

CHAPTER FOUR ORIGIN PROCEDURES

ARTICLE 4.1: DEFINITIONS

For the purposes of this Chapter:

customs authority means the authority that is responsible under the law of a Party for the administration and application 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 Three (Rules of Origin);

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

indirect materials means “indirect materials” as defined in Article 3.1 (Definitions);

materials means “materials” as defined in Article 3.1 (Definitions);

producer means “producer” as defined in Article 3.1 (Definitions); and

production means “production” as defined in Article 3.1 (Definitions).

ARTICLE 4.2: ISSUING AUTHORITIES OF CERTIFICATE OF ORIGIN

1. The Certificate of Origin shall be issued by the Government designated authorities (hereinafter referred to as “Issuing Authorities”) of the exporting Party as provided in Annex 4-A.
2. Each Party shall inform the other Party of the names and addresses of the authorised officials of its respective Issuing Authorities and also provide the original sets of their specimen signatures and specimen of official seals. Any change in names, addresses, specimen signatures or official seals shall be promptly informed to the other Party.
3. For the purposes of verifying the requirements for preferential tariff treatment, the Issuing Authorities shall have the right to request for any supporting documentary evidence or to carry out any verification considered appropriate, consistent with its laws or practices.

ARTICLE 4.3: APPLICATION FOR CERTIFICATE OF ORIGIN

1. The exporter or the producer of the goods qualified for preferential tariff treatment shall apply in writing or electronically, as the case may be, to the relevant Issuing Authorities requesting for pre-export verification of the origin of the goods. The Issuing Authorities may conduct pre-export verification. The result of the verification, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in verifying the origin of the said goods to be exported thereafter. The pre-export verification may not apply to the goods of which, by their nature, origin can be easily verified.

2. At the time of carrying out the formalities for exporting the goods under preferential tariff treatment:

- (a) the exporter or his or her authorised representative shall submit a written application for a Certificate of Origin together with appropriate supporting documents proving that the goods to be exported qualify for the issuance of the Certificate of Origin; or
- (b) where an exporter is not the producer of the good, the application for a Certificate of Origin may be on the basis of the producer's origin declaration that the goods qualify as originating goods, including the result of pre-export verification pursuant to paragraph 1.

3. The Issuing Authorities shall, to the best of their competence and ability, carry out proper examination upon each application for a Certificate of Origin to ensure that:

- (a) the application for the Certificate of Origin is duly completed and signed by the exporter or its authorised signatory;
- (b) the origin of the goods is in conformity with Chapter Three (Rules of Origin);
- (c) the other statements of the Certificate of Origin correspond to supporting documentary evidence submitted; and
- (d) export of multiple items declared on a single Certificate of Origin shall be allowed, provided that each item qualifies as originating separately in its own right.

ARTICLE 4.4: ISSUANCE OF A CERTIFICATE OF ORIGIN

1. A Certificate of Origin shall:

- (a) be in a printed format or such other medium including electronic format;
- (b) be completed in English in conformity with the specimen and the instructions contained therein as set out in the Annex 4-B; and
- (c) comprise one original and three copies.

2. The Issuing Authorities, while retaining the duplicate, shall provide the original and remaining two copies to the exporter. The original shall be forwarded, together with the triplicate, by the exporter to the importer for submission to the customs authority at the port or place of importation. The triplicate shall be retained by the importer. The quadruplicate shall be retained by the exporter.

3. No erasures and superimpositions shall be allowed on the Certificate of Origin. Any alteration shall be made by striking out the errors and making any addition required. Such alterations shall be approved and certified by an official authorised to sign the Certificate of Origin issued by the relevant Issuing Authorities. Unused spaces shall be crossed out to prevent any subsequent addition.

