

## CHAPTER 3

### RULES OF ORIGIN AND ORIGIN PROCEDURES

#### Section A: Rules of Origin

##### Article 3.1: Definitions

For the purposes of this Chapter:

**aquaculture** means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants from seed stock such as eggs, fry, fingerlings or larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;

**fungible goods or materials** means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

**Generally Accepted Accounting Principles** means those principles recognised by consensus or with substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These principles may encompass broad guidelines for general application, as well as detailed standards, practices and procedures;

**material** means a good that is used in the production of another good;

**non-originating good** or **non-originating material** means a good or material that does not qualify as originating in accordance with this Chapter;

**packing materials and containers for shipment** means goods used to protect another good during its transportation, but does not include the packaging materials or containers in which a good is packaged for retail sale;

**producer** means a person who engages in the production of a good;

**production** means operations including growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, collecting, breeding, extracting, aquaculture, gathering, manufacturing, processing or assembling a good;

**recovered material** means a material in the form of one or more individual parts that results from:

- (a) the disassembly of a used good into individual parts; and
- (b) the cleaning, inspecting, testing or other processing of those parts as necessary for improvement to sound working condition;

**transaction value** means the price actually paid or payable for the good when sold for export to the country of importation or other value determined in accordance with the Customs Valuation Agreement; and

**value of the good** means the transaction value of the good excluding any costs incurred in the international shipment of the good.

### **Article 3.2: Originating Goods**

Except as otherwise provided in this Chapter, each Party shall provide that a good is originating if it is:

- (a) wholly obtained or produced entirely in the territory of one or both of the Parties by one or more producers as established in Article 3.3;
- (b) produced entirely in the territory of one or both of the Parties by one or more producers, exclusively from originating materials; or
- (c) produced entirely in the territory of one or both of the Parties by one or more producers using non-originating materials provided the good satisfies all applicable requirements of Annex 3.1,

and the good satisfies all other applicable requirements of this Chapter.

### **Article 3.3: Wholly Obtained or Produced Goods**

Each Party shall provide that for the purposes of Article 3.2, a good is wholly obtained or produced entirely in the territory of one or both of the Parties if it is:

- (a) a plant or plant good, grown, cultivated, harvested, picked or gathered there;
- (b) a live animal born and raised there;
- (c) a good obtained from a live animal there;
- (d) an animal obtained by hunting, trapping, fishing, gathering or capturing there;
- (e) a good obtained from aquaculture there;
- (f) a mineral or other naturally occurring substance, not included in subparagraphs (a) to (e), extracted or taken from there;
- (g) fish, shellfish and other marine life taken from the high seas, by vessels that are entitled to fly the flag of that Party;

- (h) a good produced from goods referred to in subparagraph (g) on board a factory ship that is registered, listed or recorded with a Party and entitled to fly the flag of that Party;
- (i) a good other than fish, shellfish and other marine life taken by a Party or a person of a Party from the seabed or subsoil outside the territories of the Parties and beyond areas over which non-Parties exercise jurisdiction provided that Party or person of that Party has the right to exploit that seabed or subsoil in accordance with international law;
- (j) a good that is:
  - (i) waste or scrap derived from production there; or
  - (ii) waste or scrap derived from used goods collected there, provided that those goods are fit only for the recovery of raw materials; and
- (k) a good produced there, exclusively from goods referred to in subparagraphs (a) to (j), or from their derivatives.

**Article 3.4: Treatment of Recovered Materials Used in Production of a Remanufactured Good**

1. Each Party shall provide that a recovered material derived in the territory of one or both of the Parties is treated as originating when it is used in the production of, and incorporated into, a remanufactured good.
2. For greater certainty:
  - (a) a remanufactured good is originating only if it satisfies the applicable requirements of Article 3.2; and
  - (b) a recovered material that is not used or incorporated in the production of a remanufactured good is originating only if it satisfies the applicable requirements of Article 3.2.

