

Chapter 4 Rules of Origin and Implementation Procedures

Section A Rules of Origin

Article 4.1 Definitions

For the purposes of this Chapter:

aquaculture means the farming of aquatic organisms, including fish, mollusks, 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;

authorized body means any government authority or other entity authorized under the laws or regulations of a Party or recognized by a Party as competent to issue a Certificate of Origin;

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the GATT 1994, which is part of the WTO Agreement;

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

competent authority means:

For China: General Administration of Customs;

For Ecuador: The Ministry of Production, Foreign Trade, Investment and Fisheries, or the authority designated by the domestic law;

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

fungible materials means materials which are interchangeable for commercial purposes, whose properties are essentially identical, and between which it is impractical to differentiate by a mere visual examination;

generally accepted accounting principles means the recognized accounting

standards 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. Those standards may encompass broad guidelines of general applications as well as detailed standards, practices, and procedures;

good means a product or material;

materials means ingredients, parts, components, assemblies, and/or goods that were physically incorporated into another product or were subject to a process in the production of another product;

originating materials means materials which qualify as originating in accordance with this Chapter;

product means a product being produced, even if it is intended for later use in another production operation; and

production means any method of obtaining goods, including, but not limited to, growing, raising, mining, harvesting, fishing, aquaculture, farming, trapping, hunting, capturing, gathering, collecting, breeding, extracting, manufacturing, processing, or assembling a good.

Article 4.2 Originating Goods

Except as otherwise provided in this Chapter and subject to the condition that a good meets all the other applicable requirements of this Chapter, the following goods shall be considered as originating in a Party:

(a) goods wholly obtained or produced in a Party as defined in Article 4.3 (Goods Wholly Obtained);

(b) goods produced in a Party exclusively from originating materials of one Party or both Parties; or

(c) goods produced in a Party, using non-originating materials, that conform to a regional value content not less than 40%, except for the goods listed in Annex 4 (Product Specific Rules of Origin), which must comply with the requirements specified therein.

Article 4.3 Goods Wholly Obtained

For the purposes of Article 4.2(a), the following goods shall be considered as wholly obtained or produced in a Party:

- (a) live animals born and raised in a Party;
- (b) goods obtained from live animals referred to in sub-paragraph (a) in a Party;
- (c) plants and plant products grown, and harvested, picked, or gathered in a Party;
- (d) goods obtained from hunting, trapping, fishing, aquaculture, gathering, or capturing conducted in a Party;
- (e) minerals and other naturally occurring substances not included in sub-paragraphs (a) through (d), extracted or taken from its soil, waters, seabed, or subsoil beneath the seabed;
- (f) goods extracted from the waters, seabed, or subsoil beneath the seabed outside the territorial waters of a Party, provided that the Party has the right to exploit such waters, seabed, or subsoil beneath the seabed in accordance with international law and its domestic law;
- (g) goods of sea fishing and other marine products taken from the sea outside the territorial waters of a Party by a vessel registered in a Party and flying the flag of that Party;
- (h) goods processed or made on board factory ships registered in a Party and flying the flag of that Party, exclusively from goods referred to in sub-paragraph (g);
- (i) scrap and waste derived from processing operations in a Party, which fit only for the recovery of raw materials;
- (j) used goods consumed and collected there which fit only for the recovery of raw materials; or
- (k) goods produced entirely in a Party exclusively from the goods referred to in sub-paragraphs (a) to (j).

Article 4.4 Regional Value Content

1. The Regional Value Content (RVC) criterion shall be calculated as follows:

$$RVC = \frac{V - VNM}{V} \times 100\%$$

where:

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

V is the value of the product, as defined in the Customs Valuation Agreement, adjusted on an FOB basis; and

VNM is the value of the non-originating materials, including materials of undetermined origin, as provided in paragraph 2.

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

(a) the value of the materials, as defined in the Customs Valuation Agreement, adjusted on a CIF basis; or

(b) the earliest ascertained price paid or payable for the non-originating materials in a Party where the working or processing takes place. When the producer of a product 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 value of the non-originating materials used by the producer in the production of a product shall not include, for the purposes of calculating the regional value content of the product, pursuant to paragraph 1, the value of non-originating materials used to produce originating materials that are subsequently used in the production of the product.

Article 4.5 De Minimis

A product that does not meet tariff classification change requirements, pursuant to Annex 4 (Product Specific Rules of Origin), shall nonetheless be considered to be an originating product, provided that:

(a) the value of all non-originating materials, determined pursuant to Article 4.4 (Regional Value Content), including materials of undetermined origin, that do not meet the tariff classification change requirement, does not exceed 10% of the FOB value of the given product; and

(b) the product meets all the other applicable criteria of this Chapter.

Article 4.6 Accumulation

Originating materials from a Party, used in the production of a good in the other Party, shall be considered to be originating in the latter Party.

