

## **Chapter V: Customs Procedures**

### **Section I-Certification of Origin**

#### **Article V.1 Certificate of Origin**

1. The Parties shall establish, by the date of entry into force of this Agreement, a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of the other Party qualifies as an originating good, and may thereafter revise the Certificate of Origin by agreement.

2. Each Party may require that a Certificate of Origin for a good imported into its territory be completed in the language required under its law.

3. Each Party shall:

- (a) require an exporter in its territory to complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment upon importation of the good into the territory of the other Party; and
- (b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign a Certificate of Origin on the basis of:

- (i) its knowledge of whether the good qualifies as an originating good;
- (ii) its reasonable reliance on the producer's written declaration that the good qualifies as an originating good; or
- (iii) a completed and signed Certificate of Origin for the good voluntarily provided to the exporter by the producer.

4. Nothing in paragraph 3 shall be construed to require a producer to provide a Certificate of Origin to an exporter.

5. Each Party shall provide that a Certificate of Origin that has been completed and signed by an exporter or a producer in the territory of the other Party that is applicable to:

- (a) a single importation of one or more goods into the Party's territory; or
- (b) multiple importations of identical goods into the Party's territory to be made by the same importer, that occur within a specified period, not exceeding 12 months, set out therein by the exporter or producer;

shall be accepted by its customs administration for 4 years after the date on which the Certificate of Origin was signed.

6. For any originating good that is imported into the territory of a Party on or after the date of entry into force of this Agreement, each Party shall accept a Certificate of Origin that has been completed and signed prior to that date by the exporter or producer of that good.

#### **Article V.2 Obligations Regarding Importations**

1. Except as otherwise provided in this Chapter, each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

- (a) make a written declaration, based on a valid Certificate of Origin, that the good qualifies as an originating good;

- (b) have the Certificate of Origin in its possession at the time the declaration is made;
- (c) provide, on the request of that Party's customs administration, a copy of the Certificate of Origin; and
- (d) promptly make a corrected declaration in a manner required by the customs administration of the importing Party and pay any duties owing where the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct.

2. Each Party shall provide that, where an importer in its territory claims preferential tariff treatment for a good imported into its territory from the territory of the other Party:

- (a) the Party may deny preferential tariff treatment to the good if the importer fails to comply with any requirement under this Chapter; and
- (b) the importer shall not be subject to penalties for the making of an incorrect declaration, if it voluntarily makes a corrected declaration pursuant to paragraph 1(d).

3. Each Party shall provide that, where a good would have qualified as an originating good when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer of the good may, no later than 4 years after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, on presentation of:

- (a) a written declaration that the good qualified as an originating good at the time of importation;
- (b) a copy of the Certificate of Origin; and
- (c) such other documentation relating to the importation of the good as that Party may require.

### **Article V.3      Exceptions**

Each Party shall provide that a Certificate of Origin shall not be required for:

- (a) a commercial importation of a good whose value does not exceed US\$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish, except that it may require that the invoice accompanying the importation include a statement certifying that the good qualifies as an originating good;
- (b) a non-commercial importation of a good whose value does not exceed US\$1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish; or
- (c) an importation of a good for which the Party into whose territory the good is imported has waived the requirement for a Certificate of Origin; provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles V.1 and V.2.

### **Article V.4      Obligations Regarding Exportations**

1. Each Party shall provide that:

- (a) an exporter in its territory, or a producer in its territory that has provided a copy of a Certificate of Origin to that exporter pursuant to Article V.1.3(b)(iii), shall provide a copy of the Certificate of Origin to its customs administration on request; and
- (b) an exporter or a producer in its territory that has completed and signed a Certificate of Origin, and that has reason to believe that the Certificate of Origin contains information that is not correct, shall promptly notify in writing all persons to whom the Certificate of Origin was given by the exporter or producer of any change that could affect the accuracy or validity of the Certificate of Origin.

## 2. Each Party:

(a) shall provide that a false certification by an exporter or a producer in its territory that a good to be exported to the territory of the other Party qualifies as an originating good shall have the same legal consequences, with appropriate modifications, as would apply to an importer in its territory for a contravention of its customs laws and regulations regarding the making of a false statement or representation; and

(b) may apply such measures as the circumstances may warrant where an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

3. Neither Party may impose penalties on an exporter or a producer in its territory that voluntarily provides written notification pursuant to paragraph (1)(b) with respect to the making of an incorrect certification.

