

## Chapter IV

### Customs Procedures

#### Article 4-01: Definitions

1. For purposes of this Chapter:

**competent authority** means the authority that, according to the legislation of each Party, is responsible for the administration of its customs laws and regulations. The names of such authorities are listed in Annex 4-01 (Competent Authorities);

**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;

**customs value** means the value of a good for purposes of calculating customs duties according to the legislation of each Party;

**determination of origin** means a determination issued as a result of a verification of origin that determines whether a good qualifies as an originating good in accordance with Chapter III (Rules of Origin);

**exporter** means an exporter located in the territory of the Party from which the good is exported and who, under this Chapter, is required to maintain in the territory of that Party the records referred to in Article 4-06(1)(a);

**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 its origin under Chapter III (Rules of Origin);

**importer** means an importer located in the territory of a Party, to which the good is imported, who, under this Chapter, is required to maintain, in the territory of that Party, the records referred to in Article 4-06(1)(b);

**preferential tariff treatment** means the duty rate applicable to an originating good in accordance with this Agreement;

**producer** means “producer”, according to Article 3-01, located in the territory of a Party, who is required to maintain, in the territory of that Party, the records referred to in Article 4-06(1)(a);

**valid certificate of origin** means a certificate of origin in the format referred to in Article 4-02(1), completed, signed and dated by the exporter of the good, in accordance with the provisions of this Chapter and with its instructions; and

**value** means the value of a good or material for purposes of applying Chapter III (Rules of Origin).

2. Except as otherwise defined in this Article, the definitions of Chapter III (Rules of Origin) are incorporated herein.

#### **Article 4-02: Certificate and Declaration of Origin**

1. For purposes of this Chapter, prior to the implementation of this Agreement, the Parties shall establish a unique form for the Certificate and the Declaration of Origin, and may thereafter revise the form by agreement.
2. The Certificate of Origin referred to in paragraph 1, will have the purpose of certifying that a good being exported from the territory of one Party into the territory of the other Party is considered to qualify as an originating good.
3. Each Party shall require its exporters to complete and sign a Certificate of Origin for any exportation of a good for which an importer may claim preferential tariff treatment.
4. Each Party shall provide that where an exporter is not the producer of the good, the exporter may complete and sign a Certificate of Origin on the basis of:
  - (a) the Declaration of Origin referred to in paragraph 1, for the good subject to exportation which shall be completed and signed by the producer of the good and voluntarily provided to the exporter by the producer; and
  - (b) the exporter's knowledge of whether the good qualifies as an originating good.
5. Each Party shall provide that a Certificate of Origin that has been completed and signed by an exporter in the territory of the other Party, whether or not he is also the producer of the good, be 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, as indicated in the Certificate of Origin by the exporter,

and shall be accepted by its competent authority for two years after the date on which the Certificate was signed.

6. Each Party shall provide that where originating goods imported under a valid Certificate of Origin are invoiced in the territory of a non-Party, the importing Party shall grant preferential tariff treatment, provided that such goods are shipped directly from the territory of the other Party, subject to the provisions of Article 3-17.
7. The Certificate of Origin for a good imported into the territory of the importing Party shall be completed in one of the official languages of this Agreement. If the Certificate of Origin is not completed in the official language of the importing Party, a translation into the English language shall be attached thereto. If the Certificate of Origin is completed in the English language, a translation into the Spanish or the Hebrew language shall not be required.

#### **Article 4-03: Obligations Regarding Importations**

1. Each Party shall require an importer 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 on the import document provided for in its legislation, on the basis of a valid Certificate of Origin, that the good qualifies as an originating good;
- (b) have the original Certificate of Origin in its possession at the time such declaration is made;
- (c) provide, on the request of the competent authority of the importing Party, a copy of the original Certificate of Origin; and
- (d) promptly submit a corrected declaration and pay any duties owed, where the importer has reason to believe that the Certificate of Origin on which a declaration was based contains incorrect information. Where the importer submits the above mentioned declaration before the competent authority initiates the exercise of its powers to conduct a verification, he shall not be subject to penalties, according to the legislation of each Party.

2. Each Party shall provide that where an importer fails to comply with any of the requirements established in paragraph 1 of this Article, that Party may deny the preferential tariff treatment requested for the good imported from the territory of the other Party. However, where a Certificate of Origin is illegible or defective on its face or contains minor formal errors that may affect the accuracy of the Certificate of Origin, the importer shall be granted a period not less than five working days to provide the customs administration with a copy of the corrected certificate.

