

FTAA – Free Trade Area of the Americas

Draft Agreement

Chapter XI [Customs] Procedures Related to Rules of Origin

CHAPTER XI [Customs] Procedures Related to the Origin Regime

Section A General Aspects

[Article 1. Definitions

1.1. For the purposes of this Chapter:

customs authority means the authority that, under the domestic law of each Party, is responsible for the administration of customs laws and regulations;

certifying authority means the [government] authority that, under the domestic law of each Party, is responsible for issuing, verifying, and controlling certificates of origin;

identical goods means goods that are the same in all respects, including physical characteristics, quality, and commercial reputation. Minor differences in appearance shall not prevent goods that in all other ways fit this definition from being considered identical;

CI means inclusive of cost, insurance, and freight;

exporter means an exporter located in the territory of a Party from which the good is exported who, pursuant to this Chapter, is obliged to maintain, in the territory of that Party, the records referred to in Article 7.1.a) (Record keeping requirements);

importer means an importer located in the territory of a Party into which the good is imported who, pursuant to this Chapter, is obliged to maintain, in the territory of that Party, the records referred to in Article 7.1.b) (Record keeping requirements);

producer means in addition to the stipulations of the Chapter on “Rules of Origin”, the person who is obliged to maintain, in the territory of that Party, the records referred to in Article 7.1.a) (Record keeping requirements);

ruling to determine origin means a ruling issued as a result of a verification of origin that establishes whether a good qualifies as originating, in accordance with the RO Chapter “Rules of Origin”;

preferential tariff treatment means the application of the duty rate applicable to an originating good, in accordance with the Tariff Elimination Program.]

Section B Substantive Provisions

Subsection B.1. Claim for Preferential Tariff Treatment ¹

Article 2.

2.1. The claim for preferential tariff treatment shall be made by the importer based on a certificate of origin [or based on his knowledge or reasonable reliance on any other information in his possession that the good qualifies as originating.]

2.2. In the case of a claim based on a certificate of origin, said certificate may be issued by:

[a] **Producer-Exporter**

The certificate issued by the producer or exporter of the good may be completed on the basis of one or all of the following options:

- i) the producer's or exporter's knowledge of whether the good qualifies as an originating good; and/or
- ii) reasonable reliance, by the exporter, on documentation voluntarily provided by the producer, to the effect that the good qualifies as originating; and/or
- iii) a certificate of origin voluntarily issued by the producer.]

[b] **Certifying Entities**

The issuance of the certificate of origin shall be the responsibility of the certifying authorities of each Party. Each Party shall designate one or more certifying authorities to be responsible for issuing certificates of origin.

Requests for the issuance of the certificate of origin shall be made by the final producer or exporter of the good in question. For the certificate of origin to be issued, the certifying authority shall be presented with the corresponding request, along with the declaration of origin and all the background information necessary to document that the good meets the applicable requirements.

The requesting producer-exporter shall keep the necessary background information documenting compliance of the good with the established requirements and make it available to the certifying authority that is to issue the certificate [or to the customs authority of the importing Party when so requested].]

2.3. [In the case of basing his knowledge or reasonable reliance on any other information in his possession that the good qualifies as originating, each Party shall provide that an importer may make a claim for preferential treatment based on:

- i) an advance ruling in accordance with Article 8. (Advance rulings); or

¹ The delegations will continue negotiating which alternative or alternatives included in this point shall apply in the FTAA.

- ii) records in accordance with Article 7. (Record Keeping Requirements); or
- iii) a determination of origin on an identical or similar good produced by the same producer;

which indicates that the good qualifies as an originating good.]

Article 3. Certification

Format

3.1. The origin of goods is accredited by way of a certificate of origin [according to][without] a format and a minimum set of data established by the Parties in Annex XX. This certificate may be in written or electronic form.²

3.2. The certificate of origin shall be filled out in the language of the importing Party or the exporting Party. In the latter case, the customs authority of the importing Party may require that the document be translated.

