

**APPENDIX 1**

**NEW CHAPTER 4 (RULES OF ORIGIN)**

## CHAPTER 4 RULES OF ORIGIN

### ARTICLE 1 Definitions

For the purposes of this Chapter:

- (a) **aquaculture** refers to the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding, protection from predators, *etc*;
- (b) **fungible products and materials** refers to 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;
- (c) **generally accepted accounting principles** refers to the recognised 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;
- (d) **material** refers to ingredients, parts, components, subassembly and/or goods that were physically incorporated into another good or were subject to a process in the production of another good;
- (e) **non-originating material** refers to a material that has not satisfied the requirements of this Chapter;
- (f) **originating materials** or **originating goods** refers to materials or goods which qualify as originating in accordance with this Chapter;
- (g) **producer** refers to a person who engages in the production of a good;
- (h) **Product Specific Rules** are rules that specify that the materials have undergone a change in tariff classification, or undergone a specific manufacturing or processing operation, or satisfy an *ad valorem* criterion, or a combination of any of these criteria;
- (i) **production** refers to methods of obtaining goods including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting,

capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling a good; and

- (j) **used** means spent or consumed in the production of products.

## **ARTICLE 2 Origin Criteria**

For the purposes of this Agreement, products imported by a Party shall be deemed to be originating and eligible for preferential concessions if they conform to the origin requirements under any one of the following:

- (a) products which are wholly obtained or produced as set out and defined in Article 3 (Wholly Obtained Products);
- (b) products which are produced entirely in one or both Parties, exclusively from originating materials; or
- (c) products which are produced from non-originating materials, provided that said products are eligible under Article 4 (Regional Value Content), or Article 6 (Product Specific Rules);

and satisfy all other applicable requirements of this Chapter.

## **ARTICLE 3 Wholly Obtained Products**

For the purposes of this Agreement, the following shall be considered as being wholly produced or obtained in a Party:

- (a) plant<sup>1</sup> and plant products harvested, picked or gathered there;
- (b) live animals<sup>2</sup> born and raised there;
- (c) products<sup>3</sup> obtained from live animals referred to in sub-paragraph (b) above;
- (d) products obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted there;

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<sup>1</sup> **Plant** referred to in sub-paragraph (a) covers all plant life, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants.

<sup>2</sup> **Animals** referred to in sub-paragraphs (b) and (c) covers all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, bacteria and viruses.

<sup>3</sup> **Products** referred to in sub-paragraph (c) covers those obtained from live animals without further processing, including milk, eggs, natural honey, hair, wool, semen and dung.

- (e) minerals and other naturally occurring substances, not included in sub-paragraphs (a) to (d), extracted or taken from its soil, waters, seabed or beneath their seabed;
- (f) products taken from the waters, seabed or beneath the seabed outside the territorial waters of that Party, provided that that Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with international law;
- (g) products of sea fishing and other marine products taken from the high seas by vessels registered with a Party or entitled to fly the flag of that Party;
- (h) products processed and/or made on board factory ships registered with a Party or entitled to fly the flag of that Party, exclusively from products referred to in sub-paragraph (g) above;
- (i) articles collected in the territory of that Party that can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of raw materials, or for recycling purposes<sup>4</sup>;
- (j) goods obtained or produced in a Party solely from products referred to in sub-paragraphs (a) to (i) above.

#### **ARTICLE 4**

#### **Regional Value Content**

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

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

where:

**RVC** means the regional value content expressed as a percentage;

**V** means the value of the good, as defined in the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, adjusted on a Free On Board (FOB) basis; and

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<sup>4</sup> This would cover all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and all products that can no longer perform the purpose for which they were produced and are fit only for discarding or for the recovery of raw materials. Such manufacturing or processing operations shall include all types of processing, not only industrial or chemical but also mining, agriculture, construction, refining, incineration and sewage treatment operations.

**VNM** shall be:

- (i) the Cost, Insurance and Freight (CIF) value at the time of importation of the materials; or
- (ii) the earliest ascertained price paid for the materials of undetermined origin in the territory of the Party where the working or processing takes place.

