

Chapter 4

Rules of Origin and Related Customs Procedures

Section A: Rules of Origin

Article 4.01 Application and interpretation instruments

1. For purposes of this Chapter:
 - (a) the Harmonized System shall be the basis for the tariff classification of goods; and
 - (b) the principles and norms of the Customs Valuation Agreement shall be used to determine the value of a good or material.
2. For purposes of this Chapter, regarding the application of the Customs Valuation Agreement when determining the origin of a good:
 - (a) the principles and norms of the Customs Valuation Agreement shall be applied to domestic transactions as they would be applied to international transactions, with only the modifications required by circumstances; and
 - (b) the provisions contained in this Chapter shall prevail over the Customs Valuation Agreement to the extent of any inconsistency.

Article 4.02 Originating Goods

1. Except as otherwise provided in this Chapter, a good shall be considered originating in the territory of a Party where:
 - (a) it is wholly obtained or produced entirely in the territory of that Party;
 - (b) it is produced entirely in the territory of that Party exclusively from the originating materials;
 - (c) it is produced entirely in the territory of one or both of the Parties from non-originating materials that undergo a change in tariff classification, satisfy a regional value content or other requirements, as specified in Annex 4.02, and that the good complies with all other applicable provisions of this Chapter; or
 - (d) it is produced entirely in the territory of a Party, although one or more of the non-originating materials or parts provided for as parts under the Harmonized System that are used in the production of the good does

not undergo a change in tariff classification for any of the following reasons:

- (i) the good was imported into the territory of a Party in an unassembled or a disassembled form, and has been classified as an assembled good in accordance with the Rule 2(a) of the General Rules of Interpretation of the Harmonized System;
- (ii) the good and its parts are classified under the same heading which describes specifically both the good itself and its parts, and that heading is not further divided into subheadings; or
- (iii) the good and its parts are classified under the same subheading which describes specifically both the good itself and its parts;

provided that the regional value content of the good, determined in accordance with Article 4.06, is not less than thirty five percent (35%), and the good fulfills all other applicable requirements of this Chapter, unless the specific rule of origin applicable to the good pursuant to Annex 4.02, specifies a different requirement of regional value content, in which case that specific requirement shall be applied.

2. Notwithstanding other provisions of this Article, goods shall not be considered originating, if they are exclusively the outcome of the minimal operations or processes referred to in Article 4.03 and carried out in the territory of one or both of the Parties, unless the specific rules of origin of Annex 4.02 indicate otherwise.

Article 4.03 Minimal Operations or Processes

The minimal operations or processes that by themselves or in combination do not confer origin to a good are:

- (a) operations for the preservation of a good in good condition during transportation or storage (such as aeration, ventilation, drying, refrigeration, freezing or keeping in brine);
- (b) cleaning, washing, sieving, sifting, screening, selecting, classifying, grading or culling;
- (c) peeling, hulling, stripping, husking, deboning, pressing, squeezing, filleting or soaking;
- (d) elimination of dust or broken or damaged parts, application of oil, anti-oxidant paint or protective coating;

- (e) testing or gauging, division of bulk shipments, bulking of packages, adhesion of brand names, labels or distinguishing signs on goods and their packaging;
- (f) packing, unpacking or repacking;
- (g) dilution in water or any other watery solution, or ionization and salting;
- (h) simple putting together or assembly of parts of a good in order to constitute a complete good, the formation of sets and assortments of goods; and
- (i) slaughter of animals.

Article 4.04 Indirect Materials

Indirect materials shall be considered as originating regardless to where there are produced or manufactured, and the value of these materials shall be the cost as registered in the accounting records of the producer of the good.

Article 4.05 Accumulation

1. The goods or materials originating from a Party and incorporated into a good in the territory of the other Party shall be considered as originating in the territory of that other Party.
2. A good is originating where the good is produced in the territory of one or both Parties by one or more producers, provided that the good satisfies the requirements in Article 4.02 and all other applicable requirements in this Chapter.