**Article 3.5: Regional Value Content**

1. Each Party shall provide that a regional value content requirement specified in this Chapter to determine whether a good is originating, is calculated as follows:
  - (a) Build-down Method: Based on Value of Non-Originating Materials
 
$$RVC = \frac{\text{Value of the Good} - \text{VNM}}{\text{Value of the Good}} \times 100$$

or

- (b) Build-up Method: Based on Value of Originating Materials

$$\text{RVC} = \frac{\text{VOM}}{\text{Value of the Good}} \times 100$$

where:

“RVC” is the regional value content of a good, expressed as a percentage;

“VNM” is the value of non-originating materials, including materials of undetermined origin, used in the production of the good; and

“VOM” is the value of originating materials used in the production of the good in the territory of one or both of the Parties.

2. Each Party shall provide that all costs considered for the calculation of regional value content are recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of a Party where the good is produced.

### **Article 3.6: Materials Used in Production**

1. Each Party shall provide that if a non-originating material undergoes further production such that it satisfies the requirements of this Chapter, the material is treated as originating when determining the originating status of the subsequently produced good, regardless of whether that material was produced by the producer of the good.

2. Each Party shall provide that if a non-originating material is used in the production of a good, the following may be counted as originating content for the purposes of determining whether the good meets a regional value content requirement:

- (a) the value of processing of the non-originating materials undertaken in the territory of one or both of the Parties; and
- (b) the value of any originating material used in the production of the non-originating material undertaken in the territory of one or both of the Parties.

### **Article 3.7: Value of Materials Used in Production**

Each Party shall provide that for the purposes of this Chapter, the value of a material is:

- (a) for a material imported by the producer of the good, the transaction value of the material at the time of importation, including the costs incurred in the international shipment of the good;
- (b) for a material acquired in the territory where the good is produced:
  - (i) the price paid or payable by the producer in the territory of the Party where the producer is located;
  - (ii) the value as determined for an imported material in subparagraph (a); or
  - (iii) the earliest ascertainable price paid or payable in the territory of the Party; or
- (c) for a material that is self-produced:
  - (i) all the costs incurred in the production of the material, which includes general expenses; and
  - (ii) an amount equivalent to the profit added in the normal course of trade or equal to the profit that is usually reflected in the sale of goods of the same class or kind as the self-produced material that is being valued.

### **Article 3.8: Further Adjustments to the Value of Materials**

1. Each Party shall provide that for an originating material, the following expenses may be added to the value of the material, if not included under Article 3.7:

- (a) the costs of freight, insurance, packing and all other costs incurred to transport the material to the location of the producer of the good;
- (b) duties, taxes and customs brokerage fees on the material, paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, which include credit against duty or tax paid or payable; and
- (c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

2. Each Party shall provide that, for a non-originating material or material of undetermined origin, the following expenses may be deducted from the value of the material:

- (a) the costs of freight, insurance, packing and all other costs incurred in transporting the material within the territories of the Parties to the location of the producer of the good;

- (b) duties, taxes and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, which include credit against duty or tax paid or payable; and
- (c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

3. If the cost or expense listed in paragraph 1 or paragraph 2 is unknown or documentary evidence of the amount of the adjustment is not available, then no adjustment is allowed for that particular cost.

### **Article 3.9: Accumulation**

1. Each Party shall provide that an originating good or material of one of the Parties that is used in the production of another good in the territory of the other Party is considered as originating in the territory of the other Party.

2. Each Party shall provide that production undertaken on a non-originating material in the territory of one or both of the Parties by one or more producers may contribute toward the originating content of a good for the purposes of determining its origin, regardless of whether that production was sufficient to confer originating status to the material itself.

3. Subject to paragraph 4, if each Party has a trade agreement that, as contemplated by the WTO Agreement, concerns the establishment of a free trade area with the same non-Party, the territory of that non-Party shall be deemed to form part of the territory of the free trade area established by this Agreement, for the purposes of determining whether a good is an originating good under this Agreement.

4. A Party shall apply paragraph 3 only once provisions with effect equivalent to those of paragraph 3 are in force between each Party and the non-Party with which each Party has separately concluded a free trade agreement. If such provisions in force between a Party and the non-Party apply to only certain goods or under certain conditions, the other Party may limit the application of paragraph 3 to those goods and under those conditions and as otherwise set out in this Agreement.

