

## **CHAPTER 4 RULES OF ORIGIN**

### **Article 4.01            Definitions**

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

**CIF:** the value of imported goods including the costs of insurance and freight to the port or place in the importing country;

**FOB:** free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer;

**fungible goods:** goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical and which are impossible to tell apart from visual examination alone;

**generally accepted accounting principles:** principles applied in the territories of each Party which give a substantial and authorised support to the registration of income, costs, expenditures, assets and liabilities related to the information and preparation of financial statements. These indicators, practical rules and procedures used generally in accounting can become a comprehensive guide with general applicability;

**goods wholly obtained or produced entirely in a Party:**

- (a) mineral goods extracted or taken in the territory of that Party;
- (b) plants and plant products harvested, picked or gathered in the territory of that Party;
- (c) live animals born and raised in the territory of that Party;
- (d) goods obtained by hunting, trapping, fishing, gathering or capturing in the territory of that Party;
- (e) goods obtained from live animals in the territory of that Party;
- (f) fish, shellfish and other marine life taken outside the territorial sea of the Parties by fishing vessels registered or recorded with that Party and owned by a person of that Party and flying its flag, or by rented fishing vessels of a company established in the territory of that Party;
- (g) goods obtained or produced on board factory ships from the goods referred to in subparagraph (f) provided such factory ships are registered

or recorded with that Party and flying its flag, or on rented board factory ships of a company established in the territory of that Party;

- (h) goods taken by that Party or a person of that Party from the seabed or beneath the seabed outside the territorial sea of that Party, provided that Party has rights to exploit such seabed;
- (i) waste and scrap derived from manufacturing or processing operations or from consumption in the territory of that Party and fit only for disposal or for the recovery of raw materials;
- (j) articles collected in the territory of that Party which can no longer perform their original purpose in its territory, nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials; or
- (k) goods produced in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (j) above;

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

- (a) fuel, energy, catalysts and solvents;
- (b) equipment, devices, and supplies used for testing or inspecting goods;
- (c) gloves, glasses, footwear, clothing, 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 materials or products that are 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:** a good that is used in the production of another good including ingredients, parts, components, subassemblies and goods that were physically incorporated into another good or were subject to a process in the production of another good;

**producer:** a “producer” according to Article 2.01 (Definitions of General Application);

**production:** methods of obtaining goods including manufacturing, producing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting, and capturing;

**transaction value of a good:** the price actually paid or payable for a good related to the transaction done by the producer of the good, according to the principles of Article 1 of the Customs Valuation Agreement, adjusted in accordance with the principle of paragraphs 1, 3 and 4 of its Article 8, regardless whether the good is sold for export. For 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:** the price actually paid or payable for a material related to the transaction done by the producer of the good, according to the principles of Article 1 of the Customs Valuation Agreement, adjusted in accordance with paragraphs 1, 3 and 4 of its Article 8, regardless whether the material be sold for export. For purposes of this definition the seller referred to in the Customs Valuation Agreement shall be the supplier of the material, and the buyer referred to in the Customs Valuation Agreement shall be the producer of the good; and

**value:** the value of a good or a material according to the rules of the Customs Valuation Agreement.

#### **Article 4.02            Application Instruments and Interpretation**

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 rules of the Customs Valuation Agreement shall be applied to determine the value of a good or material.

2.     For purposes of this Chapter, when applying the Customs Valuation Agreement to determine the origin of a good:

- (a) the principles and rules of the Customs Valuation Agreement shall apply to domestic transactions, with such modifications as may be required by the circumstances as would apply to international transactions; and

- (b) the provisions of this Chapter shall prevail over the provisions of the Customs Valuation Agreement to the extent of any inconsistency.

