

that qualifies as "production", the mere fact that there is a prescribed change in tariff classification will not be considered as meeting a rule of origin.

The term "production" is defined in Article 415 of the NAFTA and in 19 U.S.C. 3332(p)(22) and is implemented in section 2(1) of the Uniform Regulations (19 CFR part 181, Appendix, section 2(1)). As noted, the term, in relevant part, requires a manufacturing, processing or assembling of a good. Of course, the processes listed here are illustrative, not exhaustive, and the absence of the term "disassembly" is not dispositive of whether or not a disassembly operation is a production process for NAFTA purposes.

A disassembly operation will result in one or more articles being taken or separated from a manufactured good. Assuming no further production, these various articles are typically classifiable under tariff provisions (often those for "parts" of goods) other than the classification of the original good from which the articles were disassembled. Consequently, if disassembly is treated as production and any other requirements are satisfied, the recovered component may satisfy the NAFTA rules of origin.

Disassembly as a Production Process

Upon review, we find no evidence (beyond the failure to explicitly include disassembly in the illustrative list of "production" activities in NAFTA Article 415) showing that the NAFTA intended not to treat "disassembly" as a production process. Use of the term "processing" includes a broad range of economic activity within production. Recycling operations for the recovery by disassembly of reusable components such as automotive parts and photocopier or computer parts constitute identifiable business operations within the NAFTA territories and the free trade purposes of NAFTA (discussed above) would be satisfied by establishing rules under which substantial "production" consistent with those purposes will be deemed to occur. Recycling operations based on certain repair or alteration operations already have been given appropriate recognition under NAFTA Article 307. Equally, operations based on the recovery of certain waste or scrap materials have been designated in the NAFTA rules of origin as conferring origin where such operations take place (NAFTA Article 415). It is thus consistent with the NAFTA to treat the recovery of useable goods by disassembly as "production" under the NAFTA rules of origin.

Circumvention of NAFTA's Rules of Origin; Disassembly of New Products

Moreover, to ensure that disassembly is not used to circumvent the intent of NAFTA, the proposed rule provides that, under certain circumstances, additional operations beyond disassembly are required for the recovered component to acquire NAFTA originating status. Specifically, as previously outlined, the recovered component must meet the requirement of the applicable rule of origin in Annex 401, including any pertinent regional value content requirement; and, if the applicable rule of origin in Annex 401 does not include a regional value content requirement, the recovered component must be subject to additional processing beyond certain minor operations.

Where there is no regional value content requirement applicable to the recovered components, the additional processing operations necessary to confer NAFTA originating status must involve more than certain minor operations which are enumerated as follows: (1) Cleaning or sterilizing, including removal of rust, grease, paint, or other coatings; (2) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings; (3) Trimming, filing or cutting off small amounts of excess materials (precision machining, however, is not to be considered a minor operation); (4) Unloading, reloading or any other operation necessary to maintain the good in good condition; (5) Packing, re-packing, packaging or repackaging; or (6) Testing, marking, sorting, or grading.

Customs has also examined whether a producer might use disassembly of new goods to circumvent the intent of the NAFTA. A new non-NAFTA product could be imported into Mexico or Canada, disassembled, and the disassembled parts could then be imported into the United States and either re-assembled or used as parts. Customs believes that a change in tariff classification resulting from the disassembly of new, non-originating goods should not make the resulting goods eligible for originating status. Because the disassembly of new goods may potentially be treated as a circumvention activity within the meaning of section 17 of the Uniform Regulations (19 CFR part 181, Appendix, section 17), the proposed rule provides that the disassembly of new goods shall not be considered to be "production" for the purposes of NAFTA Article 415 and the NAFTA

rules of origin. Notwithstanding this proposal, Customs is particularly interested in receiving comments on the contrary view that an applicable value content rule or alternative requirement for substantial processing suffice to permit "production" to be considered to have occurred in this case as well. After reviewing the comments, Customs will issue a final rule that will resolve the question definitively.

To reflect the above-described interpretations of law and substantive considerations, this document proposes to add a new § 181.132 to the Customs Regulations (19 CFR 181.132).

Comments

Before adopting the proposed regulation, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of the proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5, Treasury Department Regulations (31 CFR 1.5) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), at the U.S. Customs Service, 799 9th Street, NW., Washington, DC during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

Regulatory Flexibility Act and Executive Order 12866

The proposed rule is intended to promote economic activity as well as the protection of the environment in North America, both of which are goals of the NAFTA. Specifically, the recovery and recycling of used goods is a critical element in both the economic activity and the environmental goals of the nation, and disassembly, for the recovery or re-manufacturing of used goods, is a key process in many such operations. Hence, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor does the proposed rule result in a "significant regulatory action" under E.O. 12866.

List of Subjects in 19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Imports, Mexico, Trade