

§ 181.13

that the U.S. producer has failed to maintain its records in accordance with the Generally Accepted Accounting Principles applied in the United States, that customs administration will so inform the U.S. producer in writing and will give the U.S. producer 60 calendar days to conform the records to those Principles. If a U.S. exporter or producer fails to maintain records or make records available to the Canadian or Mexican customs administration in accordance with the provisions of this section, or if a U.S. producer fails to conform its records to Generally Accepted Accounting Principles as provided in this paragraph, the Canadian or Mexican customs administration may deny preferential tariff treatment to the good that is the subject of the verification visit.

[T.D. 95-68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98-56, 63 FR 32955, June 16, 1998]

§ 181.13 Failure to comply with requirements.

The port director may apply such measures as the circumstances may warrant where an exporter or a producer in the United States fails to comply with any requirement of this part. Such measures may include the imposition of penalties pursuant to 19 U.S.C. 1508(e) for failure to retain records required to be maintained under § 181.12.

[T.D. 95-68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98-56, 63 FR 32955, June 16, 1998]

Subpart C—Import Requirements

§ 181.21 Filing of claim for preferential tariff treatment upon importation.

(a) *Declaration.* In connection with a claim for preferential tariff treatment for a good under the NAFTA, the U.S. importer shall make a written declaration that the good qualifies for such treatment. The written declaration may be made by including on the entry summary, or equivalent documentation, the symbol “CA” for a good of Canada, or the symbol “MX” for a good of Mexico, as a prefix to the subheading of the HTSUS under which each qualifying good is classified. Except as otherwise provided in § 181.22 of this part

19 CFR Ch. I (4-1-03 Edition)

and except in the case of a good to which appendix 6.B. to Annex 300-B of the NAFTA applies (see, however, § 12.132 of this chapter), the declaration shall be based on a complete and properly executed original Certificate of Origin, or copy thereof, which is in the possession of the importer and which covers the good being imported.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section or under § 181.32(b)(2) of this part, the U.S. importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer shall within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration shall be effected by submission of a letter or other written statement to the Customs office where the original declaration was filed.

§ 181.22 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential tariff treatment for a good imported into the United States shall maintain in the United States, for five years after the date of entry of the good, all documentation relating to the importation of the good. Such documentation shall include a copy of the Certificate of Origin and any other relevant records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential tariff treatment on a good under § 181.21 of this part shall provide, at the request of the port director, a copy of each Certificate of Origin pertaining to the good which is in the possession of the importer. A Certificate of Origin submitted to Customs under this paragraph or under § 181.32(b)(3) of this part:

(1) Shall be on Customs Form 434, including privately-printed copies thereof, or on such other form as approved by the Canadian or Mexican customs administration, or, as an alternative to Customs Form 434 or such other approved form, in an approved computerized format or such other medium or format as is approved by the Office of

Field Operations, U.S. Customs Service, Washington, DC 20229. An alternative format must contain the same information and certification set forth on Customs Form 434;

(2) Shall be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Shall be completed either in the English language or in the language of the country from which the good is exported. If the Certificate is completed in a language other than English, the importer shall also provide to the port director, upon request, a written English translation thereof;

(4) Shall be accepted by Customs for four years after the date on which the Certificate was signed by the exporter or producer; and

(5) May be applicable to:

(i) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical goods into the United States that occur within a specified period, not exceeding 12 months, set out therein by the exporter or producer.

(c) *Acceptance of Certificate.* A Certificate of Origin shall be accepted by the port director as valid for the purpose set forth in §181.11(a) of this part, provided that the Certificate is completed, signed and dated in accordance with the requirements of paragraph (b) of this section. If the port director determines that a Certificate is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer shall be given a period of not less than five working days to submit a corrected Certificate. Acceptance of a Certificate will result in the granting of preferential tariff treatment to the imported good unless, in connection with an origin verification initiated under subpart G of this part or based on a pattern of conduct within the meaning of §181.76(c) of this part, the port director determines that the imported good does not qualify as an originating good or should not be accorded such treatment for any other reason as specifically provided for elsewhere in this

part. A Certificate shall not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(5)(ii) of this section if, based on an origin verification under subpart G of this part, the port director determined that a previously imported identical good covered by the Certificate did not qualify as an originating good.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer shall not be required to have a Certificate of Origin in his possession for:

(i) An importation of a good for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the good qualifies for preferential tariff treatment under the NAFTA;

(ii) A non-commercial importation of a good; or

(iii) A commercial importation of a good whose value does not exceed US\$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the good covered by this shipment qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA.

Check One:

- () Producer
- () Exporter
- () Importer
- () Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a certification requirement set forth in this part, the

§ 181.23

port director shall notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential tariff treatment. The importer shall have 30 calendar days from the date of the written notice to obtain a valid Certificate, and a failure to timely obtain the Certificate will result in denial of the claim for preferential tariff treatment. For purposes of paragraph (d)(2) of this section, a "series of importations" means two or more entries covering goods arriving on the same day from the same exporter and consigned to the same person.

[T.D. 95-68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98-56, 63 FR 32955, June 16, 1998]

§ 181.23 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *Effect of noncompliance.* If the importer fails to comply with any requirement under this part, including submission of a Certificate of Origin under § 181.22(b) or submission of a corrected Certificate under § 181.22(c), the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this part are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than the United States, Canada or Mexico and the importer of the good does not provide, at the request of the port director, copies of the customs control documents that indicate to the satisfaction of the port director that the good remained under customs control while in such other country.

Subpart D—Post-Importation Duty Refund Claims

§ 181.31 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, including the right to amend an entry so long as liquidation of the entry has not become final, where a

19 CFR Ch. I (4-1-03 Edition)

good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment on that originating good was made at that time under § 181.21(a) of this part, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 181.32 of this part. Subject to the provisions of § 181.23 of this part, Customs may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 181.33(c) of this part.

§ 181.32 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 181.31 of this part shall be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund shall be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry covering the good;

(2) Subject to § 181.22(d) of this part, a copy of each Certificate of Origin (see § 181.11 of this part) pertaining to the good;

(3) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement shall identify each recipient by name, Customs identification number and address and shall specify the date on which the documentation was provided;

(4) A written statement indicating whether or not the importer of the good is aware of any claim for refund, waiver or reduction of duties relating to the good within the meaning of Article 303 of the NAFTA (see subpart E of this part). If the importer is aware of any such claim, the statement shall identify each claim by number and date and shall identify the person who made the claim by name, Customs identification number and address; and