

CHAPTER 5

CUSTOMS PROCEDURES RELATED TO RULES OF ORIGIN

Article 5.01 Definitions

1. For purposes of this Chapter, the following terms shall be understood as:

certifying authority: in the case of the Republic of Guatemala, the Ministry of Economy, or its successor; and in the case of the Republic of China (Taiwan), the Bureau of Foreign Trade (BOFT), Ministry of Economic Affairs, or its successor, or other agencies as authorized by BOFT or its successor;

commercial importation: the importation of a good into the territory of a Party for sale, or for commercial, industrial or similar purposes;

competent authority: in the case of the Republic of Guatemala, the Ministry of Economy, or its successor; and in the case of the Republic of China (Taiwan), the customs authority under the Ministry of Finance, or its successor;

customs authority: the authority, according to the respective laws of each Party, responsible for administering and implementing customs laws and regulations;

days: "days" as defined in Chapter 2 (General Definitions);

determination of origin: the written legal document issued by the competent authority as a result of a procedure for verifying whether a good qualifies as originating according to Chapter 4 (Rules of Origin);

exporter: a person engaging in exportation and located in the territory of a Party who is obligated, in accordance with this Chapter, to maintain records in the territory of that Party according to paragraph 1 a) of Article 5.05;

identical goods: goods that are equal in all aspects, including physical characteristics, quality and commercial prestige, irrespective of minor differences in appearance that are not relevant to the determination of origin of these goods according to Chapter 4 (Rules of Origin);

importer: a person engaging in importation and located in the territory of a Party, who is obligated, in accordance with this Chapter, to maintain records in the territory of that Party according to paragraph 1 b) of Article 5.05;

preferential tariff treatment: the application of the tariff rate corresponding to an originating good according to the tariff reduction schedule, pursuant to Article 3.04 (Tariff Reduction Schedule);

producer: "producer" as defined in Chapter 2 (General Definitions); located in the territory of a Party who is obligated, in accordance with this Chapter, to maintain records in the territory of that Party according to paragraph 1 a) of Article 5.05; and

valid certificate of origin: a certificate of origin in the format established in paragraph 1 of Article 5.02, completed, signed and dated by the exporter of a good in the territory of a Party, and certified by a certifying authority of that Party, according to the provisions of this Chapter and to the instructions for filling the certificate.

2. The definitions established in Chapter 4 (Rules of Origin) shall be incorporated into this Chapter.

Article 5.02 Origin Certification

1. For the purposes of this Chapter, the Parties shall establish a single form of certificate of origin, which shall enter into force on the same day as this Agreement and may be modified as many times as deemed necessary by mutual consent.

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.

3. The certifying authorities of each Party shall require its exporters or producers to complete and sign a certificate of origin for each 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 will do so through an affidavit, committing to 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 out and signed by the exporter or producer of the good is correctly completed, based on the information provided by such exporter or producer, who shall be responsible for the accuracy and validity of the information provided, and shall verify that the exporter or producer is indeed located in that Party.

6. Each Party shall require the certificate of origin to 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) maintain the administrative procedures for certifying the certificates of origin that its producer or exporter fills out and signs;
- b) provide, if requested by the competent authority of the importing Party, information about the origin of the imported goods claiming preferential tariff treatment; and
- c) notify in writing, before this Agreement enters into force, the list of the names of the authorized persons and, where applicable, the list of bodies authorized 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 thirty (30) days after the date on which that Party receives 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 enters into force, review the certifying procedures with a view to confirm whether it would be more beneficial to the Parties to let exporters or producers certify certificates of origin by themselves, rather than requiring any agency to perform the certification. If this is agreed by the 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 5.03 Obligations Regarding Importations

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

- 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 copies; 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 the revision, according to the domestic laws of each Party, the importer may not be penalized.

2. Each Party shall provide that, if an importer in its territory fails to comply with any requirement established in this Chapter, it may deny the preferential tariff treatment under this Agreement to a good imported from the territory of the other Party.