### **Article 3.10: *De Minimis***

1. Each Party shall provide that a good that contains non-originating materials that do not satisfy the applicable change in tariff classification requirement specified in Annex 3.1 for the good is nonetheless an originating good if:

- (a) the value of all those materials does not exceed 10 per cent of the value of the good, as defined under Article 3.5, and the good meets all the other applicable requirements of this Chapter; or
  - (b) for a good classified in Chapters 50 through 63 of the Harmonized System, the total weight of all such materials does not exceed 10 per cent of the total weight of the good, or the total value of all such materials does not exceed 10 per cent of the value of the good.
2. Paragraph 1 applies only when using a non-originating material in the production of another good.

### **Article 3.11: Fungible Goods or Materials**

Each Party shall provide that a fungible good or material is treated as originating based on the:

- (a) physical segregation of each fungible good or material; or
- (b) use of any inventory management method recognised in the Generally Accepted Accounting Principles if the fungible good or material is commingled, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

### **Article 3.12: Accessories, Spare Parts, Tools and Instructional or Other Information Materials**

1. Each Party shall provide that:
  - (a) in determining whether a good is wholly obtained or satisfies a process or change in tariff classification requirement as set out in Annex 3.1, accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be disregarded; or
  - (b) in determining whether a good meets a regional value content requirement, the value of the accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.
2. Each Party shall provide that a good's accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, have the originating status of the good with which they are delivered.

3. For the purposes of this Article, accessories, spare parts, tools and instructional or other information materials are covered when:

- (a) the accessories, spare parts, tools and instructional or other information materials are classified with, delivered with but not invoiced separately from the good; and
- (b) the types, quantities and value of the accessories, spare parts, tools and instructional or other information materials are customary for that good.

### **Article 3.13: Packaging Materials and Containers for Retail Sale**

1. Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, are disregarded in determining whether all the non-originating materials used in the production of the good have satisfied the applicable process or change in tariff classification requirement set out in Annex 3.1 or whether the good is wholly obtained or produced.

2. Each Party shall provide that if a good is subject to a regional value content requirement, the value of the packaging materials and containers in which the good is packaged for retail sale, if classified with the good, are taken into account as originating or non-originating, as the case may be, in calculating the regional value content of the good.

### **Article 3.14: Packing Materials and Containers for Shipment**

Each Party shall provide that packing materials and containers for shipment are disregarded in determining whether a good is originating.

### **Article 3.15: Indirect materials**

1. Each Party shall provide that an indirect material is considered to be originating without regard to where it is produced.

2. **Indirect material** means a material used in the production, testing or inspection of a good but not physically incorporated into the good; or a material used in the maintenance of buildings or the operation of equipment, associated with the production of a good, including:

- (a) fuel, energy, catalysts and solvents;
- (b) equipment, devices and supplies used to test or inspect the good;
- (c) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (d) tools, dies and moulds;

- (e) spare parts and materials used in the maintenance of equipment and buildings;
- (f) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; and
- (g) any other material that is not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production.

### **Article 3.16: Sets of Goods**

Sets, as defined in General Interpretative Rule 3 of the Harmonized System, shall be regarded as originating when all component products are originating products. When a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating, provided that the value of the originating products is not less than 40 percent of the value of the set.

### **Article 3.17: Transit and Transshipment**

1. Each Party shall provide that an originating good retains its originating status if the good has been transported to the importing Party without passing through the territory of a non-Party.

2. Each Party shall provide that if an originating good is transported through the territory of one or more non-Parties, the good retains its originating status provided that the good does not undergo any operation outside the territories of the Parties other than: unloading; reloading; separation from a bulk shipment; storing; labelling or marking required by the importing Party; or any other operation necessary to preserve it in good condition or to transport the good to the territory of the importing Party.

## **Section B: Origin Procedures**

### **Article 3.18: Claims for Preferential 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 importer or an authorised representative of the exporter, producer or importer.<sup>1</sup>

2. Each Party shall provide that the certification of origin shall include a signed statement attesting to the origin of the goods.

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<sup>1</sup> This article does not prevent Parties adopting or maintaining laws and regulations governing the issuance of certificates of origin.

