

## CHAPTER 5 CUSTOMS PROCEDURES

### Article 5.1: 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 ruling issued as a result of origin verification process establishing that a good qualifies as an originating good in accordance with Chapter 4;

**exporter** means a person located in the territory of a Party from where a good is exported by such a person and required to maintain records in the territory of that Party regarding exportations of the good, pursuant to Article 5.4.5;

**identical goods** means "identical goods" as defined in the Customs Valuation Agreement;

**importer** means a person located in the territory of a Party where a good is imported by such a person and required to maintain records in the territory of that Party regarding importation of the good, pursuant to Article 5.3.4;

**material** means a "material" as defined in Article 4.1;

**preferential tariff treatment** means the duty rate applicable to an originating good, pursuant to the Parties' respective Tariff Elimination Schedules;

**producer** means a "producer" as defined in Article 4.1;

**production** means "production" as defined in Article 4.1;

**adjusted value** means "adjusted value" as defined in Article 4.1;

**Uniform Regulations** means the "Uniform Regulations" established under Article 5.12;

**used** means "used" as defined in Article 4.1; and

**value** means value of a good or material for purposes of calculating customs duties or for purposes of applying Chapter 4.

### Article 5.2: Certificate and Declaration of Origin

1. The Parties shall establish, by the entry into force of this Agreement, a single form for the Certificate of Origin and a single form for the Declaration of Origin, which may thereafter be revised by agreement between the Parties.

2. The Certificate of Origin, referred to in paragraph 1, shall certify that goods that are exported from the territory of one Party to the territory of the other Party qualify as originating. The Certificate will have a duration of two years from the date on which the Certificate was signed.
3. Each Party shall require that a Certificate of Origin for a good imported into its territory must be completed and signed in the English language, for the purpose of requesting preferential tariff treatment.
4. 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 on importation of the good into the territory of the other Party;
  - (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 representation that the good qualifies as an originating good; or
    - (iii) the Declaration of Origin referred to in paragraph 1.
5. The Declaration of Origin referred to in paragraph 1 should be completed and signed by the producers of the good and provided voluntarily to the exporter. The Declaration will have a duration of two years from the date on which it was signed.
6. Each Party shall provide that a Certificate of Origin that has been completed and signed by an exporter in the territory of the other Party is applicable to a single importation of a good into its own territory.
7. 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 of that good.
8. Each Party shall make all efforts to establish, according to its domestic legislation, that the Certificate of Origin completed and signed by the exporter is certified by competent governmental authorities or the body empowered by the government.

### **Article 5.3: Obligations Regarding Importations**

1. 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, in the importation document established in its legislation, 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, referred to in subparagraph (a), is made;
  - (c) provide, upon request of that Party's customs administration, a

- copy of the Certificate of Origin; and
- (d) promptly make a corrected declaration 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. When the importer complies with such obligations, the importer shall not be penalised.

2. Each Party shall provide that, when an importer in its territory does not comply with any requirement established in this Chapter, the claimed preferential tariff treatment shall be denied for the imported goods from the territory of the other Party.

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 one year 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 with 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.

4. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into its territory maintain in that territory, for five 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 5.4: Obligations Regarding Exportations**

1. Each Party shall provide that an exporter in its territory, or a producer in its territory that has provided a copy of a Declaration of Origin to that exporter pursuant to Article 5.2, shall provide a copy of the Certificate or Declaration of Origin to its customs administration upon request.

2. Each Party shall provide that an exporter or a producer in its territory who has completed and signed a Certificate or Declaration of Origin, and who has reason to believe that the Certificate or Declaration of Origin contains information that is not correct, notifies promptly, in writing, its customs administration and all persons, to whom the Certificate or Declaration of Origin was given by the exporter or producer, of any change that could affect the accuracy or validity of the Certificate or Declaration, depending on the case. Upon compliance with such an obligation, neither the exporter nor the producer shall be penalised for presenting an incorrect Certification or Declaration of Origin.

3. Each Party shall provide that the customs administration of the exporting Party notify in writing to the customs administration of the importing Party regarding the notification mentioned in paragraph 2.

