

## **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 and larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;

**CIF value** means the value of an imported good at the time of importation, inclusive of freight, insurance, packing and other costs incurred in transporting the good to the importation port;

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

**FOB** means the free-on-board value of a good, inclusive of the cost of transport to the port or site of final shipment abroad;

**Generally Accepted Accounting Principles** means recognised consensus or substantial authoritative support given 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. Generally Accepted Accounting Principles may encompass broad guidelines for general application, as well as detailed standards, practices, and procedures;

**good** means any merchandise, product, article, or material;

**identical and interchangeable goods and materials** means goods and materials of the same kind and commercial quality, possessing the same technical and physical characteristics, and which cannot be distinguished from one another by a mere visual examination for origin purposes;

**material** means a good that is used or consumed in the production of, or physically incorporated into, another good;

**material that is self-produced** means a material that is produced by a producer of a good and used or consumed in the production of that good;

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

**origin declaration** means an appropriate statement as to the origin of the goods made by the exporter or producer;

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

**production** means methods of obtaining goods, including growing, mining, harvesting, fishing, breeding, raising, trapping, hunting, manufacturing, cultivating, extracting, gathering, collecting, capturing, farming, processing, or assembling a good.

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

For the purposes of this Agreement, a good shall be treated as originating if it meets all the applicable requirements of this Chapter and:

- (a) is wholly obtained or produced within the meaning of Article 3.3;
- (b) is produced entirely in the territory of one or both of the Parties using non-originating material that conforms to a change in tariff classification, a Regional Value Content (as provided for in Article 3.4) or other requirements as specified in Annex 3-A; or
- (c) is produced entirely in the territory of one or both of the Parties, exclusively from originating materials.

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

For the purposes of Article 3.2(a) the following goods shall be considered as wholly obtained or produced:

- (a) minerals and other naturally occurring substances taken or extracted from the territory of a Party;
- (b) plant and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown and harvested, picked or gathered in the territory of a Party;
- (c) live animals born and raised in the territory of a Party;
- (d) goods obtained from live animals born and raised in the territory of a Party;
- (e) goods obtained from hunting, trapping, fishing, aquaculture, gathering, or capturing conducted within the land, internal waters and territorial sea of a Party;

- (f) goods of sea-fishing and other marine life taken from the Exclusive Economic Zone of a Party under that Party's applicable law, or from the high seas in accordance with international law, by a vessel registered or recorded with a Party and entitled to fly the flag of that Party;
- (g) goods produced on board a factory ship from the goods referred to in subparagraph (f), provided such factory ship is registered or recorded with a Party and entitled to fly its flag;
- (h) goods other than goods of sea-fishing and other marine life, taken or extracted from the seabed, ocean floor, or subsoil, outside the territory of one or both of the Parties by a Party or a person of a Party, provided that the Party or person of the Party has rights to exploit that seabed, ocean floor, or subsoil in accordance with *Part XI of the United Nations Convention on the Law of the Sea*;
- (i) waste and scrap derived from:
  - (i) production or consumption in the territory of a Party provided that such waste and scrap is fit only for the recovery of raw materials; or
  - (ii) used goods collected in the territory of a Party provided that such goods are fit only for the recovery of raw materials;
- (j) goods collected from the territory of a Party which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts or raw materials; or
- (k) goods produced entirely in the territory of a Party exclusively from goods referred to in this Article or from their derivatives.

### **Article 3.4 : Regional Value Content**

1. Where Annex 3-A provides for a regional value content requirement, the formula for calculating the regional value content shall be either:

- (a) Build-down formula

$$RVC = \frac{FOB - VNM}{FOB} \times 100$$

- (b) Build-up formula

$$RVC = \frac{VOM}{FOB} \times 100$$

where,

RVC is the regional value content, expressed as a percentage;

FOB is the free-on-board value of the good as defined in Article 3.1;

VNM is the value of non-originating materials, other than indirect materials, acquired and used by the producer in the production of the good; VNM does not include the value of a material that is self-produced; and

VOM is the value of originating materials.

