

of the NAFTA. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(b) but differs from the NAFTA text by not specifying a 4-year period for acceptance of the Certificate by Customs, because that 4-year period is only relevant in a NAFTA context.

3. Paragraph (c) concerns the correction of defective Certificates of Origin and the nonacceptance of blanket Certificates in certain circumstances. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(c) but is simplified and does not include any reference to NAFTA-type origin verifications which do not apply for ATPDEA purposes.

4. Paragraph (d) sets forth the circumstances in which a Certificate of Origin is not required. Consistent with the terms of paragraph (5)(B) of amended section 204(b), this regulatory text follows the terms of Article 503 of the NAFTA and the NAFTA regulatory text contained in 19 CFR 181.22(d).

Section 10.247 concerns the verification and justification of claims for preferential treatment. Paragraph (a) concerns the verification of claims by Customs and paragraph (b) prescribes steps that a U.S. importer should take in order to support a claim for preferential treatment. Although paragraph (a) is derived from provisions contained in the GSP regulations (19 CFR 10.173(c)), in the CBI regulations (19 CFR 10.198(c)), and in the ATPA regulations (19 CFR 10.207(e)), the text expands on the GSP/CBI/ATPA approach in the following respects:

1. In paragraph (a)(1), specific reference is made to the review of import-related documents required to be made, kept, and made available by importers and other persons under Part 163 of the regulations.

2. Paragraph (a)(2) sets forth examples of documents and information relating to production Customs may need to review for purposes of verifying a claim for preferential treatment.

3. Paragraph (a)(3) refers to evidence to document the use of U.S. or ATPDEA beneficiary country materials in an article, because the presence of those materials is a key element for some of the articles to which preferential treatment applies under the ATPDEA. Accordingly, U.S. importers must be aware of the fact that their ability to successfully claim preferential treatment on their imports may be a function of the nature of the records maintained, for example by an ATPDEA beneficiary country producer, not only with regard to the production process but also with regard to the source of the materials used in that production.

Section 10.248 sets forth additional requirements for preferential treatment of brassieres described in paragraph (a)(4) of § 10.243 and is directed specifically to the 75 and 85 percent U.S.-formed fabric requirements of subclauses (II) and (III) of paragraph (3)(B)(v) of amended section 204(b). The following points are noted regarding this regulatory text:

1. The definitions of “cost” and “declared customs value” in paragraphs (a)(4) and (a)(5) are based in part on principles reflected in the Customs Regulations provisions that apply for purposes of subheading 9802.00.80, HTSUS (see, in particular, 19 CFR 10.17) and under the ATPA see, in particular, 19 CFR 10.206(d)(3)). Moreover, as regards the definition of “declared customs value” in paragraph (a)(5), Customs notes that because the circumstance in which this terminology appears in the statute does not relate to a point at which a value is normally declared to U.S. Customs, the text includes multiple factual circumstances that reflect all conditions under which a value of fabric could exist for purposes of comparison to the “cost” (of fabrics formed in the United States) defined in paragraph (a)(4).

2. Paragraph (b)(1) reflects the 75 and 85 percent U.S. fabric content requirements of paragraphs (3)(B)(v)(II) and (III) of the statute and also requires the U.S. importer to include a specific documentation identifier assigned by Customs (see the discussion of paragraph (c) below) when filing the claim for preferential treatment. Customs considers a specific documentation identifier necessary. The following points are noted regarding this paragraph:

a. Paragraph (b)(1)(i), which concerns the 75 percent requirement of paragraph (3)(B)(v)(II) of the statute, refers to articles that are “entered as articles described in § 10.243(a)(4),” whereas paragraph (b)(1)(ii), which concerns the 85 percent requirement of paragraph (3)(B)(v)(III) of the statute, refers to articles that “conform to the production standards set forth in § 10.243(a)(4).” The difference in wording is necessary in order to enable the 85 percent standard to operate. Customs notes in this regard that if the universe of articles that are looked at for purposes of assessing compliance with the 85 percent standard is the same as that used for purposes of the 75 percent standard (that is, articles that were entered under the HTSUS subheading that applies to articles described in paragraph (3)(B)(v)(I) of the statute and § 10.243(a)(4)), it would be impossible after the end of the first year of the

program (that is, after September 30, 2003) for a new producer or entity to enter the program, or for a producer or entity that failed to meet the 75 percent standard in the previous year to reenter the program. This is because application of the 85 percent standard presupposes a failure to have met the 75 percent standard in the preceding year, in which case there could not be any entries in the next year under the HTSUS subheading that applies to articles described in paragraph (3)(B)(v)(I) of the statute and § 10.243(a)(4) against which compliance with the 85 percent standard can be determined. The wording in paragraph (b)(1)(ii) of the regulatory text, by referring to articles that meet the U.S./Andean cutting and assembly production requirement (regardless of the HTSUS subheading under which they are entered), is intended to avoid this anomalous result.

b. The specific identifier, which is to be noted on the entry summary or warehouse withdrawal, will serve both the importer and Customs. The identifier serves the importer as it is a method to indicate that the importer has at the time of entry a specific basis for claiming preferential treatment—that either the 75 or the 85 percent requirement has been met in the preceding year—for the brassieres being entered and thus will facilitate the entry and clearance process. The identifier serves Customs as it is a means by which Customs can tie a particular entry to the fact that a producer of brassieres or an entity controlling production of brassieres has met the 75 or 85 percent requirement. This is essential in view of the fact that compliance with the 75 or 85 percent requirement must be established by a producer or by an entity controlling production who might not be the U.S. importer.

3. Paragraph (b)(2) sets forth a number of general rules that Customs believes apply under paragraphs (b)(1)(i) and (b)(1)(ii) and for purposes of preparing and filing the documentation prescribed under paragraph (c) by the producer or entity controlling production. Paragraph (b)(2) also includes some examples to illustrate the application of those rules.

4. Paragraph (c) provides that, in order for an importer to be able to include the distinct and unique identifier on the entry summary or warehouse withdrawal as required under paragraph (b)(1)(iii), the producer or entity controlling production must have filed with Customs a declaration of compliance with the applicable 75 or 85 percent requirement. Paragraph (c) further provides that Customs will advise the filer of the identifier assigned to that declaration of compliance so that