4. The Certificate of Origin shall be issued at the time of exportation, or within seven working days from the date of shipment whenever the goods to be exported can be considered originating in that Party. Under exceptional cases where a Certificate of

Origin has not been issued at the time of exportation or within seven working days from the date of shipment due to involuntary errors or omissions, or any other valid reasons, the Certificate of Origin may be issued retrospectively but not later than one year from the date of shipment, bearing the words “ISSUED RETROSPECTIVELY” in Remarks box of the Certificate of Origin.

5. In the event of theft, loss or destruction of a Certificate of Origin, the exporter may apply in writing to the Issuing Authorities which issued it for a certified true copy of the original and the triplicate to be made on the basis of the export documents in their possession bearing the endorsement of the words “CERTIFIED TRUE COPY”, (in lieu of the original certificate) in Remarks box of the Certificate of Origin. This copy shall bear the date of the original Certificate of Origin. The certified true copy of a Certificate of Origin shall be issued not later than one year from the date of issuance of the original Certificate of Origin and on the condition that the exporter provides to the relevant Issuing Authorities the quadruplicate.

ARTICLE 4.5: VALIDITY OF CERTIFICATE OF ORIGIN

1. A Certificate of Origin shall be valid for 12 months from the date of issue in the exporting Party, and the claim for preferential tariff treatment shall be made within the said period to the customs authority of the importing Party.

2. A Certificate of Origin, which is submitted to the customs authority of the importing Party after the said expiration date specified in paragraph 1, may be accepted for the purpose of claiming preferential tariff treatment, in accordance with the procedures applicable in that Party where the failure to submit these documents by the final date is due to exceptional circumstances.

3. In all cases, the customs authority in the importing Party may accept such Certificate of Origin, provided that the goods have been imported before the expiration date of the said Certificate of Origin in accordance with the procedures applicable in that Party.

4. A single Certificate of Origin may be used for:

- (a) a single shipment of goods that results in the filing of one or more entries on the importation of the goods into the territory of a Party; or
- (b) more than one shipment of goods that results in the filing of one entry on the importation of the goods into the territory of a Party.

ARTICLE 4.6: INVOICING BY A NON-PARTY OPERATOR

1. The customs authority in the importing Party may accept a Certificate of Origin in cases where the sales invoice is issued by an operator located in a third country or by an exporter for the account of the said operator, provided that the good meets the requirements of Chapter Three (Rules of Origin).

2. The exporter of the goods shall indicate “third country invoicing” and such information as name, address and country of the operator issuing the invoice in the Certificate of Origin.

ARTICLE 4.7: DISCREPANCIES IN THE CERTIFICATE OF ORIGIN

The discovery of minor discrepancies between the statements made in the Certificate of Origin and those made in the documents submitted to the customs authority of the importing Party for the purpose of carrying out the formalities for importing the goods shall not *ipso facto* invalidate the Certificate of Origin, if it does in fact correspond to the said goods.

ARTICLE 4.8: CLAIMS FOR PREFERENTIAL TARIFF TREATMENT

1. Except as otherwise provided for 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) request preferential tariff treatment at the time of importation of an originating good, if required by the customs authority of the importing Party;
- (b) make a written declaration, if it deems necessary, that the good qualifies as an originating good;
- (c) submit the original Certificate of Origin to the customs authority of the importing Party at the time of importation, if required by the customs authority of the importing Party;
- (d) provide, on the request of that Party's customs authority, any other documentation relating to the importation of the good; and
- (e) promptly make a corrected declaration in a manner required by the customs authority of the importing Party, subject to the customs laws of the importing Party and pay any duties along with interest and other charges 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 may in accordance with its laws and regulations, provide that, where a good would have qualified as an originating good when it was imported into its territory, the importer of the good may, within a period of at least one year or for such longer period specified by the importing Party's laws and regulations 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.

3. For the purposes of paragraph 1(d), the customs authority of the importing Party may require an importer to demonstrate that the good was shipped in accordance with Article 3.15 (Direct Consignment) by providing with:

- (a) bills of lading or waybills indicating the shipping route and all points of shipment and transshipment prior to the importation of the good; and
- (b) where the good is shipped through or transhipped in a non-Party, a copy of the customs control documents indicating that the good remained under customs control while in that non-Party.