3.3. [The certificate of origin may [not] be issued prior to the date on which the commercial invoice is issued and both documents shall be presented to the customs authorities upon requesting customs clearance.]

3.4. [When the goods being traded are invoiced from by a third country, regardless of whether or not it is a Party to the Agreement, the producer or exporter of the country of origin shall declare that the goods will be marketed by a third party, and provide the name and other information of the firm that ultimately invoices the operation to its final destination will be the final seller.]

Validity

3.5. The certificate of origin shall be valid for [one hundred and eighty (180) days][one (1)] [four (4)] [year[s]] from the date it was issued.

3.6. [In the event that the goods are temporarily stored under control of the customs authority of the Party of destination, the certificate of origin shall remain in effect for the additional amount of time the customs administration has established for such operations.]

Coverage

3.7. The certificate of origin shall cover:

- a) a single importation of one or more goods;
- b) [multiple importations of identical goods [by the same importer], [within a specific period not to exceed twelve (12) months] established in the certificate by the producer-exporter;]

² The certificate of origin shall be in electronic form, once the countries are ready to apply it.

Exceptions

[3.8. A certificate of origin will not be required in the following instances:

- a) for commercial or non-commercial importation of goods that do not exceed [five hundred (500)] [one thousand (1000)] U.S. dollars or its equivalent in the domestic currency of the importing Party or a value greater than that established by this Party; these exceptions shall only apply in the event that the importation is not part of a series of importations undertaken for the purpose of evading compliance with the certification of origin requirements;
- b) for importations of goods for which the importing Party has waived the requirement to present a certificate of origin.]

[A posteriori issuance of the certificate of origin

3.9. Without prejudice to the above provisions on the issuance of certificates, the certifying authority may issue a certificate of origin on an exceptional basis after the good or goods in question have been exported, if:

- a) it was not issued at the time of export on account of errors, involuntary omissions, or special circumstances; or,
- b) it can be shown to the satisfaction of the certifying authority that a certificate of origin was issued but was not accepted at the time of importation for technical reasons.

3.10. [The certifying authority may subsequently issue a certificate of origin only after verifying that the information provided by the exporter or producer in the request matches the information in the corresponding file.] In the case of the goods referred to in point a) it shall be accepted by the customs authority of the importing Party within one hundred and eighty (180) days following the date on which importation into that Party occurred. For the purposes of issue of this certificate, in their request the exporter or producer shall indicate where and when the goods covered by the corresponding certificate of origin were exported and the reasons for the a posteriori request.

3.11. A certificate of origin issued a posteriori shall be completed with the following phrase: "ISSUED A POSTERIORI", and recorded in the "Comments" field on the certificate of origin.]

[Issuance of duplicate certificate of origin

3.12. Should a certificate of origin be stolen, lost, or destroyed, the exporter may request a duplicate from the certifying authority that issued it. Said duplicate shall be issued on the basis of the export documents that the certifying authority has on file, pursuant to the terms of issuance of the certificates.

3.13. A duplicate issued in this fashion shall be marked with the word "DUPLICATE" in the "Comments" field of the duplicate certificate of origin for the good.

3.14. The duplicate, on which the issue date of the original certificate of origin shall appear, shall be valid as of that date.]

[Certificate of provenance

3.15. The Parties establish the certificate of provenance for the purpose of identifying those goods that are re-exported from a duty-free area of one of the Parties to the territory of another Party, as goods from a third FTAA Party, provided that the following is observed:

- a) the goods have remained under Customs supervision by the re-exporting Party;
- b) the goods have not undergone subsequent transformation or any other operation, except commercialization, unloading, reloading, or whatever other operation is deemed necessary for the adequate maintenance of those goods; and
- c) there is documentary evidence of the above.

3.16. The certificate of provenance shall be filled out and signed by the re-exporter located in the duty-free zone and shall be approved by the customs authorities.

