

CHAPTER 3

RULES OF ORIGIN AND OPERATIONAL PROCEDURES

RELATED TO ORIGIN

Section A: Rules of Origin

Article 22: Definitions

For purposes of this Chapter:

aquaculture means the farming of aquatic organisms, including fish, mollusks, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fries, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding, protection from predators, etc.;

authorized body means any body authorized under the domestic legislation of a Party to issue a Certificate of Origin;

FOB means the value of the good free on board, inclusive of the cost of transportation to the port or site of final shipment abroad, independent of the means of transportation;

CIF means the value of the good imported inclusive of the cost of insurance and freight up to the port or place of entry in the country of importation;

competent authority means:

(a) for China, the application and administration of the Rules of Origin under this Agreement shall be organized by the General Administration of Customs; and

(b) for Peru, by the Ministry of Foreign Trade and Tourism, or its successor;

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 the recognized consensus or 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. Generally Accepted Accounting Principles may encompass broad guidelines for general application, as well as detailed standards, practices, and procedures;

identical goods means “identical goods”, as defined in the Customs Valuation Agreement;

material means a good used in the production of another good, including any components, ingredients, raw materials, parts or pieces;

production means growing, raising, extracting, picking, gathering, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good; and

producer means a person who grows, raises, extracts, picks, gathers, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles a good.

Article 23: Originating Goods

Unless otherwise indicated in this Chapter, and on the condition that a good meets all the other applicable requirements of this Chapter, the good shall be regarded as originating from a Party when:

(a) the good is wholly obtained or produced entirely in the territory of one or both Parties, within the meaning of Article 24 (Wholly Obtained Goods), including where required under Annex 4 (Product Specific Rules of Origin);

(b) the good is produced in the territory of one or both Parties, exclusively from materials whose origin conforms to the provisions of this Chapter; or

(c) the good is produced in the territory of one or both Parties, using non-originating materials that conform to a change in tariff classification, a regional value content, a process requirement or other requirements specified in Annex 4 (Product Specific Rules of Origin).

Article 24: Wholly Obtained Goods

For the purpose of subparagraph (a) of Article 23 (Originating Goods), the following goods shall be regarded as wholly obtained or produced entirely in the territory of one or both Parties:

- (a) live animals, born and raised in China or Peru;
- (b) goods obtained from live animals raised in China or Peru;
- (c) goods obtained by hunting, trapping, fishing or aquaculture in China or Peru;
- (d) fish, shellfish and other marine life taken from the sea beyond the territory of a Party, by a vessel flying the flag of China or Peru;
- (e) goods manufactured on board a factory ship flying the flag of China or Peru, exclusively from goods referred to in subparagraph (d);
- (f) plants and plants products harvested, picked or gathered in China or Peru;
- (g) mineral goods and other naturally occurring substances extracted from the soil, waters, seabed or beneath the seabed of China or Peru;
- (h) goods other than fish, shellfish and other marine life taken or extracted by a Party from the waters, seabed or beneath the seabed outside China or Peru, provided that that Party has rights to exploit them;
- (i) waste and scrap derived from:

(i) manufacturing operations conducted in China or Peru; or

(ii) used goods collected in China or Peru;

provided that such waste and scrap is fit only for the recovery of raw materials; and

(j) goods produced in China or Peru exclusively from goods specified in subparagraphs (a) to (i).

Article 25: Change in Tariff Classification

A change in tariff classification requires that the non-originating materials used in the production of the goods undergo a change in tariff classification as specified in Annex 4 (Product Specific Rules of Origin) as a result of production processes performed in the territory of one or both Parties.

Article 26: Regional Value Content (RVC)

1. The regional value content of a good shall be calculated on the basis of the following method:

$$\text{FOB} - \text{VNM}$$

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

$$\text{FOB}$$

where:

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

FOB: is the Free On Board value of the good; and

VNM: is the value of the non-originating materials.

2. The value of the non-originating materials shall be:

(a) the CIF value at the time of importation of the material; or

(b) the earliest ascertained price paid or payable for the non-originating materials in the territory of the Party where the working or processing takes place. When the producer of a good acquires non-originating materials within that Party, the value of such materials shall not include freight, insurance, packing costs and any other costs incurred in transporting the material from the supplier's warehouse to the producer's location.