3. Each Party shall provide that, when the importer does not ask for a preferential tariff treatment for goods imported into its territory that would have qualified as originating, the importer may, not later than four (4) months from the date of release of the imported goods, request the return of the tariff duties paid in excess for not having requested the preferential tariff treatment for that good, as long as 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 import 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 concludes an origin verification and determines to deny the preferential tariff treatment to goods imported, according to Article 5.06.

Article 5.04 Obligations Regarding Exportations

1. Each Party shall require its exporter or producer that has filled out 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 who has completed and signed a certificate of origin or information for his/her certifying authority, and has reasons to believe such certificate contains incorrect information, to notify promptly in writing all

persons to whom that certificate was given and its certifying authority, of any change that may affect the accuracy or validity of that certificate, in which 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 the notification referred to in paragraph 2.

Article 5.05 Records

1. Each Party shall provide that:

- a) its exporter or producer who requests a certificate of origin and provides information to its certifying authority shall maintain, for at least five (5) 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 (5) 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 (5) 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 shall 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 and of Chapter 4 (Rules of Origin); or
- b) denies access to the records or documents.

Article 5.06 Origin Verification Procedures

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 sent directly to the importer in its territory or the exporter or producer in the territory of the other Party;
- b) verification visits to the exporter or producer in the territory of the other Party to review the records and documents referred to in Article 5.05, and to inspect the materials and facilities used in the production of the good in question;
- c) delegating its Embassy in the territory of the other Party to conduct the verification visit mentioned above; or
- d) 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 importer, exporter or the producer 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 importer, exporter or producer 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 thirty (30) days from the date of receipt, that the importer, 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 preferential tariff treatment, in case the importer, exporter or producer does not duly complete and return the questionnaire or provide the information requested within such time period.

5. The importer, 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 importer, exporter or producer may make a written request to the competent authority of the importing Party for an extension of no more than thirty (30) days. Such request shall not have the consequence of denial of the preferential tariff treatment.

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

7. If the importer, 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 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 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 thirty (30) days of the written notification as provided in paragraphs 8 and 9, the importing Party may deny preferential tariff treatment to the good or goods by notifying in writing to the importer, exporter or producer its 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 paragraphs 8 and 9, that exporter or producer may, within fifteen (15) days of receipt of the notification, notify in writing the competent authority of the importing Party, certifying authority and competent authority of the exporting Party, its decision to postpone only for once the proposed verification visit for a period no longer than sixty (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 subject to 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 5.05 to the competent authority of the importing Party conducting a verification visit. If the records and documents are not in

possession of the exporter or producer, he/she may 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 requirement established under Chapter 4 (Rules of Origin) have 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 prepare a minute of the visit, which shall include the facts confirmed by it. The exporter or producer may sign this minute.

18. Within a period of one hundred and twenty (120) days from the conclusion of the verification of origin, the competent authority shall issue a written determination of origin, including the facts, results and the legal basis for such determination, and send it to the importer, exporter or producer of the good subject to verification according to paragraph 3, to determine whether or not the good qualifies as originating.

19. Where through a verification the importing Party determines that an importer, exporter or a producer has provided more than once, a false or unfounded certificate of origin or stating that a good qualifies as originating, the importing Party may suspend preferential tariff treatment to the identical goods imported, exported or produced by that person, until it is confirmed that such person is in compliance with all the requirements under Chapter 4 (Rules of Origin). 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 completed 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 when:

- 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 5.07 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 whose territory or an exporter or producer in the territory of the other Party, based on the facts and circumstances stated by such importer, exporter or producer of the good, with respect to:

