

CHAPTER FIVE

CUSTOMS PROCEDURES

Section A – Definitions

Article 5.1: Definitions

For the purposes of this Chapter:

commercial importation means the importation of a good into the territory of a Party for:

- (a) Sale; or
- (b) a commercial, industrial, or like use;

competent authority means:

- (a) for Canada, Canada Border Services Agency or a successor notified in writing to the other Party; and
- (b) for Honduras, the Secretary of State of Industry and Commerce (*Secretaría de Estado en los Despachos de Industria y Comercio*), or a successor notified in writing to the other Party;

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

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

exporter in the territory of a Party means an exporter located in the territory of a Party that is required under this Chapter to maintain records in the territory of that Party regarding the exportation of a good;

importer in the territory of a Party means an importer located in the territory of a Party that is required under this Chapter to maintain records in the territory of that Party regarding importations of a good;

preferential tariff treatment means the duty rate applicable under this Agreement to an originating good;

value means value of a good or material, determined in accordance with the Customs Valuation Agreement.

The following terms have the same meaning as in Article 4.1 (Rules of Origin – Definitions):

- (a) Generally accepted accounting principles,
- (b) good,
- (c) identical goods,
- (d) indirect material,
- (e) material,
- (f) net cost of a good,
- (g) producer,
- (h) production, and
- (i) transaction value.

Section B – Certification of Origin

Article 5.2: Certificate of Origin

1. The Parties shall establish, by the date of entry into force of this Agreement, a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of the other Party qualifies as originating. The Certificate of Origin may be modified after the date of entry into force, if the Parties so decide.
2. Each Party shall permit the Certificate of Origin for a good imported into its territory to be completed in English, French or Spanish.
3. Each Party shall:
 - (a) require an exporter in its territory to complete and sign a Certificate of Origin for the exportation of a good for which an importer may claim preferential tariff treatment upon importation of the good into the territory of the other Party; and
 - (b) provide that, when an exporter in its territory is not the producer of the good, the exporter may complete and sign a Certificate of Origin on the basis of:
 - (i) the exporter's knowledge of whether the good qualifies as originating,
 - (ii) the exporter's reasonable reliance on the producer's written declaration that the good qualifies as originating, or
 - (iii) a completed and signed Certificate of Origin for the good voluntarily provided to the exporter by the producer.
4. Paragraph 3 does not require a producer to provide a Certificate of Origin to an exporter.

5. A Party shall permit a Certificate of Origin to apply to:
 - (a) a single importation of one or more goods into the Party's territory; or
 - (b) multiple importations of identical goods into the Party's territory by the same importer within the period identified in the Certificate of Origin, provided that the period does not exceed 12 months.

6. A Party shall ensure that the Certificate of Origin is accepted by its customs administration for at least 1 year after the date on which the Certificate of Origin was signed.

7. A Party shall accept a Certificate of Origin that is completed and signed by the exporter or producer of a good prior to entry into force of this Agreement, if the good is originating and is imported into the territory of a Party on or after entry into force of this Agreement.

Article 5.3: Obligations regarding Importations

1. Except as otherwise provided in this Chapter, each Party shall require an 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) make a written declaration, in the import document provided by its laws and regulations, based on a valid Certificate of Origin, that the good qualifies as originating;
 - (b) have the Certificate of Origin in its possession at the time the declaration is made;
 - (c) provide a copy of the Certificate of Origin at the request of that Party's customs administration; and

- (d) promptly make a corrected declaration in a manner required by the customs administration of the importing Party and pay any duties owing if the importer has reason to believe that a Certificate of Origin on which a declaration is based contains incorrect information.

2. When an importer in the territory of a Party claims preferential tariff treatment for a good imported into its territory from the territory of the other Party:

- (a) the importing Party may deny preferential tariff treatment to the good if the importer fails to comply with a requirement under this Chapter; and
- (b) the importing Party shall not subject the importer to penalties for making an incorrect declaration if:
 - (i) the importer voluntarily makes a correction to the declaration pursuant to paragraph 1(d), and
 - (ii) the competent authority of the importing Party has not initiated a verification of origin pursuant to Article 5.7.