3. The values referred to above shall be determined pursuant to the Customs Valuation Agreement.

Article 27: Minimal Operations or Processes

Operations or processes which contribute minimally to the essential characteristics of the goods, either by themselves or in combination, are considered to be minimal operations or processes and do not confer origin, notwithstanding that the good or materials satisfies with the provisions of this Chapter. These include:

(a) operations to ensure the preservation of goods in good condition during transport and storage;

(b) breaking-up or assembly of consignments;

(c) packing, unpacking or repacking operations for retail sale purposes; or

(d) slaughter of animals.

Article 28: Accumulation

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

2. A good shall be considered as originating where its production is carried out by one or more producers in the territory of a Party, in such way that the production of the materials incorporated in that good, carried out in the territory of that Party, may be considered as part of the production of the good, provided that the good complies with the requirements established in Article 23 (Originating Goods) and all other applicable requirements in this Chapter.

Article 29: De Minimis

1. A good that does not meet the change in tariff classification, pursuant to Annex 4 (Product Specific Rules of Origin), shall be considered to be originating if the value of all non-originating materials used in its production not meeting the change in tariff classification does not exceed 10% of the value of the good, determined pursuant to Article 26 (Regional Value Content (RVC)). Additionally, the good shall satisfy all other applicable requirements in this Chapter.

2. Where the good mentioned in paragraph 1 is also subject to a regional value content requirement, the value of all non-originating materials shall be considered for calculating the regional value content of the good. Additionally, the good shall satisfy all other applicable requirements in this Chapter.

Article 30: Fungible Goods or Materials

1. In determining whether a good is an originating good, any fungible goods or materials shall be distinguished by:

(a) physical separation of the goods or materials; or

(b) an inventory management method recognized in the Generally Accepted Accounting Principles of the exporting Party.

2. The inventory management method selected under paragraph 1 for a particular fungible good or material shall continue to be used for that good or material throughout the fiscal year of the person that selected the inventory management method.

Article 31: Sets

Sets, as defined in General Rule 3 of the HS, shall be regarded as originating when all the components of the sets are originating. Nevertheless, when a set is composed of originating and non-originating goods, the set as a whole shall be regarded as originating, provided that the value of the non-originating goods does not exceed 15% of the total value of the set, determined pursuant to Article 26 (Regional Value Content (RVC)).

Article 32: Accessories, Spare Parts and Tools

1. With regard to the change in tariff classification requirements, specified in Annex 4 (Product Specific Rules of Origin), accessories, spare parts, tools, and instructional and information materials presented with the good upon importation shall be disregarded in the

determination of the origin of the good, provided that these are classified with and not invoiced separately from the good.

2. Where the good is subject to an RVC requirement, the value of the accessories, spare parts, tools, and instructional and information materials shall be taken into account as originating materials or non-originating materials, as the case may be, for calculating the RVC of the good, provided that these are classified with and not invoiced separately from the good.

3. This Article applies only where the quantities and values of said accessories spare parts, tools, and instructional and information materials are customary for the good.

Article 33: Packaging Materials and Containers for Retail Sale

1. Where the packaging materials and containers are classified with the good, the origin of the packaging materials and containers in which a good is packaged for retail sale, shall be disregarded in determining the origin of the good, provided that:

(a) the good is wholly obtained or entirely produced as defined in subparagraph (a) of Article 23 (Originating Goods);

(b) the good is produced exclusively from originating materials, as defined in subparagraph (b) of Article 23 (Originating Goods); or

(c) the good is subject to a change in tariff classification requirement set out in Annex 4 (Product Specific Rules of Origin).

2. Where the good is subject to a regional value content requirement, the value of the packaging materials and containers used for retail sale shall be taken into account when determining the origin of the good.

Article 34: Packing Materials and Containers for Shipment

The packing materials and containers used to protect a good during its transportation shall not be taken into account when determining the origin of the good.

Article 35: Neutral Elements

1. In order to determine whether a good is originating, the origin of the neutral elements defined in paragraph 2 shall not be taken into account.

