

## **CHAPTER 5**

### **Customs Procedures**

#### **Section I – Certification of Origin**

##### **Article 5-1: Certificate of Origin**

1. The Parties shall establish, by the date of entry into force of this Agreement, a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of the other Party qualifies as an originating good. The Certificate of Origin may thereafter be modified as the Parties may agree.
2. Each Party shall provide that the Certificate of Origin may be presented in Arabic, English or French. Each Party may nevertheless require the importer to submit a translation of the Certificate of Origin into a language required by its domestic law.
3. Each Party shall:
  - (a) require an exporter in its territory to complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment upon importation of the good into the territory of the other Party; and
  - (b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign a Certificate of Origin on the basis of:
    - (i) its knowledge of whether the good qualifies as an originating good, based on information in the exporter's possession,
    - (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 of Origin for the good voluntarily provided to the exporter by the producer.

4. Each Party shall apply a Certificate of Origin to a single importation of one or more goods into its territory.

5. The Parties shall endeavour to modify the Certificate of Origin so that it may be used for multiple importations of identical goods into a Party's territory when these importations are made by the same importer and occur within a specified period, not exceeding 12 months.

6. When a Certificate of Origin is established by the Parties under paragraph 1, each Party shall apply the Certificate of Origin to a single importation of goods as described in paragraph 4 and to multiple importations as described in paragraph 5.

#### **Article 5-2: Obligations Regarding Importations**

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

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

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

- (a) the Party may deny preferential tariff treatment to the good if the importer fails to comply with any requirement under this Chapter; and
- (b) the importer shall not be subject to penalties for the making of an incorrect declaration, if it voluntarily makes a corrected declaration pursuant to subparagraph 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, within 60 days or for such a longer period specified by the importing Party's law after the date on which the good was imported, apply for a refund, of any excess duties paid as a 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.

4. Each Party, through its customs administration, may require an importer to demonstrate that the good was shipped in accordance with Article 4-12 of Chapter 4 (Rules of Origin) by providing:

- (a) carrier documents, including bills of lading or waybills, indicating the shipping route and all points of shipment and transshipment prior to the importation of the good and indicating that the importing Party is the final destination;

- (b) where the good is shipped through or transhipped outside the territories of the Parties, a copy of the customs control documents indicating to that customs administration that the good remained under customs control while outside the territories of the Parties.

### **Article 5-3: Exceptions**

1. A Party shall not require a Certificate of Origin for:
  - (a) a commercial importation of a good whose customs 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 from the exporter certifying that the good qualifies as an originating good;
  - (b) a non-commercial importation of a good whose customs 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 the importing Party reasonably considers to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 5-1 and 5-2.

### **Article 5-4: Obligations Regarding Exportations**

1. Each Party shall provide that:
  - (a) an exporter in its territory, or a producer in its territory that has provided a Certificate of Origin to that exporter in accordance with item (iii) of subparagraph 3(b) of Article 5-1, shall provide the Certificate of Origin to its customs administration on its request;

- (b) where an exporter or a producer in its territory has provided a Certificate of Origin and has reason to believe that the Certificate of Origin contains or is based on incorrect information, the exporter or producer shall promptly notify in writing any change that could affect the accuracy or validity of the Certificate of Origin to every person to whom the exporter or producer has provided the Certificate of Origin; and
  - (c) 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 is originating shall be subject to penalties equivalent to those that would apply to an importer in its territory that makes a false statement or representation in connection with an importation, with appropriate modifications.
2. Each Party may apply measures, as the circumstances may warrant, where an exporter or a producer in its territory fails to comply with any requirement of this Chapter.
3. Neither Party may impose penalties on an exporter or a producer in its territory that voluntarily provides written notification pursuant to subparagraph 1(b) with respect to the making of an incorrect certification.