#### **Article 4.03            Originating Goods**

1. Except as otherwise provided in this Chapter, a good shall be regarded as originating in the territory of a Party where:

- (a) the good is wholly obtained or produced entirely in the territory of that Party;
- (b) the good is produced entirely in the territory of one or both Parties exclusively from originating materials according to this Chapter;
- (c) the good is produced in the territory of one or both Parties from non-originating materials that complying with the change in tariff classification, regional value content or other requirements, according to the specifications stated in Annex 4.03, and the good satisfies all the other applicable requirements of this Chapter; or
- (d) the good is produced in the territory of one or both of the Parties but one or more of the non-originating materials that are used in the production of the good does not undergo a change in tariff classification due to:
  - (i) the good was imported into the territory of a Party in an unassembled or a disassembled form and was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the Harmonized System,
  - (ii) the tariff heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings, or
  - (iii) the tariff subheading for the good provides for and specifically describes both the good itself and its parts;

provided that the regional value content of the good, determined in accordance with Article 4.07 is not less than thirty five (35%) percent and the good satisfies the other provisions applicable in this Chapter, unless the applicable rule of Annex 4.03, under which the good is classified, specified a different requirement of regional value content, in which case such requirement has to be met.

The rules provided for in this subparagraph do not apply to the goods in Chapters 61 through 63 of the Harmonized System.

2. If a good of a Party satisfies the rules of origin specified in Annex 4.03, there is no need to require additional compliance with the regional value content established in paragraph 1(d).

3. For purposes of this Chapter, the production of a good from non-originating materials that satisfies a change in tariff classification and other requirements, as set out in Annex 4.03, shall be done entirely in the territory of one or both Parties, and the good has to satisfy any applicable regional value-content requirement in the territory of one or both Parties.

4. Notwithstanding other provisions of this Article, goods shall not be considered originating, if they are exclusively the outcome of the operations set out in Article 4.04 and carried out in the territory of the Parties that gives their final form for marketing, where non-originating materials are used in such operations, unless the specific rules of origin of Annex 4.03 state the opposite.

#### **Article 4.04 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 necessary for the preservation of goods during the transportation or storage (including airing, ventilation, drying, refrigeration, freezing, elimination of damaged part, application of oil, antirust paint or protective coating, placing in salt, sulphur dioxide or other aqueous solution);
- (b) simple operations consisting of cleaning, washing, sieving, sifting or straining, selection, classification or grading, culling; peeling, shelling or striping, grain removal, pitting, pressing or crushing, soaking, elimination of dust or of spoiled, sorting, division of consignments in bulk, grouping in packages, placing of marks, labels or distinctive signs on products and their packages, packing, unpacking or repackaging;
- (c) combination or mixing operations of goods which have not resulted in any important difference in the characteristics of the goods before and after such combination or mixing;
- (d) simple joining or assembling of parts of products to make a complete good, formation of set or assortments of goods;

- (e) simple diluting operations or ionization and salting, which have not changed the nature of the goods; and
- (f) slaughter of animals.

**Article 4.05 Indirect Materials**

Indirect materials shall be considered to be originating materials regardless of their place of manufacturing or production and the value of these materials shall be the costs as indicated in the accounting records of the producer of the good.

**Article 4.06 Accumulation**

1. A Party may only accumulate origin with goods originating from the territories of the Parties.
2. Originating materials or originating goods from the territory of a Party, incorporated into a good in the territory of the other Party shall be considered originating from the territory of the latter.
3. For purposes of determining whether a good is an originating good, the producer of such good may accumulate its production with that of other producer or producers in the territory of one or both Parties, of materials incorporated into the good, so that the production of these materials is considered as done by such producer, provided that the good satisfies the requirements of Article 4.03.

**Article 4.07 Regional Value Content**

1. The regional value content of goods shall be calculated according to the following method:

**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 a FOB basis, unless as stated in paragraph 2. In the event that there does not exist or it is not possible to determine the value in accordance with the principles and rules of Article 1 of the Customs Valuation Agreement, then this shall be calculated according to the principles and rules of Articles 2 through 7 of that Agreement; and

**VNM:** is the transaction value of non-originating materials adjusted to a CIF basis, unless stated in the paragraph 5. In the event that there does not exist or it is not possible to determine the value according to the principles and provisions of Article 1 of the Custom Valuation Agreement, this shall be calculated in accordance with the principles and provisions of Articles 2 through 7 of that Agreement.

2. When the producer of a good does not export directly, the value shall be adjusted to the point where the buyer receives the good in the territory where the producer is located.

3. When the origin is determined by the method of regional value content, the percentage required is specified in Annex 4.03.

