

Chapter Five

Customs Procedures

Subchapter A - Certification of Origin

Article 501: Certificate of Origin

1. Upon the date of entry into force of this Agreement, the Parties shall establish a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of another Party qualifies as an originating good, and may thereafter revise the Certificate by agreement.

2. Each Party may provide that a Certificate of Origin for a good imported into its territory be completed in a language required under its laws or regulations.

3. Each Party shall provide that:

(a) an exporter in its territory shall 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 another Party; and

(b) where an exporter in its territory is not the producer of the good, such exporter may complete and sign a Certificate on the basis of

(i) its knowledge of whether the good qualifies as an originating good,

(ii) reasonable reliance upon the producer's written representation that the good qualifies as an originating good, or

(iii) a completed and signed Certificate for the good voluntarily provided to the exporter by the producer.

4. Nothing in paragraph 3 shall be construed to require a producer to provide a Certificate of Origin to an exporter.

5. Each Party shall:

(a) provide that a Certificate of Origin that has been completed and signed by an exporter or a producer in the territory of another Party that is applicable to

(i) a single importation of a good into its territory, or

(ii) multiple importations of identical goods imported into its territory within any specified period, not exceeding 12 months, set out therein by the exporter or producer,

shall be accepted by its customs administration for a

period of four years after the date on which the Certificate was signed; and

(b) require an exporter or a producer in its territory that completes and signs a Certificate pursuant to subparagraph (a) to notify in writing all persons to whom such Certificate was given of any change that could affect its accuracy or validity.

Article 502: Obligations Regarding Importations

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

(a) the importer shall make a written declaration, based on a valid Certificate of Origin, that the good qualifies as an originating good;

(b) the importer shall have the Certificate in its possession at the time such declaration is made;

(c) the importer shall provide, upon the request of that Party's customs administration, a copy of the Certificate;

(d) if the importer fails to comply with any requirement set out in this Chapter, that Party may deny preferential tariff treatment to the good;

(e) the importer, where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct, shall promptly make a corrected declaration and pay any duties owing; and

(f) the importer, who voluntarily makes a corrected declaration pursuant to subparagraph (e), shall not be subject to penalties for the making of an incorrect declaration.

2. 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 one year of the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, upon presentation of:

(a) a written declaration that the good qualifies as an originating good at the time of importation;

(b) a copy of the Certificate of Origin to the same effect; and

(c) such other documentation relating to the importation of the good as that Party may require.

Article 503: Exceptions

Each Party shall provide that a Certificate of Origin shall not be required for:

- (a) a commercial importation of a good whose value does not exceed the amount of (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 such importation include a statement certifying that such goods qualify as originating goods;
- (b) a non-commercial importation of a good whose value does not exceed the amount of (US)\$1000 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 such 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 set out in Articles 501 and 502.

Article 504: Obligations Regarding Exportations

Each Party shall provide that:

- (a) upon 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 such exporter pursuant to Article 501(3)(b)(iii), shall provide a copy of the Certificate to its customs administration;
- (b) a false certification by an exporter or a producer in its territory that a good to be exported to the territory of another Party qualifies as an originating good shall have the same legal consequences, with appropriate modifications, as would apply to an importer in its territory with respect to a contravention of its customs laws and regulations regarding the making of a false statement or representation;
- (c) where an exporter or a producer in its territory fails to comply with any of the requirements set out in this Chapter, it may apply such measures as the circumstances may warrant;
- (d) an exporter or a producer in its territory that has completed and signed a Certificate of Origin, and that has reason to believe that the Certificate contains information that is not correct, shall promptly notify in writing all persons to whom the Certificate was given of any change that could affect the accuracy or validity of the Certificate; and

(e) an exporter or a producer who voluntarily provides written notification pursuant to subparagraph (d) shall not be subject to penalties with respect to the making of an incorrect certification.

Subchapter B - Administration and Enforcement

Article 505: Records

1. Each Party shall provide that:

(a) an exporter or a producer in its territory that completes and signs a Certificate of Origin shall maintain in its territory, for a period of five years from the date the Certificate was signed or for such longer period as such Party may specify, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of another Party, including records associated with

(i) the purchase of, cost of, value of, and payment for, the good that is exported from its territory, and

(ii) the purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory, and

(iii) the production of the good in the form in which the good is exported from its territory; and

(b) an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain in that territory, for a period of five years from the date of importation of the good or for such longer period as the Party may specify, a copy of the Certificate and all other required documentation relating to the importation of the good.

Article 506: Origin Verifications

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

(a) written questionnaires to an exporter or a producer in the territory of another Party;

(b) visits to the premises of an exporter or a producer in the territory of another Party to review the records and observe the facilities used in the production of the good; or

(c) such other procedure as the Parties may agree.