2. The percentage of regional value content shall not be less than 40%, except for the goods listed in Annex 2 (Product Specific Rules), which shall comply with the Product Specific Rules as provided under Article 6 (Product Specific Rules).

3. The value of the non-originating materials used by the producer in the production of a good shall not include, for purposes of calculating the regional value content of the good, pursuant to paragraph 1, the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.

4. When the producer of the good acquires a non-originating material within the Party's territory where it is located, the value of such material 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.

## **ARTICLE 5 Cumulative Rule of Origin**

Where originating goods or originating 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 6 Product Specific Rules**

Products which have undergone sufficient transformation in a Party shall be treated as originating goods of that Party. Products which satisfy the Product Specific Rules provided for in Annex 2 (Product Specific Rules) shall be considered as goods to which sufficient transformation has been carried out in a Party.

## **ARTICLE 7 *De Minimis***

A good that does not meet tariff classification change requirements, pursuant to the provisions of Annex 2 (Product Specific Rules), shall nonetheless be considered to be an originating good if:

- (a) the value of all non-originating materials used in the production of the product, which do not undergo the applicable change in tariff classification or fulfil any other condition set out in Annex 2 (Product Specific Rules), does not exceed 10% of the FOB value of the product; and
- (b) the product meets all other applicable requirements provided in this Chapter for qualifying as an originating product.

The value of such non-originating materials shall, however, be included in calculating the value of the non-originating materials for any applicable qualifying value content requirement for the product.

## **ARTICLE 8**

### **Minimal Operations and Processes**

1. The following operations undertaken by themselves shall be considered as insufficient working or processing to confer the status of originating products:

- (a) preserving operations to ensure that the products remain in good condition during transport and storage;
- (b) breaking-up and assembly of packages;
- (c) washing, cleaning, removal of dust, oxide, oil, paint or other coverings;
- (d) ironing or pressing of textiles;
- (e) simple painting and polishing operations;
- (f) husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- (g) operations to color sugar or form sugar lumps;
- (h) peeling, stoning and shelling, of fruits, nuts and vegetables;
- (i) sharpening, simple grinding or simple cutting;
- (j) sifting, screening, sorting, classifying, grading or matching (including the making-up of sets of articles);
- (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (m) simple mixing of products, whether or not of different kinds;

- (n) simple assembly of parts of articles to constitute a complete article, or disassembly of products into parts;
  - (o) operations whose sole purpose is to ease port handling;
  - (p) a combination of two or more operations specified in sub-paragraphs (a) to (o); and
  - (q) slaughter of animals.
2. For the purposes of this Article:
- (a) **simple** generally describes activities which need neither special skills nor special machines, apparatus or equipment specially produced or installed for carrying out the activity; and
  - (b) **simple mixing** generally describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity. However, simple mixing does not include chemical reaction.

## ARTICLE 9 Direct Consignment

1. Preferential tariff treatment provided for in this Agreement shall be applied to goods which satisfy the requirements of this Chapter and are directly consigned between the Parties.
2. For the purposes of paragraph 1, 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 three (3) months in such non-Parties provided that:
    - (i) the goods do not enter into trade or commerce there;
    - (ii) the goods do not undergo any operation there other than unloading and reloading, or any operation required to keep them in good condition; and
    - (iii) the transit entry is justified for geographical reasons or by considerations related exclusively to transport requirements.

3. Compliance with the provisions set out in paragraph 2(b) shall be authenticated by the importer presenting to the customs administration of the importing Party either with customs documents of the non-Parties or with any other documents provided to the customs administration of the importing Party.

#### **ARTICLE 10 Treatment of Packing**

1. Where, for the purposes of assessing customs duties, a Party treats products separately from their packing, it may also, in respect of its imports consigned from the other Party, determine separately the origin of such packing.

2. Where paragraph 1 is not applied, packing shall be considered as forming a whole with the products and no part of any packing required for their transport or storage shall be considered as having been imported from a non-Party when determining the origin of the products as a whole.