2. All costs considered for the calculation of regional value content shall be based on the Generally Accepted Accounting Principles applicable in the territory of the Party where the good is produced.
3. When an originating good is used in the subsequent production of another good, no account shall be taken of the non-originating materials contained in the originating good for the purposes of determining the originating status of the subsequently produced good.
4. When a non-originating good is used in the subsequent production of another good, an account shall be taken only of the non-originating materials contained in the non-originating good for the purposes of determining the originating status of the subsequently produced good.

### **Article 3.5 : Value of Materials**

1. The value of the materials shall be:
  - (a) for a material imported directly by the producer of a good: the CIF value at the time of importation of the material;
  - (b) for a material acquired by the producer in the territory where the good is produced: the transaction value; or
  - (c) for a self-produced material or where the relationship between the producer of the good and the seller of the material influence the price actually paid or payable for the material: the sum of all costs incurred in the production of the material, including general expenses. Additionally, it will be possible to add an amount for profit equivalent to the profit added in the normal course of trade.
2. For originating materials, the following expenses, where not included under paragraph 1, may be added to the value of the material:
  - (a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the territories of the Parties to the location of the producer;

- (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, including 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 renewable scrap or by-product.

3. For non-originating materials, the following expenses, where included under paragraph 1, 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 a Party's territory or between the territories of the Parties to the location of the producer;
- (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, including credit against duty or tax paid or payable;
- (c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product; and
- (d) the cost of originating materials used in the production of the non-originating material in the territory of a Party.<sup>1</sup>

4. The values referred to above shall be determined pursuant to the Customs Valuation Agreement. The principles of the Customs Valuation Agreement shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions.

### **Article 3.6 : Accumulation**

1. Originating goods or materials of a Party, incorporated into a good in the territory of the other Party, shall be considered as originating in the territory of the other Party.

2. A good is originating where the good is produced in the territory of one or both of the Parties by one or more producers, provided that the good satisfies the requirements in Article 3.2 and all other applicable requirements in this Chapter.

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<sup>1</sup> For greater certainty and for the purposes of Articles 3.5.2(a) and 3.5.3(a) "costs of freight" includes the costs of all types of freight, including in-land freight incurred within a Party's territory, regardless of the mode of transportation.

### **Article 3.7 : De Minimis**

1. A good that does not satisfy a change in tariff classification requirement pursuant to Annex 3-A is nonetheless originating if:
  - (a) the value of all non-originating materials that have been used or consumed in the production of the good and do not satisfy the applicable change in tariff classification requirement does not exceed 10 percent of the FOB value of the good; and
  - (b) the good meets all other applicable requirements in this Chapter.
2. The value of such non-originating materials shall, however, be included in the value of non-originating materials for any applicable regional value content requirement.
3. Paragraph 1 shall only apply to goods classified in Chapters 1 through 14 of the HS code where the non-originating material is used or consumed in the production of another good and the process involves more than simple<sup>2</sup> mixing.
4. A good classified in Chapters 50 through 63 of the HS Code that does not undergo a change in tariff classification is nonetheless considered as originating where;
  - (a) the weight of all non-originating materials used in the production of the good that do not undergo the required change in tariff classification does not exceed 10 percent of the total weight of the good; or
  - (b) the value of all non-originating materials used in the production of the good that do not undergo the required change in tariff classification does not exceed 10 percent of the FOB value of the good.

### **Article 3.8 : Identical and Interchangeable Goods and Materials**

In determining whether a good is originating, any identical and interchangeable goods and materials shall be distinguished by:

- (a) physical separation of the goods and materials; or
- (b) an inventory management method recognised in the Generally Accepted Accounting Principles of the exporting Party, such as averaging, last-in-first-out (“LIFO”) or first-in-first-out (“FIFO”).

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<sup>2</sup> “Simple” generally describes activities which need neither special skills nor special machines, apparatus or equipment, especially produced or installed for carrying out the activities.

### **Article 3.9 : Accessories, Spare Parts, Tools and Instructional or Information Material**

The origin of the accessories, spare parts, tools and instructional or other information materials presented with a good at the time of importation:

- (a) shall be considered part of that good and disregarded if the good is subject to a change in tariff classification requirement; and
- (b) shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good, if the good is subject to a regional value content requirement,

provided that:

- (a) the accessories, spare parts, tools and instructional or other information materials presented with the good are not invoiced separately from the good;<sup>3</sup> 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 that good.