3. If a good would have qualified as originating when it was imported into the territory of a Party but a claim for preferential tariff treatment was not made at that time, the importing Party shall permit the importer of the good, within 4 years after the date the good was imported, to apply for a refund of any excess duties paid because the good was not accorded preferential tariff treatment. The importer applying for a refund must submit:

- (a) a written declaration that the good qualified as originating at the time of importation;
- (b) a copy of the Certificate of Origin; and

- (c) any other documentation required by the importing Party that relates to the importation of the good.

Article 5.4: Exceptions

A Party shall not require a Certificate of Origin for:

- (a) a commercial importation of a good whose value does not exceed US\$1,000 or its equivalent amount in the Party's currency, or a higher amount that the Party establishes, except that it may require that the invoice accompanying the importation include a statement from the exporter certifying that the good qualifies as originating;
- (b) a non-commercial importation of a good whose value does not exceed US\$1,000 or its equivalent amount in the Party's currency, or a higher amount that the Party establishes; or
- (c) an importation of a good for which the importing Party has waived the requirement for a Certificate of Origin,

provided that the importation is not part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purposes of avoiding the certification requirements of Articles 5.2 and 5.3.

Article 5.5: Obligations regarding Exportations

1. Each Party shall provide that:

- (a) at the request of its customs administration, an exporter in its territory, or a producer in its territory that has provided a copy of a Certificate of Origin to that exporter pursuant to Article 5.2(3)(b)(iii), must provide a copy of the Certificate of Origin to the customs administration;

- (b) if an exporter or a producer in its territory provided a Certificate of Origin and has reason to believe that it contains information that is incorrect, the exporter or producer must promptly notify in writing every person who received a Certificate of Origin from them of a change that could affect the accuracy or validity of the Certificate of Origin; and
 - (c) a false Certificate of Origin provided by an exporter or a producer in its territory for a good to be exported to the territory of the other Party is subject to legal consequences of an equivalent effect, in accordance with the customs law of that Party, as would apply to an importer in its territory that makes a false statement or representation.
2. A Party may apply a measure that the circumstances warrant if an exporter or a producer in its territory fails to comply with a requirement of this Chapter.
3. A Party may not impose penalties on an exporter or a producer in its territory that voluntarily provides written notification pursuant to paragraph (1)(b) for an incorrect Certificate of Origin.

Section C – Administration and Enforcement

Article 5.6: Records

1. Each Party shall provide that an exporter or a producer in its territory that completes and signs a Certificate of Origin must maintain in its territory for 5 years after the date on which the Certificate of Origin was signed, or for a longer period specified by the Parties, records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of the other Party, including records associated with:

- (a) the purchase of, cost of, shipping of, value of, and payment for, the good that is exported from its territory;

- (b) the purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory; and
- (c) the production of the good in the form in which the good is exported from its territory.

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Party's territory must maintain in its territory documentation relating to the importation of the good, including a copy of the Certificate of Origin, for 5 years after the date of importation of the good or for a longer period specified by the Party.

Article 5.7: Origin Verifications

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

- (a) A written questionnaire to an exporter or a producer in the territory of the other Party;
- (b) A visit to the premises of an exporter or a producer in the territory of the other Party to review the records referred to in Article 5.6(1) and to observe the facilities used in the production of the good; or
- (c) another procedure set out in the Uniform Regulations.

2. Each Party shall allow an exporter or producer who receives a questionnaire pursuant to paragraph 1(a) at least 30 days, and no more than 60 days, from the date of receipt to return the completed questionnaire. On written request by the exporter or producer made during that period, the importing Party may grant the exporter or producer a single extension of the deadline of no more than:

- (a) 30 days; or

- (b) a longer period if the exceptional circumstances set out in the Uniform Regulations apply.
- 3. If an exporter or producer fails to provide a properly completed questionnaire within the period or extension set out in paragraph 2, the importing Party may deny preferential tariff treatment to the good in question.
- 4. Before conducting a verification visit under paragraph 1(b), a Party shall, through its competent authority:
 - (a) deliver a notification in writing of its intention to conduct the visit to:
 - (i) the exporter or producer whose premises are to be visited,
 - (ii) the competent authority of the other Party, no less than 5 working days prior to notifying the exporter or producer referred to in sub-subparagraph (i), and
 - (iii) if requested by the Party in whose territory the visit is to occur, the embassy of that Party in the territory of the Party proposing to conduct the visit; and
 - (b) obtain the written consent of the exporter or producer whose premises are to be visited.
- 5. The notification referred to in paragraph 4 must include:
 - (a) the identity of the competent authority issuing the notification;
 - (b) the name of the exporter or producer whose premises are to be visited;
 - (c) the date and place of the proposed verification visit;
 - (d) the object and scope of the proposed verification visit, including specific reference to the good that is the subject of the verification;

- (e) the names and titles of the officials performing the verification visit; and
- (f) the legal authority for the verification visit.