Article 4.06 Regional Value Content

1. The regional value content of a good shall be calculated according to the following formula:

$$RVC = [(TV - VNM) / TV] * 100$$

Where

RVC : is the regional value content, expressed as a percentage;

TV : is the transaction value of the good adjusted to an FOB basis, except as provided for in paragraph 2. If this value does not exist or cannot be determined in accordance with the principles and norms set forth in Article 1 of the Customs Valuation Agreement, it shall be calculated in accordance with the principles and norms set forth in Article 2 through 7 of said Agreement; and

VNM : is the transaction value of the non-originating materials adjusted to a CIF basis, except as provided for in paragraph 5. If such value does not exist or cannot be determined in accordance with the principles and norms set forth in Article 1 of the Customs Valuation Agreement, it shall be calculated in accordance with the principles and norms set forth in Articles 2 through 7 of said Agreement.

2. When the producer of a good does not export it directly, the value shall be adjusted to the point at which the buyer receives the good within the territory in which the producer is located.
3. When the origin is determined by the regional value content rule, the percentage required shall be specified in Annex 4.02.
4. All of the costs considered when calculating the regional value content shall be recorded and kept in accordance with Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.
5. When the producer of a good acquires a non-originating material in the territory of the Party in which it is located, the value of the non-originating material shall not include freight, insurance, costs of packaging and any other costs incurred in transporting the material from the supplier's warehouse to the place where the producer is located.
6. For purposes of calculating the regional value content, the value of the non-originating materials used in the production of a good shall not include the value of the non-originating materials used in the production of originating materials acquired and used in the production of that good.

Article 4.07 De Minimis

Except as provided in Annex 4.07, a good is nonetheless originating if the value of all non-originating materials used in the production of the good that does not undergo the applicable change in tariff classification does not exceed ten percent of the value of the good. The value of such non-originating material shall, however, be included in the value of non-originating materials for any applicable regional value content requirement and that the good satisfies all other applicable requirements in this Chapter.

Article 4.08 Fungible Goods and Materials

1. Each Party shall provide that the origin of fungible goods or materials used in the production of a good shall be determined by:
 - (a) physical segregation of each good or material; or

- (b) at the producer's choice, through the use of any of the following inventory management methods, recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed:
 - (i) first in first out (FIFO) method;
 - (ii) last in first out (LIFO) method; or
 - (iii) averaging method.

2. Once the inventory management method listed out in the preceding paragraph is selected, it shall be used during the entire period of a fiscal year.

Article 4.09 Accessories, Spare Parts and Tools

1. Each Party shall provide that a good's standard accessories, spare parts, or tools delivered with the good shall be treated as originating goods if the good is an originating good and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification, provided that:

- (a) the accessories, spare parts, or tools are classified with and not invoiced separately from the good; and
- (b) the quantities and value of the accessories, spare parts, or tools are customary for the good.

2. If the good is subject to a regional value content requirement, the value of accessories, spare parts, or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.10 Sets or Assortments

1. The sets or assortments of goods that are classified in accordance with rule 3 of the General Rules of the Interpretation of the Harmonized System, as well as goods whose description according to the nomenclature of the Harmonized System is specifically that of a set or assortment, shall qualify as originating, only if each good in the set or assortment complies with the rules of origin established in this Chapter and in Annex 4.02.

2. When sets or assortments are subject to regional value content requirements, their containers and packaging materials shall be considered originating or non-originating, as the case may be.

Article 4.11 Packaging Materials and Containers for Retail Sale

Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.02 and, if the good is subject to a regional value content requirement, the value of such packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.12 Packing Materials and Containers for Shipment

Containers and packing materials in which the good is packed for shipment shall be disregarded in determining whether a good is originating.

Article 4.13 Transit and Transshipment

The originating goods of the other Party shall not lose such status when they are:

- (a) transported directly from the territory of the other Party; or
- (b) transported through the territory or territories of one or more non-Parties for the purpose of transit or temporary storing in warehouses in such territory or territories, provided that they do not undergo any operations other than unloading, reloading or any other operation to preserve them in good condition and remain under the control of customs authority in the territory of a non-Party mentioned above.