2. Prior to conducting a verification visit pursuant to paragraph (1)(b), a Party shall, through its customs

administration:

(a) deliver a written notification of its intention to conduct such visit;

(i) to the exporter or producer whose premises are to be visited,

(ii) to the customs administration of the Party in whose territory the visit is to occur, and

(iii) to, if requested by the Party in whose territory the visit is to occur, the embassy of such Party in the territory of the Party proposing to conduct the visit; and

(b) obtain the written consent of the exporter or producer whose premises are to be visited.

3. The notification referred to in paragraph 2 shall include:

(a) the identity of the customs administration issuing the notification;

(b) the name of the exporter or producer whose premises are to be visited;

(c) the date and place of the proposed verification visit;

(d) the object and scope of the proposed verification visit, including specific reference to the good subject to the verification;

(e) the names and titles of the officials performing the verification visit; and

(f) the legal authority for the verification visit.

4. Where an exporter or a producer has not given its written consent to a proposed verification visit within 30 days of receipt of notification pursuant to paragraph 2, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.

5. Each Party shall provide that, where its customs administration receives notification pursuant to paragraph 2, it may, within 15 days from the date of receipt of such notification, postpone the proposed verification visit for a period not exceeding 60 days from the date of such receipt, or for such longer period as the Parties may otherwise agree.

6. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraph 5.

7. Each Party shall permit an exporter or a producer whose good is the subject of a verification visit by another Party to designate two observers to be present during such visit, provided that:

(a) the observers do not participate in a manner other than as observers; and

(b) the failure of such exporter or producer to designate observers shall not result in the postponement of the visit.

8. Each Party shall, through its customs administration, conduct a verification of a regional value-content requirement in accordance with the Generally Accepted Accounting Principles applied in the territory of the Party from which the good was exported.

9. The Party conducting a verification shall provide the exporter or producer whose good is subject to the verification with a written determination of whether the good qualifies as an originating good, including findings of fact and the legal basis for the determination.

10. Where verifications by a Party indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, such Party may withhold preferential tariff treatment to identical goods exported or produced by such person until that person establishes compliance with the provisions of Chapter Four (Rules of Origin).

11. Each Party shall provide that where it determines that a certain good imported into its territory does not qualify as an originating good based on a tariff classification or a customs value applied by the Party to one or more materials used in the production of the good, which differs from the tariff classification or customs value applied to such materials by the Party from whose territory the good was exported, the Party's determination shall not become effective until it notifies in writing both the importer of the good and the person that completed and signed the Certificate of Origin for the good of its determination.

12. A Party shall not apply a determination made under paragraph 11 to an importation made before the effective date of the determination, provided that:

(a) the customs administration of the Party from whose territory the good was exported has issued an advance ruling on the tariff classification or on the customs value of such materials, or has given consistent treatment to the entry of such materials under the tariff classification or customs value at issue, on which a person is entitled to rely; and

(b) the advance ruling or consistent treatment was given prior to notification of the determination.

13. Where a Party denies preferential tariff treatment to a good pursuant to a determination made under paragraph 11, it shall postpone the effective date of the denial for a period not exceeding 90 days, provided that the importer of the good, or the person who completed and signed the Certificate of Origin for the good, demonstrates that it has relied in good faith to its detriment on the tariff classification or customs value applied to such materials by the customs administration of the Party from whose territory the good was exported.

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of confidential business information collected pursuant to this Chapter and shall protect that business information from disclosure that could prejudice the competitive position of the persons providing the information.

2. The confidential business information collected pursuant to this Chapter may only be disclosed to those authorities responsible for the administration and enforcement of determinations of origin, and of customs and revenue matters.

Article 508: Penalties

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

2. Nothing in Articles 502(1)(d) and (f), 504(e) and 506(6) shall be construed to prevent a Party from applying such measures as the circumstances may warrant.

Subchapter C - Advance Rulings

Articles 509: Advance Rulings

1. Each Party shall, through its customs administration, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, to an importer in its territory or an exporter or a producer in the territory of another Party, on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning:

(a) whether materials imported from the territory of a non-Party undergo, as a result of production in the territory of one or more of the Parties, the applicable change in tariff classification under Chapter Four (Rules of Origin) to qualify as an originating good;

(b) whether a good satisfies a regional value-content requirement under either the transaction value method or the net cost method set out in Chapter Four;

(c) the appropriate basis or method for customs 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, in calculating the transaction value of a good, or the value of materials used in the production of a good, for which an advance ruling is requested, for the purpose of determining whether the good satisfies a regional value-content requirement under Chapter Four;

(d) the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods set out in the Uniform Regulations, for calculating the net cost of a good, or the value of an intermediate material, for which an advance ruling is

requested, for the purposes of determining whether the good satisfies a regional value-content requirement under Chapter Four;

(e) whether a good that re-enters its territory after the good has been exported from its territory to the territory of another Party for repair or alteration qualifies for duty-free treatment in accordance with Article 307 (Goods Re-entered After Repair or Alteration);

(f) whether the proposed or actual marking of a good satisfies country of origin marking requirements under Article 312 (Country of Origin Marking); or

(g) whether a good to be imported qualifies as a good of a Party under Annexes 300-B or 302.2.