4. Each Party 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. Furthermore, each Party 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.

5. Each Party shall provide that an exporter or a producer in its territory that completes and signs a Certificate or Declaration of Origin shall maintain in its territory, for five years after the date on which the Certificate or Declaration of Origin was signed or for such a 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:

- (a) the purchase, cost and value of, and payment for, the good that is exported from its territory;
- (b) the purchase, cost and value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory; and
- (c) the production of the good in the form in which the good is exported from its territory.

#### **Article 5.5: 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 one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 5.2 and 5.3.

#### **Article 5.6: Invoicing by a Non-Party Operator**

When a good to be traded is invoiced by a non-Party operator, the producer or exporter of the originating Party shall notify, in the field titled "observations" of the respective Certificate of Origin, that the goods subject to declaration shall be invoiced from that non-Party, and shall notify the name, corporate name and address of the operator that will eventually invoice the operation to its destination.

### **Article 5.7: Confidentiality**

1. Each Party shall maintain, in accordance with its law, the confidentiality of confidential business information collected pursuant to this Chapter and shall protect such information from disclosure that could prejudice the competitive position of the persons 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 customs and revenue matters.

### **Article 5.8: Origin Verifications**

1. The importing Party may request the exporting Party to provide information regarding the origin of any imported good.

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

- (a) written questionnaires and requests for required information 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 5.4.5 and observe the facilities used in the production of the good, or to that effect any facilities used in the production of the materials; or
- (c) such other procedure as the Parties may agree.

3. The exporter or producer that receives a questionnaire pursuant to subparagraph 2(a) shall answer and return it within a period of 30 days from the date on which it was received. During this period the exporter or producer may, in only one opportunity, request in writing to the importing Party an extension of the original period, not exceeding 30 days.

4. In the case the exporter or producer does not return the questionnaire correctly answered within the given period or its extension, the importing Party may deny preferential tariff treatment.

5. Prior to conducting a verification visit pursuant to subparagraph 2(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; and
  - (iii) if requested by the other Party, the embassy of the other Party in the territory of the importing Party proposing to conduct the visit;and
- (b) obtain the written consent of the exporter or producer whose premises are to be visited.

6. The notification referred to in paragraph 5 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.

7. Where an exporter or a producer has not given its written consent to a proposed verification visit within 30 days after the receipt of notification pursuant to paragraph 5, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.

8. Each Party shall provide that, upon receipt of notification pursuant to paragraph 5, such an exporter or a producer may, within 15 days of receiving 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. However, this may be done in only one opportunity. For this purpose, this extension shall be notified to the customs administration of the importing and exporting Parties.

9. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraph 8.

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 two 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 the verification of origin involving a regional value content, De Minimis calculation or any other provision in Chapter 4 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. After the conclusion of a verification, the customs administration conducting the verification shall 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.

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 a person until that person establishes compliance with Chapter 4.

14. Each Party shall provide that where its customs administration 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 exporter 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 competent authorities of the other Party has issued an advanced ruling under Article 5.9 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 advanced 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.

#### **Article 5.9: Advanced Rulings on Determinations of Origin**

1. Each Party shall, through its competent authorities, provide for the expeditious issuance of written advanced 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 an importer, an exporter or a producer of the good, concerning:

- (a) whether a good qualifies as an originating good under Chapter 4;
- (b) whether materials imported from a non-Party used in the production of a good undergo an applicable change in tariff classification set out in Annex 4 as a result of production occurring entirely in the territory of one or both of the Parties;
- (c) whether a good satisfies a regional value-content requirement under either the build-down method or the build-up method set out in Chapter 4;
- (d) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter 4, 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 adjusted value of the good or of the materials used in the production of the good;
- (e) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter 4, the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods set out in the Uniform Regulations, for calculating the value of an intermediate material;
- (f) 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 3.7; or
- (g) such other matters as the Parties may agree.