Section B: Customs Procedures Related to Origin

Article 4.14 Certificate of Origin

1. For purposes of this Chapter, the Parties shall establish a single form of Certificate of Origin as provided in Annex 4.14, which shall enter into force with this Agreement and may, thereafter, be modified by mutual agreement.

2. The Certificate of Origin referred to in paragraph 1 shall be used to certify that a good being exported from the territory of a Party into the territory of the other Party qualifies as originating and satisfy all other requirements established in this Chapter.

3. The certifying authorities of each Party shall require its exporters or producers to complete and sign a Certificate of Origin for every exportation of goods for which an importer of the other Party may claim preferential tariff treatment.

4. The exporter or producer completing and signing a Certificate of Origin shall assume administrative, civil or criminal liability whenever the exporter includes false or incorrect information in the Certificate of Origin.
5. The certifying authority of each Party shall certify that the Certificate of Origin filled and signed by the exporter or producer of the good is completed correctly, based on the information provided by such exporter or producer, and shall verify that the exporter or producer has indeed complied with the requirements of this Chapter and is located in the territory of that Party.
6. Each Party shall require the Certificate of Origin be sealed, signed and dated by the certifying authority of the exporting Party with respect to the exportation of a good for which the importer may claim preferential tariff treatment. The Certificate of Origin shall also carry a serial number allowing its identification, which will be managed by the certifying authority.
7. The certifying authority of the exporting Party shall:
 - (a) adopt or maintain the administrative procedures for certifying the Certificate of Origin that its producer or exporter filled and signed;
 - (b) provide, if requested by the competent authority of the importing Party, information about the origin of the imported goods claiming the preferential tariff treatment; and
 - (c) notify in writing before this Agreement enters into force, the list of the names of the authorized officials and, where applicable, the list of authorized agencies to certify the Certificate of Origin, with the corresponding signatures and seals. Modifications to this list shall be notified immediately in writing to the other Party and shall enter into force 30 days after the date on which that Party receives that notification of the modification.
8. Each Party shall provide that a Certificate of Origin shall only be applicable to a single importation of one or more goods into the territory of that Party.
9. Each Party shall provide that a valid Certification of Origin be accepted by the customs authority of the importing Party for a period of one year from the date on which the certificate was signed and sealed by the certifying authority.
10. Each Party shall provide that the preferential tariff treatment shall not be denied only because the good covered by a Certificate of Origin is invoiced by an enterprise located in the territory of a non-Party.
11. The Parties shall, in the second year from the date on which this Agreement entry into force, review the certifying procedures with a view to confirm whether it would be more beneficial to the Parties to convey to an auto-certification process, rather than requiring any agency to perform the certification. If it is agreed by both

Parties, the exporter or producer will be the one responsible to certify the origin without the certifying agency of each Party being the one required to perform the certification.

Article 4.15 Obligations regarding Importations

1. A Party shall require that the importer who claims preferential tariff treatment for a good imported into its territory from the territory of the other Party should:

- (a) declare in writing in the importation document required by its legislation, based on a valid Certificate of Origin, that a good qualifies as an originating good;
- (b) have the Certification of Origin in his possession at the time the declaration is made;
- (c) provide, if requested by its customs authority, the Certificate of Origin or its copy ; and-
- (d) promptly make a corrected declaration and pay any duties owing where the importer has reasons to believe that the Certificate of Origin on which a customs declaration was based contains incorrect information. Where the importer presents a corrected declaration before the customs authority notifies a revision process, according to the domestic laws of each Party, the importer may not be penalized.

2. A Party may deny preferential tariff treatment to a good if the importer fails to comply with any requirement in this Chapter.

3. A Party shall provide that, where a good was originating when it was imported into its territory, but the importer of the good did not make a claim for preferential tariff treatment at the time of importation that importer may, not later than four months from the date of the release of the imported good, request a refund of the tariff duties paid in excess as a result of not having requested the preferential tariff treatment for that good, provided that the importer has the Certificate of Origin in his/her possession and the request is accompanied by:

- (a) a written declaration, indicating that the good qualifies as originating at the time of importation;
- (b) the Certificate of Origin or its copy ; and
- (c) any other documentation related to the importation of the good, as the customs authority may require.

