

## CHAPTER SIX

### RULES OF ORIGIN AND ORIGIN PROCEDURES

#### Section A: Rules of Origin

##### Article 6.1: Definitions

For purposes of this Chapter:

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

**CIF** means the value of the good imported, and includes the cost of freight and insurance up to the port or place of entry into the country of importation;

**competent authority** means the government authority or authorities designated by a Party and notified to the other Party;

**exporter** means a natural or juridical person located in the territory of a Party from where goods are exported by such a person;

**ExWorks Value** means the price paid or payable for the good ex-works to the manufacturer in the Parties in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used, minus any internal taxes which are, or may be, repaid when the good obtained is exported

**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 recognized by consensus or with substantial authoritative support in 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;

**goods** means materials or products, regardless of whether they are wholly obtained or produced and whether they are intended for later use as materials in another production process. For purposes of this Chapter, the terms “goods”, “materials” and “products” can be used interchangeably and the terms “good”, “material” and “product” shall be interpreted accordingly;

**importer** means a natural or juridical person located in the territory of a Party into where goods are imported by such a person;

**issuing body** means an entity designated or authorized by a Party to issue a Certificate of Origin and notified to the other Party in accordance with this Chapter;

**materials** means ingredients, raw materials, parts, components, or sub-assemblies used in the production process;

**non-originating goods** or **non-originating materials** mean goods or materials which do not qualify as originating in accordance with this Chapter;

**“originating goods”** or **“originating materials”** means goods or materials that qualify as originating in accordance with this Chapter;

**packing materials and containers for the transportation** means the goods used to protect a good during its transportation, different from those materials or containers used for its retail sale;

**preferential tariff treatment** means tariff concessions granted to originating goods as reflected by the tariff rates applicable under this Agreement;

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

**Product Specific Rules** means the rules that specify that the materials have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a regional value content or a combination of any of these criteria;

**production** means methods of obtaining a good including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, aquaculture, trapping, hunting, manufacturing, producing, processing or assembling a good; and

**third country** means a non-Party.

## **Article 6.2: Origin Criteria**

1. For purposes of this Agreement, a good imported into the territory of a Party shall be deemed to be originating and eligible for preferential tariff treatment if it conforms to the origin requirements under any one of the following:

- (a) a good which is wholly obtained or produced in the territory of the exporting Party as set out and defined in Article 6.3;
- (b) a good which is produced in the territory of the exporting Party exclusively from originating materials; or
- (c) a good which is produced in the territory of the exporting Party using non-originating materials, provided that the good satisfies the applicable requirements set out in Annex 6-A (Product Specific Rules).

2. Except as provided for in Article 6.6, the conditions for acquiring originating status set out in this Chapter must be fulfilled without interruption in the territory of the exporting Party.

### **Article 6.3: Wholly Obtained or Produced Goods**

For purposes of Article 6.2.1(a), the following shall be considered to be wholly obtained or produced in the territory of a Party:

- (a) plants and plant products harvested, picked or gathered after being grown there;
- (b) live animals born and raised there;
- (c) goods obtained from live animals raised there;
- (d) goods obtained from hunting, trapping, fishing, aquaculture, gathering, or capturing conducted there;
- (e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d), extracted or taken from its soil, waters, seabed, or beneath its seabed;
- (f) fish, shellfish, and other marine life taken by vessels registered with the Party and entitled to fly its flag, and other products taken by the Party or a person of that Party, from the waters, seabed, or beneath the seabed outside the territorial waters of the Party, provided that the Party has the rights to exploit the natural resources of such waters, seabed, and beneath the seabed under international law;
- (g) fish, shellfish, and other marine life taken from the high seas by vessels registered with the Party and entitled to fly its flag;
- (h) goods produced or made on board factory ships registered with a Party and entitled to fly its flag, exclusively from products referred to in subparagraph (f) or (g);
- (i) goods taken from outer space provided that they are obtained by the Party or a person of that Party;
- (j) waste and scrap derived from production or consumption there, provided that such goods are fit only for disposal, for the recovery of raw materials, or for recycling purposes;
- (k) used goods collected there, provided that such goods are fit only for disposal, for the recovery of parts or raw materials, or for recycling purposes; and
- (l) goods obtained or produced in the territory of the Party solely from goods referred to in subparagraphs (a) through (k).

#### **Article 6.4: Calculation of Regional Value Content**

The Regional Value Content (hereinafter referred to as “RVC”) of a good, specified in Annex 6-A (Product Specific Rules), shall be calculated by using either of the following formulas:

- (a) Direct/Build-Up Method:

$$RVC = \frac{VOM + \text{Direct Labor Cost} + \text{Direct Overhead Cost} + \text{Profit}}{\text{ExWorks Value}} \times 100\%$$

Where:

- (i) VOM is the value of originating materials, parts, or goods that are acquired or self-produced by the producer in the production of the good;
- (ii) Direct Labor Cost includes wages, remuneration, and other employee benefits;
- (iii) Direct Overhead Cost is the total overhead expense;

or

- (b) Indirect/Build-Down Method

$$RVC = \frac{\text{ExWorks Value} - \text{VNM}}{\text{ExWorks Value}} \times 100\%$$

VNM means value of non-originating materials, which shall be:

- (i) the CIF value at the time of importation of the materials, parts, or goods; or
- (ii) the earliest ascertained price paid for the materials, parts, or goods of undetermined origin in the territory of the Party where the working or processing has taken place.

#### **Article 6.5: Treatment for Certain Goods**

The Parties shall enter into discussions on the treatment for goods which are worked or processed outside a Party, upon the request of the Party, and conclude such discussions within three years from the start of the discussions.

