

CHAPTER 5

ORIGIN PROCEDURES

Article 5.1: Definitions

For the purposes of this Chapter:

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

identical goods means goods that are the same in all respects, including physical characteristics, quality, and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods under Chapter 4 (Rules of Origin) or Chapter 6 (Textile and Apparel Goods);

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

value means value of a good or material for purposes of calculating customs duties or for purposes of applying Chapter 4 (Rules of Origin) or Chapter 6 (Textile and Apparel Goods).

Article 5.2: Claims for Preferential Tariff Treatment

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment, based on a certification of origin completed by the exporter, producer, or importer¹ for the purpose of certifying that a good being exported from the territory of a Party into the territory of another Party qualifies as an originating good.

2. An importing Party may:

- (a) require that an importer who completes a certification of origin provide documents or other information to support the certification;
- (b) establish in its law conditions that an importer shall meet to complete a certification of origin;

¹ For Mexico, implementation of paragraph 1 with respect to a certification of origin by the importer shall be no later than three years and six months after the date of entry into force of this Agreement.

- (c) if an importer fails to meet or no longer meets the conditions established under subparagraph (b), prohibit that importer from providing its own certification as the basis of a claim for preferential tariff treatment; or
 - (d) if a claim for preferential tariff treatment is based on a certification of origin completed by an importer, prohibit that importer from:
 - (i) issuing a certification, based on a certification of origin or a written representation completed by the exporter or producer, and
 - (ii) making a subsequent claim for preferential tariff treatment for the same importation, based on a certification of origin completed by the exporter or producer.
3. Each Party shall provide that a certification of origin:
- (a) need not follow a prescribed format;
 - (b) contains a set of minimum data elements as set out in Annex 5-A (Minimum Data Elements) that indicate that the good is both originating and meets the requirements of this Chapter;
 - (c) may be provided on an invoice or any other document;
 - (d) describes the originating good in sufficient detail to enable its identification; and
 - (e) meets the requirements as set out in the Uniform Regulations.
4. A Party shall not reject a claim for preferential tariff treatment for the sole reason that the invoice was issued in a non-Party. However, a certification of origin shall not be provided on an invoice or any other commercial document issued in a non-Party.
5. Each Party shall provide that the certification of origin for a good imported into its territory may be completed in English, French, or Spanish. If the certification of origin is not in a language of the importing Party, the importing Party may require an importer to submit, upon request, a translation into such a language.
6. Each Party shall allow a certification of origin to be completed and submitted electronically and shall accept the certification of origin with an electronic or digital signature.

Article 5.3: Basis of a Certification of Origin

1. Each Party shall provide that if a producer certifies the origin of a good, the certification of origin is completed on the basis of the producer having information, including documents, that demonstrate that the good is originating.
2. Each Party shall provide that if the exporter is not the producer of the good, the certification of origin may be completed by the exporter of the good on the basis of:
 - (a) having information, including documents, that demonstrate that the good is originating; or
 - (b) reasonable reliance on the producer's written representation, such as in a certification of origin, that the good is originating.
3. Each Party shall provide that a certification of origin may be completed by the importer of the good on the basis of the importer having information, including documents, that demonstrate that the good is originating.
4. For greater certainty, nothing in paragraph 1 or 2 shall be construed to allow a Party to require an exporter or producer to complete a certification of origin or provide a certification of origin or a written representation to another person.
5. Each Party shall provide that a certification of origin may apply to:
 - (a) a single shipment of a good into the territory of a Party; or
 - (b) multiple shipments of identical goods within any period specified in the certification of origin, but not exceeding 12 months.
6. Each Party shall provide that a certification of origin for a good imported into its territory be accepted by its customs administration for four years after the date the certification of origin was completed.