### **Article 3.10 : Packaging Materials and Containers for Retail Sale**

1. Packaging materials and containers in which a good is packaged for retail sale, when classified together with that good, shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 3-A.

2. If a good is subject to a regional value content requirement, the value of packaging materials and containers described in paragraph 1 shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

### **Article 3.11 : Packing Materials and Containers for Transportation and Shipment**

1. The packing materials and containers for transportation and shipment shall not be taken into account in determining the origin of the good.

2. Packing materials and containers for transportation and shipment do not include the packaging materials and containers in which a good is packaged for retail sale.

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<sup>3</sup> The Parties understand that accessories, spare parts, tools and instructional or other information materials may or may not be identified separately on the same invoice as the good with which they are presented.

### **Article 3.12 : Preferential Tariff Treatment**

Preferential tariff treatment under this Agreement shall be applied to goods that satisfy the requirements of this Chapter.

### **Article 3.13 : Indirect Materials**

1. An indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in accounting records of the producer of the good.

2. For the purposes of this Article, “indirect materials” means a good used or consumed in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used or consumed in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

- (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 goods;
- (g) catalysts and solvents; and
- (h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.

### **Article 3.14 : Non-Qualifying Operations and Processes**

Notwithstanding the other provisions of this Chapter, a good or material shall not be considered originating merely by reason of having undergone one or more of the following operations or processes:

- (a) preserving operations to ensure that the products remain in good condition during transport and storage;
- (b) changes of packaging, breaking-up and assembly of packages;

- (c) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (d) washing, cleaning, removal of dust, oxide, oil, paint or other coverings;
- (e) sharpening, simple grinding or crushing or simple cutting;
- (f) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging; or
- (g) simple assembly of parts of articles to constitute a complete article or disassembly of goods into parts.

### **Article 3.15 : Outward Processing Zones on the Korean Peninsula**

Notwithstanding Article 3.2, the Parties agree that certain goods shall be considered to be originating even if they have undergone working or processing outside Korea, on materials exported from Korea and subsequently re-imported there, provided that the working or processing is done in the areas designated by the Parties pursuant to Annex 3-B.

### **Article 3.16 : Direct Transport**

1. An originating good shall retain its originating status as determined under Article 3.2 provided that it is directly transported to the importing Party without passing through the territory of a non-Party.
2. An originating good that is transported through the territory of a non-Party shall not retain its originating status, if the good:
  - (a) has undergone any subsequent production or other operation outside the territories of the Parties other than unloading, temporary storage, splitting up of loads for transport reasons, reloading or any other operation necessary to preserve it in good condition or to transport it to the importing Party;<sup>4</sup> or
  - (b) has been released from customs control in the territory of a non-Party.

### **Article 3.17 : Compliance**

Compliance with the requirements of this Section shall be determined in accordance with the provisions of Section B as applicable.

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<sup>4</sup> Maintenance and supplementary work may be conducted in a bonded area of the importing Party in accordance with its domestic laws and regulations.

## **Section B : Operational Procedures**

### **Article 3.18 : Claims for Preferential Tariff Treatment**

1. Except as otherwise provided in this Chapter, each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

- (a) request preferential tariff treatment at the time of importation of an originating good, if required by the importing Party's customs administration;
- (b) make a written declaration, if it deems necessary, that the good qualifies as an originating good;
- (c) have the evidence of origin in its possession at the time the declaration is made;
- (d) provide, on the request of that Party's customs administration, a copy of the origin declaration and such other documentation relating to the importation of the good in accordance with the domestic laws and regulations of the importing Party; and
- (e) promptly make a corrected declaration in a manner required by the customs administration of the importing Party and pay any duties owing where the importer has reason to believe that an origin declaration on which an entry declaration was based contains information that is not correct.