4. Compliance with the provisions of previous paragraphs of this Article does not exempt the importer from the obligation to pay the corresponding customs duties according to the applicable laws of the importing Party, when the competent authority

of that Party conclude an origin verification and determines to deny the preferential tariff treatment to goods imported, according to Article 4.19

Article 4.16 Obligations regarding Exportations

1. Each Party shall require its exporter or producer that has filled and signed a Certificate of Origin to submit a copy of such Certificate to its competent authority upon request.

2. Each Party shall require its exporter or producer, that has completed and signed a Certificate of Origin or provided information for his/her certifying authority, and has reasons to believe that such Certificate contains incorrect information, to notify promptly in writing:

- (a) all persons who have received that Certificate; and
- (b) its certifying authority,

of any change that may affect the accuracy or validity of that Certificate, in such case the exporter or producer may not be penalized for having provided an incorrect certificate or information according to domestic laws of each Party.

3. Each Party shall require that if a false Certificate or information provided by its exporter or producer results in the good being exported to the territory of the other Party qualified as originating, such exporter or producer shall be subject to similar penalties as would apply to an importer in its territory for violating its customs laws and regulations by making false declarations or statements.

4. The certifying authority of the exporting Party shall provide the competent authority of the importing Party with the notification referred to in paragraph 2.

Article 4.17 Records

1. Each Party shall provide that:

- (a) its exporter or producer who requests a Certificate of Origin and provides information for its certifying authority shall maintain, for at least five years from the date on which the Certificate is signed, all records and documents related to the origin of the goods, including those concerning:
 - (i) the purchase, costs, value, and payment of the good exported from its territory,
 - (ii) the purchase, costs, value and payment of, all materials, including indirect ones, used in the production of the good exported from its territory, and

- (iii) the production of the good in the form in which it is exported from its territory;
- (b) an importer who claims preferential tariff treatment for a good imported into that Party's territory shall maintain a copy of the Certificate of Origin and other documentation relating to the importation for at least five years from the date of importation of the good; and
- (c) the certifying authority of the exporting Party that has issued a Certificate of Origin shall maintain all documentation relating to the issuance of the Certificate for a minimum period of five years from the issuing date of the Certificate.

2. A Party may deny the preferential tariff treatment to an imported good subject to an origin verification, if the exporter, producer or importer of the good who should maintain records or documents in accordance with paragraph 1:

- (a) does not have the records or documents for determining the origin of the good, in accordance with the provisions of this Chapter; or
- (b) denies access to the records or documents.

Article 4.18 Confidentiality

1. Each Party shall maintain the confidentiality of confidential information collected pursuant to this Chapter and shall protect that information from disclosure, in accordance with its legislation.

2. The confidential information collected pursuant to this Chapter may only be disclosed to those authorities responsible for the administration and enforcement of determinations of origin, and for customs and revenue matters in accordance with each Party's legislation.

Article 4.19 Origin Verifications

1. The importing Party, through its competent authority, may request information about the origin of a good from the certifying authority of the exporting Party. The competent authority of the importing Party may also request its embassy in the territory of the other Party for assistance in those matters.

2. For purposes of determining whether a good imported into its territory from the territory of the other Party under preferential tariff treatment according to this agreement qualifies as originating, a Party may verify the origin of the good through its competent authority by means of:

- (a) written questionnaires or requests for information sending directly to the exporter or producer in the territory of the other Party;

- (b) verification visits to the premises of the exporter or producer in the territory of the other Party to review the records and documents referred to in Article 4.17, and to inspect the materials and facilities used in the production of the good in question; or
- (c) other procedures as the Parties may agree to.

3. For the purposes of this Article, the questionnaires, requests, official letters, determinations of origin, notifications or any other written communications sent by the Competent Authority to the exporter, producer or importer, for origin verification, shall be considered valid, provided that they are done by the following means:

- (a) certified mails with receipts of acknowledgement or other ways that confirm that the exporter, producer or importer has received the documents;
- (b) official communications through the embassies of the Parties whenever the competent authority requires; or
- (c) any other way as the Parties may agree to.