2. Each Party shall provide that an advance ruling issued pursuant to paragraph 1 shall be based on:

(a) for the purpose of determining the origin of a good, Chapter Four (Rules of Origin), the principles of the Customs Valuation Code and the Uniform Regulations;

(b) for the purpose of determining country of origin marking, Article 312 (Country of Origin Marking); and

(c) for the purpose of determining whether a good qualifies as a good of a Party, Annex 302.2.

3. 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.

4. Each Party shall provide that its customs administration:

(a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information from the person requesting the ruling;

(b) after it has obtained all necessary information from the person requesting an advance ruling, shall issue the ruling in accordance with the time periods specified in the Uniform Regulations; and

(c) where the advance ruling is unfavorable to the person requesting it, shall provide that person with a full explanation of the reasons for the ruling.

5. Subject to paragraph 7, each Party shall apply an advance ruling to importations into its territory of the good for which the ruling was requested, commencing on the date of its issuance or such later date as may be specified therein.

6. Each Party shall provide to any person requesting an advance ruling the same treatment, including the same interpretation and application of the provisions of Chapter Four (Rules of Origin) regarding a determination of origin of a good, 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.

7. The issuing Party may modify or revoke an advance ruling:

(a) if the ruling is based on an error

(i) of fact,

(ii) in the tariff classification of a good or the materials subject to the ruling,

(iii) in the application of a regional value-content requirement under Chapter Four (Rules of Origin), or

(iv) in the application of the rules for determining whether a good qualifies as a good of a Party under Annexes 300-B or 302.2;

(b) if the ruling is not in accordance with an interpretation agreed by the Parties regarding Chapter Three (National Treatment and Market Access for Goods) and Chapter Four (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 amendment of Chapter Three, Chapter Four, Marking Rules or Uniform Regulations; or

(e) to conform with a judicial decision or a change in its domestic law.

8. 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.

9. Notwithstanding paragraph 8, the issuing Party shall postpone the effective date of such modification or revocation for a period not exceeding 90 days where the person to whom the advance ruling was issued has in good faith relied to its detriment on that ruling.

10. Each Party shall provide that where its customs administration examines the regional value-content of a good for which it has issued an advance ruling with respect to an approved basis or method of customs value under Article 509(1)(c), or with respect to an approved basis or method for reasonably allocating costs under Article 509(1)(d), or with respect to whether a good qualifies for duty-free treatment under Article 509(1)(e), it may 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 upon which the advance ruling is based; and

(c) the supporting data and computations used in applying

the basis or method of customs valuation were correct in all material respects.

11. Each Party shall provide that where its customs administration determines that any requirement in paragraph 10 has not been satisfied, it may modify or revoke the advance ruling as the circumstances may warrant.

12. Each Party shall provide that, where a person can demonstrate that it used reasonable care and acted in good faith in presenting the facts and circumstances on which an advance ruling was based, and where the customs administration of a Party determines that the ruling was based on incorrect information, the person to whom such advance ruling was issued shall not be subject to penalties.

13. Where a Party issues an advance ruling to a person that has misrepresented or omitted material facts or circumstances upon which the ruling is based or has failed to act in accordance with the terms and conditions of such ruling, it may apply such measures as the circumstances may warrant.

Subchapter D - Review And Appeal of Origin Determinations and Advance Rulings

Article 510: Review and Appeal

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

(a) who completes and signs a Certificate of Origin for a good that has been subject to a determination of origin;

(b) whose good has been subject to a country of origin marking determination pursuant to Article 312 (Country of Origin Marking); or

(c) who has received an advance ruling pursuant to Article 509(1).

2. Further to Articles 1804 (Administrative Proceedings) and 1805 (Review and Appeal), each Party shall provide that the rights of review and appeal referred to in paragraph 1 shall include access to:

(a) at least one level of administrative review, independent of the official or office responsible for the determination under review; and

(b) in accordance with its domestic law, judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review.

Subchapter E - Uniform Regulations

Article 511: Uniform Regulations

1. Upon the date of entry into force of this Agreement, the Parties shall establish, and implement through their respective domestic laws or regulations, Uniform Regulations regarding the interpretation, application and administration of the provisions of Chapter Four (Rules of Origin).