## Section II - Administration and Enforcement

### Article V.5      Records

Each Party shall provide that:

(a) an exporter or a producer in its territory that completes and signs a Certificate of Origin shall maintain in its territory, for 5 years after the date on which the Certificate of Origin was signed or for such longer period as the Party may specify, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of the other Party, including records associated with:

(i) the purchase of, cost of, value of, and payment for, the good that is exported from its territory;

(ii) the purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory; and

(iii) the production of the good in the form in which the good is exported from its territory; and

(b) an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain in that territory, for 5 years after the date of importation of the good or for such longer period as the Party may specify, such documentation, including a copy of the Certificate of Origin, as the Party may require relating to the importation of the good.

### Article V.6      Origin Verifications

1. For purposes of determining whether a good imported into its territory from the territory of the other Party qualifies as an originating good, a Party may, through its customs administration, conduct a verification solely by means of:

(a) written questionnaires to an exporter or a producer in the territory of the other Party;

(b) visits to the premises of an exporter or a producer in the territory of the other Party to review the records referred to in Article V.5(a) and observe the facilities used in the production of the good; or

(c) such other procedures as the Parties may agree.

2. An exporter or producer who receives a questionnaire pursuant to paragraph 1(a) shall be given not less than 30 days from the date of receipt to provide responses and return the form. During that period, the exporter or producer may submit a written request to the importing Party, asking for a single extension of this deadline for a period not to exceed an additional 30 days.

**3.** Where an exporter or producer fails to return a duly completed questionnaire within the above-mentioned period or extension, the importing Party may deny preferential tariff treatment to the good in question.

**4.** Prior to conducting a verification visit pursuant to Paragraph (1)(b), a Party shall, through its customs administration:

**(a)** deliver a written notification of its intention to conduct the visit to:

- (i)** the exporter or producer whose premises are to be visited;
- (ii)** the customs administration of the other Party at least 5 working days prior to notifying the exporter or producer referred to in 4(a)(i); and
- (iii)** if requested by the other Party, the embassy of the other Party in the territory of the Party proposing to conduct the visit; and

**(b)** obtain the written consent of the exporter or producer whose premises are to be visited.

**5.** The notification referred to in paragraph 4 shall include:

- (a)** the identity of the customs administration issuing the notification;
- (b)** the name of the exporter or producer whose premises are to be visited;
- (c)** the date and place of the proposed verification visit;
- (d)** the object and scope of the proposed verification visit, including specific reference to the good that is the subject of the verification;
- (e)** the names and titles of the officials performing the verification visit; and
- (f)** the legal authority for the verification visit.

**6.** Where an exporter or producer has not given its written consent to a proposed verification visit within 30 days of notification pursuant to paragraph 4, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.

**7.** Each Party shall provide that, where its customs administration receives notification pursuant to paragraph 4, the customs administration may, within 15 days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 days from the date of such receipt, or for such longer period as the Parties may agree.

**8.** Each Party shall provide that, when the exporter or producer receives notification pursuant to paragraph 4, the exporter or producer may, on a single occasion, within 15 days of receipt of the notification, request the postponement of the proposed verification visit for a period not exceeding 60 days from the date of such receipt, or for such longer period as agreed to by the notifying Party.

**9.** A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraph 7.

**10.** Each Party shall permit an exporter or a producer whose good is the subject of a verification visit by the other Party to designate 2 observers to be present during the visit, provided that:

- (a)** the observers do not participate in a manner other than as observers; and
- (b)** the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

**11.** Each Party shall, through its customs administration, where conducting a verification of origin involving a regional value content, de minimis calculation or any other provision in Chapter IV (Rules of Origin) to which Generally Accepted Accounting Principles may be relevant, apply such principles as are applicable

in the territory of the Party from which the good was exported.

**12.** The Party conducting a verification shall, through its customs administration and within 120 days after it has received all the necessary information, provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good, including findings of fact and the legal basis for the determination. Notwithstanding the foregoing, the customs administration may extend such period for up to 90 days, after notifying the producer or exporter of the good.