2. Neutral elements mean articles used in the production of a good which are not physically incorporated into it, neither form part of it, including:

(a) fuel, energy, catalysts and solvents;

(b) equipment, devices, and supplies used for testing or inspecting the goods;

(c) gloves, glasses, footwear, clothing, safety equipment and supplies;

(d) tools, dies and molds;

(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 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 36: Direct Transport

1. In order for originating goods to maintain their originating status, the goods shall be

transported directly between the Parties.

2. Notwithstanding paragraph 1, the following shall be considered as transported directly from the exporting Party to the importing Party:

(a) goods that are transported without passing through the territory of a non-Party; and

(b) goods whose transport involves transit through one or more non-Parties, with or without trans-shipment or temporary storage of up to 3 months in such non-Parties, provided that:

(i) the goods do not enter into trade or commerce there; and

(ii) the goods do not undergo any operation there other than unloading and reloading, repacking, or any operation required to keep them in good condition.

3. Compliance with the provisions set out in paragraphs 1 and 2 shall be authenticated by presenting to the competent authority of the importing Party, either with customs documents of the non-Parties or with any other documents so provided to the satisfaction of the competent authority of the importing Party.

Article 37: Exhibitions

1. Preferential tariff treatment as provided for under this Agreement shall be granted to originating goods, sent for exhibition in a non-Party and sold after the exhibition for importation in China or Peru, when the following conditions are met to the satisfaction of the customs authority of the importing Party:

(a) an exporter has consigned these goods from China or Peru to the non-Party where the exhibition has actually taken place;

(b) the goods have been sold or otherwise disposed of by that exporter to a person in China

or Peru;

(c) the goods have been consigned during the exhibition or immediately thereafter in the state in which they were sent for exhibition;

(d) the goods have not been used for any purpose other than demonstration at the exhibition since they were consigned for exhibition; and

(e) the goods have remained during the exhibition under customs authority control.

2. For purposes of application of paragraph 1, a Certificate of Origin shall be issued in accordance with the provisions of this Chapter and submitted to the customs authority of the importing Party, with the name and address of the exhibition being attached thereon. Where necessary, additional documentary evidence related to the exhibition may be required.

3. Paragraph 1 shall apply to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display which is not organized for private purposes in shops or business premises, with a view to the sale of foreign goods.

Section B: Operational Procedures Related to Origin

Article 38: Certificate of Origin

1. In order for originating goods to qualify for preferential tariff treatment, the importer shall hold and submit, where required by the customs legislation of the importing Party, an original and valid Certificate of Origin, issued in writing on the basis of the format as set out in Section A (Certificate of Origin) of Annex 5 (Certificate of Origin and Declaration of Origin), at the time of importation.

2. The exporter of the good shall apply in writing to the authorized body of the exporting Party for the issuance of a Certificate of Origin, which shall be issued before or at the time of

exportation.

3. The Certificate of Origin must be duly completed in English, covering one or more goods under one consignment.

4. The exporter of the good applying for a Certificate of Origin shall provide the commercial invoice, the origin application which contains the minimum information data required under its domestic legislation, and all necessary documents to prove the originating status of the good concerned as required by the competent authority or authorized body, and undertake to fulfill the other requirements as laid down under this Chapter.

5. The Certificate of Origin, as referred to in paragraph 1, shall be valid for one year from its date of issuance.

6. In the event of theft, loss or destruction of a Certificate of Origin, the exporter may apply in writing to the authorized body which issued it for a duplicate of the original, on the basis of the export documents in his possession. The duplicate issued in this manner shall bear in the Remarks box the word “CERTIFIED TRUE COPY of the original Certificate of Origin number_dated_”, for its validation period to count from that date.

Notwithstanding subparagraph 2, a Certificate of Origin may, under exceptional circumstances, be issued retrospectively subsequent to the exportation of the good if:

(a) it was not issued at the time of exportation because of errors, involuntary omissions or any other circumstances as may be deemed justified under the legislation of each Party, provided that the exporter provides all the necessary commercial documents and the export declaration endorsed by the customs authority of the exporting Party; or

(b) it is demonstrated to the satisfaction of the authorized body that a Certificate of Origin

was issued but was not accepted at importation for technical reasons. The validation period shall remain the same as indicated in the certificate originally issued.