Article 5.4: Obligations Regarding Importations

1. Except as otherwise provided for in this Chapter, each Party shall provide that, for the purpose of claiming preferential tariff treatment, the importer shall:
 - (a) make a statement forming part of the import documentation based on a valid certification of origin that the good qualifies as an originating good;

- (b) have a valid certification of origin in its possession at the time the statement referred to in subparagraph (a) is made;
- (c) provide, on the request of the importing Party's customs administration, a copy of the certification of origin, in accordance with its laws and regulations;
- (d) if a certification by the importer forms the basis for the claim, demonstrate, on request of the importing Party, that the good is originating under Article 5.3.3 (Basis of a Certification of Origin); and
- (e) if the claim for preferential tariff treatment is based on a certification of origin completed by a producer that is not the exporter of the good, demonstrate, on the request of the importing Party, that the good certified as originating did not undergo further production or any other operation other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good into the territory of the importing Party.

2. Each Party shall provide that, if the importer has reason to believe that the certification of origin is based on incorrect information that could affect the accuracy or validity of the certification of origin, the importer shall promptly correct the importation document and pay any duties owing. The importer shall not be subject to penalties for making an incorrect statement that formed part of the import documentation, if it promptly corrects the importation document and pays any duties owing.

3. A Party may require an importer to demonstrate that a good for which the importer claims preferential tariff treatment was shipped in accordance with Article 4.18 (Transit and Transshipment) by providing:

- (a) transportation documents, including the multimodal or combined transportation documents, such as bills of lading or waybills, indicating the shipping route and all points of shipment and transshipment prior to the importation of the good; and
- (b) if the good is shipped through or transhipped outside the territories of the Parties, relevant documents, such as in the case of storage, storage documents or a copy of the customs control documents, demonstrating that the good remained under customs control while outside the territories of the Parties.

Article 5.5: Exceptions to Certification of Origin

Each Party shall provide that a certification of origin shall not be required if:

- (a) the value of the importation does not exceed US\$1,000 or the equivalent amount in the importing Party's currency or any higher amount as the importing Party

may establish. A Party may require a written representation certifying that the good qualifies as an originating good; or

- (b) it is an importation of a good for which the Party into whose territory the good is imported has waived the requirement for a certification of origin,

provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of evading compliance with the importing Party's laws, regulations, or procedures governing claims for preferential tariff treatment.

Article 5.6: Obligations Regarding Exportations

1. Each Party shall provide that an exporter or producer in its territory that completes a certification of origin shall provide a copy of the certification of origin to its customs administration, on its request.

2. Each Party shall provide that if an exporter or a producer in its territory has provided a certification of origin and has reason to believe that it contains or is based on incorrect information, the exporter or producer shall promptly notify, in writing, every person and every Party to whom the exporter or producer provided the certification of origin of any change that could affect the accuracy or validity of the certification of origin.

3. No Party shall impose penalties on an exporter or a producer in its territory that voluntarily provides written notification pursuant to paragraph 2 with respect to a certification of origin.

4. A Party may apply measures as the circumstances may warrant when an exporter or a producer in its territory fails to comply with any requirement of this Chapter.

5. Each Party shall allow a certification of origin to be maintained in any medium and submitted electronically from the exporter or producer in the territory of a Party to an importer in the territory of another Party.

Article 5.7: Errors or Discrepancies

1. Each Party shall provide that it shall not reject a certification of origin due to minor errors or discrepancies in it that do not create doubts concerning the correctness of the import documentation.

2. Each Party shall provide that if the customs administration of the Party into whose territory a good is imported determines that a certification of origin is illegible, defective on its

face, or has not been completed in accordance with this Chapter, the importer shall be granted a period of not less than five working days to provide the customs administration with a copy of the corrected certification of origin.

Article 5.8: Record Keeping Requirements

1. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into its territory shall maintain, for a period of no less than five years from the date of importation of the good:

- (a) the documentation related to the importation, including the certification of origin that served as the basis for the claim;
- (b) all records necessary to demonstrate that the good is originating, if the claim was based on a certification of origin completed by the importer; and
- (c) the information, including documents, necessary to demonstrate compliance with Article 5.4.1(e) (Obligations Regarding Importations), if applicable.