3. Unless such information already appears on the export invoice or other entry documentation, the certification shall also include:

- (a) a full description of the good(s) sufficient to relate it to the good(s) covered by the certification;
- (b) six digit Harmonized System Code for the respective good(s);
- (c) the exporter's name and address;
- (d) the producer's name(s) if known (if the producer is not the exporter);
- (e) the importer's name(s) in respect of imported goods, if known;
- (f) the rule of origin under which the declarant claims the good(s) qualifies;
- (g) date of the origin declaration; and
- (h) in the case of a blanket declaration issued for multiple shipments, the period that the origin declaration covers.

4. The declaration or certificate of origin shall be in writing, including electronic format, and be completed in English.

5. An importer, exporter or producer, or a person acting on their behalf, may use the guidance template provided in Annex 3.2 to certify the goods.

6. 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.

7. Each Party shall provide that a certification of origin is valid for one year after the date that it was either issued or signed, or for such longer period specified by the laws and regulations of the importing Party.

8. Each Party shall allow an importer to submit a certification of origin in English.

### **Article 3.19: Basis of a Self-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 that the good is originating.

2. Each Party shall provide that if the exporter is not the producer of the good, a certification of origin may be completed by the exporter of the good on the basis of:

- (a) the exporter having information that the good is originating; or
- (b) reasonable reliance on the producer's information 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:

- (a) the importer having documentation that the good is originating; or
- (b) reasonable reliance on supporting documentation provided by the exporter or producer that the good is originating.

4. Each Party shall provide that a certification of origin may be completed by an authorised representative of a producer, exporter or importer of the good on the basis of:

- (a) the authorised representative having documentation that the good is originating; or
- (b) reasonable reliance on supporting documentation provided by the producer, exporter or importer that the good is originating.

5. For greater certainty, nothing in paragraph 1 or paragraph 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 to another person.

### **Article 3.20: Discrepancies**

Each Party shall provide that it shall not reject a certification of origin due to minor errors or discrepancies in the certification of origin.

### **Article 3.21: Waiver of Certification of Origin**

Neither Party shall require a certification of origin if:

- (a) the customs 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; or
- (b) it is for an importation of a good for which the importing Party has waived the requirement for a certification of origin,

provided that the importation does not form part of a series of importations carried out or planned for the purposes of evading compliance with the importing Party's laws and regulations governing claims for preferential tariff treatment under this Agreement.

### **Article 3.22: Obligations Relating to Importation**

1. Except as otherwise provided for in this Chapter, each Party shall provide that, for the purposes of claiming preferential tariff treatment, the importer shall:

- (a) make a declaration<sup>2</sup> that the good qualifies as an originating good; and
- (b) provide a copy of the certification of origin to the importing Party if required by the 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 correct the importation document and pay any customs duty and, if applicable, penalties owed.

3. No importing Party shall subject an importer to a penalty for making an invalid claim for preferential tariff treatment if the importer, on becoming aware that such a claim is not valid and prior to discovery of the error by that Party, voluntarily corrects the claim and pays any applicable customs duty under the circumstances provided for in the Party's laws and regulations.

### **Article 3.23: Obligations Relating to Exportation**

Each Party shall provide that an exporter or a producer, or their authorised representative, that has completed and signed a certification of origin, shall, on request, provide a copy of the certification of origin and such other documents to its customs administration, if required by the Party's laws and regulations.

### **Article 3.24: Record Keeping Requirements**

1. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the territory of that Party 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; and

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<sup>2</sup> A Party shall specify its declaration requirements in its laws, regulations or administrative procedures that are published or otherwise made available in a manner as to enable interested persons to become acquainted with them.

- (b) all records necessary to demonstrate that the good is originating and qualified for preferential tariff treatment, if the claim was based on a certification of origin completed by the importer.

2. Each Party shall provide that a producer or exporter in its territory that provides a certification of origin shall maintain, for a period of no less than five years from the date the certification of origin was issued, all records necessary to demonstrate that a good for which the exporter or producer provided a certification of origin is originating. Each Party shall make available information on types of records that may be used to demonstrate that a good is originating.