6. If an exporter or producer has not given its consent, in writing, to a proposed verification visit within 30 days of receipt of a notification under paragraph 4, the notifying Party may deny preferential tariff treatment to the good that was the subject of the visit.

7. The Party whose competent authority receives a notification under paragraph 4 may, within 15 days of receipt of the notification, postpone the proposed verification visit for up to 60 days from the date of that receipt or for a longer period that the Parties may decide.

8. Each Party shall allow an exporter or producer that receives notification under paragraph 4 to, on a single occasion within 15 days of receipt of the notification, request in writing that the postponement of the proposed verification visit for no more than:

- (a) 60 days from the date of that receipt, or
- (b) a longer period permitted by the notifying Party.

9. A Party may not deny preferential tariff treatment to a good based only on the postponement of a verification visit under paragraphs 7 or 8.

10. A Party shall permit an exporter or a producer of a good that is the subject of a verification visit by the other Party to designate 2 observers to be present during the visit, provided that:

- (a) the observers participate only as observers; and
- (b) the exporter or producer designate observers in time for the visit.

11. When a Party conducts a verification of origin involving a regional value content, *de minimis* calculation or any other provision in Chapter Four (Rules of Origin) to which Generally Accepted Accounting Principles may be relevant, it shall apply those principles as they apply in the territory of the Party from which the good was exported.

12. When a Party conducts a verification of origin, it shall, within 120 days after it receives the necessary information, provide the exporter or producer of the good that is the subject of the verification with a written determination of whether the good is originating, including findings of fact and the legal basis for the determination. A Party may extend that period by up to 90 days by providing a notification of extension to the exporter or producer.

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

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

15. A Party shall not apply a determination made under paragraph 14 to an importation made before the effective date of the determination if:

- (a) the competent authority of the other Party has issued an advance ruling under Article 5.10 or any other ruling on the tariff classification or on the value of that material, or has given consistent treatment to the entry of the material under the tariff classification or value at issue on which a person is entitled to rely; and
- (b) the advance ruling, other ruling or consistent treatment was given prior to notification of the determination.

16. If a Party denies preferential tariff treatment to a good pursuant to a determination made under paragraph 14, it shall postpone the effective date of the denial for a period not exceeding 90 days if the importer of the good, or the person who completed and signed the Certificate of Origin for the good, demonstrates that it has relied in good faith to its detriment on the tariff classification or value applied to that material by the customs administration of the other Party.

Article 5.8: Confidentiality

1. Each Party shall maintain, in accordance with its domestic law, the confidentiality of the information collected under this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information. If the Party receiving or obtaining the information is required by its domestic law to disclose the information, that Party shall notify the person or Party who provided that information.

2. Subject to paragraph 3, each Party shall ensure that the confidential information collected under this Chapter is not used for purposes other than the administration and enforcement of determinations of origin and for customs matters, except with the authorization of the person or Party who provided the confidential information.

3. A Party may allow information collected under this Chapter to be used in an administrative, judicial, or quasi-judicial proceedings instituted for failure to comply with customs related laws and regulations implementing Chapter Four (Rules of Origin) and this Chapter. A Party shall notify the person or Party who provided the information in advance of that use.

Article 5.9: Penalties

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

2. Articles 5.3(2), 5.5(3) or 5.7(9) do not prevent a Party from applying measures that are warranted by the circumstances, in accordance with its domestic law.

