

## **CHAPTER FOUR**

### **CUSTOMS PROCEDURES**

#### **Article 4.01: Definitions**

For purposes of this Chapter:

**customs administration** means the governmental 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 originating in accordance with Chapter Three (Rules of Origin);

**exporter** means an exporter located in the territory of a Party;

**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 Three (Rules of Origin);

**importer** means an importer located in the territory of a Party;

**preferential tariff treatment** means the rate of duty applicable under this Agreement to an originating good; and

**value** means value of a good or material for purposes of calculating customs duties or for the purposes of applying Chapter Three (Rules of Origin).

The following terms have the same meaning as in Article 3.01 (Rules of Origin-Definitions):

- (a) Generally Accepted Accounting Principles;
- (b) indirect material;
- (c) material;

- (d) net cost;
- (e) producer; and
- (f) production.

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

### **Article 4.02: Certificate of Origin**

1. The Parties shall establish, no later than 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 decide.
2. Each Party shall permit the Certificate of Origin for a good imported into its territory to be completed in English, French or Spanish.
3. Each Party shall:
  - (a) require an exporter in its territory to complete and sign a Certificate of Origin for the 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, when 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) knowledge of whether the good qualifies as an originating good,
    - (ii) 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. Under paragraph 3 neither Party may require a producer to provide a Certificate of Origin to an exporter.

5. Each Party shall permit a Certificate of Origin to apply to:

- (a) a single importation of one or more goods 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.

6. Each Party shall ensure that the Certificate of Origin is accepted by its customs administration for 4 years after the date on which the Certificate of Origin was signed.

#### **Article 4.03: 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, in the import document provided by its laws and regulations, based on a valid Certificate of Origin, that the good qualifies as originating;
- (b) have the Certificate of Origin in its possession at the time the declaration is made;
- (c) provide, at the request of that Party's customs administration, a copy of the Certificate of Origin and, if required by the customs administration, a translation of the Certificate of Origin in a language required by its domestic law; and

- (d) promptly make a corrected declaration in a manner required by the customs administration of the importing Party and pay any duties owing when the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is incorrect.

2. For the purpose of paragraph 1(d), if the customs administration of the importing Party determines that the Certificate of Origin has not been completed in accordance with Article 4.02, the importing Party shall ensure that the importer is granted no less than 5 working days to provide the customs administration with a corrected Certificate of Origin.

3. When an importer claims preferential tariff treatment for a good imported into the territory of a Party from the territory of the other Party:

- (a) the importing Party may deny preferential tariff treatment to the good if the importer fails to comply with a requirement under this Chapter; and
- (b) the importing Party shall not subject the importer to penalties for making an incorrect declaration if the importer voluntarily corrects the declaration under paragraph 1(d).

4. Each Party, through its customs administration, may require an importer to demonstrate that a good for which the importer claims preferential tariff treatment was shipped in accordance with Article 3.14 (Rules of Origin – Transit and Transshipment) 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
- (b) where the good is shipped through or transshipped 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.

5. Where a good would have qualified as an originating good when it was imported into the territory of a Party, but no claim for preferential tariff treatment was made at the time of importation, the importing Party shall permit the importer, within a period of no less than 1 year after the date of importation, to apply for a refund of any excess duties paid as a result of the good not having been granted preferential tariff treatment, on presentation to the customs administration of the importing Party of:

- (a) a written declaration that the good qualified as originating at the time of importation;
- (b) a copy of the Certificate of Origin; and
- (c) other documentation relating to the importation of the good required by the importing Party.

#### **Article 4.04: Exceptions**

A Party shall not require a Certificate of Origin for:

- (a) an importation of a good whose value does not exceed USD 1,000 or its equivalent amount in the Party's currency, or a higher amount that the Party establishes, 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, or
- (b) an importation of a good for which the importing Party 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 4.02 and 4.03.

## **Article 4.05: Obligations Regarding Exports**

1. Each Party shall provide that:
  - (a) on the request of its customs administration, an exporter in its territory, or a producer in its territory that has provided a copy of a Certificate of Origin to that exporter in accordance with Article 4.02(3)(b)(iii) must provide a copy of the Certificate of Origin to its customs administration;
  - (b) an exporter or a producer in its territory that has completed and signed a Certificate of Origin and has reason to believe that the Certificate of Origin contains information that is incorrect must promptly notify in writing every person to whom each has provided the Certificate of Origin of a change that could affect the accuracy or validity of 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 qualifies as originating is subject to the same legal consequences, with appropriate modifications, as would apply to an importer in the territory of the exporting Party that makes a false statement or representation in connection with an importation.
2. Neither Party may impose penalties on an exporter or a producer in its territory that voluntarily provides written notification under paragraph 1(b) with respect to the making of an incorrect certification.
3. Each Party may apply a measure that the circumstances warrant if an exporter or a producer in its territory fails to comply with a requirement of this Chapter.

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

### **Article 4.06: Records**

1. Each Party shall provide that:
  - (a) an exporter or a producer in its territory that completes and signs a Certificate of Origin must maintain in its territory, for 5 years after the date on which the Certificate of Origin was signed or for a longer period as specified by the Party, records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of the other Party, including records associated with:
    - (i) the purchase of, cost of, shipping of, value of, and payment for, the exported good,
    - (ii) the purchase of, cost of, value of, and payment for all materials, including indirect materials, used in the production of the exported good, and
    - (iii) the production of the good in the form in which it was exported; and
  - (b) an importer claiming preferential tariff treatment for a good imported into the Party's territory must maintain, in that territory documentation relating to the importation of the good, including a copy of the Certificate of Origin, for 5 years after the date of importation of the good or for a longer period as specified by the Party.
2. When a Party requires importers, exporters or producers in its territory to maintain documentation or records in relation to the origin of the good, in accordance with that Party's laws and regulations, it shall permit them to do so in any medium, provided that the documentation or records can be retrieved and printed.

3. 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 the records or documentation.

#### **Article 4.07: 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 customs administration, conduct a verification only by means of:

- (a) verification letters requesting information from the exporter or producer of the good in the territory of the other Party;
- (b) written questionnaires to an exporter or a producer in the territory of the other Party;
- (c) visits to the premises of an exporter or a producer in the territory of the other Party to review the records referred to in Article 4.06(1)(a) and observe facilities used in the production of the good; or
- (d) any other method that the Parties decide.

2. For purposes of verifying the origin of a good, the importing Party may request the importer of the good to voluntarily obtain and supply written information voluntarily provided by the exporter or producer of the good in the territory of the other Party. The importing Party shall not consider the failure or refusal of the importer to obtain and supply that information 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 under paragraph 1(a) or a questionnaire under paragraph 1(b) no less than 30 days from the date of receipt of that letter or questionnaire to provide the information and documentation required or the completed questionnaire. On written request by the exporter or producer made during that period, the importing Party may grant the exporter or producer a single extension of the deadline for a period of no more than 30 days.

4. If 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 in accordance with the procedures set out in paragraphs 14, 15 and 16.

5. Prior to conducting a verification visit under paragraph 1(c), a Party, through its customs administration, shall:

- (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 customs administration of the other Party, and
  - (iii) if requested by the other Party, 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 must include:
  - (a) the identity of the customs administration issuing the notification;
  - (b) the name of the exporter or producer whose premises are to be visited;
  - (c) the date and place of the proposed verification visit;
  - (d) the object and scope of the proposed verification visit, including specific reference to the good that is the subject of the verification;
  - (e) the names and titles of the officials performing the verification visit; and
  - (f) the legal authority for the verification visit.
7. If an exporter or producer has not given its written consent to a proposed verification visit within 30 days of receipt of a notification under paragraph 5, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.
8. The Party whose customs administration receives notification under paragraph 5(a)(ii), within 15 days of receipt of the notification, may postpone in writing to the customs administration who sent the notice, the proposed verification visit for no more than 60 days from the date of that receipt or for a longer period that the Parties may decide.
9. Each Party shall allow, when the exporter or producer receives notification under paragraph 5(a)(i), the exporter or producer to, on a single occasion, within 15 days of receipt of the notification, request in writing the postponement of the proposed verification visit for no more than 60 days from the date of that receipt or for a longer period as accepted by the notifying Party.
10. A Party shall not deny preferential tariff treatment to a good based only on the postponement of a verification visit under 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 do not participate in a manner other than as observers; and
- (b) the failure of the exporter or producer to designate observers does not result in the postponement of the visit.

12. When a Party conducts a verification of origin involving a value test, *de minimis* calculation or any other provision in Chapter Three (Rules of Origin) to which Generally Accepted Accounting Principles may be relevant, it shall apply those principles as they apply in the territory of the other Party from which the good was exported.

13. When the producer of a good calculates the net cost of the good as set out in Article 3.04 (Rules of Origin – Value Test), the importing Party will not verify, during the 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 originating, including findings of fact and the legal basis for the determination.

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

16. Each Party shall ensure that a written notice of intent to deny preferential tariff treatment under paragraph 15 provides for at least 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. In accordance with each Party's laws and regulations, if 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 originating, the Party may withhold preferential tariff treatment to identical goods exported or produced by that exporter or producer until that exporter or producer establishes compliance with Chapter Three (Rules of Origin).

18. If, 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 origin of the material in accordance with the procedures in paragraphs 1 through 3, 5, 6, 8, 9 through 13 and 20.

19. When a Party conducts a verification under paragraph 18, the Party may consider the material to be non-originating in determining whether the good is an originating good if 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, within 30 days of receipt of a notification under paragraph 5, to a verification visit.

20. For purposes of this Article, the importing Party shall ensure that communication to the exporter or producer and to the other Party are sent by means that can produce a confirmation of receipt. The periods referred to in this Article begin from the date of that receipt.

#### **Article 4.08: Confidentiality**

1. Each Party shall maintain, in accordance with its domestic law, the confidentiality of the information collected under this Chapter and shall protect that information from disclosure that could prejudice the competitive position of a person providing the information. If the Party receiving or obtaining the information is required by its domestic law to disclose the information, that Party shall notify the person or Party who provided that information.
2. Each Party shall ensure that the confidential information collected under this Chapter is not used for purposes other than the administration and enforcement of determinations of origin and of customs matters, except with the authorization of the person or Party who provided the confidential information.
3. Notwithstanding paragraph 2, a Party may allow information collected under this Chapter to 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. A Party shall notify the person or Party who provided the information in advance of that use.

#### **Article 4.09: Penalties**

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

### **Section III – Advance Rulings**

#### **Article 4.10: Advance Rulings**

1. Each Party, through its customs administration, shall provide for the expeditious issuance of a written advance ruling, 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 that importer, exporter or producer of the good, concerning whether a good qualifies as an originating good in accordance with Chapter Three (Rules of Origin).
2. Each Party shall adopt or maintain procedures for the issuance of an advance ruling, 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) during the course of an evaluation of an application for an advance ruling, may request supplemental information from the person requesting the ruling;
  - (b) after it has obtained necessary information from the person requesting an advance ruling, shall 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. The customs administration may decline or postpone the issuance of an advance ruling if the ruling involves an issue that is the subject of:
  - (a) a verification of origin;
  - (b) a review by or appeal to the customs administration; or
  - (c) a judicial or quasi-judicial review in that Party's territory.

5. Subject to paragraph 8, 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 a later date specified in the ruling.

6. Each Party shall provide to a person requesting an advance ruling the same treatment, including the same interpretation and application of provisions of Chapter Three (Rules of Origin) regarding a determination of origin, as it provided to another person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.

7. 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 a material fact or circumstance on which the ruling is based;
- (c) to conform with a modification of Chapter Two (National Treatment and Market Access for Goods), Chapter Three (Rules of Origin), this Chapter or any Uniform Regulations; or
- (d) to conform with a judicial decision or a change in its domestic law.

8. Each Party shall provide that a modification or revocation of an advance ruling is effective on the date on which the modification or revocation is issued, or on a later date specified in that modification or revocation, and is not 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.

9. Notwithstanding paragraph 8, the issuing Party shall postpone the effective date of that modification or revocation for no more than 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.

10. Subject to paragraph 7, each Party shall provide that an advance ruling remains in effect and is honoured.

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

### **Article 4.11: 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 an importer in its territory, to a person who:

- (a) completes and signs a Certificate of Origin for a good that has been the subject of a determination of origin; or
- (b) has received an advance ruling under Article 4.10(1).

2. Further to Articles 20.04 (Transparency – Administrative Proceedings) and 20.05 (Transparency – Review and Appeal), each Party shall provide that the rights of review and appeal referred to in paragraph 1 includes 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.

## **Section V – Uniform Regulations**

### **Article 4.12: Uniform Regulations**

1. The Parties may establish and implement, through their respective domestic law or administrative policy, by the date of entry into force of this Agreement, Uniform Regulations regarding the interpretation, application and administration of this Chapter.

2. Each Party shall implement a modification of or addition to the Uniform Regulations within a period that the Parties may decide.

## **Section VI – Cooperation**

### **Article 4.13: Cooperation**

1. The Parties shall cooperate, to the extent practicable, in jointly organizing training programs on customs-related issues, such as simulated audit environment exercises, for the officials and users who participate directly in customs procedures.
2. With respect to goods considered originating in accordance with Article 3.05 (Rules of Origin – Accumulation), the Parties may cooperate with a non-Party in developing customs procedures based on the principles of this Chapter.

### **Article 4.14: Customs Procedures Sub-Committee**

1. The Parties hereby establish a Customs Procedures Sub-Committee comprising representatives of each Party. The Sub-Committee shall meet periodically at the request of a Party, and shall:
  - (a) endeavour to decide on:
    - (i) the uniform interpretation, application and administration of Articles 2.05 (National Treatment and Market Access for Goods – Temporary Admission of Goods), 2.06 (National Treatment and Market Access for Goods – Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials), and 2.07 (National Treatment and Market Access for Goods – Goods Re-Entered after Repair or Alteration), of Chapter Three (Rules of Origin), this Chapter and any 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) revision of the Certificate of Origin,
  - (v) any other matter referred to it by a Party or the Committee on Trade in Goods and Rules of Origin established under Article 2.19 (National Treatment and Market Access for Goods – Consultations and Committee on Trade in Goods and Rules of Origin), 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 or operational changes that may affect the flow of trade between the Parties' territories;
- (c) report periodically to the Committee on Trade in Goods and Rules of Origin and notify it of any agreement reached under this paragraph; and
- (d) refer to the Committee on Trade in Goods and Rules of Origin any matter on which it has been unable to reach a decision within 60 days of referral of the matter to it, under paragraph (a)(v).

2. Nothing in this Chapter prevents a Party from issuing a determination of origin or an advance ruling relating to a matter under consideration by the Customs Procedures Sub-Committee or the Committee on Trade in Goods and Rules of Origin or from taking other action that it considers necessary, pending a resolution of the matter under this Agreement.