**13.** Where verifications by a Party indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods exported or produced by such person until that person establishes compliance with Chapter IV (Rules of Origin).

**14.** Each Party shall provide that where it determines that a certain good imported into its territory does not qualify as an originating good based on a tariff classification or a value applied by the Party to one or more materials used in the production of the good, which differs from the tariff classification or value applied to the materials by the other Party, the Party's determination shall not become effective until it notifies in writing both the importer of the good and the person that completed and signed the Certificate of Origin for the good of its determination.

**15.** A Party shall not apply a determination made under paragraph 14 to an importation made before the effective date of the determination where: (a) the customs administration of the other Party has issued an advance ruling under Article V.9 or any other ruling on the tariff classification or on the value of such materials, or has given consistent treatment to the entry of the materials under the tariff classification or value at issue, on which a person is entitled to rely; and (b) the advance ruling, other ruling or consistent treatment was given prior to notification of the determination.

**16.** If a Party denies preferential tariff treatment to a good pursuant to a determination made under paragraph 14, it shall postpone the effective date of the denial for a period not exceeding 90 days where the importer of the good, or the person who completed and signed the Certificate of Origin for the good, demonstrates that it has relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs administration of the other Party.

**17.** The Parties may also agree to develop other verification procedures under this Article.

#### **Article V.7      Confidentiality**

**1.** Each Party shall maintain, in accordance with its law, the confidentiality of the business information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.

**2.** The confidential business information collected pursuant to this Chapter may only be disclosed to those authorities responsible for the administration and enforcement of determinations of origin, and of customs and revenue matters.

#### **Article V.8      Penalties**

**1.** Each Party shall maintain measures imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to this Chapter.

**2.** Nothing in Article V.2.2, V.4.3 or V.6.9 shall be construed to prevent a Party from applying such measures as may be warranted by the circumstances in accordance with its legislation.

## Section III - Advance Rulings

### Article V.9 Advance Rulings

1. Each Party shall, through its customs administration, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, to an importer in its territory or an exporter or a producer in the territory of the other Party, on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning:

- (a) whether materials imported from a non-Party country used in the production of a good undergo an applicable change in tariff classification set out in Annex IV.1 (Specific Rules of Origin) as a result of production occurring entirely in the territory of one or both of the Parties;
- (b) whether a good satisfies a regional value-content requirement set out in Chapter IV (Rules of Origin);
- (c) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter IV (Rules of Origin), the appropriate basis or method for value to be applied by an exporter or a producer in the territory of the other Party, in accordance with the principles of the Customs Valuation Agreement, for calculating the transaction value of the good or of the materials used in production of the good;
- (d) whether a good qualifies as an originating good under Chapter IV (Rules of Origin);
- (e) whether a good that re-enters its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment in accordance with Article III.6 (Goods Re-Entered after Repair or Alteration); or
- (f) such other matters as the Parties may agree.

2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including a detailed description of the information reasonably required to process an application for a ruling.

3. Each Party shall provide that its customs administration:

- (a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information from the person requesting the ruling;
- (b) shall, after it has obtained all necessary information from the person requesting an advance ruling, issue the ruling within 120 days; and
- (c) shall provide to the person requesting the ruling a full explanation of the reasons for the ruling.

4. Subject to paragraph 6, each Party shall apply an advance ruling to importations into its territory of the good for which the ruling was requested, beginning on the date of its issuance or such later date as may be specified in the ruling.

5. Each Party shall provide to any person requesting an advance ruling the same treatment, including the same interpretation and application of provisions of Chapter IV (Rules of Origin) regarding a determination of origin, as it provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.

6. The issuing Party may modify or revoke an advance ruling:

- (a) if the ruling is based on an error:
  - (i) of fact;
  - (ii) in the tariff classification of a good or a material that is the subject of the ruling;
  - (iii) in the application of a regional value-content requirement under Chapter IV (Rules of Origin); or
  - (iv) in the application of the rules for determining whether a good that re-enters

its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment under Article III.6 (Goods Re-Entered after Repair or Alteration);

- (b) if the ruling is not in accordance with an interpretation agreed upon by the Parties regarding Chapter III (National Treatment and Market Access of Goods) or Chapter IV (Rules of Origin);
- (c) if there is a change in the material facts or circumstances on which the ruling is based;
- (d) to conform with a modification of Chapter III (National Treatment and Market Access of Goods), Chapter IV (Rules of Origin), this Chapter or any Uniform Regulations; or
- (e) to conform with a judicial decision or a change in its domestic law.

