

**APPENDIX 1**

**NEW CHAPTER 4 (RULES OF ORIGIN AND OPERATIONAL PROCEDURES)**

## CHAPTER 4

### RULES OF ORIGIN AND OPERATIONAL PROCEDURES

#### Section 1: Rules of Origin

##### Article 1                      Definitions

For the purposes of this Chapter:

**authorized body** means any government authority or other entity authorized under the domestic legislation of a Party to issue a Certificate of Origin;

**Certificate of Origin** means a form issued by an authorized body of the exporting Party, identifying the goods being consigned between the Parties and certifying that the goods to which the certificate relates originate in a Party;

**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;

**Customs Valuation Agreement** means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

**Declaration of Origin based on an Advance Ruling** means a statement as to the origin of the goods made by the holder of an advance ruling in accordance with a Party's domestic laws and regulations;

**Declaration of Origin by an Approved Exporter** means a statement as to the origin of the goods made by an exporter approved pursuant to Article 20 of this Chapter;

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

**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 application as well as detailed standards, practices and procedures;

**Harmonized System** means the Harmonized Commodity Description and Coding System of the WCO, which is set out in the Annex to the *International Convention on the Harmonized Commodity Description and Coding System*, done at Brussels on 14 June 1983, as amended;

**Joint Electronic Verification System** means the system developed by the Parties to exchange electronic data of origin under the Agreement for the purpose of verifying the accuracy or authenticity of an origin document;

**materials** means any matter or substance used in the production or transformation of another good, including a part or ingredient;

**origin document** means a Certificate of Origin, a Declaration of Origin by an Approved Exporter, a Declaration of Origin based on an Advance Ruling, or any other document demonstrating the origin status that the importing Party may decide to accept;

**originating materials** or **originating goods** means materials or goods which qualify as originating in accordance with the provisions of this Section;

**other documentary evidence of origin** means any other documentary evidence sufficient to substantiate the origin of the goods;

**packing materials and containers for shipment** means goods used to protect a good during its transportation, other than containers or packaging materials used for retail sale;

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

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

## **Article 2                      Preferential Tariff Treatment**

Preferential tariff treatment under this Agreement shall be applied to goods that satisfy the requirements of this Chapter and which are consigned directly between the Parties.

## **Article 3                      Originating Goods**

Unless otherwise indicated in this Section, a good shall be considered as originating in a Party when:

- (a) the good is wholly obtained or produced in the territory of a Party as set out and defined in Article 4 of this Chapter, including where required to be so under Annex 5;
- (b) the good is produced entirely in the territory of one or both Parties, exclusively from materials whose origin conforms to the provisions of this

Section; 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 5, and the good meets the other applicable provisions of this Section.

#### **Article 4 Goods Wholly Obtained**

Within the meaning of Article 3(a) of this Chapter, the following goods shall be considered as wholly obtained or produced in the territory of a Party:

- (a) plant products harvested, picked or gathered in the territory of a Party;
- (b) live animals born and raised in the territory of a Party;
- (c) goods obtained from live animals raised in the territory of a Party;
- (d) goods obtained from hunting, trapping, fishing, farming, gathering or capturing conducted in the territory of a Party;
- (e) minerals and other naturally occurring substances, not included in paragraphs (a) to (d) above, extracted or taken from its soil, waters, seabed or beneath its seabed;
- (f) goods extracted or taken by a Party, or a person of a Party, from the waters, seabed or subsoil beneath the seabed outside the territorial waters of that Party, provided that the Party has the right to exploit such waters, seabed or subsoil beneath the seabed under that Party's applicable domestic law in accordance with relevant international agreements to which that Party is a party;
- (g) goods (fish, shellfish, plant and other marine life) taken within the territorial waters or the Exclusive Economic Zone of a Party seaward of the territorial sea under that Party's applicable laws in accordance with relevant international agreements to which that Party is a party, or taken from the high seas, by a vessel registered or recorded with a Party and flying or entitled to fly the flag of that Party;
- (h) goods processed and/or made on board factory ships registered or recorded with a Party and flying or entitled to fly the flag of that Party, exclusively from goods referred to in paragraph (g) above;
- (i) scrap and waste derived from processing operations in the territory of a Party and fit only for the recovery of raw materials, or used goods

collected in the territory of a Party provided that such goods are fit only for the recovery of raw materials;

- (j) goods obtained or produced in the territory of a Party solely from goods referred to in paragraphs (a) to (i) above.