## **Section II – Administration and Enforcement**

### **Article 5-5: Records**

1. Each Party shall provide that an exporter or a producer in its territory that provides a Certificate of Origin in accordance with Article 5-1 shall maintain, for a minimum of five years after the date the certification was issued, or for such longer period as specified in the Party's laws and regulations, all records necessary to demonstrate that a good for which the producer or exporter provided the Certificate of Origin was an originating good, including records concerning:
- (a) the purchase of, cost of, value of, shipping of and payment for, the exported good;

- (b) the purchase of, cost of, value of, and payment for all materials, including indirect materials, used in the production of the exported good; and
- (c) the production of the good in the form in which it was exported.

2. Each Party shall require an importer claiming preferential tariff treatment for a good imported into its territory to maintain documentation relating to the importation of the good, including a copy of the Certificate of Origin, for five years after the date of importation of the good or for such longer period as specified in the Party's laws and regulations.

3. Where a Party requires importers, exporters and producers in its territory to maintain documentation or records in relation to a good imported pursuant to this Agreement, it shall permit them to do so in any medium, provided that the documentation or records can be retrieved and printed.

4. A Party may deny preferential tariff treatment to a good that is the subject of an origin verification where the exporter, producer or importer of the good that is required to maintain records or documentation under this Article:

- (a) fails to maintain records or documentation relevant to determining the origin of the good in accordance with the requirements of the Chapter; or
- (b) denies access to such records or documentation.

## **Article 5-6: Origin Verifications**

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

- (a) verification letters that request information from the exporter or producer of the good in the territory of the other Party;
- (b) written questionnaires to the exporter or producer of the good in the territory of the other Party;
- (c) visits to the premises of an exporter or producer in the territory of the other Party to review the records referred to in paragraph 1 of Article 5-5 and observe the facilities used in the production of the good; or
- (d) any other method of communication customarily used by the competent authority of the Party conducting the verification.

2. Each Party shall provide that the competent authority of a Party may, for purposes of verifying the origin of a good, request that the importer of the good voluntarily obtain and supply written information voluntarily provided by the exporter or producer of the good in the territory of the other Party, provided that the failure or refusal 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.

3. Each Party shall allow an exporter or producer who receives a verification letter or a questionnaire pursuant to subparagraphs 1(a) and (b) no less than 30 days to provide the information and documentation required or the completed questionnaire. During that period, the importing Party shall allow the exporter or producer to submit to it a written request for a single extension of this deadline for a period not exceeding 30 days.

4. Where an exporter or producer fails to provide the information and documentation required by a verification letter or fails to return a duly completed questionnaire within the period or extension set out in paragraph 3, the importing Party may deny preferential tariff treatment to the good in question pursuant to the procedures set out in paragraphs 15 and 16.

5. Prior to conducting a verification visit pursuant to subparagraph 1(c), a Party shall, through its competent authority:

- (a) deliver a written notification of its intention to conduct the visit:
  - (i) to the exporter or producer whose premises are to be visited,
  - (ii) to the competent authority 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, to 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.

6. The notification referred to in paragraph 5 shall include:

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

8. The Party whose competent authority receives notification pursuant to item (ii) of subparagraph 5(a) may, within 15 days of receipt of the notification, postpone the proposed verification visit for no more than 60 days from the date of such receipt or for such longer period as the Parties may agree.

9. Each Party shall provide that, where the exporter or producer receives notification pursuant to item (i) of subparagraph 5(a) the exporter or producer may, on a single occasion, within 15 days of receipt of the notification, request the postponement of the proposed verification visit for a period no more than 60 days from the date of such receipt or for such longer period as agreed to by the notifying Party.

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

11. A 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 shall only participate as such; and
- (b) the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

12. Where a Party conducts a verification of origin involving a value test, *de minimis* calculation or any other provision in Chapter 4 (Rules of Origin) to which Generally Accepted Accounting Principles may be relevant, it shall apply such principles as are applicable in the territory of the other Party.

13. Where the producer of a good calculates the net cost of the good as set out in Article 4-2 of Chapter 4 (Rules of Origin), the importing Party shall not verify, during the fiscal period over which the net cost is being calculated, whether the good satisfies the value test.

14. 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.