4. Where the customs authority of the importing Party determines that a Certificate of Origin is illegible, defective on its face or has not been completed pursuant to Article 4.4,

or discovers that discrepancies exist between the Certificate of Origin and the written declaration, the importer will be granted a period of not less than five working days, but not exceeding 30 working days from the date of request by the customs authority to provide a copy of the corrected Certificate of Origin.

5. An importer that makes a corrected declaration of origin pursuant to paragraph 1(e) and pays any duties owing, will not be subject to penalties under Article 4.16, in accordance with each Party's laws and regulations.

ARTICLE 4.9: WAIVER OF CERTIFICATE OF ORIGIN

Goods sent as small packages from private persons to private persons or forming part of travellers' personal luggage may be admitted as originating goods without requiring the submission of a Certificate of Origin, in accordance with each Party's laws and regulations.

ARTICLE 4.10: RECORD KEEPING REQUIREMENT

1. The application for a Certificate of Origin and all documents related to origin shall be retained by the Issuing Authorities, exporter and producer for not less than five years from the date of issuance of the Certificate of Origin.

2. A copy of the Certificate of Origin and all relevant import documents shall be retained by an importer for not less than five years from the date of importation.

3. An importer, exporter or producer may choose to maintain records specified in paragraphs 1 and 2 in any medium that allows for prompt retrieval, including, but not limited to, digital, electronic, optical, magnetic or hard copy.

4. Importers, exporters and producers that are required to maintain documents related to origin pursuant to paragraphs 1 and 2 will make those documents available for inspection by an officer of the customs authority or Issuing Authorities of a Party conducting a verification visit and provide facilities for inspection thereof.

ARTICLE 4.11: VERIFICATION BY COMPETENT AUTHORITY OF EXPORTING PARTY

1. The importing Party may, at random or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the goods in question or of certain parts thereof, request the Issuing Authorities¹ of the exporting Party for a retroactive check. The Issuing Authorities shall conduct such check subject to the following procedures:

- (a) the request for a retroactive check shall be accompanied with the Certificate of Origin concerned and shall specify the reasons and any additional information suggesting that the particulars given on that Certificate of Origin may be inaccurate, unless the retroactive check is requested on a random basis;
- (b) the Issuing Authorities receiving a request for a retroactive check shall respond to the request promptly and reply within three months after receipt

¹ In the case of Korea, the Issuing Authorities referred to Articles 4.11 through 4.13 for the purposes of origin verification for the exported goods into India refer to the customs authority in accordance with its customs laws and regulations.

of the request;

- (c) the customs authority of the importing Party may suspend the provision of preferential tariff treatment while awaiting the result of verification. However, it may release the goods to the importer subject to any administrative measures deemed necessary, provided that they are not subject to import prohibition or restriction and that there is no suspicion of fraud; and
- (d) the Issuing Authorities shall promptly transmit the results of the verification process to the customs authority of the importing Party which shall then determine whether or not the subject good is originating. The retroactive check process, including the process of notifying the Issuing Authorities of the exporting Party of the results of determination on whether the subject good is originating or not, should be completed within six months. While the process of the retroactive check is being undertaken, subparagraph (c) shall be applied.

2. The customs authority of the importing Party may request an importer for information or documents relating to the origin of imported goods in accordance with its laws and regulations before requesting the retroactive check pursuant to paragraph 1.

ARTICLE 4.12: VERIFICATION BY CUSTOMS AUTHORITY OF IMPORTING PARTY

1. If the customs authority of the importing Party is not satisfied with the results of the retroactive check pursuant to Article 4.11, it may, under exceptional circumstances, conduct a verification in the exporting Party by means of:

- (a) written requests for information and documentation from the exporter or producer;
- (b) written questionnaires to the exporter or producer; and/or
- (c) verification visits to the premises of an exporter or producer in the exporting Party.