## **Article 5                      Change in Tariff Classification**

A change in tariff classification under Annex 5 requires that the non-originating materials used in the production of the goods undergo a change of tariff classification as a result of processes performed in the territory of one or both Parties.

## **Article 6                      Regional Value Content**

1. Where Annex 5 refers to a Regional Value Content (“RVC”), the RVC shall be calculated as follows:

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

where:

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

**FOB** is the FOB value of the goods; and

**VNM** is the value in CIF terms of non-originating materials (including materials of undetermined origin).

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. Both the FOB and CIF values referred to above shall be determined pursuant to the Customs Valuation Agreement.

## **Article 7                      Accumulation**

Where originating goods or materials of a Party are incorporated into a good in the other Party's territory, the goods or materials so incorporated shall be regarded to be originating in the latter's territory.

## **Article 8                      Minimal Operations or Processes**

1. For purposes of this Article, "simple" generally describes activities which need neither special skills nor special machines, apparatus or equipment specially produced or installed for carrying out the activity.

2. 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. These include:

- (a) operations to ensure the preservation of goods in good condition during transport and storage, such as drying, freezing, ventilation, chilling and like operations;
- (b) simple operations consisting of sifting, sorting, grading, screening, classifying, washing, cutting, slitting, bending, coiling, or uncoiling;
- (c) breaking-up and assembly of consignments;
- (d) packing, unpacking or repacking operations;
- (e) simple packaging operations, such as simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards;
- (f) affixing or printing marks, labels, logos or other like distinguishing signs on products or their packaging;
- (g) mere dilution with water or another substance that does not materially alter the characteristics of the goods;
- (h) husking, partial or total bleaching, polishing, and glazing of cereals other than rice;
- (i) operations to colour sugar or form sugar lumps.

## **Article 9 Direct Consignment**

1. For the purposes of Article 2 of this Chapter, the following shall be considered as consigned directly from the exporting Party to the importing Party:

- (a) goods that are transported without passing through the territory of a non-Party;
- (b) goods whose transport involves transit through one or more non-Parties with or without trans-shipment or temporary storage of up to 12 months in such non-Parties, provided that:
  - (i) the goods are subject to controls by the customs administration of a non-Party to ensure compliance with the domestic laws and regulations which that customs administration of a non-Party is responsible for enforcing; and
  - (ii) the goods do not undergo any operation there other than unloading and reloading, repacking, splitting, labelling or marking required by the importing Party, or any operation necessary to preserve it in good condition.

2. The importing Party may require the importer to present evidence to prove compliance with this Article, such as transport documents or other commercial documents that demonstrate the route of the goods and, if applicable, the storage of the goods. If the customs administration of the importing Party is not satisfied by the aforementioned documents to demonstrate compliance with this Article, the importing Party may require additional documents to be provided.

## **Article 10 Packing and Containers for Transportation**

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

## **Article 11 Packaging Materials and Containers for Retail Sale**

Where goods are subject to a change in tariff classification criterion set out in Annex 5, the origin of the packaging materials and containers in which goods are packaged for retail sale shall be disregarded in determining the origin of the goods, provided that the packaging materials and containers are classified with the goods. However, if the goods are subject to an RVC 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 when determining the origin of the goods.

## **Article 12                      Accessories, Spare Parts and Tools**

1. With regard to the change in tariff classification requirements for origin specified in Annex 5, accessories, spare parts, tools, 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 goods are subject to an RVC requirement, the value of the accessories, spare parts, tools, instructional and information materials shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the RVC of the goods.