2. Each Party shall, in accordance with its domestic laws and regulations, provide that, where a good would have qualified as an originating good when it was imported into the territory of that Party, the importer of the good may, within a period of at least one year or for such longer period specified by the importing Party's domestic laws and regulations after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment, on presentation of the following to the customs administration of the importing Party:

- (a) an origin declaration that the good qualifies as an originating good; and
- (b) such other evidence as the customs administration may require to satisfactorily evidence the preferential tariff treatment claimed.

### **Article 3.19 : Evidence of Origin**

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment based on a written or electronic origin declaration by the exporter or producer.

2. The origin declaration may be in the forms set out in the Implementing Arrangement on Rules of Origin Operational Procedures attached to this Chapter as Annex 3-C. The Implementing Arrangement may be revised or modified by mutual decision of the Parties.

3. The origin declaration shall include the following information:

- (a) the name of the certifying person, including as necessary, contact details for obtaining other identifying information;
- (b) the importer of the good (if known);
- (c) the exporter of the good (if different from the producer);
- (d) the producer of the good (if known);
- (e) the six-digit tariff classification(s) under the Harmonized System and a description of the good;
- (f) the rule of origin under which the good(s) qualifies;
- (g) date of the origin declaration; and
- (h) in the case of a blanket declaration issued as set out in paragraph 7(b), the period that the origin declaration covers.

4. The origin declaration shall be completed in English.

5. Each Party shall provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign an origin declaration on the basis of:

- (a) its knowledge of whether the good qualifies as an originating good;
- (b) its reasonable reliance on the producer's written representation that the good qualifies as an originating good; or
- (c) a completed and signed origin declaration for the good voluntarily provided to the exporter by the producer.

6. Nothing in paragraph 5 shall be construed to require a producer to provide an origin declaration to an exporter.

7. Each Party shall provide that an origin declaration, duly completed and signed by an exporter or a producer in the territory of the other Party, is applicable to:

- (a) a single importation of one or more goods into the other Party's territory; or

- (b) multiple importations of identical goods into the other Party's territory that occur within a period specified, not exceeding 12 months from the date of original declaration.

8. The origin declaration referred to in paragraph 2 shall be valid for two years from the date on which the origin declaration was signed.

9. For any originating good that is imported into the territory of a Party on or after the date of entry into force of this Agreement, each Party shall accept an origin declaration that has been completed and signed prior to that date by the exporter or producer of that good.

### **Article 3.20 : Waiver of an Origin Declaration**

Notwithstanding Article 3.18, an origin declaration shall not be required for:

- (a) an importation of a good whose customs value does not exceed 1,000 US dollars or its equivalent amount in the importing Party's currency, or such higher amount as the importing Party 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 an origin declaration,

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 purposes of avoiding the origin declaration requirements of Articles 3.18 and 3.19.

### **Article 3.21 : Discrepancies and Formal Errors**

1. Where the origin of the good is not in doubt, the discovery of minor discrepancies in documentation shall not invalidate the origin declaration, if it does in fact correspond to the goods submitted.

2. For multiple goods declared under the same origin declaration, a problem encountered with one of the goods listed shall not affect or delay the granting of preferential tariff treatment and customs clearance of the remaining goods listed in the origin declaration.

### **Article 3.22 : Record Keeping Requirements**

1. Each Party shall provide that:

- (a) an exporter or a producer in its territory that completes and signs an origin declaration shall maintain in its territory, for five years after the date on which the origin declaration was signed or for such longer period as the Party may specify, all records necessary to demonstrate that the good for which the

exporter or producer provided the origin declaration was an originating good, which may consist *inter alia* of the following:

- (i) direct evidence of the processes carried out by the exporter or producer to obtain the goods concerned, contained for example in accounts for internal bookkeeping;
  - (ii) documents proving the originating status of materials used, issued or made out in a Party where these documents are used, as provided for in its domestic laws;
  - (iii) documents proving the working or processing of materials in a Party, issued or made out in a Party where these documents are used, as provided for in its domestic laws; or
  - (iv) the origin declaration proving the originating status of materials used, completed in a Party; and
- (b) an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain in that territory, for five 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 origin declaration, as the Party may require relating to the importation of the good.