**7.** Each Party shall provide that any modification or revocation of an advance ruling shall be effective on the date on which the modification or revocation is issued, or on such later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

**8.** Notwithstanding paragraph 7, the issuing Party shall postpone the effective date of such modification or revocation for a period not exceeding 90 days where the person to whom the advance ruling was issued demonstrates that it has relied in good faith to its detriment on that ruling.

**9.** Each Party shall provide that where its customs administration examines the regional value content of a good for which it has issued an advance ruling pursuant to subparagraph 1(b), (c), (d) and (e), it shall evaluate whether:

- (a) the exporter or producer has complied with the terms and conditions of the advance ruling;
- (b) the exporter's or producer's operations are consistent with the material facts and circumstances on which the advance ruling is based; and
- (c) the supporting data and computations used in applying the basis or method for calculating value or allocating cost were correct in all material respects.

**10.** Each Party shall provide that where its customs administration determines that any requirement in paragraph 9 has not been satisfied, it may modify or revoke the advance ruling as the circumstances may warrant.

**11.** Each Party shall provide that, where the person to whom an advance ruling was issued demonstrates that it used reasonable care and acted in good faith in presenting the facts and circumstances on which the ruling was based, and where the customs administration of a Party determines that the ruling was based on incorrect information, the person to whom the ruling was issued shall not be subject to penalties.

**12.** Each Party shall provide that where it issues an advance ruling to a person that has misrepresented or omitted material facts or circumstances on which the ruling is based, or has failed to act in accordance with the terms and conditions of the ruling, the Party may apply such measures as may be warranted by the circumstances in accordance with its laws.

**13.** The Parties shall provide that an advance ruling will remain in effect and will be honoured if there is no change in the material facts or circumstances on which it is based.

**14.** Each Party may provide that, where application for an advance ruling is made to its customs administration that involves an issue that is the subject of:

- (a) a verification of origin;
- (b) a review by or appeal to the customs administration; or
- (c) judicial or quasi-judicial review in its territory; the customs administration may decline or

postpone the issuance of the ruling.

## **Section IV - Review and Appeal of Advance Rulings and Origin Determinations**

### **Article V.10 Review and Appeal**

1. Each Party shall grant substantially the same rights of review and appeal of determinations of origin and advance rulings issued by its customs administration as it provides to importers in its territory, to any person:

- (a) who completes and signs a Certificate of Origin for a good that has been the subject of a determination of origin; or
- (b) who has received an advance ruling pursuant to Article V.9.1.

2. Further to Articles XII.4 (Administrative Proceedings) and XII.5 (Review and Appeal), each Party shall provide that the rights of review and appeal referred to in Paragraph 1 shall include access to:

- (a) at least one level of administrative review independent of the official or office responsible for the determination under review; and
- (b) in accordance with its domestic law, judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review.

## **Section V - Uniform Regulations**

### **Article V.11 Uniform Regulations**

1. The Parties shall establish, and implement, through their respective laws, regulations or administrative policies, by the date of entry into force of this Agreement, and at any time thereafter, upon agreement of the Parties, Uniform Regulations regarding the interpretation, application and administration of this Chapter and other matters as may be agreed by the Parties.

2. Each Party shall implement any modification of or addition to the Uniform Regulations no later than 180 days after the Parties agree on such modification or addition, or such other period as the Parties may agree.

## **Section VI - Cooperation**

### **Article V.12 Cooperation**

1. Each Party shall notify the other Party of the following determinations, measures and rulings, including, to the greatest extent practicable, those that are prospective in application:

- (a) a determination of origin issued as the result of a verification conducted pursuant to Article V.6.1;
- (b) a determination of origin that the Party is aware is contrary to:

- (i) a ruling issued by the customs administration of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the net cost of a good, that is subject of a determination of origin; or
- (ii) consistent treatment given by the customs administration of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the net cost of a good, that is the subject of a determination of origin;

- (c) a measure establishing or significantly modifying an administrative policy that is likely to affect future determinations of origin; and
- (d) an advance ruling, or a ruling modifying or revoking an advance ruling, pursuant to Article V.9.