#### **ARTICLE 11 Accessories, Spare Parts and Tools**

The origin of accessories, spare parts, tools and instructional or other information materials presented with the goods therewith shall be neglected in determining the origin of the goods, provided that such accessories, spare parts, tools and information materials are classified and collected customs duties with the goods by the importing Party.

#### **ARTICLE 12 Fungible Products and Materials**

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

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

#### **ARTICLE 13 Neutral Elements**

Unless otherwise provided, for the purpose of determining the origin of goods, the origin of the power and fuel, plant and equipment, or machines and tools used to obtain the goods, or the materials used in its manufacture which do not remain in the goods or form part of the goods, shall not be taken into account.



**ARTICLE 14**  
**Electronic Origin Data Exchange System**

The Parties will develop an Electronic Origin Data Exchange System to ensure the effective and efficient implementation of this Chapter in a manner jointly determined by the Parties.

**ARTICLE 15**  
**Certificate of Origin**

1. For the purpose of obtaining preferential tariff treatment in the other Party, a Certificate of Origin shall be issued by the authorised body of the exporting Party.
2. Each Party shall inform the customs administration of the other Party of the names and addresses of the authorised bodies issuing the Certificate of Origin and shall provide specimen impressions of official seals used by such authorised bodies. Any change in names, addresses or official seals shall be promptly notified to the other Party.
3. The Certificate of Origin shall be issued before or at the time of exportation whenever the goods to be exported can be considered originating in that Party subject to this Chapter. The exporter or producer shall submit a written application for the Certificate of Origin together with appropriate supporting documents proving that the products to be exported qualify for the issuance of a Certificate of Origin.
4. The Certificate of Origin, based on the formats as set out in Annex 3 (Formats of Certificates of Origin), shall be completed in the English language and duly signed and stamped, covering one or more goods under one consignment. A Certificate of Origin is applicable to a single importation of a good into the Party's territory and shall remain valid for twelve (12) months from the date of issue.
5. In cases where a Certificate of Origin has not been issued before or at the time of exportation due to involuntary errors or omissions or other valid causes, or no later than three (3) days after the date of shipment, the Certificate of Origin may be issued retrospectively but not later than one (1) year from the date of shipment, bearing the words "ISSUED RETROSPECTIVELY".
6. In cases of theft, loss or accidental destruction of a Certificate of Origin, the exporter or producer may, within validity of the original Certificate of Origin, make a written request to the authorised bodies of the exporting Party to issue a certified copy, provided that the exporter or producer 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 \_\_\_\_".

**ARTICLE 16**  
**Claims for Preferential Treatment**

1. Except as otherwise provided in this Chapter, each Party's customs administration shall require an importer claiming preferential tariff treatment for a good to:

- (a) make a written declaration before or at the time of importation, in accordance with its laws and regulations, that the good qualifies as an originating good;
- (b) have a Certificate of Origin in his possession;
- (c) submit, if required by the importing customs administration, the original Certificate of Origin<sup>5</sup> and such other documentation relating to the importation of the good; and
- (d) promptly make a corrected declaration and pay any duties owed, where the importer has reason to believe that a Certificate of Origin, on which a declaration was based, contains information that is not correct.

2. A Party may deny preferential tariff treatment under this Agreement to an imported good if the importer fails to comply with any requirement of this Chapter.

3. Each Party shall provide that:

- (a) where the origin of the product is not in doubt, the discovery of minor discrepancies between the statements made in the Certificate of Origin and those made in the documents submitted to the customs administration of the importing Party for the purpose of carrying out the formalities for importing the products, shall not *ipso facto* invalidate the Certificate of Origin, if it does in fact correspond to the same products presented; and
- (b) for multiple items declared under the same Certificate of Origin, a problem encountered with one of the items listed shall not affect or delay the granting of preferential tariff treatment and customs clearance of the remaining items listed in the Certificate of Origin.