2. Each Party shall provide that an exporter or a producer in its territory that completes a certification of origin or a producer that provides a written representation shall maintain in its territory for five years after the date on which the certification of origin was completed, or for such longer period as the Party may specify, all records necessary to demonstrate that a good for which the exporter or producer provided a certification of origin or other written representation is originating, including records associated with:

- (a) the purchase of, cost of, value of, shipping of, and payment for, the good or material;
- (b) the purchase of, cost of, value of, shipping of, and payment for all materials, including indirect materials, used in the production of the good or material; and
- (c) the production of the good in the form in which the good is exported or the production of the material in the form in which it was sold.

3. Each Party shall provide in accordance with that Party's law that an importer, exporter, or producer in its territory may choose to maintain the records or documentation specified in paragraphs 1 and 2 in any medium, including electronic, provided that the records or documentation can be promptly retrieved and printed.

4. For greater certainty, the record keeping requirements on an importer, exporter, or producer that a Party provides for pursuant to this Article apply even if the importing Party does

not require a certification of origin or if a requirement for a certification of origin has been waived.

Article 5.9: Origin Verification

1. For the purpose of determining whether a good imported into its territory is an originating good, the importing Party may, through its customs administration, conduct a verification of a claim for preferential tariff treatment by one or more of the following:

- (a) a written request or questionnaire seeking information, including documents, from the importer, exporter, or producer of the good;
- (b) a verification visit to the premises of the exporter or producer of the good in order to request information, including documents, and to observe the production process and the related facilities; (c) for a textile or apparel good, the procedures set out in Article 6.6 (Verification); or
- (d) any other procedure as may be decided by the Parties.

2. The importing Party may choose to initiate a verification under this Article to the importer or the person who completed the certification of origin.

3. If an importing Party conducts a verification under this Article it shall accept information, including documents, directly from the importer, exporter, or producer.

4. If a claim for preferential tariff treatment is based on a certification of origin completed by the exporter or producer, and in response to a request for information by an importing Party to determine whether a good is originating in verifying a claim of preferential treatment under paragraph 1(a), the importer does not provide sufficient information to demonstrate that the good is originating, the importing Party shall request information from the exporter or producer under paragraph 1 before it may deny the claim for preferential tariff treatment. The importing Party shall complete the verification, including any additional request to the exporter or producer under paragraph 1, within the time provided in paragraph 15.

5. A written request or questionnaire seeking information, including documents, or a request for a verification visit, under paragraphs 1(a) or (b) shall:

- (a) include the identity of the customs administration issuing the request;
- (b) state the object and scope of the verification, including the specific issue the requesting Party seeks to resolve with the verification;
- (c) include sufficient information to identify the good that is being verified; and

- (d) in the case of a verification visit, request the written consent of the exporter or producer whose premises are going to be visited and indicate:
 - (i) the legal authority for the visit,
 - (ii) the proposed date and location for the visit,
 - (iii) the specific purpose of the visit, and
 - (iv) the names and titles of the officials performing the visit.

6. If an importing Party has initiated a verification under paragraph 1(a) or 1(b) other than to the importer, it shall inform the importer of the initiation of the verification.

7. For a verification under paragraph 1(a) or 1(b), the importing Party shall:

- (a) ensure that the written request for information, or documentation to be reviewed, is limited to information and documentation to determine whether the good is originating;
- (b) describe the information or documentation in detail to allow the importer, exporter, or producer to identify the information and documentation necessary to respond;
- (c) allow the importer, exporter, or producer at least 30 days from the date of receipt of the written request or questionnaire under paragraph 1(a) to respond; and
- (d) allow the exporter or producer 30 days from the date of receipt of the written request for a visit under paragraph 1(b) to consent to or refuse the request.

8. On request of the importing Party, the Party where the exporter or producer is located may, as it deems appropriate and in accordance with its laws and regulations, assist with the verification. This assistance may include providing information it has that is relevant to the origin verification. The importing Party shall not deny a claim for preferential tariff treatment solely on the grounds that the Party where the exporter or producer is located did not provide requested assistance.

9. If an importing Party initiates a verification under paragraph 1(b), it shall, at the time of the request for the visit under paragraph 5, provide a copy of the request to:

- (a) the customs administration of the Party in whose territory the visit is to occur; and

- (b) 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.