**2. The Parties shall cooperate:**

- (a) in the enforcement of their respective customs-related laws or regulations implementing this Agreement, and under any customs mutual assistance agreement or other customs-related agreement to which they are party;
  - (b) to the extent practicable and for purposes of facilitating the flow of trade between them, in such customs-related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonization of documentation used in trade, the standardization of data elements, the acceptance of an international data syntax and the exchange of information;
  - (c) to the extent practicable, in the harmonization of customs laboratories methods and exchange of information and personnel between the customs laboratories; and
  - (d) to the extent practicable, in jointly organizing training programs on customs-related issues, which include training for the officials and users who participate directly in customs procedures.
3. For purposes of this Article, the Parties shall enter into a Customs Mutual Assistance Agreement between their customs administrations.

**Article V.13      The Customs Sub-Committee**

1. The Parties hereby establish a Customs Sub-Committee, comprising representatives of each Party's customs administration. The Sub-Committee shall meet as required and at any other time on the request of either Party and shall:

(a) endeavor to agree on:

- (i) the uniform interpretation, application and administration of Article III.4 (Temporary Admission of Goods), III.5 (Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials) and III.6 (Goods Re-Entered after Repair or Alteration), Chapter IV (Rules of Origin), this Chapter, and any Uniform Regulations;
- (ii) tariff classification and valuation matters relating to determinations of origin;
- (iii) equivalent procedures and criteria for the request, approval, modification, revocation and implementation of advance rulings;
- (iv) revision to the Certificate of Origin;
- (v) any other matter referred to it by a Party or the Committee on Trade in Goods and Rules of Origin established under Article III.14.1 (Consultations and Committee on Trade in Goods and Rules of Origin); and
- (vi) any other customs-related matter arising under this Agreement;

(b) consider:

- (i) the harmonization of customs-related automation requirements and documentation; and
- (ii) proposed customs-related administrative or operational changes that may affect the flow of trade between the Parties' territories;

- (c) report periodically to the Committee on Trade in Goods and Rules of Origin and notify it of any agreement reached under this paragraph; and
- (d) refer to the Committee on Trade in Goods and Rules of Origin any matter on which it has been unable to reach agreement within 60 days of referral of the matter to it pursuant to

subparagraph (a)(v).

2. Nothing in this Chapter shall be construed to prevent a Party from issuing a determination of origin or an advance ruling relating to any matter under consideration by the Customs Sub-Committee or from taking such other action as it considers necessary, pending a resolution of the matter under this Agreement.

#### **Article V.14      Definitions**

For purposes of this Chapter:

**commercial importation** means the importation of a good into the territory of a Party for the purpose of sale, or any commercial, industrial or other like use;

**customs administration** means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

**determination of origin** means a determination as to whether a good qualifies as an originating good in accordance with Chapter IV (Rules of Origin);

**exporter in the territory of a Party** means an exporter located in the territory of a Party and an exporter required under this Chapter to maintain records in the territory of that Party regarding exportations of a good;

**identical goods** means goods that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods under Chapter IV (Rules of Origin);

**importer in the territory of a Party** means an importer located in the territory of a Party and an importer required under this Chapter to maintain records in the territory of that Party regarding importations of a good;

**indirect material** means "indirect material" as defined in Article IV.15 (Definitions);

**material** means "material" as defined in Article IV.15 (Definitions);

**net cost of a good** means "net cost of a good" as defined in Article IV.15 (Definitions);

**preferential tariff treatment** means the duty rate applicable to an originating good;

**producer** means "producer" as defined in Article IV.15 (Definitions);

**production** means "production" as defined in Article IV.15 (Definitions);

**transaction value** means "transaction value" as defined in Article IV.15 (Definitions);

**Uniform Regulations** means "Uniform Regulations" established under Article V.11 (Uniform Regulations);

**used** means "used" as defined in Article IV.15 (Definitions); and

**value** means value of a good or material in accordance with the Customs Valuation Agreement.