4. Where a Certificate of Origin is not provided at the time of importation of a good, the importing Party, upon the request of the importer, may impose the applied non-preferential import customs duty or payment of a deposit equivalent to the full duties on that good as requested. In such a case, the importer will be entitled to a refund of any excess import customs duty or deposit paid if the payment refund claim is made within one (1) year from the date the good was imported, provided that the requirements in paragraph 1 are fulfilled.

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<sup>5</sup> If all the information pertaining to a Certificate of Origin is exchanged between the customs administrations of both Parties through the Electronic Origin Data Exchange System as set out in Article 14 (Electronic Origin Data Exchange System), the customs administration of each Party may not require the importer to submit the original Certificate of Origin on importation.

**ARTICLE 17**  
**Verification of Origin**

1. A Certificate of Origin is the basis for eligibility of preferential tariff treatment for goods imported from the exporting Party. In cases where verification is required, the customs administration of the importing Party may conduct verification 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; or
  - (d) such other procedures as the customs administrations of the Parties may jointly decide.
2. A verification process under paragraph 1 shall only be initiated when there are reasonable grounds to doubt the accuracy or authenticity of the origin of the goods concerned, and when the 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 any documents and information obtained justifying the verification activities shall be forwarded to the customs administration of the requested Party.
4. To the extent allowed by its domestic laws and practices, the customs administration of the exporting Party shall fully cooperate in any action to verify eligibility.
5. The customs administration of the Party conducting the verification shall promptly inform the customs administration of the other Party of the outcome of the verification conducted.

**ARTICLE 18**  
**Waiver of Certificate of Origin**

Each Party shall provide that a Certificate of Origin shall not be required for:

- (a) a commercial importation of a good whose value does not exceed US\$600 or its equivalent amount in the Party's currency, or such higher amount as it may establish, except that it may require that the invoice accompanying the importation include a statement certifying that the good qualifies as an originating good; or

- (b) a non-commercial importation of a good whose value does not exceed US\$600 or its equivalent amount in the Party's currency, or such higher amount as it may establish,

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 purpose of avoiding the certification requirements.

#### **ARTICLE 19**

### **Record Keeping Requirement**

1. Each Party shall require its producers, exporters and importers to retain origin documents for three (3) years.
2. Each Party shall ensure that its authorised bodies retain copies of Certificates of Origin and other documentary evidence of origin for three (3) years.
3. The records to be maintained may include electronic records and shall be maintained in accordance with the domestic laws and practices of each Party.

#### **ARTICLE 20**

### **Confidentiality**

1. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.
2. Each Party shall maintain, in accordance with its domestic laws, the confidentiality of information collected pursuant to this Chapter, including information obtained from the verification of Certificates of Origin, and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.
3. Pursuant to Article 19 (Record Keeping Requirement), any information communicated between the Parties shall be treated as confidential and used for the validation of Certificates of Origin only.

#### **ARTICLE 21**

### **Third Party Invoicing**

The importing Party shall accept Certificates of Origin in cases where the sales invoice is issued either by a company located in a non-Party or by an exporter in the exporting Party for the account of the said company, provided that the product meets the requirements of this Chapter.

**ARTICLE 22**  
**Committee on Rules of Origin**

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

2. Unless the Parties otherwise agree, the Committee on Rules of Origin shall meet in regular session at least once a year, preferably together with the FTA Joint Committee meetings set out in paragraph 4 of Article 111 (Implementation and Review), to consider any matter arising under this Chapter to ensure that this Chapter is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter, including but not limited to the following:

- (a) keeping the Annexes of this Chapter updated on the basis of the transposition of the nomenclature established under the Harmonized Commodity Description and Coding System developed by the World Customs Organization;
- (b) consulting to discuss possible amendments or modifications to this Chapter, taking into account developments in technology, production processes or other related matters, to be submitted to the FTA Joint Committee for approval;
- (c) addressing technical issues related to the implementation of this Chapter and its Annexes, such as change in tariff classification, regional value content calculation, *etc.*; and
- (d) addressing technical or implementation aspects of the Electronic Origin Data Exchange System.