

Annex III

RULES OF ORIGIN AND IMPLEMENTATION PROCEDURES

Section A: Rules of Origin

ARTICLE 1: DEFINITIONS

For the purposes of this Annex:

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

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 mean 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 mean 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 product or material;

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

originating materials mean materials which qualify as originating in accordance with this Annex;

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 2: ORIGINATING GOODS

1. Except as otherwise provided in this Annex, the following goods shall be considered as originating in a Party:

(a) goods wholly obtained or produced in a Party as defined in Article 3 (Goods Wholly Obtained);

(b) goods produced in a Party exclusively from originating materials; or

(c) goods produced from non-originating materials in a Party, provided that the goods conform to Regional Value Content criterion, except for the goods listed in Appendix 1(Product Specific Rules of Origin) must comply with the requirements specified therein.

ARTICLE 3: GOODS WHOLLY OBTAINED

1. For the purposes of Article 2(1)(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 subparagraph (a);

(c) plant 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 subparagraphs (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 subparagraph (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 in a Party which fit only for the recovery of raw materials; or

(k) goods produced entirely in a Party exclusively from the goods referred to in subparagraphs (a) to (j).

ARTICLE 4: REGIONAL VALUE CONTENT

1. Regional Value Content criterion defined in Article 2(1)(c) of this Annex, means the good has a regional value content of not less than 40 per cent of FOB calculated using the formula as described in paragraph 2, and the final process of production is performed within a Party.

2. The Regional Value Content (RVC) criterion 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; and

VNM is the value of the non-originating materials, including materials of undetermined origin.

3. VNM shall be determined according to the following circumstances:

(a) in case of the imported non-originating materials, VNM shall be the CIF value of the materials at the time of importation; and

(b) in case of the non-originating materials obtained in a Party, VNM shall be the earliest ascertainable price paid or payable for the non-originating materials used in the production of the goods in that Party. The value of such non-originating 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.

4. If a product which has acquired originating status in a Party is used as material in the manufacture of another product in that Party, no account shall be taken of the non-originating components of that material in the determination of the originating status of the latter product.

ARTICLE 5: DE MINIMIS

1. A product that does not meet tariff classification change requirements, pursuant to Annex X (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 (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 Annex.

ARTICLE 6: ACCUMULATION

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

ARTICLE 7: MINIMAL OPERATIONS OR PROCESSES

1. The following operations or processes which contribute minimally to the essential characteristics of the goods, either by themselves or in combination, do not confer origin:

(a) operations or processes to ensure preservation of goods in good condition for the purpose of transport or storage;

(b) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;

(c) changing package, unpacking or combining package;

(d) washing, cleansing, removal of dust, oxide, oil, paint or other cover;

(e) ironing or pressing of textiles or textile products;

(f) simple painting or polishing;

(g) husking, partial or total bleaching, polishing, and glazing of cereals and rice;

(h) operations to colour sugar, to add flavor, or to form sugar lumps; partial or total powdering crystallized sugar;

(i) peeling and removal of stones and shells from fruits, nuts and vegetables;

(j) sharpening, simple grinding or simple cutting;

(k) sifting, screening, sorting, classifying, grading, matching (including combining set goods), rip cutting, curving, winding, unfolding;

(l) simple placing in bottles, cans, flasks, bags, cases, boxes; fixing on cards or boards; and all other simple packaging operations;

(m) affixing or printing marks, labels, logos, and other like distinguishing signs on products or their packaging;

(n) simple mixing of products, whether or not of different kinds; mixing sugar with other materials;

(o) testing or calibrating;

(p) mere dilution with water or other substances, which does not materially alter the characteristics of the goods;

(q) drying, salting (or keeping in brine); refrigeration or freezing;

(r) slaughter of animals;

(s) combination of two or more operations specified in sub-paragraphs (a) through (r).

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 8: FUNGIBLE MATERIALS

1. 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 9: NEUTRAL ELEMENTS

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

2. Neutral element 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 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 origin of the goods.