10. Each Party shall provide that, when the exporter or producer receives notification pursuant to paragraph 5, the exporter or producer may, on a single occasion, within 15 days of receipt of the notification, request the postponement of the proposed verification visit for a period not exceeding 30 days from the proposed date of the visit.

11. Each Party shall provide that, when its customs administration receives notification pursuant to paragraph 9, the customs administration may, within 15 days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 days from the proposed date of the visit, or for a longer period as the relevant Parties may decide.

12. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraphs 10 or 11.

13. Each Party shall permit an exporter or a producer whose good is subject to a verification visit by another Party to designate two observers to be present during the visit, provided that:

- (a) the observers do not participate in a manner other than as observers;
- (b) the failure of the exporter or producer to designate observers does not result in the postponement of the visit; and
- (c) an exporter or producer of a good identifies to the customs administration conducting a verification visit any observers designated to be present during the visit.

14. The importing Party shall provide the importer, exporter, or producer that certified that the good was originating and is the subject of a verification, with a written determination of origin that includes the findings of facts and the legal basis for the determination. If the importer is not the certifier, the importing Party shall also provide that written determination to the importer.

15. The Party conducting a verification shall, as expeditiously as possible and within 120 days after it has received all the information necessary² to make the determination, provide the written determination under paragraph 14. Notwithstanding the foregoing, the Party may extend this period, in exceptional cases, for up to 90 days after notifying the importer, and any exporter or producer who is subject to the verification or provided information during the verification.

² This includes any information collected pursuant to a verification request to an exporter or producer.

16. Prior to issuing a written determination under paragraph 14, if the importing Party intends to deny preferential tariff treatment, the importing Party shall inform the importer, and any exporter or producer who is subject to the verification and provided information during the verification, of the preliminary results of the verification and provide those persons with a notice of intent to deny that includes when the denial would be effective and a period of at least 30 days for the submission of additional information, including documents, related to the originating status of the good.

17. If verifications by a Party indicate a pattern of conduct by an importer, exporter, or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods imported, exported, or produced by such person until that person establishes compliance with this Chapter, Chapter 4 (Rules of Origin), and Chapter 6 (Textile and Apparel Goods).

18. For the purposes of this Article and relevant articles of the Uniform Regulations, all communication to the exporter or producer and to the customs administration of the Party of export will be sent by any means that can produce any confirmation of receipt. The specified time periods will begin from the date of receipt.

Article 5.10: Determinations of Origin

1. Except as otherwise provided in paragraph 2 or Article 6.7 (Determinations), each Party shall grant a claim for preferential tariff treatment made under this Chapter on or after the date of entry into force of this Agreement.

2. The importing Party may deny a claim for preferential tariff treatment if:

- (a) it determines that the good does not qualify for preferential treatment;
- (b) pursuant to a verification under Article 5.9 (Origin Verification), it has not received sufficient information to determine that the good qualifies as originating;
- (c) the exporter, producer, or importer fails to respond to a written request or questionnaire for information, including documents, under Article 5.9 (Origin Verification);
- (d) the exporter or producer fails to provide its written consent for a verification visit, in accordance with Article 5.9 (Origin Verification);
- (e) the importer, exporter, or producer fails to comply with the requirements of this Chapter; or

- (f) the exporter, producer, or importer of the good that is required to maintain records or documentation in accordance with this Chapter:
 - (i) fails to maintain records or documentation, or
 - (ii) denies access, if requested by a Party, to those records or documentation.

Article 5.11: Refunds and Claims for Preferential Tariff Treatment after Importation

1. Each Party shall provide that an importer may apply for preferential tariff treatment and a refund of any excess duties paid for a good if the importer did not make a claim for preferential tariff treatment at the time of importation, provided that the good would have qualified for preferential tariff treatment when it was imported into the territory of the Party.