3.17. Each Party may require that importers within their territory, when importing from duty-free zones goods for which they are requesting tariff preferences, present the corresponding certificate of provenance and the corresponding certificate of origin for goods that qualify as originating, under the Chapter on Rules of Origin of this Agreement.

3.18. Each Party shall establish, through their duty-free zones, a mechanism for administration and control of such goods, for the purposes of applying this point.]

Article 4. Obligations relating to Importations

4.1. [Each Party shall grant any claim for preferential tariff treatment under the Agreement made in accordance with its provisions, unless it possesses information that the claim is invalid.][Each Party may deny the preferential tariff treatment to the good if the importer fails to comply with any requirement set out in this Chapter.]

[4.2. Where a Party denies a claim for preferential treatment under this Agreement, the Party shall not impose penalties on the importer provided the importer exercised reasonable care in making that claim.]

[4.3. Each Party may require an importer who requests preferential tariff treatment for a good imported into its territory from the territory of another Party to:

- a) declare in the import document required by its law, that the good qualifies as originating;
- b) have the certificate of origin or a copy [or the document referred to in Article 2.3.] in its possession at the time the declaration referred to in sub-paragraph a) is made; in those circumstances where such certification constitutes the basis of a claim for preferential treatment;
- c) provide a copy of the certificate of origin [or the document referred to in Article 2.3.] when its customs authority so requests;

- [d) submit without delay a corrected import document and pay the corresponding customs duties when the importer has reason to believe that the certificate of origin [or the document referred to in Article 2.3.] on which its import declaration is based contains inaccurate information. [When the importer voluntarily complies with the above obligations, it shall not be penalized.] [provided that the competent authority has not already initiated the process of verification or investigation.] [The importing Party shall not subject an importer to any penalty for making an invalid claim for preferential treatment if the importer, upon becoming aware that such claim is not valid, promptly and voluntarily corrects the claim and pays any corresponding duty.];]
- [e) make a claim for preferential treatment on the basis of certification by a producer or exporter, and at the request of the customs authority, provide, at the importer's option, all information relied upon by such producer or exporter in making such certification, or arrange for it to be provided by the producer or exporter;]
- [f) make a claim for preferential treatment on the basis of information in its possession, provide substantiating information upon request].]

[4.4. Each Party shall provide that, where, at the time of importation, an importer has not requested preferential tariff treatment for a good qualified as originating, the importer may make a claim for preferential treatment and apply for a refund of the excess customs duties paid or for a credit towards future obligations within a period no less than one year from the date of the importation, provided that the request is accompanied by:

- a) a written declaration, stating that the good did qualify as an originating good at the time of importation;
- b) a copy of the valid certificate of origin covering the imported goods; and,
- c) any other documentation relating to the claim for preferential treatment required by the Party's customs authority.]

[4.5. If the Customs Authorities of the importing Party for any reason do not consider the certificate of origin presented by the importer to be adequate or accurate, it may not interrupt the process of importation of the merchandise. In such case, the customs authorities of the importing Party may take any action necessary to safeguard the fiscal interests of the importing Party, in addition to requesting the appropriate information from the authorized body in the exporting Party.]

Article 5. Obligations relating to Exportations

[5.1. Each Party shall require that the issuer of a certificate of origin, deliver a copy to its customs authority when it is requested.]

[5.2. Each Party shall stipulate that when an issuer of a certificate of origin has reason to believe that it contains incorrect information, the issuer must act without delay to notify, in writing, all persons to whom such certification was given of any change that could affect the accuracy or validity of the certificate. The issuer must issue a corrected certificate of origin and provide it to all persons to whom it may have initially been delivered as well as to its customs administration.]

[In these cases, the issuer can not be penalized for having submitted an incorrect certificate, provided that the competent authorities have not already begun a process of verification or prosecution.]

[Article 6. Obligations of Certifying Entities]

[6.1. Each Party shall establish an official body which shall be responsible for issuing certificates of origin and shall coordinate all matters relating to the actions of the certifying authorities.]