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

## **Article 13                      Neutral Elements**

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

2. Neutral elements are goods used in the production, testing or inspection of another good but not physically incorporated into the good, or goods used in the maintenance of buildings or the operation of equipment associated with the production of a good. These include:

- (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 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;
- (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 14 Interchangeable Materials**

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

- (a) physical separation of the goods; or
- (b) an inventory management method recognized in the generally accepted accounting principles of the exporting Party.

2. Interchangeable materials are goods or 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.

## **Article 15 De Minimis**

A good that does not meet tariff classification change requirements, pursuant to the provisions of Annex 5, shall nonetheless be considered to be an originating good if:

- (a) the value of all non-originating materials, 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 good, determined pursuant to Article 6 of this Chapter; and
- (b) the good meets all the other applicable criteria of this Section.

## **Article 16 Compliance**

Compliance with the requirements of this Section shall be determined in accordance with the provisions of Section 2 as applicable.

### **Section 2: Operational Procedures**

## **Article 17 Claim for Preferential Tariff Treatment**

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

- (a) request or claim 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 the Party deems it necessary, that the good qualifies as an originating good;
- (c) have the origin document 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 document, other documentary evidence of origin, 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 document on which an entry declaration was based contains information that is not correct.

## **Article 18                      Refund of Import Duties or Deposits**

1. Where the importer does not satisfy the requirements of Article 17 at the time of importation of a good from a Party, the importing Party may impose the applied non-preferential import customs duty or require payment of a deposit on that good, where applicable. In such a case the importer may apply for a refund of any excess import custom duty or deposit paid within one year of the date on which the good was imported, provided that:

- (a) a written declaration that the good presented qualifies as an originating good was provided to the customs administration of the importing Party at the time of importation; and
- (b) a valid origin document, as the case may be, is provided in relation to the good imported.

2. Any excess import customs duty paid shall be refunded to the importer as soon as possible following a determination by the customs administration of the importing Party that a refund is due.

3. Any excess import deposit paid shall be refunded to the importer within one month, or in a shorter time period specified by the importing Party's domestic laws and regulations, provided that the importer has fulfilled the requirements for such a refund.

## **Article 19**                      **Certificate of Origin**

1. A Certificate of Origin shall be in the format as set out in Annex 6, and shall:
  - (a) contain a unique certificate number;
  - (b) be applicable to one or more goods under a single consignment;
  - (c) state the basis on which the goods are deemed to qualify as originating for the purposes of Section 1 of this Chapter;
  - (d) contain security features, such as specimen signatures or stamps as advised to the importing Party by the exporting Party;
  - (e) be marked "ORIGINAL"; and
  - (f) be completed in English.
2. A Certificate of Origin shall remain valid for 12 months from the date of issue.
3. A Certificate of Origin may be issued retrospectively within one year from the date of shipment, bearing the words "ISSUED RETROSPECTIVELY" and remain valid for one year from the date of shipment, if it was not issued before or at the time of shipment due to force majeure, involuntary errors, omissions or other valid causes determined by an authorized body of the exporting Party.
4. Notwithstanding paragraph 1(e), in the event of theft, loss or damage of a Certificate of Origin, the exporter or manufacturer may make a written request to the authorized bodies of the exporting Party for issuing a certified copy, provided that the exporter or manufacturer makes sure that the original copy previously issued has not been used. The certified copy shall bear the words "CERTIFIED TRUE COPY of the original Certificate of Origin number \_\_\_\_\_ dated \_\_\_\_\_". If the importing customs administration ascertains that the original copy has been used, the certified copy shall be invalid and vice versa.
5. The format and any requirements set out in Annex 6 may be revised or modified by joint decision through an exchange of letters between the Parties.

## **Article 20**                      **Approved Exporter**

1. A Party may implement an approved exporter system under this Agreement, which allows an approved exporter to complete a Declaration of Origin by an Approved Exporter. The approved exporter shall be approved and administered by the exporting Party.

2. An approved exporter shall be issued a unique identification number by the exporting Party. The use of unique identification numbers by approved exporters shall be monitored and supervised by the exporting Party.

