

## **CHAPTER 5**

### **CUSTOMS PROCEDURES**

#### **ARTICLE 5.1 : DEFINITIONS**

For the purposes of this Chapter:

**certificate of origin** means respective forms used for purposes of claiming preferential tariff treatment in the importing Party, certifying that an exported good qualifies as an originating good in accordance with Chapter 4 (Rules of Origin), on the basis of documentary evidence or reliable information;

**certification body** means a body referred to in Annex 5A;

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

**exporter** means a person located in the territory of a Party from where a good is exported by such a person;

**importer** means a person located in the territory of a Party where a good is imported by such a person;

**identical goods** means "identical goods" as defined in the Customs Valuation Agreement;

**producer** is as defined in Article 4.1;

**production** is as defined in Article 4.1;

**Cost and Production Statement** means a declaration made by the producer, in the calculation of the regional value content, the HS tariff classifications of the product and its non-originating material used, to determine the originating status of the good. The declaration should be signed by a designated authority, generally the managing director or accountant of the company. The declaration may be made by the importer or exporter, if he or she has pertinent information to the production of the good. Notwithstanding the

above, the producer shall not be required to provide the information to the importer or the exporter;

**value** means value of a good or material for purposes of calculating customs duties or for purposes of applying Chapter 4 (Rules of Origin);

**Declaration for Preference** means an application for claiming preferential tariff treatment declared, on the basis of a certificate of origin or any other documentary evidence of origin, by an importer to the customs administration as part of the import application that an imported good qualifies as an originating good in accordance with Chapter 4.

## **ARTICLE 5.2 : CERTIFICATE OF ORIGIN**

1. The Parties shall adopt two respective forms of the certificate of origin as set out in Annex 5B and Annex 5C, which may be revised by agreement between the Parties.

2. The respective certificate of origin, referred to in paragraph 1, shall be issued by the certification bodies of the exporting Party.

3. The issued certificate of origin shall be valid for twelve (12) months from the date of issue.

4. Each Party shall inform, through its customs administration, the other Party of the names and addresses of the authorised signatories issuing this certificate of origin and shall provide specimen impressions of signatures and official seals used by such signatories. Any change in names, addresses, signatures or official seals shall be promptly notified to the other Party.

5. Each Party shall:

- (a) require an exporter in its territory to complete and sign an application for certificate of origin for any good which an importer may claim preferential tariff treatment on importation of the good into the territory of the other Party; and

- (b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign an application for a certificate of origin on the basis of:
- (i) the exporter's knowledge that the good qualifies as an originating good; or
  - (ii) the exporter's reasonable reliance on the producer's written representation that the good qualifies as an originating good.

6. The certificate of origin shall be issued in the English language.
7. Each Party shall provide that a certificate of origin that has been issued by authorised body designated by each Party is applicable to a single importation of a good into its territory.
8. In cases where a certificate of origin has not been issued at the time of exportation or soon thereafter due to involuntary errors or omissions or other valid causes, the certificate of origin may be issued retrospectively but not later than one year from the date of shipment.

### **ARTICLE 5.3 : CLAIMS FOR PREFERENTIAL TREATMENT**

1. 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 declaration for preference as part of the import application prescribed by its legislation, based on importer's knowledge or information including a valid certificate of origin, that the good qualifies as an originating good;
  - (b) submit the certificate of origin or other documentary evidence of origin at the time of the declaration referred to in subparagraph (a), to its customs administration upon request; and
  - (c) 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 information that is incorrect.
2. Each Party shall provide that the importing Party applies preferential tariff treatment only in cases where an importer proves the accuracy of origin of the imported

goods through documentary evidence or any other relevant information in accordance with its laws and regulations.

3. A Party may deny preferential tariff treatment to an imported good if the importer fails to comply with requirements of this Chapter.

4. The importing Party shall grant preferential tariff treatment to goods imported after the date of entry into force of this Agreement, in cases where the importer does not have the certificate of origin or other documentary evidence of origin at the time of importation, provided that:

- (a) the importer had, at the time of importation, indicated to the customs administration of the importing Party his intention to claim preferential tariff treatment; and
- (b) the certificate of origin or other documentary evidence of origin is submitted to its customs administration within such period from the date of payment of customs duties in accordance with the domestic laws and regulations in the importing Party.

#### **ARTICLE 5.4 : OBLIGATIONS RELATING TO EXPORTATIONS**

1. Each Party shall provide that an exporter or a producer in its territory shall submit a copy of the certificate of origin or other documentary evidence of origin to its customs administration upon request.