4. All the records of costs considered for the calculation of regional value content shall be registered and maintained according to the generally accepted accounting principles applicable in the territory of the Party from where the good is produced.

5. When a producer of a good acquires a non-originating material in the territory of the Party where it is located, the value of non-originating material shall not include freight, insurance, packing costs and any other cost incurred in the transportation of material from the warehouse of the supplier to the place of the producer.

6. For purposes of calculating the regional value content, the value of the non-originating material used in the production of a good shall not include the value of the non-originating materials used in the production of the originating material acquired and used in the production of that good.

#### **Article 4.08**      ***De Minimis***

1. A good shall be considered to be an originating good if the value of all non-originating materials used in the production of that good that do not satisfy the requirement of change in tariff classification set out in Annex 4.03 is not more than ten percent (10%) of the transaction value of the good as determined in Article 4.07.

2. For a good provided for in Chapters 50 through 63 of the Harmonized System, the percentage indicated in the paragraph 1 refers to the weight of fibers or yarns with respect to the weight of the good being produced.

3. Paragraph 1 does not apply to a non-originating material used in the production of goods provided for in Chapters 1 through 27 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this Article.

#### **Article 4.09            Fungible Goods**

1. In the preparation or production of a good which uses originating or non-originating fungible goods, the origin of these goods can be determined by the application of one of the following methods of inventory management, to be selected by the producer:

- (a) first in, first out (FIFO) method;
- (b) last in, first out (LIFO) method; or
- (c) averaging method.

2. Where originating or non-originating fungible goods are mixed or combined physically in warehouse and do not go through any production process or any operation other than unloading, reloading or any other necessary movement in the territory of the Party before the exportation to keep the good in good condition or to transport them to the territory of the other Party, the origin of the goods shall be determined by one of the inventory management methods.

3. Once the method of inventory management is selected it shall be used during the entire period or a fiscal year.

#### **Article 4.10            Sets or Assortments of Goods**

1. Sets or assortments of goods classified according to rule 3 of the General Rules of Interpretation of the Harmonized System and the goods whose description according to the Harmonized System nomenclature is specifically that of a set or assortment shall qualify as originating, provided that every good included in the set or assortment complies with the rules of origin established in this Chapter and in Annex 4.03.

2. Notwithstanding paragraph 1, a set or assortment of goods shall be considered originating if the value of all non-originating goods used in making the set or assortment does not exceed the percentage set out in Article 4.08(1) with respect to the value of the set or assortment, adjusted to the point set out in Article 4.07(1) or (2), as the case may be.

3. The provisions of this Article shall prevail over the specific rules established in Annex 4.03.

#### **Article 4.11            Accessories, Spare Parts and Tools**

1. Accessories, spare parts and tools delivered with the good that usually form part of the good shall be considered one with the 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 set out in Annex 4.03, provided that:

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

2. Where a good is subject to a regional value content requirement, its value of the accessories, spare parts or tools shall be considered as either originating or non-originating materials, as the case may be, in order to calculate the regional value content of the good.

3. For those accessories, spare parts and tools that do not satisfy the conditions mentioned above, the rules of origin shall apply to each of them respectively and separately.

#### **Article 4.12 Containers and Packaging Materials for Retail Sale**

1. Containers and packaging materials in which a good is packaged for retail sale shall, if classified with the good by Harmonized System code, 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 4.03.

2. If the good is subject to a regional value content requirement, the value of such containers and packaging materials 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 4.13 Containers and Packing Materials for Shipment**

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

- (a) the non-originating materials used in the production of the good undergo an applicable change in tariff classification as set out in Annex 4.03; and
- (b) the good satisfies the regional value content requirement.

#### **Article 4.14 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 operations other than unloading, reloading or any other operation to preserve them in good condition.