2. The written request or questionnaire pursuant to paragraph 1(a) or (b) will indicate that the time period the exporter or producer has to complete and return the questionnaire or the information and documentation required will be 30 days or for such longer period as the Parties may agree, from the date of its receipt.

3. When the customs authority of a Party has received the completed questionnaire or the information and documentation required pursuant to paragraph 1(a) or (b), and considers that it needs more information to determine the origin of the goods subject to verification, it may request additional information from the exporter or producer.

4. Where an exporter or producer fails to return a duly completed questionnaire or fails to provide the information and documentation required within the period referred to in paragraph 2, the importing Party may deny preferential tariff treatment to the good in question after providing at least 30 days written notice to the exporter or producer to provide written comments or additional information that will be taken into account prior to completing the verification.

5. Prior to conducting a verification visit pursuant to paragraph 1(c):

- (a) an importing Party shall deliver a written notification of its intention to conduct the verification visit simultaneously to:
 - (i) the producer or exporter whose premises are to be visited;
 - (ii) the Issuing Authorities of the Party in the territory of which the verification visit is to occur;
 - (iii) the customs authority of the Party in the territory of which the verification visit is to occur; and
 - (iv) the importer of the good subject to the verification visit;
- (b) the written notification mentioned in subparagraph (a) shall be as comprehensive as possible and shall include, among others:
 - (i) the name of the customs authority issuing the notification;
 - (ii) the name of the producer or exporter whose premises are to be visited;
 - (iii) the proposed date of the verification visit;
 - (iv) the coverage of the proposed verification visit, including reference to the good subject to the verification; and
 - (v) the names and designation of the officials performing the verification visit;
- (c) an importing Party shall obtain the written consent of the producer or exporter whose premises are to be visited;
- (d) when a written consent from the producer or exporter is not obtained within 30 days from the date of receipt of the notification pursuant to subparagraph (a), the notifying Party may deny preferential tariff treatment to the good referred to in the Certificate of Origin that would have been subject to the verification visit; and
- (e) the Issuing Authorities receiving the notification may postpone the proposed verification visit and notify in writing the customs authority of the importing Party of such intention within 15 days from the date of receipt of the notification. Notwithstanding any postponement, any verification visit shall be carried out within 60 days from the date of such receipt, or for such longer period as the Parties may agree.

6. For the purposes of paragraph 1(c), an exporter or producer of a good will identify any observers to be present during such verification visit by the customs authority of the importing Party.

7. The importing Party conducting the verification visit shall provide the producer or exporter and importer whose goods are subject to the verification and the relevant issuing authority with a written determination of whether or not the subject good qualifies as an originating good. Any suspended preferential tariff treatment shall be reinstated upon the determination that goods qualify as originating goods.

8. The producer or exporter shall be allowed 30 days from the date of receipt of the

written determination pursuant to paragraphs 4 and 7 to provide written comments or additional information regarding the eligibility of the good for preferential tariff treatment. If the good is still found to be non-originating, the final written determination shall be communicated to the Issuing Authorities within 30 days from the date of receipt of the comments or additional information from the producer or exporter.

9. The verification visit process, including the actual visit, the determination and its notification of whether the subject good is originating or not shall be carried out and its results shall be communicated to the Issuing Authorities within a maximum period of six months from the first day when the verification visit was conducted. While the process of verification is undertaken, Article 4.11.1(c) shall be applied.

10. The customs authority of a Party may, prior to the verification visit, request the importer of the good to voluntarily obtain and supply written information provided by the exporter or producer of the good in the territory of the other Party. The failure of the importer to obtain and supply such information will not be considered as a failure of the exporter or producer to supply the information, or as a ground for denying preferential tariff treatment.