2. Each Party shall provide that a false statement by an exporter or a producer in its territory that a good to be exported to the territory of the other Party qualifies as an originating good shall be penalised for a contravention of its customs laws and regulations regarding the making of a false statement or representation. Furthermore, each Party may apply such measures as the circumstances may warrant where an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

#### **ARTICLE 5.5 : RECORD KEEPING REQUIREMENT**

1. Each Party shall provide that an exporter and a producer in its territory that has obtained a certificate of origin shall maintain in its territory, for five (5) years after the date on which the certificate of origin was issued or for such longer period as the Party may specify, all 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, value of, shipping of, and payment for, the good that is exported from its territory;
- (b) the sourcing of, the purchase of, cost of, value of, and payment for, all materials, including neutral elements, 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 shall maintain in that territory, for five (5) years after the date of importation of the good or for such longer period as the Party may specify, such documentation, including a copy of the certificate of origin, as the Party may require relating to the importation of the good.

3. The records to be maintained in accordance with paragraphs 1 and 2 shall include electronic records and shall be maintained in accordance with the domestic laws and practices of each Party.

#### **ARTICLE 5.6 : WAIVER OF CERTIFICATE OF ORIGIN**

1. Notwithstanding paragraph 1(b) of Article 5.3, a certificate of origin shall not be required for:

- (a) an importation of a good whose aggregate customs value does not exceed USD 1,000 or its equivalent amount in the Party's currency, or such higher amount as it may establish; or
- (b) an importation of a good into the territory of the importing Party, for which the importing Party has waived the requirement for a certificate of origin in accordance with its domestic laws and practices;

provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of Articles 5.2 and 5.3.

2. The importing Party may request the importer in paragraph 1 to provide relevant documents to certify that the good qualifies as an originating good.

#### **ARTICLE 5.7 : VERIFICATIONS FOR PREFERENTIAL TARIFF TREATMENT**

1. For the purposes of determining whether a good imported into its territory from the territory of the other Party is eligible for preferential tariff treatment, the importing Party may, through its customs administration, conduct a verification, which may be in sequence, by means of:

- (a) request for a certificate of origin from the importer;
- (b) request for Cost and Production Statement and information from the importer for cases where the importer is able to prepare it on the basis of the importer's own documentary evidence or information;
- (c) request for Cost and Production Statement and information from an exporter or a producer in the territory of the other Party through the other Party's customs administration;
- (d) visit to the premises of an exporter or a producer in the territory of the other Party to review the records referred to in paragraph 1 of Article 5.5 and observe the facilities used in the production of the good, or to that effect any facilities used in the production of the materials; or
- (e) such other procedure as the Parties may agree to.

2. The importer, exporter or producer that receives a written request pursuant to subparagraphs (a), (b) or (c) of paragraph 1 shall answer and return it within a period of thirty (30) days from the date on which it was received. During this period, the importer, exporter or producer may have one opportunity to make a written request to the Party conducting the verification for an extension of the answering period, for a period not exceeding thirty (30) days.

3. In the case where the importer, exporter, or producer does not return the written

request for information made by the importing Party within the given period or its extension, or that the information provided is false or incomplete, the Party may deny preferential tariff treatment.

4. Prior to conducting a verification visit pursuant to subparagraph 1(d), a Party shall, through its customs administration:

- (a) deliver a written notification of its intention to conduct the visit to:
  - (i) the exporter or producer whose premises are to be visited; and
  - (ii) the customs administration of the other Party; and
- (b) obtain the written consent of the exporter or producer whose premises are to be visited.

5. Where an exporter or producer has not given its written consent to a proposed verification visit within thirty (30) days from the receipt of notification pursuant to paragraph 4, the notifying Party may deny preferential tariff treatment to the relevant good.

6. Each Party shall provide that, upon receipt of notification pursuant to paragraph 4, such an exporter or producer may, within fifteen (15) days of receiving the notification, have one opportunity to request to the Party conducting the verification for a postponement of the proposed verification visit, for a period not exceeding sixty (60) days. This extension shall be notified to the customs administration of the importing and exporting Parties.

7. A Party shall not deny preferential tariff treatment to a good solely because a verification visit was postponed pursuant to paragraph 6.

8. After the conclusion of a verification visit, the Party conducting the verification, shall provide the exporter or producer whose good was verified, with a written determination of whether the good is eligible for preferential tariff treatment, based on the relevant law and findings of fact.

9. Where verifications by a Party show that an exporter or producer repeatedly makes false or unsupported representations that a good imported into the Party's territory qualifies as an originating good, the Party may suspend the preferential tariff treatment to be accorded to subsequent shipment of identical good exported or produced

by such a person until that person establishes that the shipment complies with Chapter 4 (Rules of Origin), in accordance with its domestic laws, regulations or practices. The importing Party shall inform the customs administration of the exporting Party on the evidence and details of the suspension made.