## CHAPTER 5

### CUSTOMS PROCEDURES

#### 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 China, the designated authority is the Bureau of Foreign Trade (BOFT), Ministry of Economic Affairs (MOEA), or other agencies as authorized by BOFT; in the case of Panama, the designated authority is the Vice-ministry of Foreign Trade, or its successor;

**commercial importation:** the importation of a good into the territory of one of the Parties for the purpose of sale, or any commercial, industrial or other like use;

**customs authority:** the competent authorities responsible under their respective laws for the administration and implementation of customs laws and regulations;

**customs value:** value of a good used for calculating the customs tariff according to the legislation of each Party;

**days:** “days” according to Article 2.01 (Definitions of General Application);

**exporter:** an exporter located in the territory of a Party from where the good is exported and who, according to this Chapter, is required to maintain records in the territory of that Party under Article 5.05(1)(a);

**identical goods:** goods which are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance which are not relevant for the determination of origin of such goods under Chapter 4 (Rules of Origin);

**importer:** an importer located in the territory of a Party, and required to maintain records in the territory of that Party, under Article 5.05(1)(b);

**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:** a “producer” according to Article 2.01 (Definitions of General Application), located in the territory of a Party, and required to maintain records in the territory of that Party, under Article 5.05(1)(a);

**resolution of origin determination:** a resolution issued by the customs authority made as a result of an origin-verifying procedure which establishes whether a good qualifies as originating according to Chapter 4 (Rules of Origin);

**valid Certificate of Origin:** a certificate of origin written in the format referred to in Article 5.02(1), completed, signed and dated by an exporter of a good in the territory of a Party according to the provision of this Chapter and to the instructions for completing the certificate, and certified by the certifying authority of the exporting Party, pursuant to the provision of this Chapter; and

**value:** the value of a good or material for the purpose of application of Chapter 4 (Rules of Origin).

2. Unless defined in this Article, the definitions established in Chapter 4 (Rules of Origin) are incorporated into this Chapter.

## **Article 5.02 Certification of Origin**

1. For purposes of this Chapter, before this Agreement enters into force, the Parties shall develop a single format of Certificate of Origin, 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 served to certify that a good being exported from the territory of a Party into the territory of the other Party qualifies as an originating good.

3. Each Party shall require exporters in its territory to complete and sign a Certificate of Origin for any exportation of goods for which an importer may claim preferential tariff treatment.

4. The Certificate of Origin shall be certified by the certifying authority of the exporting Party. For this purpose the certifying authority shall ensure that the good to which a Certificate of Origin is applicable, satisfies the requirements established in Chapter 4 (Rules of Origin) and in the Annex to Article 4.03 (Specific Rules of Origin).

5. Each Party shall require the Certificate of Origin be sealed, signed and dated by the certifying authority of the exporting Party, when the goods may be considered originating according to the requirement established in Chapter 4 (Rules of Origin) and in the Annex to Article 4.03 (Specific Rules of Origin). The Certificate of Origin shall also carry a serial number allowing its identification.

6. The certifying authority of each Party shall certify the origin of the goods covered by a Certificate of Origin, based on the information provided by the exporter or producer

of the good, who shall be responsible for the veracity of the information provided and for those established in the Certificate of Origin. The certification shall be valid, while the circumstances or facts on which the certification is based do not change.

7. The certifying authority of the exporting Party shall:
  - (a) maintain the administrative procedures for certification of the Certificate of Origin that its producer or exporter completed and signed;
  - (b) provide, if requested by the customs authority of the importing Party, information about the origin of the imported goods with preferential tariff treatment; and
  - (c) notify in writing before this Agreement enters into force, a list of bodies entitled to issue the certificate referred to in subparagraph (a) of this Article, with the list of the name of the authorized officials and the corresponding seals and signatures. 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 that notification of the modification.
8. Each Party shall require that the Certificate of Origin be completed and signed by the exporter applicable to a single importation of one or more goods.
9. Each Party shall require that the Certificate of Origin be accepted by the customs authority of the importing Party for a period of one year from the signature date of the certifying authority.
10. Each Party shall require that the preferential tariff treatment not be denied if the goods covered by a Certificate of Origin are invoiced by the branches, subsidiary companies or agents of the producer or exporter in the territory of a non-Party, and provided that such goods are directly shipped from the territory of the other Party, without prejudice to the provisions of Article 4.14 (Transshipment).

### **Article 5.03            Obligations Regarding Importation**

1. Each Party shall require the importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:
  - (a) complete a written declaration 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 Certificate of Origin in its possession at the time the declaration is made;
- (c) provide, upon the request of customs authority of that Party, a copy of the Certificate of Origin; and
- (d) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate of Origin on which a declaration was based contains incorrect information. Where the importer presents the mentioned declaration before the customs authorities notify the revision, according to the domestic laws of each Party, the importer shall not be sanctioned.