## **Article 6.6: Accumulation**

Where originating goods of a Party are incorporated into goods manufactured or produced in the other Party, the goods so incorporated shall be considered to be originating in the other Party.

## **Article 6.7: Non-Qualifying Operations**

1. Notwithstanding any provisions in this Chapter, a good shall not be considered to be originating in the territory of a Party if the following operations are undertaken exclusively by itself or in combination in the territory of that Party:

- (a) preserving operations to ensure that the good remains in good condition during transport and storage;
- (b) changes of packaging, breaking-up and assembly of packages;
- (c) simple<sup>1</sup> washing, cleaning, removal of dust, oxide, oil, paint, or other coverings;
- (d) ironing or pressing of textiles;
- (e) simple painting and polishing operations;
- (f) husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- (g) operations to color sugar or form sugar lumps;
- (h) simple peeling, stoning, or un-shelling;
- (i) sharpening, simple grinding, or simple cutting;
- (j) sifting, screening, sorting, classifying, grading, or matching;
- (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards, and all other simple packaging operations;
- (l) affixing or printing marks, labels, logos, and other like distinguishing signs on products or their packaging;
- (m) simple mixing<sup>3</sup> of products, whether or not of different kinds;
- (n) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (o) simple testing or calibrations;
- (p) slaughtering of animals<sup>4</sup> ;
- (q) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

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<sup>1</sup> For purposes of this Article, “simple” generally describes an activity which does not need special skills, or machines, apparatus, or equipment especially produced or installed for carrying out the activity.

<sup>3</sup> For purposes of this Article, “simple mixing” generally describes an activity which does not need special skills, or machines, apparatus, or equipment especially produced or installed for carrying out the activity. However, simple mixing does not include chemical reaction. Chemical reaction means a process (including a biochemical process) which result in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

<sup>4</sup> “Slaughtering” means the mere killing of animals and subsequent processes such as cutting, chilling, freezing, salting, drying, or smoking, for purposes of preservation for storage and transport.

(r) a combination of two or more operations specified in (a) to (q).

2. A good originating in the territory of a Party shall retain its initial originating status, when exported from the other Party, where operations undertaken have not gone beyond those referred to in paragraph 1.

#### **Article 6.8: Materials Used in Production**

If a non-originating materials undergoes further production such that it satisfies the requirements of this Chapter, the materials shall be treated as originating when determining the originating status of the subsequently produced goods, regardless of whether that good was produced by the producer of the goods.

#### **Article 6.9: Direct Consignment**

The preferential treatment provided for under this Agreement applies only to products satisfying the requirements of this Chapter, which are transported directly between the Parties. However, products may be transported through territories of non-Parties, provided that they do not undergo operations other than unloading, reloading, storing, splitting-up of consignments, or any operation designed to preserve them in good condition. During this period the products shall remain under customs control in the country of transit.

#### **Article 6.10: *De Minimis***

1. A good that does not undergo a change in tariff classification shall be considered as originating if:

- (a) for a good, other than that provided for in Chapters 50 through 63 of the Harmonized System, the value of all non-originating materials used in its production that do not undergo the required change in tariff classification does not exceed 10 percent of the ExWorks Value of the good; or
- (b) for a good, provided for in Chapters 50 through 63 of the Harmonized System, the weight or value of all non-originating materials used in its production that do not undergo the required change in tariff classification does not exceed 10 percent of the total weight or ExWorks value of the good;

and the good specified in subparagraphs (a) and (b) meets all other applicable criteria set forth in this Chapter for qualifying as an originating good.

2. The value of non-originating materials referred to in paragraph 1 shall, however, be included in the value of non-originating materials for any applicable RVC requirement for the good.

### **Article 6.11: Treatment of Packaging and Packing Materials**

1. Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, according to Rule 5 of the General Rule for the Interpretation of the Harmonised System, shall be disregarded in determining the originating status of the good. However, if the good is subject to the RVC requirement as set out in Article 6.4, the value of such packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the RVC of the good.
2. Packing materials and containers in which a good is packed for transportation and shipment shall be disregarded in determining the originating status of any good.

### **Article 6.12: Accessories, Spare Parts, and Tools**

1. For purposes of determining the originating status of a good, accessories, spare parts, tools, and instructional or other information materials presented with the good shall be considered as part of the good and shall be disregarded in determining whether all the non-originating materials used in the production of the good have undergone the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 6 -A (Product Specific Rules), provided that:
  - (a) the accessories, spare parts, or tools, and instructional or other information materials presented with the good are not invoiced separately from the good; and
  - (b) the quantities and value of the accessories, spare parts, tools, and instructional or other information materials presented with the good are customary for the good.
2. Accessories, spare parts, tools, and instruction and information material shall be considered as materials of the goods in calculating the RVC of the goods.

### **Article 6.13: Neutral Elements**

In order to determine whether a good is originating, it shall not be necessary to determine the origin of the following which might be used in its production and not incorporated into the good:

- (a) fuel and energy;
- (b) tools, dies, and moulds;
- (c) spare parts and materials used in the maintenance of equipment and buildings;
- (d) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;
- (e) gloves, glasses, footwear, clothing, safety equipment, and supplies;
- (f) equipment, devices, and supplies used for testing or inspecting the good;
- (g) catalysts and solvents; and
- (h) any other goods that are not incorporated into the good but of which use in the production of the good can reasonably be demonstrated to be a part of that production.

#### **Article 6.14: Fungible Goods or Materials**

The determination of whether fungible goods or materials are originating shall be made either by physical segregation of each of the fungible goods or materials, or through the use of an inventory management method which is recognized in the Generally Accepted Accounting Principles of the exporting Party, and should be used throughout the fiscal year.