3. Each Party shall provide that where a good 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 six months after the date on which the written declaration referred to in Article 4-03(1)(a) was made, despite the fact that he did not have in his possession a valid Certificate of Origin, apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, provided that the importer:

- (a) submits, if required by the importing Party, a written declaration that the good qualifies as an originating good on the import document referred to in Article 4-03(1)(a);
- (b) submits at the time of application for a refund:
  - (i) a copy of the original Certificate of Origin and has the original Certificate of Origin in his possession; and
  - (ii) such other documentation relating to the importation of the good as the importing Party may require.

**Article 4-04: Obligations Regarding Exportations**

1. Each Party shall provide that its exporter or producer, who completed and signed a Certificate or a Declaration of Origin, provide, on request of its competent authority, a copy of the Certificate or Declaration of Origin, as the case may be.

2. Each Party shall provide that its exporter or a producer that has completed and signed a Certificate or a Declaration of Origin, and that has reasons to believe that the Certificate or the Declaration contains incorrect information, shall promptly notify in writing, of any change that could affect the accuracy or validity of the Certificate or Declaration of Origin to all persons to whom the certificate or declaration was given, as well as to the competent authority of the importing Party. The notification shall be sent by one of the methods stipulated in Article 4-07(2) . If this is done prior to the commencement of a verification and if the exporter or producer demonstrates that at time of issuance of the Certificate of Origin he possessed facts upon which he could reasonably rely to the effect that the good qualified as an originating good, the exporter or producer shall not be subject to penalties for having submitted an incorrect certificate or declaration.

3. Each Party shall provide that a false certification or declaration of origin by its exporter or producer, certifying that a good to be exported to the territory of the other Party qualifies as an originating good shall have the same legal consequences, with appropriate modifications, as would apply to its importer for a contravention of its customs laws and regulations regarding the making of a false statement or representation.

#### **Article 4-05: Exceptions**

Provided that the importation does not form part of a series of importations that may be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 4-02 and 4-03, the Parties shall not require a Certificate of Origin for the importation of goods in the following cases:

- (a) a commercial importation of goods, whose customs value does not exceed one thousand U.S. dollars or its equivalent amount in the Party's currency or any other higher amount that the Party establishes, except that it may require that the invoice accompanying the importation include a statement of the importer or of the exporter certifying that the good qualifies as an originating good;
- (b) a non-commercial importation of goods whose customs value does not exceed one thousand U.S. dollars or its equivalent amount in the Party's currency or any higher amount as established by the Party; and
- (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.

#### **Article 4-06: Records**

Each Party shall provide that:

- (a) its exporter or producer that completes and signs a Certificate or Declaration of Origin shall maintain in its territory, for a minimum of five years after the date on which the Certificate or Declaration was signed, all records and documents relating to the origin of a good, including records associated with:

- (i) the sourcing of, 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;
  - (iii) the production of the good in the form in which the good is exported from its territory; and
  - (iv) the sale of, the shipping route and all points of shipment prior to the importation of the good that is exported from its territory and invoiced in the territory of a non Party to the importer in the territory of the other Party;
- (b) an importer claiming preferential tariff treatment for a good imported into its Party's territory from the territory of the other Party, shall maintain, for a minimum of five years after the date of importation of the good, the original Certificate of Origin and all other documentation, as the competent authority of the importing Party may require, relating to the importation of the good; and
  - (c) an exporter, producer or importer that is required to maintain documents or records under this Article shall provide copies of the original thereof to the competent authority conducting a verification in accordance with Article 4-07, upon request made by such competent authority. For this purpose, all copies of records provided must match with the original documentation from which such copies were made.

**Article 4-07: Origin Verification**

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

- (a) written questionnaires to an exporter or a producer in the territory of the other Party;
- (b) verification visits to the premises of an exporter or a producer in the territory of the other Party to review the records and documents that demonstrate the compliance with the rules of origin, pursuant to Article 4-06 and to observe the facilities used in the production of the good and, as the case may be, the facilities used in the production of the materials used in the production of the good; or
- (c) such other procedure as the Parties may agree.

2. The competent authority of the importing Party shall send the questionnaires and any communication relating to a verification visit, referred to in paragraphs 1(a) and 1(b), to the exporters or producers in the territory of the other Party, by any of the following means:

- (a) certified or registered mail with confirmation of receipt;

- (b) any other method that produces a confirmation of receipt by the exporter or producer;  
or
- (c) such other method that the Parties may agree.

3. The provisions of paragraph 1 shall not prevent the competent authority of the importing Party from exercising its powers to conduct verifications in its territory, in relation with the fulfillment of any other obligation by its own importers, exporters or producers.

4. The exporter or producer who receives a questionnaire pursuant to paragraph 1(a), shall answer it correctly and return it within 45 days from the date of its receipt.

5. Each Party shall provide that, where it has received the answer to the questionnaire referred to in paragraph 1(a) within the period specified therein, and considers that it requires more information to determine whether the good subject to the verification qualifies as an originating good, it may, through its competent authority, request additional information from the exporter or producer, by means of a subsequent questionnaire, in which case, the exporter or producer shall answer it and return it, within 30 days from the date of its receipt.