[6.2. Each Party shall notify the other Parties of the names of the certifying entities, as well as the registry of the signatures of the officials accredited to issue certificates of origin and shall maintain an up-to-date record of the names, signatures and seals of the officials who are authorized to issue them. Each Party shall send to the agency responsible for administering the Agreement, with sufficient advance notice, any changes to the registry, indicating the dates as of which the officials are authorized or no longer authorized to issue certificates of origin.]

[6.3. The certifying entities of each Party shall:

- a) number consecutively the certificates issued and file a copy for a minimum period of (...) years, as of the date of issue thereof. Such file shall also include all the records that serve as a basis for the issue of the certificate;
- b) maintain a permanent record of all the certificates of origin issued, which shall contain, at a minimum, the number of the certificate, the name of the applicant, and the date it was issued.]

[6.4. In addition, the certifying entities of each Party shall comply with the following obligations:

- a) verify the truth of the declarations of origin presented;
- b) present reports on compliance with the present Chapter;
- c) provide the means necessary for supervising their actions; and
- d) provide the other Parties with the administrative co-operation required for the control of proof of origin.]

[6.5. The official body competent in matters of origin of each Party shall have the following functions and obligations:

- a) verify, when appropriate, the declarations of origin presented;
- b) supervise the certifying entities that have been authorized to issue certificates of origin;
- c) follow the procedures referred to in the present Chapter; and
- d) provide the Parties and the entity charged with administration of the Agreement with the information and cooperation relative to this Chapter.]

Article 7. Record Keeping Requirements

[7.1. Each Party shall stipulate that:

- a) [The issuer of a certificate of origin shall maintain, for a minimum period of (...) years from the date the certificate of origin was issued, all records and documents related to the origin of the good required to demonstrate that the good qualifies as originating, 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 exported from its territory.]

[In an origin verification process, when requested, the exporter or producer shall provide the customs authority of the importing Party with the records and documents referred to. If the records and documents are not in the possession of the exporter or producer, he may ask the producer of the good or supplier of the materials to furnish the records and documents so that, with the latter's authorization, he can deliver them to the customs authority conducting the verification;]

- b) [The importer claiming preferential tariff treatment shall maintain, for a minimum period of [five (5)][seven (7)] years from the date of importation of the good, a copy of the certificate of origin, [if applicable,] and all other documents required by the importing Party relating to the importation of the good. During this period all of this documentation shall be at the disposition of the competent authority of the importing Party.]]

Subsection B.2. Administration of the Rules of Origin

[Article 8. Advance rulings]

8.1. [Each Party shall stipulate that, through its competent authorities, advance rulings related to origin shall be promptly issued, in writing, prior to the importation of a good into its territory. These advance rulings shall be issued by the [competent] authorities of the territory of the importing Party at the request of the importer, or of the exporter or producer of the other Party. The issuance, scope, contents, and validity of these advance rulings are included in the Chapter on Customs Procedures of this Agreement.]

[Article 9. Review and appeal]

9.1. [Each Party shall grant to importers in its territory and to any person who issues a certificate of origin for a good or receives an advance ruling under Article 8., substantially the same rights of review and appeal. The scope and characteristics of this review and appeal are included in the Chapter on Customs Procedures of this Agreement.]

Subsection B.3. Verification [and Control] of Origin

Article 10. Procedures for verifying origin

[10.1. The competent authority of the Parties may undertake procedures of verification of origin at random or when they have reasonable doubts regarding the truthfulness of the information relative to the origin of the goods.]

[10.2. When preferential treatment is properly requested, it may not be denied without beginning a process of verification of the request. In no case may the competent authority of the importing Party impede customs clearance of the goods based only on doubts regarding the authenticity of the certificate of origin or when it is not present, contains errors, is incomplete, or there is reason to believe that the norms established of this Chapter have not been fulfilled.][In such situations, a bond for the value of the duties applicable to countries not a Party to this Agreement may be required, pursuant to the domestic legislation of the Parties.]