4. In a written questionnaire or request for information referred to in paragraph 2 a) it shall:

- (a) indicate the time period, which shall be no less than 30 days from the date of receipt, that the exporter or producer has to duly complete and return the questionnaire or provide the information requested; and
- (b) include the notification of intention to deny the preferential tariff treatment, in case the exporter or producer does not duly complete and return the questionnaire or provide the information requested within such time period.

5. The exporter or producer who receives a questionnaire or request for information according to paragraph 2 a) shall duly complete and return the questionnaire or respond to the request for information within the time period established in paragraph 4 a) from the date of receipt. During that time period, the exporter or producer may make a written request of extension to the competent authority of the importing Party for an extension of no more than 30 days. Such request shall not have the consequence of denial of the preferential tariff treatment.

6. Each Party shall provide that, even though the answered questionnaire or information requested referred to in paragraph 5 has been received within the specified period of time provided in paragraph 4 and 5, it may still ask through its competent authority for additional information from the exporter or producer, by means of a subsequent questionnaire or request of information. In such cases the exporter or producer shall answer the questionnaire or respond to the request within 30 days from the date of receipt.

7. In case the exporter or producer does not duly complete a questionnaire, or does not return the questionnaire or provide the information requested within the time period established in paragraphs 4 a), 5 and 6 above, the importing Party may deny the preferential tariff treatment to the goods subject to verification, by issuing a written determination of origin, including facts and the legal basis for that determination, to the importer, exporter or producer.

8. Prior to conducting a verification visit according to paragraph 2 b), the importing Party shall, through its competent authority, provide a written notification of its intention to conduct the visit. The notification shall be sent to the exporter or producer to be visited, to the certifying authority and the competent authority of the Party in whose territory the visit will be conducted, and, if necessary, to the Embassy of the other Party in the territory of the importing Party. The competent authority of the importing Party shall request the written consent from the exporter or producer to be visited.

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

- (a) the name of the competent authority that sends the notification;
- (b) the name of the exporter or producer to be visited;
- (c) the date and place of the proposed verification visit;
- (d) the objective and scope of the verification visit, including the specific reference to the goods subject to verification;
- (e) the names and positions of the officers conducting the verification visit;
and
- (f) the legal basis for carrying out the verification visit.

10. Any modification of the information referred to in the preceding paragraph shall also be notified according to paragraph 8.

11. If the exporter or producer has not given his written consent to a proposed verification visit within the 30 days of the written notification as provided in paragraph 8 and 9, the importing Party may deny the preferential tariff treatment to the good or goods by notifying in writing the importer, exporter or producer a determination, including facts and the legal basis for such denial.

12. Each Party shall provide that, when an exporter or producer receives a notification as provided in paragraph 8 and 9, that exporter or producer may, within 15 days of receipt of the notification, notify in writing the Competent Authority of the importing Party, its certifying authority and competent authority, to postpone only for once the proposed verification visit for a period no longer than 60 days from the date the notification was received, or for a longer period as the Parties may agree to.

13. The Parties shall not deny the preferential tariff treatment to a good solely because a verification visit is postponed according to paragraph 12.

14. Each Party shall permit an exporter or producer who is 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. Nevertheless, the failure of designating the observers by the exporter or producer shall not be a cause for postponing the visit.

15. Each Party shall require that an exporter or a producer provides the records and documents referred to in paragraph 1 a) of Article 4.17 to the competent authority of the importing Party conducting a verification visit. If the records and documents are not in the possession of the exporter or producer, he shall request the producer or supplier of the materials to deliver them to the competent authority mentioned above.

16. When the competent authority of the importing Party verifies whether the regional value content, the *de minimis* calculation or any other requirements established under this Chapter has been fulfilled, it shall adopt, where applicable, the generally accepted accounting principles applied in the territory of the Party from which the good under verification was exported.

17. Once the verification visit has been concluded, the competent authority of the importing Party shall make a report of the visit, which shall include the facts confirmed by it. The exporter or producer may sign on this report.