Article 4.7 Minimal Operations or Processes

1. Notwithstanding Article 4.2 (c), a good shall not be considered as originating, if

it has only undergone one or more of the following operations or processes:

- (a) preservation operations to ensure the goods remain in good condition during transport and storage;
- (b) simple assembly of parts of articles to constitute a complete article, or disassembly of products into parts;
- (c) packing, unpacking, or repacking operations for the purposes of sale or presentation;
- (d) slaughtering of animals;
- (e) washing, cleaning, removal of dust, oxide, oil, paint, or other coverings;
- (f) ironing or pressing of textiles;
- (g) simple painting and polishing operations;
- (h) husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- (i) operations to color sugar or form sugar lumps;
- (j) peeling, stoning, and shelling of fruits, nuts, and vegetables;
- (k) sharpening, simple grinding or simple cutting;
- (l) sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles), cutting, slitting, bending, coiling, or uncoiling;
- (m) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards, and other similar packaging operations;
- (n) affixing or printing marks, labels, logos, or other like distinguishing signs on products or their packaging;
- (o) simple mixing of goods, whether or not of different kinds;
- (p) mere dilution with water or another substance that does not materially alter the characteristics of the goods; or
- (q) operations whose sole purpose is to ease port handling.

2. All operations in the production of a given good carried out in a Party shall be taken into account when determining whether the working or process undergone by that good is considered as minimal operations or processes referred to in paragraph 1.

Article 4.8 Fungible Materials

Where originating and non-originating fungible materials are used in the production of a good, the following methods shall be adopted in determining whether the materials used are originating:

- (a) physical separation of the materials; or

(b) an inventory management method recognized in the generally accepted accounting principles of the exporting Party, provided that the inventory management method selected is used for at least 12 continuous months.

Article 4.9 Neutral Elements

1. In determining whether a good is an originating good, any neutral elements as defined in paragraph 2 shall be disregarded.

2. **Neutral elements** means a good used in the production, testing, or inspection of another good but not physically incorporated into that good by itself, including:

(a) fuel, energy, catalysts, and solvents;

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

(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 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 4.10 Packing, Packages and Containers

1. Containers and packing materials used for the transport of goods shall not be taken into account in determining the originating status of the goods.

2. The originating status of the packaging materials and containers in which goods are packaged for retail sale shall be disregarded in determining the originating status of the goods, provided that the packaging materials and containers are classified with the goods.

3. Notwithstanding paragraph 2, where goods are subject to a regional value content requirement, the value of the packaging materials and containers used for retail sale shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the regional value content of the goods.

Article 4.11 Accessories, Spare Parts and Tools

1. Accessories, spare parts, or tools presented and classified with the good shall be considered as part of the good, provided that:

- (a) they are invoiced together with the good; and
- (b) their quantities and values are commercially customary for the good.

2. Where a good is subject to change in tariff classification criterion set out in Annex 4 (Product Specific Rules of Origin), accessories, spare parts, or tools described in paragraph 1 shall be disregarded when determining the origin of the good.

3. Where a good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools described in paragraph 1 shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.12 Sets

Sets, as defined in General Rule 3 of the Harmonized System, shall be regarded as originating when all component products are originating. Nevertheless, 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 non-originating products does not exceed 15% of the total value of the set, determined pursuant to Article 4.4 (Regional Value Content).

Article 4.13 Direct Consignment

1. Preferential tariff treatment under this Agreement shall only be granted to originating goods that are transported directly between the Parties.

2. Notwithstanding paragraph 1, goods whose transport involves transit through one or more non-Parties, with or without trans-shipment or temporary storage of up to 6 months in such non-Parties, shall still be considered as directly transported between the Parties, provided that:

(a) the transit entry of the goods is justified for geographical reason or by consideration related exclusively to transport requirements;

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

- (c) the goods remain under customs control during transit in those non-Parties.

3. Compliance with paragraph 2 shall be evidenced by presenting the customs authority of the importing Party either with customs documents of the non-Parties, or with any other documents to the satisfaction of the customs authority of the importing Party.

Section B Implementation Procedures

Article 4.14 Certificate of Origin

1. A Certificate of Origin, as set out in Annex 5 (Certificate of Origin), shall be issued by the authorized bodies of a Party on application by the exporter or producer, provided that the goods can be considered as originating in that Party in accordance with this Chapter.

2. The Certificate of Origin shall:

- (a) contain a unique certificate number;
- (b) cover one or more goods under one consignment;
- (c) state the basis on which the goods are deemed to qualify as originating for the purposes of this Chapter;
- (d) contain security features, such as specimen signatures or stamps, as advised to the importing Party by the exporting Party; and
- (e) be completed in English.

3. The Certificate of Origin shall be issued before or at the time of shipment. It shall be valid for 1 year from the date of issuance in the exporting Party.

4. Each Party shall inform the customs authority of the other Party of the name of each authorized body, as well as relevant contact details, and shall provide details of security features for relevant forms and documents used by each authorized body, prior to the issuance of any Certificate of Origin by that body. Any change in the information provided above shall be promptly notified to the customs authority of the other Party.

5. A Certificate of Origin may be issued retrospectively within 1 year from the date of shipment, bearing the words “ISSUED RETROSPECTIVELY” and remains valid for 1 year from the date of shipment, if it is not issued before or at the time of shipment due

to force majeure, involuntary errors, omissions or other valid causes.