- a) whether the good qualifies as originating according to Chapter 4 (Rules of Origin);
 - b) whether the non-originating materials used in the production of the good have undergone applicable changes on tariff classification established in Annex 4.03 (Specific Rules of Origin);
 - c) whether the good fulfills the requirement of regional value content established in Chapter 4 (Rules of Origin) and in Annex 4.03 (Specific Rules of Origin); or
 - 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 Chapter 4 (Rules of Origin) and in Annex 4.03 (Specific Rules of Origin).
2. Each Party shall establish directives for the issuance of advance rulings, including:
- a) the obligation of the importer to provide information reasonably required to process an application for such ruling;
 - b) the power 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 one hundred and twenty (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 complete, 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 for an advance ruling the same treatment, including the same interpretation and application of the provisions of Chapter 4 (Rules of Origin), 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) when it is based on an error:
 - i) in fact;
 - ii) in the tariff classification of the good or materials which are the subject of the ruling; or
 - iii) in the application of the regional value content requirement according to Chapter 4 (Rules of Origin);
 - b) when the ruling is not in accordance with the interpretation agreed by the Parties with respect to Chapter 4 (Rules of Origin);
 - c) when 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 Chapter 4 (Rules of Origin) or this Chapter; or
 - e) for the purpose of complying with an administrative decision independent from the issuing authority, 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.

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, when a person to whom an advance ruling has been issued demonstrates that he has 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, when 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 the necessary information for the issuing authority to modify or revoke it according to paragraph 5.

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

Article 5.08 Confidentiality

1. Each Party shall maintain, according to its legislation, the confidentiality of confidential information collected according to this Chapter and shall protect such information from disclosure.

2. The confidential information collected in accordance with this Chapter may only be disclosed to the authorities in charge of the administration and enforcement of origin determinations, and of customs and taxation matters according to the legislation of each Party.

Article 5.09 Penalties

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

Article 5.10 Review and Appeal

1. Each Party shall grant the same rights of review and appeal with respect to determinations and advance rulings to its importers, or to the exporters or producers of the other Party to whom those determinations and rulings have been issued according to Article 5.06 and Article 5.07.

2. When a Party denied preferential tariff treatment to a good by a determination based on non-compliance with time periods established in this Chapter, with respect to the presentation of records or other information to the competent authority of this Party, the decision made in the review or appeal shall only deal with the non-compliance of the time period to which this paragraph refers.

3. The rights referred to in paragraphs 1 and 2 include access to at least one administrative review, independent from the responsible official or office of the determination or the advance ruling under review, and access to a judicial review of the determination or ruling as the final resort of the administrative proceedings, according to the laws of each Party.

Article 5.11 Uniform Regulations

1. The Parties shall establish and implement, through their respective laws or regulations, by the date on which this Agreement enters into force, or at any later date as agreed by the Parties, the uniform regulations regarding the interpretation, application and administration of Chapter 4 (Rules of Origin), this Chapter and other matters as may be agreed by the Parties.

2. Each Party shall implement any modification or addition to the uniform regulations no later than one hundred and eighty (180) days after the Parties agree on such modification or addition, or within any other period that the Parties may agree.

Article 5.12 Cooperation

1. Each Party shall notify the other Party of the following determinations, measures and rulings, including, to the extent possible, the ones to be applied:

- a) an origin determination issued as a result of a verification conducted according to Article 5.06, once the review and appeal referred to in Article 5.10 are exhausted;
- b) an origin determination that the Party considers contrary to a ruling issued by the competent authority of the other Party on the tariff classification or the value of a good, or of the materials used in the manufacturing of a good;
- c) a measure that establishes or significantly modifies an administrative policy that may in the future affect the determinations of origin; and
- d) an advance ruling, and its revocation or modification, issued according to Article 5.07.

2. The Parties shall cooperate:

- a) in the enforcement of their respective customs laws or regulations, for the implementation of this Agreement, and, if applicable, under mutual customs assistance agreements, or in any another customs related agreement which they are parties to;
- b) to the extent possible and for the purpose of facilitating the flow of trade between their territories, in customs issues such as the collection and exchange of statistics regarding the importation and exportation of goods, and the exchange of information;
- c) to the extent possible, in the collection and exchange of documentation on customs procedures; and
- d) to the extent possible, in the verification of origin of a good, in such a way that the competent authority of the importing Party may request, for the Republic of Guatemala, the competent authority and for the Republic of China (Taiwan), the certifying authority, to conduct investigations in its territory and provide the corresponding reports.