18. Within a period of 120 days from the conclusion of the process of any of the verification methods provided in paragraph 2, the competent authority shall issue a written determination of origin, including the facts, results and the legal basis for such determination, and sent to the importer, exporter or producer of the good subject to verification according to paragraph 3, to determine whether or not the good qualified as originating.

19. Where through a verification the importing Party determines that an exporter or a producer has provided more than one time false or unfounded information in the Certificate of Origin or stating that a good qualifies as originating, the importing Party may suspend the preferential tariff treatment to the identical goods imported, exported or produced by that person, until it is confirmed that such person has been in compliance with all the requirements under this Chapter. The suspension and resumption of the preferential tariff treatment shall be accompanied by a written notification, including facts and the legal basis, to the importer, exporter or producer.

20. When the competent authority of the importing Party determines that a good imported into its territory does not qualify as originating, according to the tariff classification or the value applied by the Party to one or more materials used in the production of the good, which differs from the classification or the value applied to the materials by the Party from which the good was exported, that Party shall provide that its origin determination shall not take effect until it has been notified in writing to

the certifying authority of the exporting Party, to the importer of the good, to the person that has filled and signed the Certificate of Origin, as well as to the producer of the good.

21. A Party shall not apply a determination issued under paragraph 20 to an importation made before the date of entry into force of the determination where:

- (a) the competent authority of that Party from whose territory the good was exported, had issued a determination on the tariff classification or on the value of the materials, on which a person is entitled to rely; and
- (b) the determination mentioned in the preceding subparagraph was issued prior to the notification of the origin verification.

Article 4.20 Advance Rulings

1. Each Party shall, through its competent authority, expeditiously provide a written advance ruling, prior to the importation of a good into its territory. The advance ruling shall be issued in response to a written application made by an importer in its territory or an exporter or producer in the territory of the other Party, based on the facts and circumstances shown by such importer, exporter or producer of the good, with respect to:

- (a) whether the good qualifies as originating according to this Chapter;
- (b) whether the non-originating materials used in the production of the good have undergone the applicable changes on tariff classification established in Annex 4.02;
- (c) whether the good fulfills the requirement of regional value content established in this Chapter and in Annex 4.02; and
- (d) whether the method applied by an exporter or producer in the territory of the other Party, according to the norms and principles of the Customs Valuation Agreement, to calculate the transaction value of a good or of the materials used in the production of the good, with respect to which an advance ruling is being requested, is adequate for demonstrating whether the good satisfies a regional value content requirement according to this Chapter and in Annex 4.02.

2. Each Party shall establish directives for the issuance of advance rulings, including:

- (a) the obligation of the importer to provide reasonable information required to process an application for such ruling;

- (b) the mandate of the competent authority to ask at any time for additional information from the person who applies for an advance ruling, while evaluating such application;
- (c) the obligation of the competent authority to issue an advance ruling within a maximum period of 120 days, once all the necessary information has been collected from the applicant; and
- (d) the obligation of the competent authority to issue an advance ruling in a completed, well-founded, and reasoned manner.-

3. Each Party shall apply an advance ruling to the imports concerned, from the date on which the ruling is issued or a later date indicated in the ruling, unless such ruling has been modified or revoked according to paragraph 5.

4. Each Party shall provide any person who applies an advance ruling the same treatment, including the same interpretation and application of the provisions of this Chapter, regarding the determination of origin as provided for any other person, to whom an advance ruling has been issued, whenever the facts and circumstances are identical in all substantial aspects.

5. An advance ruling may be modified or revoked by the issuing competent authority:

- (a) where it is based on an error:
 - (i) in fact,
 - (ii) in the tariff classification of the good or materials which is the subject of the ruling, or
 - (iii) in the application of the regional value content requirement according to this Chapter;
- (b) where the ruling is not in accordance with the interpretation agreed by the Parties with respect to this Chapter ;
- (c) where there is a change in the facts or circumstances on which the ruling is based;
- (d) for the purpose of conforming with a modification of this Chapter; or
- (e) for the purpose of complying with an administrative decision independent from the issuing authority, or a judicial decision or to adjust to a change in the national legislation of the Party that issued the advance ruling.