2. Each Party shall implement any modification of or addition to the Uniform Regulations no later than 180 days after the Parties agree on such modification or addition, or such other period as the Parties may agree.

Subchapter F - Cooperation

Article 512: Cooperation

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

(a) a determination of origin issued as the result of a verification conducted pursuant to Article 506(1);

(b) a determination of origin that such Party is aware is contrary to:

(i) a ruling issued by the customs administration of another Party with respect to the tariff classification or customs value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the net cost of a good, that is the subject of a determination of origin, or

(ii) consistent treatment given by the customs administration of another Party with respect to the tariff classification or customs value of a good, or of materials used in the production of a good, or the reasonable allocation of costs where calculating the net cost of a good, that is the subject of a determination of origin;

(c) a measure establishing or significantly modifying an administrative policy that is likely to affect future determinations of origin, country of origin marking requirements or determinations as to whether a good qualifies as a good of a Party under the Marking Rules; and

(d) an advance ruling, or a ruling modifying or revoking an advance ruling pursuant to Article 509(1).

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 agreements or other customs-related agreements to which they are party;

(b) for purposes of the detection and prevention of unlawful transshipments of textile and apparel goods of

a non-Party in the enforcement of prohibitions or quantitative restrictions, including the verification by a Party, in accordance with the procedures set out in this Chapter, of the capacity for production of goods by an exporter or a producer in the territory of another Party, provided that the customs administration of the Party proposing to conduct such verification, prior to conducting the verification

(i) obtains the consent of the Party in whose territory the verification is to occur, and

(ii) provides notification to the exporter or producer whose premises are to be visited,

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

(c) to the extent practicable, for purposes of facilitating the flow of trade between their territories, in customs-related matters, such as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonization of documentation used in trade, the standardization of data elements, the acceptance of an international data syntax and the exchange of information; and

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

Article 513: Working Group and Customs Subgroup

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

(a) the effective implementation and administration of Articles 303, 308 and 312, Chapter Four (Rules of Origin), this Chapter, the Marking Rules and the Uniform Regulations; and

(b) the effective administration of the customs-related aspects of Chapter Three (National Treatment and Market Access).

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

3. The Working Group shall:

(a) monitor the implementation and administration by the customs administrations of the Parties of Articles 303, 308 and 312, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations to ensure their uniform interpretation;

(b) endeavor to agree, upon the request of any Party, on any proposed modification of or addition to Articles 303, 308 and 312, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations;

(c) notify the Commission of any agreed modification of or addition to the Uniform Regulations;

(d) propose to the Commission any modification of or addition to Articles 303, 308 and 312, Chapter Three, Chapter Four, this Chapter, the Marking Rules, the Uniform Regulations or other provision of this Agreement as required to conform with any change to the Harmonized System; and

(e) consider any other matter referred to it by a Party, or by the Customs Subgroup established under paragraph 6.

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

5. If the Working Group fails to resolve a matter referred to it pursuant to paragraph 2(f) within 30 days of such referral, any Party may request a meeting of the Commission pursuant to Article 2007.

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

(a) endeavor to agree on

(i) the uniform interpretation, application and administration of the provisions of Articles 303, 308 and 312, Chapter Four, this Chapter, the Marking Rules and the Uniform Regulations,

(ii) tariff classification and valuation matters relating to determinations of origin,

(iii) equivalent procedures and criteria for the request, approval, modification, revocation and implementation of advance rulings,

(iv) revisions to the Certificate of Origin,

(v) any other matter referred to it by a Party, the Working Group or the Committee on Trade in Goods established under Chapter Three, and

(vi) any other customs-related matter arising under this Agreement;

(b) consider

(i) the harmonization of customs-related automation requirements and documentation, and

(ii) proposed customs-related administrative and operational changes that could affect the flow of trade between the Parties' territories;

(c) report periodically to the Working Group and notify it of any agreement reached under this paragraph; and

(d) refer to the Working Group any matter on which it has been unable to reach agreement within 60 days after the matter was referred to it pursuant to subparagraph (a)(v).

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

Article 514: Definitions

For purposes of this Chapter:

advance ruling means a written interpretation issued by the customs administration of a Party on the application of a measure to a given set of facts and circumstances regarding a prospective importation of a good into its territory;

commercial importation means the importation of a good into the territory of any Party for the purpose of sale, or any commercial, industrial, or other like use;

customs administration means the competent authority that is responsible under the domestic law of a Party for the administration of customs laws and regulations;

customs value means "customs value" as defined in Article 415;

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

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

identical goods means goods that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to the determination of origin of such goods under Chapter Four (Rules of Origin);

importer in the territory of a Party includes an importer located in the territory of a Party or an importer 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

producer includes a person that grows, mines, harvests, manufactures, processes, or assembles a good, or any combination thereof.