Section D – Advance Rulings

Article 5.10: Advance Rulings

1. Each Party shall, through its competent authority, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, 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 that importer, exporter, or producer of the good, concerning:

- (a) whether a material imported from a non-Party used in the production of a good undergoes an applicable change in tariff classification set out in Annex 4.1 (Rules of Origin – Specific Rules of Origin) as a result of production occurring entirely in the territory of one or both of the Parties;
- (b) whether a good satisfies a regional value content requirement set out in Article 4.3 (Rules of Origin – Regional Value Content);

- (c) for the purpose of determining whether a good satisfies a regional value-content requirement under Chapter Four (Rules of Origin), the appropriate basis or method for value to be applied by an exporter or a producer in the territory of the other Party, in accordance with the principles of the Customs Valuation Agreement, for calculating the transaction value of the good or of the materials used in production of the good;
- (d) whether a good is originating;
- (e) whether a good that re-enters its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment in accordance with Article 3.8 (National Treatment and Market Access for Goods – Goods Re-Entered after Repair or Alteration); or
- (f) any other matter that the Parties decide.

2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including a detailed description of the information reasonably required to process an application for a ruling.

3. Each Party shall provide that its competent authority:

- (a) during the course of an evaluation of an application for an advance ruling, may request supplemental information from the person requesting the ruling;
- (b) shall issue a ruling within 120 days of it obtaining all necessary information from the person requesting an advance ruling; and
- (c) shall provide to the person requesting the ruling a full explanation of the reasons for the ruling.

4. Subject to paragraph 6, each Party shall apply an advance ruling to importations into its territory of the good for which the ruling was requested, beginning either on the date of its issuance or a later date specified in the ruling.

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

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

(a) if the ruling is based on an error:

(i) of fact,

(ii) in the tariff classification of a good or a material that is the subject of the ruling,

(iii) in the application of a regional value content requirement under Article 4.3 (Rules of Origin – Regional Value Content), or

(iv) in the application of the rules for determining whether a good that re-enters its territory after the good has been exported from its territory to the territory of the other Party for repair or alteration qualifies for duty-free treatment under Article 3.8 (National Treatment and Market Access for Goods – Goods Re-Entered after Repair or Alteration);

(b) if the ruling is not in accordance with an interpretation decided on by the Parties under Article 21.1(3)(a) (Institutional Arrangements and Dispute Settlement Procedures – Free Trade Commission) regarding Chapter Three (National Treatment and Market Access of Goods) or Chapter Four (Rules of Origin);

(c) if there is a change in a material fact or circumstance on which the ruling is based;

- (d) to conform with an amendment to Chapter Three (National Treatment and Market Access of Goods), Chapter Four (Rules of Origin), this Chapter, or a modification to the Uniform Regulations; or
- (e) to conform with a judicial decision or a change in its domestic law.

7. Each Party shall provide that a modification or revocation of an advance ruling:

- (a) is effective on the date on which the modification or revocation is issued, or on a later date specified in the ruling; and
- (b) may not be applied to a good imported before that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

8. Notwithstanding paragraph 7, the issuing Party shall postpone the effective date of the modification or revocation for up to 90 days if the person to whom the advance ruling was issued demonstrates that it has relied in good faith on that ruling to that person's detriment.

9. Each Party shall provide that, if its competent authority examines the regional value content of a good for which it has issued an advance ruling pursuant to paragraph 1(b), (c), (d) or (e), the competent authority shall evaluate whether:

- (a) the exporter or producer has complied with the terms and conditions of the advance ruling;
- (b) the exporter's or producer's operations are consistent with the material facts and circumstances on which the advance ruling is based; and

- (c) the supporting data and computations used in applying the basis or method for calculating value or allocating cost were correct in all material respects.

10. If a Party's competent authority determines that a requirement in paragraph 9 has not been satisfied, the Party may modify or revoke the advance ruling if the circumstances warrant.

11. Each Party shall provide that, if 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 ruling was based, and if the competent authority of a Party determines that the ruling was based on incorrect information, the person to whom the ruling was issued is not subject to penalties.

12. If a Party issues an advance ruling to a person that has misrepresented or omitted the material facts or circumstances on which the ruling is based, or has failed to act in accordance with the terms and conditions of the ruling, the Party may apply the measures that are warranted by the circumstances, in accordance with its domestic law.

13. Each Party shall provide that an advance ruling will remain in effect and will be honoured if there is no change in the material facts or circumstances on which it is based.