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

3. Each Party shall provide that its competent authorities:
- (a) may, at any time during the course of an evaluation of an application for an advanced ruling, request supplemental information from the person requesting the ruling;
  - (b) shall, after it has obtained all necessary information from the person requesting an advanced ruling, issue the ruling within the periods specified in the Uniform Regulations; and
  - (c) shall, where the advanced ruling is unfavourable to the person requesting it, provide to that person with a full explanation of the reasons for the ruling.

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

5. Each Party shall provide to any person requesting an advanced ruling the same treatment, including the same interpretation and application of the provisions of Chapter 4 regarding a determination of origin, as it provided to any other person to whom it issued an advanced ruling, provided that the facts and circumstances are identical in all material respects.

6. The issuing Party may modify or revoke an advanced 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 4; 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 3.7;
  - (b) if the ruling is not in accordance with an interpretation agreed by the Parties regarding Chapter 3 or Chapter 4;
  - (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 3, Chapter 4, this Chapter or the Uniform Regulations; or
  - (e) to conform with a judicial or administrative decision or a change in its domestic law.

7. Each Party shall provide that any modification or revocation of an advanced ruling is effective on the date on which the modification or revocation is issued, or on such a 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 advanced 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 advanced 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 competent authorities examines the regional value content of a good for which it has issued an advanced ruling pursuant to subparagraphs 1(d), (e) and (f), it shall evaluate whether:

- (a) the exporter or producer has complied with the terms and conditions of the advanced ruling;
- (b) the exporter's or producer's operations are consistent with the material facts and circumstances on which the advanced 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 competent authority determines that any requirement in paragraph 9 has not been satisfied, it may modify or revoke the advanced ruling as the circumstances may warrant.

11. Each Party shall provide that, where the person to whom an advanced 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 competent authority 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 advanced ruling to a person that has misrepresented or omitted material facts or circumstances on which such a 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 the circumstances may warrant.

13. The Parties shall provide that the person to whom the advanced ruling was issued may use it only while the material facts or circumstances that were the basis of its issuance are still present. In this case, the person to whom the advanced ruling was issued may present the necessary information for the issuing authority to proceed pursuant to paragraph 6.

14. A good that is subject to an origin verification process or any instance of review or appeal in the territory of one of the Parties may not undergo an advanced ruling.

#### **Article 5.10: Review and Appeal**

1. Each Party shall grant substantially the same rights of review and appeal of determinations of origin and advanced rulings 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 pursuant to Article 5.8.12; or
- (b) who has received an advanced ruling pursuant to Article 5.9.

2. 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.

#### **Article 5.11: Penalties**

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

2. Nothing in Articles 5.3.1(d), 5.3.2, 5.4.2, 5.8.4, 5.8.7 or 5.8.9 shall be construed to prevent a Party from applying such measures as the circumstances may warrant.

#### **Article 5.12: Uniform Regulations**

1. The Parties shall establish and implement, through their respective laws or regulations, by the date of entry into force of this Agreement, or at any time thereafter upon agreement of the Parties, the Uniform Regulations regarding the interpretation, application and administration of Chapter 3, Chapter 4, this Chapter and other matters as may be agreed by the Parties.

2. As of the entry into force of the Uniform Regulations, 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.

#### **Article 5.13: 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 5.8, once the instances of review and appeal pursuant to Article 5.10 have been exhausted;
- (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 value of a good, that is the 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 value 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 advanced ruling, or a ruling modifying or revoking an advanced ruling, pursuant to Article 5.9.

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 harmonisation of documentation used in trade, the standardisation of data elements, the acceptance of an international data syntax and the exchange of information;
- (c) to the extent practicable, in the storage and transmission of customs-related documentation;
- (d) in the origin verification process of a good, for which the customs administration of the importing Party may request the other Party's customs administration to cooperate in this process of verification in its own territory;
- (e) to search for a certain mechanism with the purpose of detecting and preventing the illicit shipment of goods arriving from one of the Parties or from a non-Party; and
- (f) to jointly organise training programmes in customs related issues, which should include training for customs officials as well as users that directly participate in customs procedures.

#### **Article 5.14: Review**

In the second year from the date of entry into force of this Agreement, the Parties shall examine and revise, if deemed necessary by the Parties, the system regarding the Certificate or Declaration of Origin under this Chapter.