15. Where a Party determines as a result of an origin verification that the good that is the subject of the verification does not qualify as an originating good, the Party shall include in its written determination provided for under paragraph 14 a written notice of intent to deny preferential tariff treatment of the good.

16. A written notice of intent to deny preferential tariff treatment issued pursuant to paragraph 15 shall provide for no less than 30 days during which the exporter or producer of the good may provide, with regard to that determination, written comments or additional information that will be taken into account by the Party prior to completing the verification.

17. 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 4 (Rules of Origin), in accordance with the Party's domestic law.

18. Where, in conducting a verification of origin of a good imported into its territory under this Article, a Party conducts a verification of the origin of a material that is used in the production of the good, the Party shall conduct the verification of the origin of the material in accordance with the procedures set out in Paragraphs 1, 2, 3, 5, 6, 8, 9, 10, 11, 12, 13 and 20.

19. Where a Party conducts a verification pursuant to paragraph 18, the 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 Party 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 letter; or
- (c) refusal to consent to a verification visit within 30 days of receipt of the notification pursuant to paragraph 5.

20. For purposes of this Article, each Party shall ensure that all communication to the importer, exporter or producer and to the other Party be sent by any means that can produce a confirmation of receipt. The periods referred to in this Article will begin from the date of such receipt.

#### **Article 5-7: Confidentiality**

1. Each Party shall maintain, in accordance with its domestic law, the confidentiality of the information collected 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 to disclose information, that Party shall notify the Party or person who provided that information.

2. Each Party shall ensure that the confidential information collected 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 person or Party who provided the confidential information.

3. Notwithstanding paragraph 2, a Party may allow information collected pursuant to this Chapter or Chapter 4 (Rules of Origin) to be used in any administrative, judicial or quasi-judicial proceedings instituted for failure to comply with customs related laws and regulations implementing Chapter 4 (Rules of Origin) and this Chapter. A Party shall notify the person or Party who provided the information in advance of such use.

#### **Article 5-8: Penalties**

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

### **Section III – Advance Rulings**

#### **Article 5-9: Advance Rulings**

1. Each Party shall provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, to an importer in its territory or an exporter or a producer in the territory of the other Party, on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning whether a good qualifies as an originating good under Chapter 4 (Rules of Origin).

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 competent authority:
  - (a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information from the person requesting the ruling;
  - (b) shall, after it has obtained all necessary information from the person requesting an advance ruling, issue the ruling within 120 days; and
  - (c) shall provide to the person requesting the ruling a full explanation of the reasons for the ruling.
  
4. Subject to paragraph 6, each Party:
  - (a) 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;
  - (b) shall honour the advance ruling if there is no change in the material facts or circumstances on which it is based; and
  - (c) may establish, in the advance ruling, a period during which the advance ruling will be effective and honoured by that Party.
  
5. Each Party shall issue consistent advance rulings when the relevant facts and circumstances are identical.
  
6. The issuing Party may modify or revoke an advance ruling:
  - (a) if the ruling is based on an error of fact;
  - (b) if there is a change in the material facts or circumstances on which the ruling is based;

- (c) to conform with an amendment of Chapter 2 (National Treatment and Market Access of Goods), Chapter 4 (Rules of Origin), or this Chapter; or
- (d) to conform with a judicial decision or a change in its domestic law.

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

##### **Article 5-10: Review and Appeal**

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

- (a) who completes and signs a Certificate of Origin for a good that has been the subject of a determination of origin; or
- (b) who has received an advance ruling pursuant to paragraph 1 of Article 5-9.

2. Further to Articles 12-3 and 12-4 of Chapter 12 (Transparency), each Party shall provide that the rights of 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) judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review, in accordance with its domestic law.

## Article 5-11: Definitions

For purposes of this Chapter:

- (a) **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,
- (b) **determination of origin** means a determination as to whether a good qualifies as an originating good in accordance with Chapter 4 (Rules of Origin);
- (c) **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 4 (Rules of Origin);
- (d) **preferential tariff treatment** means the duty rate applicable under this Agreement to an originating good.