

## Chapter V: Customs Procedures

### Article V.01 Definitions

1. For the purposes of this Chapter:

**customs authority** means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations; including the verification procedures relating to the Certificate of Origin as provided for in Article V.08;

**certifying authority** means the customs authority or any entity which is responsible for the certification of the Certificate of Origin pursuant to Article V.03;

**determination of origin** means a determination as to whether a good qualifies as an originating good in accordance with Chapter IV (Rules of Origin);

**exporter in the territory of a Party** means an exporter located in the territory of a Party required under this Chapter to maintain records in the territory of that Party regarding exportations of a good;

**commercial import** means a good imported into the territory of a Party for commercial, industrial or similar purposes;

**importer in the territory of a Party** means an importer located in the territory of a Party required under this Chapter to maintain records in the territory of that Party regarding importations of a good;

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

**Uniform Regulations** means "Uniform Regulations" established under Article V.12.

2. Unless defined in this Article, terms defined in Article IV.01 (Definitions) are incorporated into this Chapter.

### Article V.02 Certificate of Origin

1. The Parties shall establish by the date of entry into force of this Agreement, a Certificate of Origin, which shall serve to certify that a good being exported from the territory of a Party into the territory of the other Party qualifies as an originating good. This Certificate of Origin may be modified by agreement of the Parties.

2. Each Party may require that a Certificate of Origin for a good imported into its territory is completed in the language required under its law.

3. Each Party shall require its exporters to make a declaration on the Certificate of Origin, indicating compliance with the rules of origin prescribed in Chapter IV (Rules of Origin) for the export of a good for which an importer may claim preferential tariff treatment.

4. The certifying authority of the exporting Party shall certify on the Certificate of Origin that the declaration made by the exporter is accurate.

5. Each Party shall provide that, where an exporter in its territory is not the producer of the good, the exporter may make a declaration on the Certificate of Origin on the basis of:

- (a) its knowledge of whether the good qualifies as an originating good; or
- (b) its reasonable reliance on the producer's written declaration made on the Certificate of Origin or on a separate document, that the good qualifies as an originating good;

6. Each Party shall prescribe that the Certificate of Origin issued by a certifying authority, in accordance with paragraph 4, is applicable to a single import of one or more goods.

7. Each Party shall prescribe that the Certificate of Origin shall be accepted by the customs authority of the importing Party within the period of six (6) months from the signature date.

#### **Article V.03                    The Functions and Obligations of the Certifying Authorities Responsible for Origin Certification**

1. The certifying authority required to carry out the certification procedures shall:

- (a) verify the accuracy of the declaration presented to them by the final producer or the exporter, by means of the systems or procedures which ensure the accuracy of the data; and
- (b) provide to the other Party the administrative cooperation required for the control of documentary proof of the origin.

2. The certifying authorities designated by the Parties shall, no later than thirty (30) days after entry into force of this Agreement, transmit through the Ministry of Foreign Trade, in the case of Costa Rica, and the CARICOM Secretariat, in the case of CARICOM, the approved list of the designated authorities to issue the certificates mentioned in this Chapter, along with a list of the authorized signatories, their specimen signatures and the stamps of the designated authorities.

3. Any changes to such listings shall become effective fifteen (15) days after receipt of notification thereof.

#### **Article V.04                    Obligations Regarding Imports**

1. Each Party shall require an importer requesting preferential tariff treatment for a good imported into its territory from the territory of another Party to:

- (a) make a written declaration in the import document, based on a valid 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; and
- (c) provide, on the request of that Party's customs authority, a copy of the Certificate of Origin.

2. Each Party shall provide that if the importer fails to comply with any requirement under paragraph 1, the preferential tariff treatment shall be denied to the good imported into the territory of the other Party, for which the preferential tariff treatment had been requested.

#### **Article V.05                    Obligations Regarding Exports**

1. Each Party shall prescribe that an exporter having made a declaration on the Certificate of Origin in accordance with paragraph 3 of Article V.02, and who has reason to believe that the Certificate of Origin contains incorrect information, shall promptly notify in writing, any change which may affect the accuracy or validity of the Certificate of Origin or written declaration to any person having received the Certificate, as well as to the customs authority of the exporting Party.

2. The customs authority of the exporting Party shall notify the customs authority of the importing Party of the notification made by the exporter referred to in Paragraph 1.

#### **Article V.06                    Exceptions**

On condition that it does not form a part of two or more import consignments undertaken or planned for the purpose of evading the fulfillment of Articles V.04 and V.05, the Certificate of Origin for the import of goods in the following cases shall not be required for:

- (a) a commercial import of a good, the transaction value of which does not exceed one thousand (\$1,000) US dollars or its equivalent amount in the Party's currency, 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 transaction value does not exceed one thousand (\$1,000) US dollars or its equivalent amount in the Party's currency; and
- (c) an import of a good for which the importing Party has waived the requirement for a Certificate of Origin.

#### **Article V.07                    Records**

Each Party shall prescribe that:

- (a) an exporter in its territory that makes a declaration as contained in the Certificate of Origin in accordance with paragraph 3 of Article V.02, shall maintain in its territory, for five (5) years, in the case of Costa Rica, and seven (7) years, in the case of CARICOM, after the date on which the Certificate of Origin was signed, all records

and documents related to the origin of a good, including those referring to:

- (i) the purchase, cost, value and payment for the good that is exported from its territory;
  - (ii) the purchase, cost, value, 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.
- (b) in accordance with the procedures for verification of origin established in Article V.08, the exporter shall provide the customs authority of the importing Party, the records and documents referred to in subparagraph (a) above. When records and documents are not in the exporters' hands, he may request from the producer of the materials the records and documents so that with the authorization of the latter they are delivered through him to the customs authority for verification; and
- (c) an importer claiming preferential tariff treatment for a good imported into its territory, from the territory of the other Party, shall maintain in that territory, for five (5) years, in the case of Costa Rica, and seven (7) years, in the case of CARICOM, after the date of import of the good, the Certificate of Origin and all other records relating to the importation required by the importing Party.

#### **Article V.08                      Procedures for Verification of Origin**

1. For purposes of determining whether goods imported into its territory from the territory of the other Party qualify as originating goods, a Party may conduct a verification procedure solely by means of:

- (a) the submission to the customs authority of the exporting Party of requests for information including written questionnaires to be completed by exporters or producers of the territory of the other Party;
- (b) verification visits to the premises of an exporter or producer in the territory of the other Party to examine the records and documents and inspect the premises used in the production of goods; and
- (c) other procedures agreed upon by the Parties whenever necessary.

2. Prior to conducting a verification procedure pursuant to paragraph 1, a Party shall notify the customs authority of the exporting Party of its intention to carry out a verification. Within five (5) days of receipt of this notification, the customs authority in the exporting Party shall notify the exporter and/or the producer of the goods.

3. The customs authority of the importing Party shall obtain through the customs authority of the exporting Party the written consent of the exporter or producer of the goods whose premises are to be visited. Within five (5) days of

receipt of this written consent, the customs authority in the exporting Party shall notify the customs authority of the importing Party.

4. Where an exporter or a producer does not give written consent to a request for a verification visit nor provide any information requested as provided for in this Article within thirty (30) days of receipt of the notification referred to in paragraph 2 or within the extended period, the Party which has notified its intention to carry out a verification procedure may deny preferential tariff treatment to goods which would have been subject of such verification.

5. The notification of visits, which is provided for in Paragraph 2, shall include:

- (a) the identity of the customs authority 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 verification visit, including specific reference to the goods which are the subject of the verification;
- (e) the names and designation of the officials who will carry out the visit; and
- (f) the legal basis for the verification visit.

6. The customs authority of the exporting Party may, at the request of the Party wishing to carry out verification pursuant to paragraph 1, call on the producer or the exporter to make available, inter alia, documentation and accounting records and permit inspection of materials, production facilities and processes.

7. Where a verification has been notified, any modification of the information referred to in this Article shall be notified in writing to the customs authority of the exporting Party, who in turn shall immediately notify the modification to the producer or the exporter. Such modifications shall be notified by the importing Party no later than fifteen (15) days of receipt of the notification.

8. Where the request for information involves the completion of a questionnaire, the exporter shall complete and return the questionnaire within thirty (30) days of receipt of the notification. Within this period, the exporter may request in writing from the importing Party an extension, which shall be no longer than thirty (30) days.

9. The customs authority of the importing Party may grant to the customs authority of the exporting Party an extension of not more than ten (10) days for the submission of any documents which may be required to support an application for verification of origin under the Agreement.

10. Each Party shall provide that, where its customs authority receives a notification regarding a verification visit, the customs authority may, within seven (7) days of receipt of the notification, postpone the proposed verification visit for a period not exceeding fifteen (15) days from the date of receipt of such notification or for such longer period as the Parties may agree.

11. The Parties shall permit an exporter or a producer whose goods are the subject of a verification visit to designate two observers, to be present during the visit provided:

- (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.

12. The Party conducting the verification procedure shall provide the producer or exporter whose goods are the subject of the verification procedure with a written determination of whether or not the goods qualify as originating goods, including findings of fact and the legal basis for the determination, within twenty-one (21) days of the conclusion of the verification procedure.

13. The procedure to verify origin performed by the customs authority of the importing Party, as set out in the present Article, shall be completed within a maximum term of one (1) year and shall commence from the first request for information, a written questionnaire or a verification visit. Notwithstanding the above, in cases duly justified, such term could be extended for one time only in accordance with the provisions set out in the Uniform Regulations.

14. Each Party shall provide that, if within the term set out in paragraph 13 or the extension set out in the Uniform Regulations, its customs authority does not issue the resolution of the origin determination, the good or goods subject to the origin verification shall have the right to preferential tariff treatment.

15. Where verifications by a Party indicate that an exporter has certified more than once false or unsupported representations that a good imported into its territory qualifies as an originating good, the importing Party may suspend preferential tariff treatment to identical goods exported by such person until such time as that person complies with the provisions of Chapter IV (Rules of Origin).

16. Each Party shall provide that where its customs authority 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 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 its determination in writing to both the importer of the good and the exporter who made the declaration on the Certificate of Origin for the good.

17. A Party shall not apply a determination made under paragraph 16 to an import made before the effective date of the determination, where the customs authority of the Party from whose territory the good was exported has issued an advanced 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.

18. If a Party denies preferential tariff treatment to a good pursuant to a determination made under paragraph 16 it shall postpone the effective date of denial for a period not exceeding ninety (90) days where the importer of the good, or the exporter who made the declaration on the Certificate of Origin for the good, demonstrates it has relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs authority of the Party from whose territory the good was exported.

19. In no case shall the customs authorities of the Parties interrupt an import procedure regarding the goods covered by a Certificate of Origin.

#### **Article V.09                    Review and Appeal**

1. Each Party shall grant substantially the same rights of review and appeal of rulings on determination of origin and advance criteria established for an importer in its territory, to an exporter or producer of the other Party that makes a declaration on the Certificate of Origin in accordance with paragraph 3 of Article V.02 for a good that has been the subject of a determination of origin in accordance with paragraph 12 of Article V.08.

2. The rights referred to in paragraph 1 shall include access to at least one level of administrative review independent of the official or office responsible for the determination under review; and access to a level of judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review, according to the national legislation of each Party.

#### **Article V.10                    Penalties**

Each Party shall establish measures imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to that set forth in this Chapter.

#### **Article V.11                    Advanced Rulings**

The Parties shall establish provisions regarding advanced rulings, through administrative mechanisms established in this Agreement subsequent to the decision of the CARICOM authorities on this issue.

#### **Article V.12                    Uniform Regulations**

1. The Parties shall establish, and implement, through their respective laws, regulations or administrative policies no later than six (6) months after the date of entry into force of this Agreement, and at any time thereafter, upon agreement of the Parties, Uniform Regulations regarding the interpretation, application and administration of this Chapter, Chapter IV (Rules of Origin) 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 one hundred and eighty (180) days after the Parties agree on such modification or addition, or in such time as the relevant amendment to the legislation enters into force.

#### **Article V.13                    Cooperation**

1. Each Party shall notify the other Party of the following determinations, measures and rulings, including, to the greatest extent practicable, those that are prospective in application regarding:

- (a) a determination of origin issued as the result of a verification conducted pursuant to Article V.08;
- (b) a determination of origin that the Party is aware is contrary to:
  - (i) a ruling issued by the customs authority of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good; or
  - (ii) consistent treatment given by the customs authority of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good; and
- (c) a measure establishing or significantly modifying an administrative policy that is likely to affect future determinations of origin.

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) 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.

**Article V.14 Invoicing by a Third-Country Operator**

When the good subject to exchange is invoiced by a third-country operator, the exporter of the country of origin shall indicate on the respective Certificate of Origin, in the section for "observations", that the good subject to declaration shall be invoiced from that third-country, identifying the name, denomination or trade name and the address of the operator having the responsibility to invoice the good.

**Article V.15 Confidentiality**

Each Party shall maintain, in accordance with its law, the confidentiality of confidential business information collected pursuant to its legislation.