Article 39: Exemption of Certificate of Origin

1. A Declaration of Origin, in the format as set out in Section B (Declaration of Origin) Annex 5 (Certificate of Origin and Declaration of Origin), may be completed by the exporter or producer and shall be accepted instead of a Certificate of Origin for any consignment whose customs value does not exceed US\$ 600 or its equivalent in the currency of the importing Party, or such higher amount as that Party may establish.

2. A Declaration of Origin shall cover the goods presented under a single import Customs Declaration and shall remain valid for one year from its date of issuance.

3. Notwithstanding paragraph 1, where an importation forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of circumventing the requirements of this Section, the importing Party may deny preferential tariff treatment.

Article 40: Authorized Bodies

1. A Certificate of Origin shall be issued only by an authorized body in the exporting Party.

2. The competent authority of each Party shall inform the competent authority of the other Party of the name of each authorized body, as well as their relevant contact details, and shall provide impression specimens of the stamps, as well as details of any security features for relevant forms and documents used by each authorized body prior to the issuance of any

certificates by that body. Any change in the information provided above shall be communicated in advance to the competent authority of the other Party.

3. The authorized body shall be held accountable to ensure that the information included in the Certificate of Origin corresponds to the goods covered by the Certificate of Origin and that the originating status of the goods, as required under this Chapter, is correct.

Article 41: Obligations Regarding Importations

1. Except as otherwise provided in this Chapter, each Party shall require an importer in its territory that claims preferential tariff treatment to:

(a) make a written statement in the customs declaration, based on a valid Certificate of Origin, indicating that the good qualifies as an originating good;

(b) hold the Certificate of Origin at the time the statement referred to in subparagraph (a) is made;

(c) hold the documents which certify that the requirements established in Article 36 (Direct Transport) have been met, where applicable; and

(d) submit the valid Certificate of Origin, as well as the documents indicated in subparagraph (c) to the customs authority, when it is required.

2. When an importer has reason to believe that a Certificate of Origin on which a statement was based contains incorrect information, the importer shall make a corrected statement and pay any customs duty owed, before a verification process is initiated.

3. When the importer does not comply with any requirements under this Article and any other requirements under this Chapter, the preferential tariff treatment shall be denied for the goods

imported from the territory of the exporting Party.

Article 42: Refund of Import Customs Duties or Deposit

1. Where an originating good is imported into the territory of a Party without a valid Certificate of Origin under this Agreement, the importer may apply for a refund of any excess import customs duties paid or deposit imposed, where applicable, within one year for the duties paid or within 3 months or such longer period not greater than one year as specified in the legislation of the importing Party for the deposit imposed, after the date on which the good was imported, on presentation of:

(a) the valid Certificate of Origin, which shall comply with Article 38 (Certificate of Origin); and

(b) other documentation related to the importation of the good as the customs authority of the importing Party may require;

provided that the importer provides a written declaration at the time of importation that the good presented qualifies as an originating good.

2. No customs duties or deposit shall be refunded in the case where the importer failed to declare to the customs authority of the importing Party, at the time of importation, that the good was an originating good under this Agreement, even though a valid certificate was provided to the customs authority subsequently.

Article 43: Supporting Documents

The documents used for the purpose of proving that the goods covered by a Certificate of

Origin can be considered as originating goods and fulfill the other requirements of this Chapter may include, but are not limited, to the following:

(a) direct evidence of the processes carried out by the exporter or supplier to obtain the goods concerned, contained for example in his accounts or internal book-keeping;

(b) documents proving the originating status of the materials used, where these documents are used in accordance with the domestic legislation;

(c) documents proving the working or processing of materials, where these documents are used in accordance with the domestic legislation; or

(d) Certificates of Origin proving the originating status of the materials used.

Article 44: Preservation of Certificate of Origin and Supporting Documents

1. The exporter applying for the issuance of a Certificate of Origin shall keep for at least 3 years the documents referred to in Article 43 (Supporting Documents), from its date of issuance.

2. The authorized bodies of the exporting Party issuing a Certificate of Origin shall keep a copy of the Certificate of Origin for at least 3 years, from its date of issuance.

Article 45: Verifications Process

1. For purposes of determining whether a good imported into one Party from the other Party qualifies as an originating good, the competent authority 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 through the competent authority of the exporting Party;

(c) requests that the competent authority of the exporting Party assists in verifying the origin of the good;

(d) or, in the case where any request under subparagraphs (a), (b) or (c) fails to satisfy the concern of the importing Party, that Party may request on-site visits to observe the verification process conducted by the competent authority of the exporting Party in the premises of the exporter or producer in the territory of the exporting Party.