6. If the exporter or producer fails to respond correctly to any of the questionnaires referred to in paragraphs 4 or 5, or does not return it within the period specified therein, the importing Party may determine that the good subject to the verification does not qualify as an originating good and may deny it preferential tariff treatment, upon written determination under paragraph 17.

7. The conducting of a verification in accordance with one of the methods set forth in paragraph 1 shall not preclude the use of another verification method provided for in paragraph 1.

8. Before conducting a verification visit pursuant to paragraph 1(b), the importing Party shall, through its competent authority, deliver a written notification of its intention to conduct the visit, at least 30 days in advance of the proposed date of the visit. The written notification shall be sent to the exporter or producer whose premises are to be visited and to the competent authority of the Party in whose territory the visit is to occur. The competent authority of the importing Party shall obtain the written consent of the exporter or producer whose premises are to be visited.

9. The notification referred to in paragraph 8 shall include:

- (a) the identity of the competent 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 proposed verification visit, including specific reference to the good or goods subject of the verification referred to in the Certificate(s) or Declaration(s) of Origin;
- (e) the names and titles of the officials performing the verification visit; and
- (f) the legal authority for the verification visit.

10. Any modification to the information referred to in paragraph 9, will be notified in writing, prior to the verification visit, in the manner specified in paragraph 2, to the exporter or producer, and to the competent authority of the exporting Party.

11. If within 30 days from the date of the notification of the proposed visit under paragraph 8, the exporter or producer has not given its written consent to such a visit, the importing Party may determine that the good or goods that would have been the subject of the visit upon written determination under paragraph 17 do not qualify as originating goods and may deny them preferential tariff treatment.

12. Each Party shall provide that, where its competent authority receives a notification pursuant to paragraph 9, it 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 a longer period as the Parties may agree.

13. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraph 12.

14. The Party conducting a verification visit shall permit an exporter or a producer whose good or goods are the subject of a verification visit, to designate two observers to be present during the visit, provided that the observers do not participate in a manner other than as observers. The failure of the exporter or producer to designate observers shall not result in the postponement of the visit. The competent authority of the exporting Party, according to the national procedures and regulations of the Party conducting the verification may send a representative to be present during the verification visit, upon notifying the competent authority of the importing Party, provided that he be present as an observer only.

15. The Party conducting the verification of origin of a good imported into its territory under this Article may determine that a material used in the production of the good is a non-originating material where the producer or exporter of the good, or the producer or supplier of the material, does not provide the information, documents or records relating to the origin of the material that demonstrate that the material in question is an originating material. Such a determination shall not necessarily lead to a decision that the good, itself, is not originating.

16. Each Party shall, through its competent authority, 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.

17. After carrying out the verification procedures outlined in paragraph 1, the competent authority of the importing Party shall in the manner specified in paragraph 2, provide the exporter or producer whose good is subject to the verification, a written determination of whether or not the good qualifies as an originating good under Chapter III (Rules of Origin), including findings of fact and the legal basis for the determination.

18. Where the exporter or producer has failed to respond to or return a questionnaire as set forth in paragraphs 4 and 6, or has not given its written consent to a verification visit as set forth in paragraph 11, and the importing Party, denies preferential tariff treatment to the good in question, a written determination thereof, pursuant to paragraph 17, shall be sent to the exporter or producer, in the manner specified in paragraph 2.

19. When the Party conducting a verification determines, based on the information obtained during the verification, that a good does not qualify as an originating good, by written determination issued under paragraph 17, it shall grant the exporter or producer whose good was the subject of the verification, 30 days from the date of receipt of the written determination, to provide any additional comments or information before denying preferential tariff treatment to the good, and shall issue a final determination after taking into consideration any comments or additional information received from the exporter or producer during the above-mentioned period, and shall send it to the exporter or producer in the manner specified in paragraph 2.

20. Where the verification completed by a Party indicates that an exporter or a producer has repeatedly made 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 III (Rules of Origin). In taking such an action, the competent authority of the importing Party shall notify the person who issued the Certificate of Origin and the competent authority of the exporting Party.

21. 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 and the competent authority of the other Party.

22. A Party shall not apply a determination made under paragraph 17 to an importation made before the effective date of the determination where:

- (a) the competent authority of the Party from whose territory the good was exported issued a ruling on the tariff classification or on the value of such materials, on which a person is entitled to rely; and
- (b) the above mentioned rulings were given prior to the commencement of the origin verification.

#### **Article 4-08: Confidentiality**

1. Each Party shall maintain, in accordance with its legislation, the confidentiality of 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. Information obtained pursuant to this Chapter may only be disclosed to those competent authorities of the Parties responsible for the administration and enforcement of determinations of origin and customs and other indirect taxes on imports, for the purposes of this Agreement.