[10.3. Once an investigation has been opened, the importing Party shall adopt any measures it considers necessary to guarantee fiscal interest, but under no circumstances shall it halt the process of importing the goods. In such situations, a bond for the value of the duties applicable to third countries may be required, pursuant to the domestic legislation of the Parties and the importing Party may decide to open an investigation, and shall notify the competent authority of the exporting Party.]

[10.4. [As part of an investigation][In order] to determine whether a good imported from the territory of another Party that has preferential tariff treatment qualifies as originating, the importing Party may, through its competent authority, verify the origin of the good by the following means:

- a) a request of the importer for further information as needed to verify [claim for preferential treatment as per Article 1.][the authenticity of the certificate of origin, the truthfulness of the information contained therein, or the origin of the goods];
- b) written questionnaires and requests for information sent to the issuer of the certificate of origin [requiring the information needed to verify the authenticity of the certificate of origin, the truth of the information contained therein, or the origin of the goods];
- c) verification visits to the facilities of the exporter or producer in the territory of the exporting Party in order to examine the [productive processes,] accounting records and the documents that demonstrate compliance with the rules of origin and to examine the facilities and materials or products used in the production of the goods [and the materials subject to verification];
- d) [a request asking the competent authority of the exporting Party to perform certain operations or procedures for the purpose of verifying the origin of the goods;]
- e) [information received directly by the Importing Party from an exporter/producer][in accordance with Article 4.4.e) of this Chapter];]
- f) [other procedures that, [being considered more convenient,] are agreed to by the Parties, [without necessarily requiring the previous steps].]

[10.5. In the event that the information requested under the previous sections is not delivered in the time to be established, or if the reply does not provide sufficient information to determine the authenticity or truth of the certificate of origin or the origin of the goods, the competent authority of the importing Party may deny preferential tariff treatment for the goods covered by the certificates subject to the verification procedure by means of a written resolution that includes the factual and legal grounds on which the resolution is based.]

10.6. [Where the competent authorities of the importing Party wish verification of origin to be carried out, they shall communicate with the competent authority in the exporting Party, setting out the substance of the enquiry. The competent authority in the exporting Party [may invite the participation of] [shall permit the participation of] the competent authorities of the importing Party in the investigation.]

[Before making a verification visit in accordance with the provisions above, the importing Party shall be required to notify in writing, through its competent authority, its intention to make the visit.] [The notification shall be sent to the exporter or producer who is to be visited, the competent authority of the Party in whose territory the visit will take place and, if the latter so requests, the embassy of this Party in the territory of the importing Party. The competent authority of the importing Party shall obtain the written consent of the exporter or producer to be visited.]

[10.7. The notification referred to in paragraph 6 shall contain:

- a) an identification of the competent authority making the notification;
- b) the name of the exporter or producer to be visited;
- c) the date and place of the proposed verification visit;
- d) the purpose and scope of the proposed verification visit, with specific mention of the goods that are subject to verification;
- e) [identification][name, personal data] and titles of the officials who will make the verification visit; and
- f) the legal grounds for the verification visit.]

[10.8. If during the days following receipt of the notification of the proposed verification visit, the exporter or producer does not give his written consent for said visit, the importing Party may deny preferential tariff treatment to the good(s) that is (are) the subject of the verification visit.]

[10.9. Each Party shall stipulate that, when the [exporter or producer][the authority] receives a notification of a verification visit, it may request, within (...) days after the date the notification is received, a one-time postponement of the proposed verification visit, for a period not to exceed (...) days as of the date the notification is received, or for a longer period agreed to by the Parties. The competent authority of the importing Party and of the exporting Party may be notified of the postponement of the visit. The importing Party may not deny preferential tariff treatment based solely on the request to postpone the verification visit.]

[10.10. Each Party shall allow the exporter or producer whose goods are the object of a verification visit, to designate up to two (2) observers who will be present during the visit, provided said observers

intervene solely in that capacity. If the exporter or producer does not designate observers, this shall not result in the postponement of the visit.]