2. Each Party shall require that, where an importer in its territory does not comply with any requirement established in this Chapter, the preferential tariff treatment for a good imported from the territory of the other Party shall be denied.

3. Each Party shall require 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 the time of entry, the importer of the good will not request for a refund or compensation of any excess duties paid.

4. Compliance with the provisions of this Article does not exempt the importer from the obligation to pay the corresponding customs tariffs according to the applicable laws of the importing Party, when the customs authority denies the preferential tariff treatment to goods imported, according to Article 5.06.

#### **Article 5.04            Obligations Regarding Exportation**

1. Each Party shall require its exporter or producer who has completed and signed a Certificate of Origin to present a copy of the Certificate of Origin to its customs authority on request.

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

- (a) all persons to whom this Certificate was given;
- (b) its certifying authority; and
- (c) its customs authority according to its legislation,

of any change that could affect the accuracy or validity of this Certificate, in which case the exporter or producer may not be sanctioned for having presented an incorrect certification or information.

3. Each Party:

- (a) shall provide that if a false certification or information by its exporter or producer resulted in a good to be exported to the territory of the other Party qualifying as an originating good, that exporter or producer shall have the similar legal consequences, as would apply to an importer in its territory for contravening its customs laws and regulations by false statement or representation; and
- (b) may apply such measures as the circumstances may warrant where its exporter or producer fails to comply with any requirement of this Chapter.

4. The customs authority and the certifying authority of the exporting Party shall notify in writing to the customs authority of the importing Party about the notification referred to in paragraph 2.

#### **Article 5.05        Records**

1. Each Party shall provide that:

- (a) its exporter or producer that completes and signs a Certificate of Origin or provides information to its certifying authority shall maintain for a minimum period of five years from the date the Certificate was signed, all records and documents associated with the origin of the good, including those relating to:
  - (i) the purchase, costs, value of, and payment for the good exported from its territory,
  - (ii) the purchase, costs, value of, and payment for all the 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 applying for preferential tariff treatment shall maintain the Certificate of Origin and all the other documentation relating to the

importation requested by the importing Party for a minimum period of 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 preferential tariff treatment to a good subject to verification of origin, if the exporter, producer or importer of the good who shall maintain records or documents according to paragraph 1:

- (a) does not maintain the records or documents for determining the origin of the good, according to the provisions of this Chapter and Chapter 4 (Rules of Origin); or
- (b) denies access to the records or documents.

#### **Article 5.06            Origin Verification Procedure**

1. The importing Party may request through its customs authority to the certifying authority of the exporting Party information about the origin of a good.

2. For the purpose of determining whether a good imported into its territory from the territory of the other Party under preferential tariff treatment qualifies as originating, each Party may verify the origin of the good through its customs authority by means of:

- (a) written questionnaires to an exporter or a producer in the territory of the other Party;
- (b) verification visits to an exporter or a producer in the territory of the other Party to review the records and documents that show compliance with rules of origin under Article 5.05 and to inspect the facilities used in the production of the good, and those used in the production of materials; or may commission the embassy in the territory of the other Party to visit the exporter or producer to verify the origin; or
- (c) other procedures as the Parties may agree.

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

(a) certified mail with acknowledgement of receipt or any other means that confirm the reception of this document by the exporter or producer; or

(b) any other means as the Parties may agree.

4. The provision of paragraph 2 shall be applied without prejudice to the authority of verification by the customs authority of the importing Party regarding the enforcement of other obligations of their own importers, exporters or producers.

5. The written questionnaire referred to in paragraph 2(a) shall:

(a) indicate the period available to the exporter or producer, which shall be no less than thirty (30) days from the date of receipt, to respond to the authority and return the questionnaire or the information and documentation requested; and

(b) include the notice of intention to deny preferential tariff treatment, in the event that the exporter or producer does not comply with the requirement of submitting the questionnaire duly completed or the requested information, within such period.