3. Each Party shall provide the other Party with the following information on the approved exporters:

- (a) their name;
- (b) unique identification number;
- (c) contact details of the approved exporters; and
- (d) any other information mutually determined by the Parties,

prior to the actual exportation of their goods.

4. Any change in the information provided under paragraph 3 shall be promptly notified to the other Party.

#### **Article 21 Declaration of Origin by an Approved Exporter**

1. An approved exporter under Article 20 of this Chapter in a Party may, for the purposes of obtaining preferential tariff treatment in the other Party, complete a Declaration of Origin by an Approved Exporter that meets the requirements set out in Annex 16.

2. The Declaration of Origin by an Approved Exporter shall contain a unique serial number.

3. A Declaration of Origin by an Approved Exporter shall only be produced if the good concerned qualifies as an originating good in accordance with the provisions of this Chapter.

4. Where the approved exporter in the exporting Party is not also the producer of the goods, a Declaration of Origin by an Approved Exporter for the good may be completed by the approved exporter in accordance with requirements of the exporting Party.

5. A Declaration of Origin by an Approved Exporter shall be valid for 12 months from the date of its completion.

6. The electronic data contained in the Declaration of Origin by an Approved Exporter shall be exchanged between the Parties through the Joint Electronic Verification System.

## **Article 22 Declaration of Origin Based on an Advance Ruling**

1. A Declaration of Origin based on an Advance Ruling shall be in the format as set out in Annex 7, and shall be accepted in place of a Certificate of Origin for any consignment of goods covered by an advance ruling in accordance with Article 9 of Chapter 5 (Customs Procedures and Trade Facilitation) that deems the good to qualify as originating, so long as the facts and circumstances on which the ruling was based remain unchanged and the ruling remains legally valid.
2. A Declaration of Origin based on an Advance Ruling shall cover the goods presented under a single import customs declaration, and shall remain valid for 12 months from the date of issue.
3. The format and any requirements set out in Annex 7 may be revised or modified by joint decision through an exchange of letters between the Parties.

## **Article 23 Waiver of Origin Document**

1. For the purposes of granting preferential tariff treatment under this Chapter, a Party shall waive the requirements for the presentation of an origin document and grant preferential tariff treatment to:
  - (a) any consignment of originating products of a customs value not exceeding US\$1,000 or its equivalent amount in the importing Party's currency, or such higher amount as that Party may establish; or
  - (b) any other originating goods as provided under a Party's domestic laws and regulations.
2. Waivers provided for in paragraph 1(a) shall not be applicable when it is established by the customs administration of the importing Party that the 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 Chapter.

## **Article 24 Amendments to Origin Documents**

1. Neither erasures nor superimpositions shall be permitted on any origin documents. Any amendment shall be made by striking out the erroneous information and making any addition which might be required. Such alterations shall be endorsed by the person who made them.
2. Any unused space shall be crossed out to prevent any addition subsequent to certification.

## **Article 25                      Retention of Origin Documents**

1. Each Party shall require its producers, exporters and importers to retain origin documents for a period specified in its domestic legislation.
2. Each Party shall ensure that its authorized bodies retain copies of Certificates of Origin and other documentary evidence of origin for a period specified in its domestic legislation.

## **Article 26                      Authorized Bodies**

1. A Certificate of Origin shall be issued only by an authorized body in the exporting Party.
2. Each Party shall inform the customs administration of the other Party of the name of each authorized body, as well as relevant contact details, and shall provide 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 advised promptly to the customs administration of the other Party.

## **Article 27                      Verification of Origin**

1. For the purposes of determining whether goods imported into the territory of a Party from the territory of the other Party qualify as originating goods, the importing customs administration may verify any claims for tariff preference by means of:
  - (a) written requests for additional information from the importer;
  - (b) written requests for additional information from the exporter or producer in the territory of the exporting Party;
  - (c) requests that the customs administration of the exporting Party verify the origin of a good;
  - (d) requests for a verification visit to the premises of the exporter or producer, which shall be conducted with the prior consent and assistance of the customs administration of the exporting Party according to procedures jointly decided by the customs administrations of the Parties; or
  - (e) such other procedures as the customs administrations of the Parties may jointly decide.