6. In cases of theft, loss, or accidental destruction of a Certificate of Origin, the exporter or producer may make a written request to the authorized bodies of the exporting Party for issuing a certified copy. The certified copy shall bear the words “CERTIFIED TRUE COPY of the original Certificate of Origin number ___ dated ___”. The certified copy shall be valid during the term of validity of the original Certificate of Origin.

Article 4.15 Retention of Origin Documents

1. Each Party shall require its producers, exporters, and importers to retain documents in any medium that allows for prompt retrieval, including in digital or written form, that prove the originating status of the goods as well as the fulfillment of the other requirements of this Chapter for at least 3 years or any longer time in accordance with that Party’s domestic law.

2. Each Party shall require that its authorized bodies retain copies of Certificates of Origin and other related supporting documents in any medium that allows for prompt retrieval, including in digital or written form, for at least 3 years or any longer time in accordance with that Party’s domestic law.

Article 4.16 Obligations Regarding Importations

Unless otherwise provided in this Chapter, the importer claiming for preferential tariff treatment shall:

(a) indicate in the customs declaration that the good qualifies as an originating good;

(b) possess a valid Certificate of Origin at the time the import customs declaration referred to in sub-paragraph (a) is made; and

(c) submit the valid Certificate of Origin and other documentary evidence related to the importation of the goods, upon request of the customs administration of the importing Party.

Article 4.17 Refund of Import Customs Duties or Deposit

1. Where a Certificate of Origin is not submitted to the import customs at the time of importation pursuant to Article 4.16 (Obligation Regarding Importations), upon the

request of the importer, the customs authorities of the importing Party may impose the applied non-preferential customs duties, or require a guarantee equivalent to the full amount of the customs duties on that good, provided that the importer formally declares to the customs authority at the time of importation that the good in question qualifies as an originating good.

2. The importer may apply for a refund of any excess customs duties imposed or guarantee paid provided that they can present all the necessary documentation required in Article 4.16 (Obligations Regarding Importations) and within the period specified in the legislation of the importing Party.

Article 4.18 Verification of Origin

1. For the purposes of determining the authenticity or accuracy of the Certificate of Origin, the originating status of the products concerned, or the fulfillment of the other requirements of this Chapter, the customs authority of the importing Party may conduct origin verification based on risk analysis and at random or whenever the customs authority of the importing Party has reasonable doubts, by means of:

- (a) requests for additional information from the importer;
- (b) requests to the customs authority of the exporting Party to verify the origin of a product;
- (c) such other procedures as the customs authorities of the Parties may jointly decide; or
- (d) conducting verification visit to the exporting Party, when necessary, in a manner to be jointly determined by the customs authorities of the Parties.

2. The customs authority of the importing Party requesting verification to the exporting Party shall specify the reasons, and provide any documents and information justifying the verification.

3. The importer or the exporting Party referred to in paragraph 1 receiving a request for verification, shall respond to the request promptly and reply within 3 months, from the date of raising of the verification request. Upon request of the exporting Party, the above-mentioned period can be extended for another 3 months.

4. If the customs authority of the importing Party decides to suspend the granting of preferential treatment to the goods concerned while awaiting the results of the verification, the goods shall be released upon submission of guarantee, unless otherwise provided in the domestic legislation of the importing Party.

5. If no reply is received within 6 months, or if the reply does not contain sufficient information to determine the authenticity of the documents or the originating status of the products in question, the requesting customs authority may deny preferential tariff treatment.

6. The exporter, producer, or manufacturer, who applied for the Certificate of Origin related to the concerned goods, shall not deny any request for a verification visit agreed upon by the Parties. Any failure to consent to a verification visit shall be liable for a denial of preferential benefits claimed in accordance with this Agreement.

Article 4.19 Denial of Preferential Tariff Treatment

Except as otherwise provided in this Chapter, the importing Party may deny claim for preferential tariff treatment, if:

- (a) the goods do not meet the requirements of this Chapter;
- (b) the importer, exporter, or producer fails to comply with the relevant requirements of this Chapter;
- (c) the Certificate of Origin does not meet the requirements of this Chapter; or
- (d) in case stipulated in Article 4.18 (Verification of Origin).

Article 4.20 Electronic Origin Data Exchange System

For the purposes of the effective and efficient implementation of this Chapter, both Parties may establish Electronic Origin Data Exchange System to ensure real-time exchange of origin related information between customs administrations upon mutually agreed time framework.

Article 4.21 Committee on Rules of Origin

1. The Parties hereby establish a Committee on Rules of Origin under the Free Trade Commission, composed of government representatives of each Party.

2. The Committee shall meet as necessary to consider any matter arising under this Chapter including but not limited to disputes in connection with the verification procedures of Article 4.18 (Verification of Origin) between the competent authorities or customs authorities and questions regarding the interpretation of this Chapter, and consult

regularly to ensure that this Chapter is administered effectively, uniformly, and consistently in order to achieve the objectives of this Agreement.

Article 4.22 Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Chapter.

2. Each Party shall notify the other Party in writing of its designated contact point no later than 60 days after the date of entry into force of this Agreement.

3. A Party shall promptly notify the other Party of any change of its contact point or the details of the relevant officials.