6. The exporter or producer that receives a questionnaire according to paragraph 2(a) shall respond to and return the questionnaire duly completed in the period established in paragraph 5(a), starting from the date of receipt. During this period, the exporter or producer may request in writing to the customs authority of the importing Party for an extension, which in this case shall not exceed thirty (30) days. This request shall not have the consequence of denying the preferential tariff treatment.

7. Each Party shall provide that where it received the responded questionnaire referred to in paragraph 2(a) within the corresponding period, each Party may still request for more information to determine the origin of the goods subject to verification. It may request, through its customs authority, for additional information from the exporter or producer, by means of a subsequent questionnaire, in which case the exporter or producer shall respond to the request and turn in the information in a period not exceeding thirty (30) days, from the date of receipt.

8. In case that the exporter or producer does not correctly respond to the questionnaires, or does not return the questionnaire within the corresponding period, as referred to in paragraphs 6 and 7 above, the importing Party may deny preferential tariff treatment to the goods subject to verification, by a prior decision in writing, addressed to the exporter or producer, including findings of fact and the legal basis for the determination.

9. Prior to conducting a verification visit pursuant to paragraph 2(b), the importing Party shall, through its customs 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, certifying authorities and the customs authority of the Party in whose territory the visit is to occur, and to the other Party's embassy in the territory of the importing Party, if it is requested by that other Party. The importing Party shall, through its customs authority, request the written consent of the exporter or producer to whom it intends to visit.

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

- (a) the identity of the customs authority issuing the notification;
- (b) the name of the exporter or producer to whom it intends to visit;
- (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 goods that are the subject of the verification;
- (e) the names (personal information) and titles of the officials performing the verification visit; and
- (f) the legal authority for the verification visit.

11. Any modification of the information referred to in paragraph 10(e) shall be notified in writing to the exporter or producer, to the customs authority and to the certifying authority of the exporting Party before the verification visit. Any modification of the information referred to in paragraph 10(a), (b), (c), (d) and (f) shall be notified according to paragraph 9.

12. Where an exporter or a producer has not given its written consent to a proposed verification visit within thirty (30) days of its receipt of a notification pursuant to paragraph 9, the importing Party may deny preferential tariff treatment to the good or goods that would have been the subject of the verification visit.

13. Each Party may require, where its customs authority receives a notification pursuant to paragraph 9 within fifteen (15) days of its receipt of the notification, postpone the proposed verification visit for a period not exceeding sixty (60) days from the date the notification is received, or for a longer period as the Parties may agree.

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

15. Each Party shall permit an exporter or a producer whose good 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, and the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

16. Each Party shall require that an exporter or a producer provide the records and documents referred to in Article 5.05(1)(a) to the customs authority of the importing Party. Where the records and documents are not in possession of an exporter or a producer, it may request the producer or supplier of the materials to deliver them to the customs authority in charge of the verification.

17. Each Party shall verify the compliance of the requirements on regional value content, the *de minimis* calculation or any other measure included in Chapter 4 (Rules of Origin) by its customs authority, according to the generally accepted accounting principles applied in the territory of the Party from where the good is exported.

18. The customs authority of the importing Party shall write a minute of the visit that shall include the facts confirmed by it. The producer or exporter and the designated observers may sign this minute accordingly.

19. Within 120 days after the conclusion of the verification, the customs authority shall provide a written decision to the exporter or producer of the goods subject to verification, determining whether the good is qualified as originating, including the findings of fact and the legal basis for the determination.

20. Where the customs authority denies preferential tariff treatment to a good or goods subject to a verification, this authority shall issue a written decision, well founded and reasoned, which shall be notified to the exporter or producer according to paragraph 3 and shall take effect the day after the receipt.

21. Where a verification by a Party demonstrates that an exporter or a producer has certified or provided more than once in a false or unfounded manner stating that a good qualifies as an originating good, the importing Party may suspend the preferential tariff treatment to the identical good that this person exports or produces, until that person establishes compliance with Chapter 4 (Rules of Origin).

22. If, in two or more verifications of origin, two or more written decisions were made denying preferential tariff treatment to goods same as the good subject to verification, it shall be considered that an exporter or a producer has certified or provided information more than once in a false or unfounded manner stating that a good imported to the territory of a Party qualifies as originating

23. 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, and it differs from the tariff classification or from the value applied to the materials by the Party from where the good was exported, that Party shall provide that its decision shall not take effects until it is notified in writing to the importer of the goods and to the person who has filled in and signed the Certificate of Origin, as well as to the producer of the good.