2. For purposes of subparagraphs 1(b) and 1(c), all the information requested by the competent authority of the importing Party and responded by the competent authority of the exporting Party shall be communicated in English.

3. For 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 purposes of subparagraph 1(c), the competent authority of the importing Party shall provide the competent authority of the exporting Party with:

(a) the reasons why such assistance for verification is requested;

(b) the Certificate of Origin of the good, or a copy thereof; and

(c) any information and documents as may be necessary for the purpose of such request.

The competent authority of the exporting Party shall provide the competent authority of the importing Party a written statement in English, regarding the origin of the good under

verification process, including the following information:

(a) description of the production process of the good;

(b) description and tariff classification of originating and non-originating materials, indicating the supplier of such materials; and

(c) detailed explanation of how the good obtained the status of an originating good.

In the cases where the competent authority of the exporting Party does not provide the written statement within 150 days from the date of request or where the written statement does not contain sufficient information, the importing Party shall determine the origin of the good based on the best information available at that moment.

5. For purposes of subparagraph 1(d), the importing Party shall notify by writing, 30 days prior to the on-site visit, the competent authority of the exporting Party of such a request.

In the case where the competent authority of the exporting Party does not give its written consent to such a request within 30 days from the receipt of the notification, the importing Party may deny the preferential tariff treatment to the relevant good.

6. The importing Party shall, within 300 days 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, based on which the determination was made.

7. Where, at the time of importation, the customs authority of the importing Party has a reasonable doubt on the origin of the good, covered under the Certificate of Origin, the good may be released upon a deposit or the payment of duties, pending the outcome of the verification process. The above deposit or duties paid shall be refunded once the outcome of the verification process confirms that the good qualifies as an originating good.

8. A Party may suspend preferential tariff treatment to an importer on any subsequent import of a good when the competent authority had already determined that an identical good was not eligible for such treatment, until it is demonstrated that the good complies with the provisions under this Chapter.

Article 46: Development of Electronic Certification and Verification System

After 6 months from the entry into force of the Agreement, the Parties shall start the work on developing an electronic certification and verification system to ensure the effective and efficient implementation of this Section, in a manner to be jointly determined by the competent authorities of the Parties, in order to be implemented within 3 years from the entry into force of the Agreement.

Article 47: Penalties

Penalties shall be imposed in accordance with the domestic legislation of each Party for infringement on the provisions of this Chapter.

Article 48: Confidentiality

1. A Party shall maintain the confidentiality of the information provided by the other Party pursuant to this Chapter, if such other Party so request. Any violation of the confidentiality shall be treated in accordance with the domestic legislation of each Party.

2. This information shall not be disclosed without the specific permission of the person or government providing such information, except to the extent that it may be required to be

disclosed in the context of judicial proceedings.

Article 49: Committee on Rules of Origin

The functions of the Committee on Rules of Origin under this Agreement shall include:

(a) ensuring the effective, uniform and consistent administration of this Chapter, and enhancing the cooperation in this regard;

(b) maintaining the Annex 4 (Product Specific Rules of Origin) on the basis of the transposition of the HS;

(c) advising the Free Trade Commission of proposed solutions to address issues related to:

(i) interpretation, application and administration of this Chapter;

(ii) calculation of the Regional Value Content; and

(iii) issues arising from the adoption by either Party of operational practices not in conformity with this Chapter that may affect adversely the flow of trade between the Parties;

(d) proposing to the Free Trade Commission for approval on the modification proposals under Article 50 (Modifications), in the event a consensus is reached between the Parties;

(e) working on the development of an electronic certification and verification system;

(f) referring the issues on tariff classification and customs valuation related to the determination of origin, to the Committee on Trade Facilitation for settlement; and

(g) studying any other origin-related matters as referred to by the Committee on Trade in Goods.

Article 50: Modifications

1. If a Party considers that there is a need to make amendments to Annex 4 (Product Specific Rules of Origin), that Party may submit a modification proposal to the other Party, along with supporting rationale and studies.
2. The other Party shall respond the results of the study on the proposal made by the requesting Party within 180 days from its submission.