6. Each Party shall provide that any modification or revocation of an advance ruling shall enter into force from 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 the importation of a good having occurred prior to that date, unless the person to whom the advance ruling was issued has not acted according to its terms and conditions. Nevertheless the effective date of modification or revocation of the advance ruling can be postponed for a period not exceeding 30 days when the advance ruling was based on an error by the competent authority.

7. Each Party shall provide that, when its competent authority verifies the origin of a good with respect to which an advance ruling has been issued, that authority shall evaluate whether:

- (a) the exporter or producer has complied with the terms and conditions of the advance ruling;
- (b) the operations of the exporter or producer are consistent with the facts and circumstances on which the advance ruling is based; and
- (c) the data and calculations used in the application of criteria or methods to calculate the regional value content are correct in all substantial aspects.

8. Each Party shall provide that, when its competent authority determines that any of the requirements established in paragraph 7 has not been fulfilled, that authority may modify or revoke the advance ruling as the circumstances warrant.

9. Each Party shall provide that, where a person to whom an advance ruling has been issued demonstrates that he had acted with reasonable care and in good faith while stating the facts and circumstances on which the ruling was based, that person shall not be penalized whenever the issuing authority determines that the ruling was based on incorrect information.

10. Each Party shall provide that, where an advance ruling has been issued to a person who had falsely stated or omitted substantial facts or circumstances on which the ruling was based, or has not acted in accordance with the terms and conditions of the ruling, the competent authority may apply measures against that person according to the legislation of each Party.

11. The Parties shall provide that the holder of an advance ruling may use it solely while the facts or circumstances on which the ruling was based are maintained. In case those facts or circumstances have changed, the holder of the ruling shall be allowed to present information necessary for the issuing authority to modify or revoke it according to paragraph 5.

12. Any good subject to an origin verification or a request of review or appeal in the territory of one of the Parties, shall not be the subject of an advance ruling.

Article 4.21 Penalties

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

Article 4.22 Review and Appeal

1. Each Party according to its domestic legislation shall grant the exporters or producers of the other Party the same rights to review and appeal the determinations of origin and the advance rulings issued to its importers.

2. The rights referred to in paragraph 1 include access to an administrative review, independent from the official or office responsible for the determination or advance ruling under review, and a judicial review of the determination or ruling as the final instance, according to the legislation of each Party.

Article 4.23 Definitions

For purposes of this Chapter:

certifying authority means in the case of the Republic of China (Taiwan), the Bureau of Foreign Trade (BOFT), Ministry of Economic Affairs (MOEA), or its successor, or other agencies as authorized by BOFT or their successors; in the case of the Republic of Nicaragua, the Centro de Tramite de las Exportaciones (CETREX) , Ministerio de Fomento, Industria y Comercio (MIFIC) or its successor, or other agencies as authorized by MIFIC or their successor ;

CIF means value of the imported good, including the costs of insurance and freight to the port or place of entry in the importing country;

commercial imports means the importation of a good into the territory of a Party for the purpose of selling or using it for business, industrial or other similar purposes;

competent authority means in the case of the Republic of China (Taiwan), the Customs Authority under the Ministry of Finance, or its successor; in the case of the Republic of Nicaragua, the Direccion General de Servicios Aduaneros (DGA), or its successor;

confidential information means that information of a confidential nature that has not previously been published, is not available to third parties, or is otherwise not public knowledge;

determination of origin means a decision issued as a result of an origin verification procedure that determines whether a good qualifies as originating;

exporter means a person located in the territory of a Party from which the good is exported and who is under the obligation of keeping all records referring to Article 4.17 in the territory of that Party;

FOB means free on board, regardless of the mode of transportation, at the point of final shipment by the seller to the buyer;

fungible goods means goods that are interchangeable for commercial purposes and whose properties are essentially identical and thus impossible to distinguish by simple visual inspection;