2. A verification action process under paragraph 1 shall only be initiated when there are reasonable grounds to doubt the accuracy or authenticity of origin documents, the origin status of the goods concerned or the fulfilment of any other requirements under this Section, and when customs duty is sufficiently material to warrant the request.

3. A verification request to the customs administration of the exporting Party shall specify the reasons, and include any relevant documents and information obtained that justifies the verification activity.

4. The customs administration of the exporting party shall respond promptly to any verification request under paragraphs 1(c) or 1(d) and advise the customs administration of the exporting Party of the verification result within 6 months from the date of the verification request being sent by the importing customs administration, or any longer time that is mutually determined by the Parties.

## **Article 28 Joint Electronic Verification System**

1. The Parties reaffirm their commitment to the utilization and further development of the Joint Electronic Verification System to facilitate trade between the Parties and to promote the transition to a paperless trading environment.

2. Where origin data is transmitted through the Joint Electronic Verification System, the importing customs administration shall not require importers to submit a physical copy of an origin document upon importation.

## **Article 29 Denial of Preferential Tariff Treatment**

1. A Party may deny preferential tariff treatment to a good when:

- (a) the name of the relevant authorized body or any security features for relevant forms and documents used by that authorized body, or any change in the above information, has not been advised to the customs administration of the other Party;
- (b) the importer, exporter, manufacturer or producer, as appropriate, fails to provide information which the Party has requested in the course of a verification process under Article 27 of this Chapter, or the requested customs administration is unable for any reason to respond to the request to the satisfaction of the importing customs administration, within 6 months of the date of request; or
- (c) the good does not or did not comply with the other requirements of this Chapter, including where:

- i. the Certificate of Origin, Declaration of Origin by an Approved Exporter or Declaration of Origin based on an Advance Ruling has not been duly completed and signed;
- ii. the origin of the goods is not in conformity with Section 1;
- iii. the data provided under the Certificate of Origin, Declaration of Origin by an Approved Exporter or Declaration of Origin based on an Advance Ruling does not correspond to those of the supporting documents submitted; or
- iv. the description, quantity and weight of goods, marks and number of packages, number and kinds of packages, as specified, do not conform to the goods imported.

2. In the event preferential tariff treatment is denied, the importing Party shall ensure that its customs administration provides in writing to the exporter, the importer or producer, as the case may be, the reasons for that decision.

### **Article 30                      Minor Errors or Discrepancies**

1. Where the origin of an imported good is not in doubt, minor transcription errors or discrepancies in an origin document shall not of themselves render that origin document invalid if it does in fact correspond to the imported good.

2. For greater certainty, nothing in this Article shall prevent the customs administration of the importing Party from initiating a verification process pursuant to Article 27.

### **Article 31                      Review**

The competent authorities of the Parties shall review the procedures under this Section as they mutually deem necessary.

### **Article 32                      Rules of Origin Committee**

1. The Parties hereby establish a Committee on Rules of Origin comprising representatives from the customs administrations of the Parties.

2. The Committee shall meet on the request of either Party to review and monitor matters arising under this Chapter and consider any issues arising from their implementation. For this purpose, contact points should be designated by the customs administrations of each Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.



3. The Committee shall meet at venues and times as agreed between the Parties.

4. The Committee's functions shall include:

- (a) furthering the uniform, effective and consistent administration of this Chapter and enhance cooperation to this end;
- (b) reviewing the ongoing implementation of Annex 5 to ensure it is consistent with the neutral transposition of the Harmonized System and, if necessary, make proposals to the FTA Joint Commission for the amendment of Annex 5;
- (c) addressing technical issues related to the implementation of this Chapter and Annex 5, such as issues relating to tariff classification and regional value content calculation; and
- (d) considering proposals aimed at further facilitating trade between the Parties.