ARTICLE 4.13: VERIFICATION OF MATERIALS THAT ARE USED IN THE PRODUCTION OF THE GOOD

1. Where the customs authority of a Party, in conducting a verification of origin of a good imported into its territory under Articles 4.11 and 4.12, conducts a verification of the origin of a material that is used in the production of the good, the verification of the material may be conducted in accordance with the procedures set out in Article 4.12.1.

2. The customs authority of a Party may consider the material to be non-originating in determining whether the good is an originating good where the producer or supplier of that material does not allow the customs authority access to information required to make a determination of whether the material is an originating material by the following or other means:

- (a) denial of access to its records;
- (b) failure to respond to a verification questionnaire; or
- (c) refusal to consent to a verification visit within 30 days of receipt of notification under Article 4.12.5(d) as made applicable by Article 4.12.1.

3. A Party will not consider a material that is used in the production of a good to be a non-originating material solely on the basis of postponement of a verification visit under Article 4.12.5(e) as made applicable by paragraph 1.

4. Communications under Articles 4.11 through 4.13 between the Parties shall be in the English language.

ARTICLE 4.14: DENIAL OF PREFERENTIAL TARIFF TREATMENT

1. Except as otherwise provided for in this Chapter, the importing Party may deny claim for preferential tariff treatment or recover unpaid duties in accordance with its laws and regulations, where:

- (a) the good does not meet the requirements of Chapter Three (Rules of

Origin);

- (b) the exporter, producer or importer of the good that is required to maintain records or documentation under Article 4.10 fails to maintain records or documentation relevant to determining the origin of the good or denies access to the records or documentation;
- (c) the importer, exporter or producer fails to provide information that the Party requested pursuant to Articles 4.12.1(a) and 4.12.1(b) demonstrating that the good is an originating good;
- (d) after receipt of a written notification for a verification visit pursuant to Article 4.12.5, the exporter or producer in the territory of the other Party prevents such verification visit; or
- (e) the Party finds a pattern of conduct indicating that an importer, exporter or producer has provided false or unsupported information or declarations that a good imported into its territory is an originating good.

2. For the purposes of paragraph 1(e), "pattern of conduct" means at least two instances of false or unsupported representations by an exporter or producer of a good resulting in at least two written determinations being sent to that exporter or producer pursuant to Articles 4.12.4 and 4.12.7, that conclude, as a finding of fact, that Certificates of Origin applied by that exporter or producer with respect to identical goods contain false or unsupported representations.

ARTICLE 4.15: CONFIDENTIALITY

1. Each Party shall maintain, in accordance with its laws and regulations, confidentiality of the information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information. Where the Party receiving the information is required by its laws and regulations to disclose information, that Party shall ensure to notify the Party or persons who provided that information.

2. The confidential information collected pursuant to this Chapter shall not be used for purposes other than the administration and enforcement of determinations of origin, and of customs matters except with the permission of the Party or persons who provided the confidential information.

3. Notwithstanding paragraph 2, information that is obtained pursuant to this Chapter may be used in any administrative, judicial or quasi-judicial proceedings instituted for failure to comply with customs-related laws and regulations implementing Chapter Three (Rules of Origin) and this Chapter. The Party or persons who provided the information will be notified in advance of such use.

ARTICLE 4.16: PENALTIES

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

2. When it is suspected that fraudulent acts in connection with the Certificate of Origin have been committed, the Issuing Authorities concerned shall cooperate in the action to be taken in the territory of the respective Party against the persons involved.

ARTICLE 4.17: REVIEW

After five years from the date of entry into force of this Agreement, the Parties shall examine and revise, if deemed necessary, the system of the Certificate of Origin including certification completed and signed by the exporter or producer and other procedures under this Chapter.

ARTICLE 4.18: UNIFORM REGULATIONS/RULES

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, Uniform Regulations/Rules regarding the interpretation, application and administration of Chapter Three (Rules of Origin) and this Chapter.

2. Each Party shall implement any modification of or addition to the Uniform Regulations/Rules within such period as the Parties may agree.