2. Each Party shall provide that an importer, exporter, or producer may choose to maintain the records specified in paragraph 1 in any medium that allows for prompt retrieval, including, but not limited to, digital, electronic, optical, magnetic, or written form.

### **Article 3.23 : Obligations Regarding Exportation**

1. Where an exporter or producer in a Party's territory that has completed and signed an origin declaration has reason to believe that it has provided an erroneous or false origin declaration or any other such erroneous or false evidence, the exporter or producer shall give notice as soon as possible to the customs administrations of the importing and exporting Party, as well as to the importer, of any change that would affect the accuracy or validity of an origin declaration.

2. The exporter or producer that has provided an origin declaration shall provide a copy of such documents to the exporting Party's customs administration upon request.

### **Article 3.24 : Origin Verification**

1. When there is a reasonable doubt as to the origin of a good, 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 process by means of:

- (a) written requests for additional information from the importer;
- (b) written requests for additional information from the exporter or producer of the exporting Party; or
- (c) visits to the premises of an exporter or a producer in the territory of the other Party, along with the customs administration of the exporting Party, to observe the facilities and the production processes of the good and to review the records referring to origin including accounting files. Officials of the customs administration of the exporting Party may attend as observers on such verification visits.

2. For the purposes of subparagraph 1(b), all the information requested by the customs administration of the importing Party and responded to by the customs administration of the exporting Party shall be communicated in English.

3. For the purposes of subparagraphs 1(a) and 1(b), where the importer, exporter or producer does not answer the written request for additional information made by the importing Party, within a period of 90 days from the date on which it was received, the importing Party may deny the preferential tariff treatment.

4. For the purposes of subparagraph 1(c):

- (a) prior to conducting a verification visit, the importing Party shall:
  - (i) deliver a written notification of its intention to conduct the visit to the exporter or producer whose premises are to be visited and the customs administration of the other Party; and
  - (ii) obtain the written consent of the exporter or producer whose premises are to be visited; and
- (b) where an exporter or producer has not given its written consent to a proposed verification visit within 30 days of the receipt of notification pursuant to subparagraph (a), the notifying Party may deny preferential tariff treatment to the relevant good.

5. Where, at the time of importation, the customs administration of the importing Party has a reasonable doubt as to the origin of the good, the good may be released upon payment of a deposit or the payment of non-preferential duties, pending the outcome of the verification process. Such deposit or duties paid shall be refunded once the outcome of the verification process confirms that the good qualifies as an originating good.

6. A Party may suspend preferential tariff treatment to an importer on any subsequent import of a good when the customs administration has previously determined that an identical good was not eligible for such treatment, until it is demonstrated that the good complies with the provisions of this Chapter.

7. The Party conducting the verification visit shall provide to the exporter or producer and the importer whose goods are subject to the verification, a written determination of whether or not the goods in question qualify as originating. Any suspended preferential tariff treatment shall be reinstated upon the determination that goods qualify as originating goods.

8. The exporter or producer shall have 30 days from the date of receipt of the written determination pursuant to paragraph 7 to provide in writing comments or additional information regarding the eligibility of the good for preferential tariff treatment. If the good is still found to be non-originating, the final written determination shall be communicated to the exporting customs administration within 30 days from the date of receipt of the comments or additional information from the exporter or producer.

9. The importing Party shall, within one year from the start of the verification process, notify the exporting Party, in writing, of the results of the determination on the origin of the good, as well as the legal basis and findings of fact on which the determination was made.

#### **Article 3.25 : Denial of Preferential Tariff Treatment**

The customs administration of the importing Party may, in accordance with its domestic laws and regulations, deny a claim for preferential tariff treatment when:

- (a) the good does not qualify as an originating good; or
- (b) the importer, exporter or producer fails to comply with any of the relevant requirements of this Chapter.

#### **Article 3.26 : Direct Transport - Compliance**

Compliance with the direct transport provisions set out in Article 3.16 may be evidenced by providing any proper document, including but not limited to relevant commercial shipping or freight documents.

#### **Article 3.27 : Third-Party Invoicing**

A Party shall not reject a claim for preferential tariff treatment for the sole reason that the invoice was issued in a non-Party.