#### **ARTICLE 5.8 : ADVANCE RULINGS**

1. Prior to the importation of a good into its territory, each Party, through its customs administration, shall provide for the issuance of written advance rulings to an importer of the good in its territory or to an exporter or producer of the good in the other Party's territory concerning tariff classification, questions arising from the application of the Customs Valuation Agreement and country of origin so as to determine whether the good qualifies as an originating good.
2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including:
  - (a) the provision that an importer or its agent in its territory or an exporter or producer or their agent in the territory of the other Party may request such a ruling prior to the importation in question;
  - (b) a detailed description of the information required to process a request for an advance ruling; and
  - (c) the provision that the advance ruling be based on the facts and circumstances presented by the person requesting the ruling.
3. Each Party shall provide that its customs administrations:
  - (a) may request, at any time during the course of evaluating an application for an advance ruling, additional information necessary to evaluate the application;
  - (b) shall issue the advance ruling expeditiously, and in any case within ninety (90) days of obtaining all necessary information; and
  - (c) shall provide, upon request of the person who requested the advance ruling, a full explanation of the reasons for the ruling.
4. The importing Party may modify or revoke the issued ruling:

- (a) if the ruling was based on an error of fact;
- (b) if there is a change in the material facts or circumstances on which the ruling was based;
- (c) to conform with an amendment to this Agreement; or
- (d) to conform with a judicial or administration decision or a change in its domestic laws and regulations.

5. Each Party shall provide that any modification or revocation of an advance ruling is effective on the date on which the modification or revocation is issued, or on such a later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

6. Notwithstanding paragraph 5, the issuing Party shall postpone the effective date of such modification or revocation for a period not exceeding sixty (60) days where the person to whom the advance ruling was issued demonstrates that it has relied in good faith to its detriment on that ruling.

7. Each Party shall provide that where it issues an advance ruling to a person that has misrepresented or omitted material facts or circumstances or failed to act in accordance with the terms and conditions of the ruling, the Party may impose penalties or deny the preferential tariff treatment as the circumstances may warrant.

8. A good that is subject to an origin verification process or any instance of review or appeal in the territory of one of the Parties may not be the subject of an advance ruling.

9. Subject to paragraph 10, each Party shall apply an advance ruling to importations into its territory of the relevant good from the date of its issuance or from such later date as may be specified in the ruling.

10. The importing Party shall apply the advance ruling for three (3) years from the date of issuance of the ruling.

#### **ARTICLE 5.9 : DENIAL OF PREFERENTIAL TARIFF TREATMENT**

Except as otherwise provided in this Chapter, each Party may, notwithstanding the requirements of Articles 5.3, 5.4, 5.5, 5.6 and 5.7 and any other legal requirements imposed under its law have been satisfied, deny the applicable preferential tariff treatment to an originating good imported into its territory:

- (a) if the declared origin of the imported good is not supported by documentary evidence presented by an importer in its territory, or an exporter or a producer in the territory of the other Party;
- (b) if an exporter or a producer in the territory of the other Party does not allow the customs administration of the importing Party access to information required to make a determination of whether the goods or the materials is originating by the following or other means:
  - (i) denial of access to its records and/or documents;
  - (ii) failure to respond to a cost and production statement or information requested; or
  - (iii) failure to maintain records or documentation relevant to determine the origin of the good in accordance with the requirement of this Chapter;
- (c) if, where the good is shipped through or transshipped in the territory of a country that is not a Party under this Agreement, the importer of the good does not provide, on the request of that Party's customs administration:
  - (i) a copy of the customs control documents that indicate, to the satisfaction of the importing Party's customs administration, that the goods remained under customs control while in the territory of such non-Parties;
  - (ii) any other information given by the customs administration of such non-Parties or other relevant entities, which evidences that they have not undergone, in such non-Parties, operation other than unloading, reloading, crating, packing, repacking or any other operation necessary to keep them in good condition; or
  - (iii) any other information or commercial documents given by the importer which evidence that they have not undergone, in such non-Parties, operation other than unloading, reloading, crating, packing, repacking or any other operation necessary to keep them in good condition; or
- (d) if, within thirty (30) days after the request of the customs administration of the importing Party, the producer, exporter or importer of a good, which has undergone processes of production or operation outside the territory of a Party, fails to submit all the necessary documentary evidence to prove that

the good satisfies all the requirements set out in Article 4.4, including that has been obtained from the performer of the processes of production or operation outside the territory of the Party. Notwithstanding the above, the producer, exporter or importer of a good may have one opportunity to make a written request to the customs administration of the importing Party for an extension of the submission period, for a period not exceeding thirty (30) days.