2. The importing Party may, for the purposes of paragraph 1, require that the importer:

- (a) make a claim for preferential tariff treatment;
- (b) provide a statement that the good was originating at the time of importation;
- (c) provide a copy of the certification of origin; and
- (d) provide any other documentation relating to the importation of the good as the importing Party may require,

no later than one year after the date of importation or a longer period if specified in the importing Party's law.

Article 5.12: Confidentiality

1. If a Party provides information to another Party in accordance with this Chapter and designates the information as confidential or it is confidential under the receiving Party's law, the receiving Party shall keep the information confidential in accordance with its law.

2. A Party may decline to provide information requested by another Party if that Party has failed to act in accordance with paragraph 1.

3. A Party may use or disclose confidential information received from another Party under this Chapter but only for the purposes of administration or enforcement of its customs laws or as otherwise provided under the Party's law, including in an administrative, quasi-judicial, or judicial proceeding.

4. When a Party collects information from a trader under this Chapter, that Party shall apply the provisions set out in Article 7.24 (Protection of Trader Information) to keep the information confidential.

Article 5.13: Penalties

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

Article 5.14: Advance Rulings Relating to Origin

1. In accordance with Article 7.5 (Advance Rulings), each Party, through its customs administration, shall, on request, provide for the issuance of a written advance ruling on origin under this Agreement.

2. Each Party shall adopt or maintain uniform procedures throughout its territory for the issuance of advance rulings on origin under this Agreement, including the common standards set out in the Uniform Regulations regarding the information required to process an application for a ruling.

Article 5.15: 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 related to origin under this Agreement as it provides to importers in its territory, to an exporter or producer:

- (a) that completes a certification of origin for a good that has been the subject of a determination of origin under this Agreement; or
- (b) that has received an advance ruling on origin under this Agreement pursuant to Article 5.14 (Advance Rulings Relating to Origin), and Article 7.5 (Advance Rulings).

Article 5.16: Uniform Regulations

1. The Parties shall, by entry into force of this Agreement, adopt or maintain through their respective laws or regulations, Uniform Regulations regarding the interpretation, application, and administration of this Chapter, Chapter 4 (Rules of Origin), Chapter 6 (Textile and Apparel Goods), Chapter 7 (Customs Administration and Trade Facilitation) and other matters as may be decided by the Parties.
2. The Committee on Rules of Origin and Origin Procedures (Origin Committee) shall consult to discuss possible amendments or modifications to the Uniform Regulations.
3. In particular, the Origin Committee shall consult regularly to consider modifications or additions to the Uniform Regulations to reduce their complexity and provide practical and useful guidance to ensure better compliance with the rules and procedures of this Chapter, Chapter 4 (Rules of Origin), and Chapter 6 (Textile and Apparel Goods), including examples or guidance that would be of particular assistance to SMEs in the territories of the Parties.
4. The Origin Committee shall notify the Commission of any modification of or addition to the Uniform Regulations it decides.
5. Each Party shall implement any modification of or addition to the Uniform Regulations within a period that the Parties decide.
6. Each Party shall apply the Uniform Regulations in addition to the obligations in the Chapter.

Article 5.17: Notification of Treatment

1. Each Party shall notify the other Parties of the following determinations, measures, and rulings, including to the extent practicable those that are prospective in application:
 - (a) a determination of origin issued as the result of a verification conducted pursuant to Article 5.9 (Origin Verification);
 - (b) a determination of origin that the Party is aware is contrary to:
 - (i) a ruling issued by the customs administration of another Party, or
 - (ii) consistent treatment given by the customs administration of another Party with respect to the tariff classification or value of a good, or of materials used in the production of a good, or the reasonable allocation of costs when calculating the net cost of a good, that has been the subject of a determination of origin;

- (c) a measure establishing or significantly modifying an administrative policy that is likely to affect a future determination of origin; and
- (d) an advance ruling, or a ruling modifying or revoking an advance ruling, on origin under this Agreement, pursuant to Article 5.14 (Advance Rulings Relating to Origin), and Article 7.5 (Advance Rulings).