[10.11. After concluding the visit, the competent authority shall provide the exporter or producer with a written ruling in which it is determined whether or not the good qualifies as originating; said ruling shall also include the findings of fact and the legal grounds of the determination. This ruling shall be presented in [...] days as of the initiation of the process of verification of origin, it may be extended for a period of [...] days with previous notification to the exporter or producer. A ruling on the determination of origin issued outside the aforementioned period or its extension, the importing Party will not deny preferential treatment for goods under investigation until the ruling is issued.]

[10.12. When the verification conducted by a Party indicates that an exporter or producer has certified more than once and in a false or unfounded manner, that a good qualifies as originating, the importing Party may suspend preferential tariff treatment for identical goods that said person exports or produces until the person proves that the good complies with the stipulations of the Chapter on Rules of Origin.]

[10.13. In the event bonds are set, competent authorities should notify the exporting Party and the entity in charge of administration of this Agreement within (...) working days following the adoption of the measure and providing the background, the facts and the justification of the measure.]

[10.14. When a certificate of origin is not presented, the competent authorities of the importing Party shall provide a fifteen (15) calendar-day period, as of the date of entry for consumption or customs release of the good, for due presentation of the document. After that period, the bond will be collected or the corresponding levies charged.]

Subsection B.4. Penalties

[Article 11.]

[11.1. Each Party shall maintain civil, or administrative penalties, and where applicable criminal penalties, for violations of its laws and regulations as related to the provisions of this Chapter.]

[Article 12.]

[12.1. Each Party shall stipulate that the issuance or delivery of a false certificate or declaration of origin by an exporter or producer, or any false documents presented by the exporter or producer for the issuance of the corresponding certificate of origin, indicating that a good that is to be exported to the territory of another Party qualifies as originating, [shall have the same legal consequences, with the appropriate modifications as required by the circumstances, as would apply to an importer in its territory who made false statements or representation in contravention of its customs laws and regulations] [shall be subject to applicable measures for such cases as provided by domestic legislation.] In addition, it may apply such measures as warranted by the circumstances, when the exporter or producer fails to comply with any of the requirements of this Chapter.]

Section C Procedures and Institutions

Article 13. Confidentiality

13.1. [Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of business information collected pursuant to this Chapter the release of which could prejudice the competitive position of the persons providing the information. The full development of this topic is included in the Chapter on Customs Procedures.]

Article 14. Cooperation

14.1. [The Parties are to cooperate and consult as deemed necessary for the effective and uniform application and interpretation of administrative or operational provisions on matters relating to this Chapter. This topic is fully developed in the Chapter on Customs Procedures.]

[Article 15. Competent authorities]

[15.1. The competent authority of the FTAA on Administration of the Rules of Origin shall be a [Committee] [Working Group] that shall be responsible for the application, interpretation, administration and modification of this Rules of Origin Regime and Customs Procedures, which shall be subordinate to the TNC and shall be composed of a representative of the competent authority of each Party, is hereby established. It shall meet at least once a year, or at the request of any of them.]

[Article 16. Incorporation of modifications]

[16.1. The [Committee] [Working Group] on Rules of Origin and Customs Procedures, established by the Parties shall present a report on the proposed modifications to the entity responsible for the administration of the Agreement, which shall issue any rulings it may consider pertinent.]

[16.2. Any Party considering that this Chapter needs to be modified to take into account changes in productive processes or other issues may submit the modification proposal to the other Parties, together with the supporting reasons and studies, for examination and adoption of such measures as appropriate in accordance with this Chapter.]

[16.3. No provision in this Chapter shall be construed as preventing a Party from issuing a ruling to determine origin or from taking such other action as it considers necessary because it is awaiting resolution of a matter submitted to this Committee.]

[Article 17. Regulations]

[17.1. [The Parties] [The Administrative Commission] shall establish regulatory standards for interpretation, application, and administration of the Chapters on National Treatment and Market Access for Goods, of the Chapter on Rules of Origin, and of this Chapter, which may be amended at any time.]