#### **ARTICLE 5.10 : TEMPORARY ADMISSION AND GOODS IN TRANSIT**

1. Each Party shall continue to facilitate the procedures for the temporary admission of goods traded between the Parties in accordance with the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods.
2. Each Party shall continue to facilitate customs clearance of goods in transit from or to the territory of the other Party.

#### **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 by its customs administration, as it provides to importers in its territory, to any person:
  - (a) who has obtained a certificate of origin or completed a cost and production statement for a good that has been the subject of a determination of origin under this Chapter; or
  - (b) who has received an advance ruling pursuant to Article 5.8.
2. 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<sup>5-1</sup> independent of the official or

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<sup>5-1</sup> For Singapore, the level of administrative review may include the Ministry supervising the Customs administration.

- 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<sup>5-2</sup>.

## **ARTICLE 5.12 : PENALTIES**

Each Party shall maintain measures imposing criminal or administrative penalties, whether solely or in combination, for violations of its laws and regulations relating to this Chapter.

## **ARTICLE 5.13 : CUSTOMS CO-OPERATION**

The Parties shall co-operate through their respective customs administrations on:

- (a) Verification of Origin:
- (i) The Parties shall co-operate through their respective customs administrations in the origin verification process of a good, for which the customs administration of the importing Party may request the other Party's customs administrations to co-operate in this process of verification in its own territory; and
- (ii) A Party may, if it considers necessary, station customs liaison officers in the local embassy to work with the host government, for information exchange pertaining to origin verification;
- (b) Paperless Customs Clearance:
- (i) The Parties shall, as they deem fit, simplify and streamline customs procedures through the domestic integration of customs systems with other controlling agencies, with a view to enhancing paperless customs clearance;
- (ii) The Parties shall endeavour to provide an electronic environment that supports business transactions between their respective customs administrations and their trading communities; and

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<sup>5-2</sup> The review of the determination or decision taken at the final level of administrative review in Singapore may take the form of a common law judicial review.

- (iii) The Parties shall exchange views and information on realising and promoting paperless customs clearance between their respective customs administrations and their trading communities;
- (c) Risk Management:
  - (i) The Parties shall adopt risk management approach in its customs activities based on its identified risk of goods in order to facilitate the clearance of low risk consignments, while focusing its inspection activities on high-risk goods; and
  - (ii) The Parties shall exchange information on risk management techniques in the performance of their customs procedures;
- (d) Sharing of Best Practices and Information:
  - (i) The Parties may, as they deem fit, organise training programmes in customs-related issues, which should include training for customs officials as well as users that directly participate in customs procedures; and
  - (ii) The Parties may, as they deem fit, facilitate initiatives for the exchange of information on best practices in relation to customs procedures and matters in accordance with their respective domestic customs laws; and
- (e) Transparency:
  - (i) Each Party shall ensure that its laws, regulations, guidelines, procedures, and administrative rulings governing customs matters are promptly published, either on the Internet or in print form;
  - (ii) Each Party shall designate, establish, and maintain one or more inquiry points to address inquiries from interested persons pertaining to customs matters, and shall make available on the Internet information concerning procedures for making such inquiries; and
  - (iii) For the purposes of certainty, nothing in this Article or in any part of this Agreement shall require any Party to publish law enforcement procedures and internal operational guidelines including those related to conducting risk analysis and targeting methodologies.

#### **ARTICLE 5.14 : IMPLEMENTATION OF OBLIGATIONS**

1. The provisions in this Chapter must be implemented by the Parties by the time that this Agreement enters into force.

2. Each Party must implement all its obligations through the institution of legal or administrative changes and where necessary amend its domestic laws to support the implementation of the obligations undertaken.

#### **ARTICLE 5.15 : CUSTOMS CONTACT POINTS AND AD HOC CUSTOMS COMMITTEE**

1. Each Party shall discharge all its obligations that are undertaken in accordance with this Chapter.

2. Each Party shall designate the contact point set out in Annex 5D for all matters relating to this Chapter and Chapter 4 (Rules of Origin).

3. Upon the receipt of any matter raised by the customs administration of a Party, the customs administration of the other Party shall assign its own experts to look into the matter and to respond with its findings and proposed solution for resolving the matter within a reasonable time.

4. The Parties shall endeavour to resolve any matter raised under this Article through consultations between contact points. If the matter cannot be so resolved, the matter shall be referred to a customs committee established on an ad hoc basis pursuant to Article 22.1.

#### **ARTICLE 5.16 : CONFIDENTIALITY**

1. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information, the disclosure of which would impede law enforcement, be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises, public or private.

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

## **ARTICLE 5.17 : REVIEW**

The Parties shall review the certification system agreed under this Chapter for issuing the certificate of origin at the review as provided in Article 22.1.