Article 5.18: Committee on Rules of Origin and Origin Procedures

1. The Parties hereby establish a Committee on Rules of Origin and Origin Procedures (Origin Committee), composed of government representatives of each Party, to consider any matters arising under this Chapter or Chapter 4 (Rules of Origin).
2. The Origin Committee shall consult regularly to ensure that this Chapter and Chapter 4 (Rules of Origin) are administered effectively, uniformly, and consistently with the spirit and objectives of this Agreement.
3. The Origin Committee shall consult to discuss possible amendments or modifications to this Chapter or Chapter 4 (Rules of Origin), and in particular to the Product-Specific Rules of Origin in Annex 4-B, except Product-Specific Rules for textile and apparel goods, taking into account developments in technology, production processes, or other related matters. A Party may submit a proposed modification, along with supporting rationale and any studies to the other Parties for consideration. In particular, the Committee shall consider the possibility of cumulation with non-parties with which the Parties have trade agreements on a product by product basis.
4. Prior to the entry into force of an amended version of the Harmonized System, the Origin Committee shall consult to prepare updates to this Chapter and Chapter 4 (Rules of Origin), and in particular to the Product-Specific Rules of Origin in Annex 4-B, except for textiles and apparel goods, that are necessary to reflect changes to the Harmonized System.
5. With respect to a textile or apparel good, Article 6.8 (Committee on Textile and Apparel Trade Matters) applies in place of this Article.

Article 5.19: Sub-Committee on Origin Verification

1. The Parties hereby establish a Sub-Committee on Origin Verification, composed of government representatives of each Party, which will be a subcommittee of the Origin Committee.

2. The Sub-Committee shall meet at least once within one year of the date of entry into force of this Agreement, and thereafter at such times as the Parties decide or on request of the Commission or the Origin Committee.

3. The Sub-Committee's functions shall include:

- (a) discussing and developing technical papers and sharing technical advice related to this Chapter or Chapter 4 (Rules of Origin) for the purposes of conducting verifications of origin;
- (b) developing and improving the NAFTA 1994 Audit Manual and recommending verification procedures;
- (c) developing and improving verification questionnaires, forms, or brochures; and
- (d) providing a forum for the Parties to consult and endeavor to resolve issues relating to origin verification.

ANNEX 5-A

MINIMUM DATA ELEMENTS

A certification of origin that is the basis for a claim for preferential tariff treatment under this Agreement shall include the following elements:

1. Importer, Exporter, or Producer Certification of Origin

Indicate whether the certifier is the exporter, producer, or importer in accordance with Article 5.2 (Claims for Preferential Treatment).

2. Certifier

Provide the certifier's name, title, address (including country), telephone number, and e-mail address.

3. Exporter

Provide the exporter's name, address (including country), e-mail address, and telephone number if different from the certifier. This information is not required if the producer is completing the certification of origin and does not know the identity of the exporter. The address of the exporter shall be the place of export of the good in a Party's territory.

4. Producer

Provide the producer's name, address (including country), e-mail address, and telephone number, if different from the certifier or exporter or, if there are multiple producers, state "Various" or provide a list of producers. A person that wishes for this information to remain confidential may state "Available upon request by the importing authorities". The address of a producer shall be the place of production of the good in a Party's territory.

5. Importer

Provide, if known, the importer's name, address, e-mail address, and telephone number. The address of the importer shall be in a Party's territory.

6. Description and HS Tariff Classification of the Good

- (a) Provide a description of the good and the HS tariff classification of the good to the 6-digit level. The description should be sufficient to relate it to the good covered by the certification; and

- (b) If the certification of origin covers a single shipment of a good, indicate, if known, the invoice number related to the exportation.

7. Origin Criteria

Specify the origin criteria under which the good qualifies, as set out in Article 4.2 (Originating Goods).

8. Blanket Period

Include the period if the certification covers multiple shipments of identical goods for a specified period of up to 12 months as set out in Article 5.2 (Claims for Preferential Treatment).

9. Authorized Signature and Date

The certification must be signed and dated by the certifier and accompanied by the following statement:

I certify that the goods described in this document qualify as originating and the information contained in this document is true and accurate. I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification.