

## **Chapter Five**

### **Customs Procedures**

#### **Section A - Certification of Origin**

##### **Article 501: Certificate of Origin**

1. The Parties shall establish by January 1, 1994 a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of another Party qualifies as an originating good, and may thereafter revise the Certificate by agreement.
2. Each Party may require that a Certificate of Origin for a good imported into its territory be completed in a 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 on importation of the good into the territory of another 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 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) a completed and signed Certificate 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 another Party that is applicable to:
  - (a) a single importation of a good into the Party's territory, or
  - (b) multiple importations of identical goods into the Party's territory 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 four years after the date on which the Certificate was signed.

**Article 502: 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 another 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 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; and
- (d) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate 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 another 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 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 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 503: 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 501 and 502.

**Article 504: 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 501(3)(b)(iii), shall provide a copy of the Certificate 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 contains information that is not correct, shall promptly notify in writing all persons to whom the Certificate was given by the exporter or producer of any change that could affect the accuracy or validity of the Certificate.

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 another 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. No 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 B - Administration and Enforcement**

### **Article 505: 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 five years after the date on which the Certificate 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 another 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 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, as the Party may require relating to the importation of the good.

### **Article 506: Origin Verifications**

1. For purposes of determining whether a good imported into its territory from the territory of another 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 another Party;
  - (b) visits to the premises of an exporter or a producer in the territory of another Party to review the records referred to in Article 505(a) and observe the facilities used in the production of the good; or
  - (c) such other procedure as the Parties may agree.
2. 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 Party in whose territory the visit is to occur, and
    - (iii) if requested by the Party in whose territory the visit is to occur, the embassy of that 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.
3. The notification referred to in paragraph 2 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.
4. Where an exporter or a producer has not given its written consent to a proposed verification visit within 30 days of receipt of notification pursuant to paragraph 2, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.
5. Each Party shall provide that, where its customs administration receives notification pursuant

to paragraph 2, 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.

6. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraph 5.
7. Each Party shall permit an exporter or a producer whose good is the subject of a verification visit by another 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.
8. Each Party shall, through its customs administration, conduct a verification of a regional value-content requirement in accordance with the Generally Accepted Accounting Principles applied in the territory of the Party from which the good was exported.
9. The Party conducting a 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.
10. 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 Four (Rules of Origin).
11. 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 Party from whose territory the good was exported, 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.
12. A Party shall not apply a determination made under paragraph 11 to an importation made before the effective date of the determination where:
  - (a) the customs administration of the Party from whose territory the good was exported has issued an advance ruling under Article 509 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.

13. If a Party denies preferential tariff treatment to a good pursuant to a determination made under paragraph 11, 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 Party from whose territory the good was exported.

#### **Article 507: 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 that 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 of customs and revenue matters.

#### **Article 508: 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 502(2), 504(3) or 506(6) shall be construed to prevent a Party from applying such measures as the circumstances may warrant.

### **Section C - Advance Rulings**

#### **Article 509: 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 another 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 used in the production of a good undergo an applicable change in tariff classification set out in Annex 401 as a result of production occurring entirely in the territory of one or more of the Parties;

- (b) whether a good satisfies a regional value-content requirement under either the transaction value method or the net cost method set out in Chapter Four (Rules of Origin);
  - (c) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter Four, the appropriate basis or method for value to be applied by an exporter or a producer in the territory of another Party, in accordance with the principles of the Customs Valuation Code, for calculating the transaction value of the good or of the materials used in the production of the good;
  - (d) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter Four, the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods set out in the Uniform Regulations, for calculating the net cost of the good or the value of an intermediate material;
  - (e) whether a good qualifies as an originating good under Chapter Four;
  - (f) whether a good that re-enters its territory after the good has been exported from its territory to the territory of another Party for repair or alteration qualifies for duty-free treatment in accordance with Article 307 (Goods Re-Entered after Repair or Alteration);
  - (g) whether the proposed or actual marking of a good satisfies country of origin marking requirements under Article 311 (Country of Origin Marking);
  - (h) whether an originating good qualifies as a good of a Party under Annex 300-B (Textile and Apparel Goods), Annex 302.2 (Tariff Elimination) or Chapter Seven (Agriculture and Sanitary and Phytosanitary Measures);
  - (i) whether a good is a qualifying good under Chapter Seven; or
  - (j) 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 the periods specified in the Uniform Regulations; and

- (c) shall, where the advance ruling is unfavorable to the person requesting it, provide to that person 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 Four 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 Four,
    - (iv) in the application of the rules for determining whether a good qualifies as a good of a Party under Annex 300-B, Annex 302.2 or Chapter Seven,
    - (v) in the application of the rules for determining whether a good is a qualifying good under Chapter Seven, or
    - (vi) 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 another Party for repair or alteration qualifies for duty-free treatment under Article 307;
  - (b) if the ruling is not in accordance with an interpretation agreed by the Parties regarding Chapter Three (National Treatment and Market Access for Goods) or Chapter Four;
  - (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 Three, Chapter Four, this Chapter, Chapter Seven, the Marking Rules or the 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(c), (d) or (f), 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 the circumstances may warrant.

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

### **Article 510: Review and Appeal**

1. Each Party shall grant substantially the same rights of review and appeal of marking determinations of origin, country of origin determinations and advance 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;
- (b) whose good has been the subject of a country of origin marking determination pursuant to Article 311 (Country of Origin Marking); or
- (c) who has received an advance ruling pursuant to Article 509(1).

2. Further to Articles 1804 (Administrative Proceedings) and 1805 (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 E - Uniform Regulations**

### **Article 511: Uniform Regulations**

1. The Parties shall establish, and implement through their respective laws or regulations by January 1, 1994, Uniform Regulations regarding the interpretation, application and administration of Chapter Four, 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 F - Cooperation

### Article 512: Cooperation

1. Each Party shall notify the other Parties 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 506(1);
  - (b) a determination of origin that the Party is aware is contrary to
    - (i) a ruling issued by the customs administration of another 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, or
    - (ii) consistent treatment given by the customs administration of another 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, country of origin marking requirements or determinations as to whether a good qualifies as a good of a Party under the Marking Rules; and
  - (d) an advance ruling, or a ruling modifying or revoking an advance ruling, pursuant to Article 509.
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) for purposes of the detection and prevention of unlawful transshipments of textile and apparel goods of a non-Party, in the enforcement of prohibitions or quantitative restrictions, including the verification by a Party, in accordance with the procedures set out in this Chapter, of the capacity for production of goods by an exporter or a producer in the territory of another Party, provided that the customs administration of the Party proposing to conduct the verification, prior to conducting the verification

- (i) obtains the consent of the Party in whose territory the verification is to occur, and
- (ii) provides notification to the exporter or producer whose premises are to be visited,

except that procedures for notifying the exporter or producer whose premises are to be visited shall be in accordance with such other procedures as the Parties may agree;

- (c) 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; and
- (d) to the extent practicable, in the storage and transmission of customs-related documentation.

#### **Article 513: Working Group and Customs Subgroup**

1. The Parties hereby establish a Working Group on Rules of Origin, comprising representatives of each Party, to ensure:

- (a) the effective implementation and administration of Articles 303 (Restriction on Drawback and Duty Deferral Programs), 308 (Most-Favored-Nation Rates of Duty on Certain Goods) and 311, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations; and
- (b) the effective administration of the customs-related aspects of Chapter Three.

2. The Working Group shall meet at least four times each year and on the request of any Party.

3. The Working Group shall:

- (a) monitor the implementation and administration by the customs administrations of the Parties of Articles 303, 308 and 311, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations to ensure their uniform interpretation;
- (b) endeavor to agree, on the request of any Party, on any proposed modification of or addition to Article 303, 308 or 311, Chapter Four, this Chapter, the Marking Rules or the Uniform Regulations;

- (c) notify the Commission of any agreed modification of or addition to the Uniform Regulations;
- (d) propose to the Commission any modification of or addition to Article 303, 308 or 311, Chapter Four, this Chapter, the Marking Rules, the Uniform Regulations or any other provision of this Agreement as may be required to conform with any change to the Harmonized System; and
- (e) consider any other matter referred to it by a Party or by the Customs Subgroup established under paragraph 6.

4. Each Party shall, to the greatest extent practicable, take all necessary measures to implement any modification of or addition to this Agreement within 180 days of the date on which the Commission agrees on the modification or addition.

5. If the Working Group fails to resolve a matter referred to it pursuant to paragraph 3(e) within 30 days of such referral, any Party may request a meeting of the Commission under Article 2007 (Commission - Good Offices, Conciliation and Mediation).

6. The Working Group shall establish, and monitor the work of, a Customs Subgroup, comprising representatives of each Party. The Subgroup shall meet at least four times each year and on the request of any Party and shall:

- (a) endeavor to agree on
  - (i) the uniform interpretation, application and administration of Articles 303, 308 and 311, Chapter Four, this Chapter, the Marking Rules and the 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) revisions to the Certificate of Origin,
  - (v) any other matter referred to it by a Party, the Working Group or the Committee on Trade in Goods established under Article 316, 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 and operational changes that may affect the flow of trade between the Parties' territories;
- (c) report periodically to the Working Group and notify it of any agreement reached under this paragraph; and
- (d) refer to the Working Group 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).

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

#### **Article 514: Definitions**

For purposes of this Chapter:

**commercial importation** means the importation of a good into the territory of any 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 Four;

**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 Four;

**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;

**intermediate material** means "intermediate material" as defined in Article 415;

**Marking Rules** means "Marking Rules" established under Annex 311;

**material** means "material" as defined in Article 415;

**net cost of a good** means "net cost of a good" as defined in Article 415;

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

**producer** means "producer" as defined in Article 415;

**production** means "production" as defined in Article 415;

**transaction value** means "transaction value" as defined in Article 415;

**Uniform Regulations** means "Uniform Regulations" established under Article 511;

**used** means "used" as defined in Article 415; and

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