3. Each Party shall provide that an importer, exporter or producer in its territory may choose to maintain the records specified in paragraph 1 and paragraph 2 in any medium that allows for prompt retrieval, including electronic, optical, magnetic or written form in accordance with that Party's law.

### **Article 3.25: Verification of Origin**

1. For the purposes of determining whether a good imported into a Party from the other Party qualifies as an originating good, the customs administration of the importing Party may conduct a verification action by means of:

- (a) written requests for information from the importer;
- (b) written requests for information from the exporter or producer of the exporting Party;
- (c) requests that the customs administration of the exporting Party assist in verifying the origin of the good; or
- (d) verification visits to the premises of the exporter or the producer in the territory of the other Party to observe the facilities and the production processes of the good and to review the records referring to origin, including accounting records.

2. For the purposes of paragraph 1(a) and paragraph 1(b), the customs administration shall allow the importer, exporter, or producer a period of 60 days from the date of the written request to respond. During this period the importer, exporter, or producer may request, in writing, an extension not exceeding 30 days.

3. For the purposes of this Article and Article 3.26, all the information requested by the importing Party and responded to by the exporting Party shall be communicated in English.

4. The customs administration of the importing Party shall complete any action under paragraph 1 to verify eligibility for preferential tariff treatment within the period specified in the laws, regulations or administrative procedures of the importing Party. On completion of

the verification action, the customs administration shall provide written advice to the exporting customs administration and the importer, exporter or producer of its decision as well as the legal basis and findings of fact on which the decision was made within 90 days.

5. Where a verification visit was undertaken, the customs administration shall also provide advice of the decision to the exporting Party.

### **Article 3.26: Verification Visit**

1. Prior to conducting a verification visit under Article 3.25.1(d), the customs administration of the importing Party shall:

- (a) make a written request to the exporter or producer to conduct a verification visit of their premises; and
- (b) obtain the written consent of the exporter or producer whose premises are to be visited.

2. An exporter or producer should provide its written consent to a proposed verification visit within 30 days of the receipt of notification in accordance with paragraph 1(a).

3. The written request referred to in paragraph 1(a) shall include:

- (a) the identity of the customs administration issuing the request;
- (b) the name of the exporter of the good in the exporting Party to whom the request is addressed;
- (c) the date the written request is made;
- (d) the proposed date and place of the visit;
- (e) the objective and scope of the proposed visit, including specific reference to the good that is the subject of the verification referred to in the certificate of origin; and
- (f) the names and titles of the officials of the customs administration of the importing Party who will participate in the visit.

4. The customs administration of the importing Party shall notify the customs administration of the exporting Party when it requests a verification visit in accordance with this Article.

5. Officials of the customs administration of the exporting Party may participate in the verification visit as observers.

### **Article 3.27: Determinations on Claims for Preferential Tariff Treatment**

1. Except as otherwise provided in paragraph 2, each Party shall grant a claim for preferential tariff treatment made on or after the date of entry into force of the Protocol.
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 3.25, 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 for information in accordance with Article 3.25;
  - (d) after receipt of a written notification for a verification visit, the exporter or producer does not provide its written consent in accordance with Article 3.25; or
  - (e) the importer, exporter or producer fails to comply with the requirements of this Chapter.
3. If an importing Party denies a claim for preferential tariff treatment, it shall issue a determination to the importer that includes the reasons for the determination.
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.

### **Article 3.28: 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. As a condition for preferential tariff treatment under paragraph 1, the importing Party may 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 such 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 3.29: Penalties**

A Party may establish or maintain appropriate penalties for violations of its laws and regulations related to this Chapter.

### **Article 3.30: Confidentiality**

Each Party shall maintain the confidentiality of the information collected in accordance with this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.

## **Section C: Other Matters**

### **Article 3.31: Consultation on Rules of Origin and Origin Procedures**

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter.
2. The Parties shall consult to discuss possible amendments or modifications to this Chapter, taking into account developments in technology, production processes or other related matters.
3. Prior to the entry into force of an amended version of the Harmonized System, the Parties shall consult to prepare updates to this Chapter that are necessary to reflect changes to the Harmonized System.