#### **Article 4-09: Advance Rulings**

1. Each Party shall, through its competent authority, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory. The advance rulings

shall be issued by the competent authority of the importing Party to its importer or to an exporter or a producer of the other Party, on the basis of the facts and circumstances presented by such importer, exporter or producer relating to the origin of the goods.

2. The advance rulings shall concern:
  - (a) whether a good qualifies as an originating good under Chapter III (Rules of Origin);
  - (b) whether non-originating materials used in the production of a good undergo an applicable change in tariff classification set out in the Annex 3-03 (Specific Rules of Origin);
  - (c) whether a good satisfies a regional value-content requirement under Chapter III (Rules of Origin);
  - (d) whether the 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 for which an advance ruling is requested, is appropriate for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter III (Rules of Origin);
  - (e) whether the method applied by the exporter or producer in the territory of the other Party for reasonably allocating costs, in accordance with the Annex 3-04 (Calculation of Net Cost), is appropriate for the purpose of determining whether a good satisfies a regional value-content under Chapter III (Rules of Origin); or
  - (f) such other matters as the Parties may agree.
3. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including:
  - (a) the information reasonably required by the competent authority to process an application including whether or not the good or goods in question have been or are the subject of a verification or an advance ruling;
  - (b) the right of its competent authority to request, at any time during the course of an evaluation of an application for an advance ruling, supplemental information from the person requesting the ruling;
  - (c) the obligation of the competent authority to issue the advance ruling within 120 days, after it has obtained all necessary information from the person requesting the ruling; and
  - (d) the obligation of the competent authority to issue the advance ruling including findings of fact and the legal basis for the determination.

The issuance of an advance ruling shall be declined where a good is subject to a verification of origin or to a review and appeal process in the territory of a Party.

4. Each Party shall provide that the advanced rulings issued to imports into its territory, shall be effective as of the date they are issued, or on such later date as may be specified therein, except when the ruling is modified or revoked pursuant to paragraph 6. The advance ruling shall be valid only with regards to the person or entity on whose behalf it was issued and as long as the substantial facts and circumstances upon which it was based are true and accurate and have not been changed or modified. The issuance of the advance ruling shall not affect in any manner whatsoever the right of the competent authority that issued the ruling to conduct a verification, as set forth in Article 4-07.

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 III (Rules of Origin) 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. An advance ruling may be modified or revoked by the competent authority that issued the ruling in the following cases:

- (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;  
or
  - (iii) in the application of a regional value-content requirement under Chapter III (Rules of Origin);
- (b) if the ruling is not in accordance with Chapter III (Rules of Origin) or with an interpretation agreed by the Parties or a modification regarding Chapter III (Rules of Origin);
- (c) if there is a change in the material facts or circumstances on which the ruling is based;
- (d) to conform with an administrative or judicial decision or a change in the domestic law of the Party that issued the advance ruling; or
- (e) any other relevant factor that could affect the outcome of the advanced ruling.

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 or if such person provided false information on which the advanced ruling was based.

8. Each Party shall provide that where its competent authority examines the regional value content of a good for which it has issued an advance ruling, 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 costs were correct in all material respects.

9. Each Party shall provide that where its competent authority determines that any requirement in paragraph 8 has not been satisfied, it may modify or revoke the advance ruling as the circumstances may warrant.

10. Each Party shall provide that, where its competent authority determines that the advance ruling was based on incorrect information, the person to whom the ruling was issued shall not be subject to penalties, where that person demonstrates that it used reasonable care and acted in good faith in presenting the facts and circumstances on which the ruling was based, although preferential tariff treatment may be denied after the completion of verification procedures in accordance with the relevant provisions of Article 4-07.

11. 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 competent authority that issued the advance ruling may apply such measures as the circumstances may warrant.

#### **Article 4-10: Penalties**

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

#### **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 by its competent authority as it provides to importers in its territory to exporters or producers from the other Party who:

- (a) complete and sign a Certificate or Declaration of Origin for a good that has been the subject of a determination of origin, according to paragraph 15 of Article 4-07; or
- (b) have received an advance ruling pursuant to Article 4-09.

2. The right referred to in paragraph 1 includes access to at least one level of administrative review independent of the official or office responsible for the determination under review and in accordance with its domestic law, judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review.

#### **Article 4-12: Uniform Procedures**

No later than the date of entry into force of this Agreement, the Parties shall, through their respective administrative regulations or departmental directives, implement the Certificate and Declaration of Origin, and implement Uniform Procedures that may be necessary for the

administration, application, interpretation and other matters as the Parties may agree of Chapter III (Rules of Origin) and this Chapter.