2. 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.

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 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 Appendix 1 (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 and 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 12: DIRECT CONSIGNMENT

1. Preferential tariff treatment under this Agreement shall only be granted to originating products which 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 other operations 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, during the importation, 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 13: CERTIFICATE OF ORIGIN

To be eligible for preferential tariff treatment, a certificate of origin may be required for the Originating goods.

1. A Certificate of Origin as set out in Appendix 2 (Certificate of Origin) shall be issued by the authorized bodies of a Party on application by exporter or producer, provided that the goods can be considered as originating in that Party in accordance with this Annex.
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 Annex;
 - (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 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 14: MINOR ERRORS

Where the origin of an imported good is not in doubt, minor transcription errors in a Certificate of Origin, will not of themselves render the Certificate of Origin invalid if it does in fact correspond to the good. However, this does not prevent the customs administration of the importing Party from initiating a verification process in accordance with Article 19.

ARTICLE 15: RETENTION OF ORIGIN DOCUMENTS

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

ARTICLE 16: OBLIGATIONS REGARDING IMPORTATIONS

1. Unless otherwise provided in this Annex, the importer claiming 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 subparagraph (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 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 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 16 (Obligations Regarding Importations) within the period specified in the legislation of the importing Party.

ARTICLE 18: WAIVER OF CERTIFICATE OF ORIGIN

1. For the purpose of granting preferential tariff treatment under this Annex, a Party shall waive the requirements for the presentation of a Certificate of Origin and grant preferential tariff treatment to:

(a) any consignment of originating goods of a customs value not exceeding US\$1000 or its equivalent amount in the Party's currency; or

(b) other originating goods as provided under its laws and regulations.

2. Waivers provided for in paragraph 1 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 avoiding the submission of a Certificate of Origin.

ARTICLE 19: VERIFICATION OF ORIGIN

1. For the purposes of determining the authenticity or accuracy of the Certificate of Origin, the customs authority of the importing Party may:

- (a) requests for additional information from the importer;
- (b) requests the competent authorities of the exporting Party to verify;
- (c) such other procedures as the competent authorities of the Parties may jointly agree; 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 importer or the exporting Party referred to in paragraph 1 receiving a request for verification, shall respond to the request promptly and reply carefully and unequivocally within 6 months, from the date of raising the verification request. If the exporting party submits multiple responses which are inconsistent to the same verification request, the relevant Certificate of Origin shall be regarded as invalid.

3. 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 legislations of the importing party.

4. If no reply is received within 6 months, or if the customs authority of the importing Party deems the reply does not contain sufficient information to determine the authenticity of the documents or origin of the products in question, the customs authority of the importing Party may deny preferential tariff treatment.

5. 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 by the Parties. Any failure to consent to a verification

visit shall be liable for a denial of preferential tariff treatment.

ARTICLE 20: DENIAL OF PREFERENTIAL TARIFF TREATMENT

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

- (a) the goods do not meet the requirements of this Annex;
- (b) the importer, exporter or producer fails to comply with the relevant requirements of this Annex;
- (c) the Certificate of Origin does not meet the requirement of this Annex; or
- (d) in case stipulated in Article 19 (4)(5).

ARTICLE 21: THIRD COUNTRY INVOICING

The importing Party shall not reject a Certificate of Origin solely for the reason that the invoice was issued in a non-Party, provided that the requirements under this Annex are complied with.

ARTICLE 22: ELECTRONIC ORIGIN DATA EXCHANGE SYSTEM

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

ARTICLE 23: COMMITTEE ON RULES OF ORIGIN

1. The Parties hereby establish a Committee on Rules of Origin under the FTA Joint Commission, composed of government representatives of each Party.
2. The Committee shall meet as necessary to consider any matter arising under

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

ARTICLE 24: CONTACT POINTS

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Annex.
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 acting as or on behalf of its contact point.