24. A Party shall not apply a decision issued under paragraph 23 to an importation made before the effective date of the decision where:

- (a) the customs authority of the Party from whose territory the good was exported has issued a decision on the tariff classification or on the value of such materials, on which a person is entitled to rely; and
- (b) the mentioned decisions were given prior to the initiation of origin verification.

#### **Article 5.07            Advance Rulings**

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

- (a) whether a good qualifies as originating, pursuant to Chapter 4 (Rules of Origin);
- (b) whether the non-originating materials used in the production of a good comply with the corresponding change of tariff classification in Annex 4.03 (Specific Rules of Origin);
- (c) whether a good satisfies the regional value content requirement set out in Chapter 4 (Rules of Origin);
- (d) whether the method applied by an exporter or a producer in the territory of the other Party according to the principles of the Customs Valuation Agreement for calculating the transaction value of the good or of the materials used in the production of the good for which an advance ruling is required is appropriate for the purpose of determining whether a good satisfies a regional value content requirement under Chapter 4 (Rules of Origin);
- (e) whether a good that re-enters its territory after it has been exported from its territory to the territory of the other Party for repair or alteration qualifies

for preferential tariff treatment under Article 3.07 (Goods Re-Entered after Repair or Alteration); and

(f) such other matters as the Parties may agree.

2. Each Party shall adopt or maintain procedures for issuing advance rulings, including:

- (a) the information which is reasonably required to process an application;
- (b) the power of the customs authority to request at any time additional information from the person applying for the ruling, during the course of the evaluation;
- (c) the obligation of the customs authority to issue the advance ruling within a period no longer than 120 days, once all necessary information has been collected from the applicant; and
- (d) the obligation of the customs authority to issue the advance ruling in a completed, well-founded and reasoned manner.

3. Each Party shall implement an advance ruling for the imports into its territory, from the date of its issue or a later date as may be specified in the ruling, unless the advance ruling has been modified or revoked according to paragraph 5.

4. Each Party shall provide to any person requesting an advance ruling the same treatment, including the same interpretation and application of provisions of Chapter 4 (Rules of Origin), regarding a determination of origin given to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all substantial aspects.

5. The advance ruling may be modified or revoked in the following cases:

- (a) if the ruling is based on an error
  - (i) of fact,
  - (ii) in the tariff classification of a good or a material that is the subject of the ruling,
  - (iii) in the application of a regional value content requirement under Chapter 4 (Rules of Origin), or

- (iv) in the application of the rules for determining whether a good that re-enters its territory after it has been exported from its territory to the territory of the other Party for repair or alteration qualifies for preferential tariff treatment under Article 3.07 (Goods Re-Entered after Repair or Alteration);
- (b) if the ruling is not in accordance with an interpretation agreed by the Parties regarding Chapter 3 (National Treatment and Market Access for Goods) or Chapter 4 (Rules of Origin);
- (c) if there is a change in the facts or circumstances on which the ruling is based;
- (d) to conform with a modification of Chapter 3 (National Treatment and Market Access), Chapter 4 (Rules of Origin), or this Chapter; or
- (e) to conform with an administrative or judicial decision or a change in the domestic law of the Party that issued the advance ruling.

6. 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 may not be applied to imports 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.

7. Each Party shall provide that where its customs authority examines the regional value content of a good for which it has issued an advance ruling, it shall evaluate whether:

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

8. Each Party shall provide that where its customs authority determines that any requirement in paragraph 7 has not been satisfied, it may modify or revoke the advance ruling as the circumstances may warrant.

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

10. Each Party shall provide that where it issues an advance ruling to a person that has misrepresented or omitted substantial facts or circumstances on which the ruling is based or has failed to act in accordance with the terms and conditions of the ruling, the customs authority that issued the advance ruling may apply measures in accordance with the legislation of each Party.

11. The Parties shall provide that the holder of an advance ruling may use it only while the facts or circumstances on which its issuance was based are maintained. In this case, the holder of the ruling may present the necessary information so that the issuing authority may proceed according to paragraph 5.