14. A Party may decline or postpone the issuance of an advance ruling if the application involves an issue that is the subject of:

- (a) a verification of origin;
- (b) a review by or appeal to the competent authority; or
- (c) judicial or quasi-judicial review in its territory.

Section E – Review and Appeal of Advance Rulings and Origin Determinations

Article 5.11: Review and Appeal

1. Each Party shall grant substantially the same rights of review and appeal of determinations of origin and advance rulings issued by its competent authority as it provides to importers in its territory, to a person who:

- (a) completes and signs a Certificate of Origin for a good that has been the subject of a determination of origin; or
- (b) has received an advance ruling under Article 5.10(1).

2. Further to Articles 20.5 (Transparency – Administrative Proceedings) and 20.6 (Transparency – Review and Appeal), each Party shall provide that the rights of review and appeal referred to in paragraph 1 shall include access to:

- (a) at least one level of administrative review independent of the official or office responsible for the determination under review; and
- (b) in accordance with its domestic law, judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review.

Section F – Uniform Regulations

Article 5.12: Uniform Regulations

1. The Parties shall establish and implement, through their respective laws, regulations or administrative policies Uniform Regulations regarding the interpretation, application and administration of this Chapter, or other matters decided by the Parties.

2. Each Party shall implement any modification of or addition to the Uniform Regulations within the period that the Parties decide.

Section G – Cooperation

Article 5.13: Cooperation

1. A Party shall notify the other Party of the following determinations, measures, and rulings:

- (a) a determination of origin of a good that the Party is aware is contrary to a ruling issued by the competent authority of the other Party; or
- (b) a measure establishing or significantly modifying an administrative policy that is likely to affect a future determination of origin.

2. The Parties shall cooperate:

- (a) in the enforcement of their respective customs-related laws or regulations implementing this Agreement, and under any customs mutual assistance agreement or other customs related agreement to which they are party;
- (b) to the extent possible, and for the purposes of facilitating the flow of trade between them, in customs related matters such as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonization of documentation used in trade, the standardization of data elements, the acceptance of an international data syntax, and the exchange of information;
- (c) to the extent possible, in the harmonization of customs laboratories methods and exchange of information and personnel between the customs laboratories; and

- (d) to the extent possible, in jointly organizing training programs on customs related issues, which include training for the officials and users who participate directly in customs procedures.

3. For purposes of this Article, the Parties may enter into a Customs Mutual Assistance Agreement between their customs administrations.

Article 5.14: The Customs Procedures Sub-Committee

1. The Parties hereby establish a Customs Procedures Sub-Committee, composed of representatives of the competent authorities or customs administrations of each Party. The Sub-Committee shall meet periodically at the request of a Party and shall:

- (a) endeavour to decide on:
 - (i) the uniform interpretation, application and administration of Articles 3.6 (National Treatment and Market Access for Goods – Temporary Admission of Goods), 3.7. (National Treatment and Market Access for Goods – Duty-Free Entry of Certain Commercial Samples of Negligible Value and Printed Advertising Materials) and 3.8 (National Treatment and Market Access for Goods – Goods Re-Entered after Repair or Alteration), Chapter Four (Rules of Origin), this Chapter, and any Uniform Regulations,
 - (ii) tariff classification and valuation matters relating to determinations of origin,
 - (iii) equivalent procedures and criteria for the request, approval, modification, revocation and implementation of advance rulings,
 - (iv) revision of the Certificate of Origin,

- (v) any other matter referred to it by a Party or the Committee on Trade in Goods and Rules of Origin established under Article 3.19(1) (National Treatment and Market Access for Goods – Committee on Trade in Goods and Rules of Origin), and
 - (vi) any other customs-related matter arising under this Agreement;
- (b) consider:
- (i) the harmonization of customs-related automation requirements and documentation, and
 - (ii) proposed customs-related administrative or operational changes that may affect the flow of trade between the Parties' territories;
- (c) report periodically to the Committee on Trade in Goods and Rules of Origin and notify it of any decisions reached under this paragraph; and
- (d) refer to the Committee on Trade in Goods and Rules of Origin a matter on which it has been unable to reach a decision.

2. This Agreement does not prevent a Party from issuing a determination of origin or an advance ruling relating to a matter under consideration by the Customs Procedures Sub-Committee or from taking any other action it considers necessary, pending a resolution of the matter under this Agreement.