Generally Accepted Accounting Principles means the principles used in the territory of each Party, which provide substantial authorized support with respect to recording of revenues, costs, expenses, assets and liabilities involved in the disclosure of information and preparation of financial statements. Generally Accepted Accounting Principles may encompass broad guidelines for general application, as well as detailed standards, practices and procedures;

goods wholly obtained or produced entirely in the territory of one or both of the Parties means:

- (a) mineral goods extracted or taken in the territory of one or both Parties;
- (b) vegetable products harvested, picked or gathered in the territory of one or both Parties;
- (c) live animals born and raised in the territory of one or both Parties;
- (d) goods obtained by hunting, trapping, fishing, gathering or capturing in the territory of one or both Parties;
- (e) fish, shellfish and other marine species taken from the sea in territorial waters and marine zones outside the jurisdiction of the Parties, by vessels registered or recorded with a Party and flying its flag or by vessels hired by firms established in the territory of a Party;
- (f) goods produced on board factory ships from the goods referred to in subparagraph e), provided that such factory ships are registered or recorded with that Party and fly its flag or by factory ships hired by firms established in the territory of that Party;
- (g) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside the territorial waters of that Party, provided that Party has rights to exploit such seabed or beneath the seabed; and
- (h) waste and scrap derived from:
 - (i) production in the territory of one or both Parties, or

- (ii) used goods collected in the territory of one or both Parties, provided that such goods are fit only for the recovery of raw materials; or
- (i) goods produced in the territory of one or both Parties exclusively from goods referred to in subparagraphs a) through h) above;

identical goods means “identical goods”, as defined in the Customs Valuation Agreement;

importer means a person located in the territory of a Party from which the good is imported and who is under the obligation of keeping all records referring to Article 4.17 in that Party’s territory;

indirect material means a good used in the production, testing or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

- (a) fuel, energy, catalysts and solvents;
- (b) equipment, devices and supplies used for testing or inspecting the goods;
- (c) gloves, glasses, footwear, clothing and safety equipment and supplies;
- (d) tools, dies and molds;
- (e) spare parts and materials used in the maintenance of equipment and buildings;
- (f) lubricants, greases, compounding materials and other materials used in production or used to operate equipment or maintain buildings; and
- (g) any other good or material that is not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

material means a good used in the production or transformation of another good, including components, inputs, raw material, spare parts and parts;

origin verification process means an administrative process that begins with the initial notification of the verification procedure on the part of the competent authority of a Party and concludes with the final decision on determination of origin;

preferential tariff treatment means the application of the corresponding rate of customs duty for an originating good in accordance with the Customs Tariff Elimination Schedule.

producer means a person located in the territory of a Party and who is under the obligation of keeping all records referring to Article 4.17 in that Party's territory;

production means growing, mining, harvesting, birth and breeding, hunting, manufacturing, processing or assembling a good;

transaction value of a good means the price actually paid or payable for a good with respect to a transaction of the producer of the good pursuant to the principles of Article 1 of the Customs Valuation Agreement, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of said Agreement, regardless of whether the good is sold for export. For the purposes of this definition, the seller referred to in the Customs Valuation Agreement shall be the producer of the good;

transaction value of a material means the price actually paid or payable for a material with respect to a transaction of the producer of the good pursuant to the principles of Article 1 of the Customs Valuation Agreement, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of said Agreement, regardless of whether the material is sold for export. For purposes of this definition, the seller referred to in the Customs Valuation Agreement shall be the producer of the material; and

value means the value of a good or material for purposes of calculating customs duties or for purposes of applying this Chapter.

Annex 4.07

Exceptions to Article 4.07

Article 4.07 shall not apply to:

- (a) a non-originating material classified under heading 10.06 that is used in the production of a good classified under heading 11.02 through 11.03 11.04 or subheading 1904.90;
- (b) a non-originating material classified under heading 12.02 that is used in the production of a good classified under heading 20.06 through 20.08;
- (c) a non-originating material classified under heading 17.01 that is used in the production of a good classified under heading 17.01 through 17.03; or
- (d) a non-originating material classified under chapter 17 of the Harmonized System that is used in the production of a good classified under heading, 20.06, 20.07, 20.08, 20.09, 21.06 or subheading 1806.10.