12. A good subject to a verification of origin or a request of review or appeal in the territory of either Party shall not be subject to an advance ruling.

#### **Article 5.08 Confidentiality**

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

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 of customs and taxation matters.

#### **Article 5.09 Recognition and Acceptance of the Re-Exportation Certificate**

1. Without prejudice to paragraph 4, the Parties hereby establish the Re-Exportation Certificate, with the aim of identifying that goods re-exported from a free zone of one Party to the territory of the other Party are goods that come from a third country, provided that the following requirements are met:

- (a) the goods remained under the control of the customs authority of the re-exporting Party;
- (b) the goods were not subject to further processing or other operations, excepting marketing, unloading, reloading or any other operation necessary to maintain them in good shape; and

(c) the previous requirements are documentarily proved.

2. Based on paragraph 1, each Party shall require that a re-exporter of goods located in the free zone shall complete and sign a re-exportation certificate, which shall be authenticated by the customs authority and by the administrative authorities of the re-exporting free zone and shall cover only one importation of one or more goods to its territory.

3. Each Party, through its customs authority, may request the importer in its territory who imports goods from a free zone to submit the re-exportation certificate at the time of importation and to provide one copy thereof if the customs authority requires it, covering the goods that qualify as originating under agreements or trade conventions signed with third parties by the importing Party and that claim the trade preferences granted therein.

4. Provided the requirements of paragraph 5 are met, each Party shall require that the imports of goods covered by a re-exportation certificate that qualified as originating in conformity with other agreements or trade conventions signed by the importing Party with third parties do not lose the preference or tariff benefits granted by the importing Party, due to the fact that the imports come from a free zone.

5. For the purpose of the application of paragraph 4, the Parties shall:

- (a) establish a mechanism for the administration and control of these goods; and
- (b) request the submission of a certificate of origin issued by third countries that benefit from the preferential tariff treatment described in paragraph 4.

#### **Article 5.10 Penalties**

1. 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.

2. Each Party shall establish criminal, civil or administrative penalties for the certifying authority that issues a Certificate of Origin in a false or unfounded manner.

#### **Article 5.11 Review and Appeal**

1. Each Party shall accord the same rights of review and appeal of determinations of origin and advance rulings to its importers, or to the exporters or producers of the other Party who complete and sign a Certificate of Origin, or provide information for a

good that has been the subject of a determination of origin pursuant to paragraph 19 of Article 5.06, or to whom have received an advance ruling pursuant to Article 5.07.

2. When a Party denies preferential tariff treatment to a good by a decision based on the non-fulfillment of a period established in this Chapter, with regard to the submission of records or other information to the customs authority of this Party, the ruling made in the review or appeal shall only deal with the compliance of the time period referred to in this paragraph.

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

## **Article 5.12 Uniform Regulations**

1. The Parties shall establish, and implement through their respective laws or regulations by the date this agreement enters into force, 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 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.

## **Article 5.13 Cooperation**

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

- (a) a determination of origin issued as the result of verification conducted pursuant to Article 5.06, once the petitions of review and appeal referred to in Article 5.11 of this Chapter are exhausted;
- (b) a determination of origin that the Party considers contrary to a ruling issued by the customs authority of the other Party with respect to the tariff classification or value of a good, or of materials used in the production of a good;
- (c) a measure establishing or significantly modifying an administrative policy that is likely to affect future determinations of origin; and

- (d) an advance ruling or its modification, pursuant to Article 5.07 of this Chapter.

2. The Parties shall cooperate in the following aspects:

- (a) the enforcement of their respective customs-related laws or regulations implementing this Agreement, and under any customs mutual assistance agreements or other customs-related agreement to which they are party;
- (b) to the extent possible and for purposes of facilitating the flow of trade between their territories, such customs-related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the standardization of data elements and the exchange of information;
- (c) to the extent possible, the collection and exchange of documentation on customs procedures; and
- (d) to the extent possible and for purposes of verifying the origin of a good, the customs authority of the importing Party may request to the certifying authority of the other Party to conduct in its territory some related investigations or inquiries, and to issue the corresponding reports.