

CHAPTER 4 RULES OF ORIGIN

SECTION A: GENERAL RULES OF ORIGIN

ARTICLE 4.1 DEFINITIONS

For the purposes of this Chapter:

aquaculture means 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, or protection from predators;

CIF means the value of the good imported and includes the cost of insurance and freight up to the port or place of entry in the country or customs territory of importation. The valuation shall be made in accordance with the Customs Valuation Agreement;

customs value means:

- (a) the price actually paid or payable for a good or material with respect to a transaction of the seller of the good, pursuant to the principles of Article 1 of the Customs Valuation Agreement, adjusted in accordance with Article 8 of the Customs Valuation Agreement; or
- (b) in the event that there is no such value or such value of the good is unascertainable, the value determined in accordance with Articles 2 through 7 of the Customs Valuation Agreement;

FOB means the value of the good free on board, independent of the means of transportation, at the port or site of final shipment abroad. The valuation shall be made in accordance with the Customs Valuation Agreement;

fungible goods or materials means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

goods wholly obtained or produced entirely in a Party means:

- (a) mineral goods extracted from the soil or seabed in the territory of a Party;
- (b) agricultural and plant products grown and harvested, picked or gathered in the territory of a Party;
- (c) live animals, born and raised in the territory of a Party;
- (d) goods obtained from live animals in the territory of a Party;
- (e) goods obtained from hunting, trapping, fishing, farming, gathering, capturing

or aquaculture in the territory of a Party;

- (f) goods (fish, shellfish, plant and other marine life) taken from the sea by a vessel registered or recorded with a Party;
- (g) goods obtained or produced on board a factory ship registered or recorded with that Party, exclusively from products referred to in subparagraph (f);
- (h) waste and scrap derived from production in the territory of a Party or used articles or goods collected in the territory of a Party, provided that such goods can no longer perform their original purposes nor are capable of being restored or repaired and are fit only for the recovery of raw materials;
- (i) goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed outside its territory, provided that the Party has rights under international law to exploit such seabed;
- (j) recovered goods derived in the territory of a Party from used goods and utilised in the territory of the Party in the production of remanufactured goods; and
- (k) goods produced entirely in the territory of a Party exclusively from goods referred to in subparagraphs (a) to (j) or from their derivatives, at any stage of production;

heading means the first four digits in the tariff classification under the Harmonized System;

indirect material means a good used in the production, testing or inspection of another good but not physically incorporated into the good, or a good used in the maintenance of buildings, or the operation of equipment associated with the production of a good, including:

- (a) fuel, energy, catalysts and solvents;
- (b) equipment, devices, and supplies used for testing or inspecting the goods;
- (c) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (d) tools, dies and 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;

material means a good or any matter or substance that is used or consumed in the production of goods or transformation of another good;

minimal operations or processes means operations or processes which contribute minimally to the essential characteristics of the goods and which by themselves, or in combination, do not confer origin as provided for in Article 4.4 (Operations that do not Confer Origin);

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

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

recovered goods means materials in the form of individual parts that result from:

- (a) the complete disassembly of used goods into individual parts; and
- (b) the cleaning, inspecting, or testing or other processing of those parts, and as necessary for improvement to sound working condition one or more of the following processes: welding, flame spraying, surface machining, knurling, plating, sleeving and rewinding in order for such parts to be assembled with other parts, including other recovered parts in the production of a remanufactured good, as listed within Annex 4A;

remanufactured goods means an industrial good, listed within Annex 4A assembled in the territory of a Party, that:

- (a) is entirely or partially composed of recovered goods;
- (b) has the same life expectancy and meets the same performance standards as a new good; and
- (c) enjoys the same factory warranty as such a new good;

subheading means the first six digits in the tariff classification under the Harmonized System;

transaction value means the price paid or payable for a good as determined by the provisions of the Customs Valuation Agreement;

used means used or consumed in the production of goods; and

value means the value of a good or material, pursuant to the provisions of the Customs Valuation Agreement.

ARTICLE 4.2 ORIGINATING GOODS

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

- (a) the good is wholly obtained or produced entirely in the territory of one Party, pursuant to the definition in Article 4.1 (Definitions);
- (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 Chapter;
- (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, or other requirements specified in Annex 4B, and the good meets the other applicable provisions of this Chapter; or
- (d) otherwise provided as an originating good under this Chapter.

ARTICLE 4.3 REGIONAL VALUE CONTENT

1. Where Annex 4B refers to a regional value content, each Party shall provide that the regional value content of a good shall be calculated on the basis of the following method:

$$RVC = \frac{TV - VNM}{TV} \times 100$$

where:

RVC is the regional value content expressed as a percentage;

TV is the transaction value of the good, adjusted on an FOB basis, except as provided in paragraph 3. If no such value exists or cannot be determined, pursuant to the principles of Article 1 of the Customs Valuation Agreement, it shall be calculated pursuant to the principles of Articles 2 to 7 of that Agreement; and

VNM is the transaction value of the non-originating materials, when they were first acquired or supplied to the producer of the goods, adjusted on a CIF basis, except as provided in paragraph 4. If such value does not exist or cannot be determined, pursuant to the principles of Article 1 of the Customs Valuation Agreement, it shall be calculated pursuant to that Agreement.

2. 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, pursuant to paragraph 1, the value of non-originating materials used to produce the originating materials subsequently used in the production of the good.

3. When the producer of a good does not export it directly, the value shall be adjusted up to the point at which the purchaser receives the good within the territory of a Party where the producer is located.

4. When the producer of the good acquires a non-originating material in the territory of

the Party 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 4.4 OPERATIONS THAT DO NOT CONFER ORIGIN

1. A good shall not be considered to be originating in the territory of a Party if the following operations are undertaken exclusively by itself or in combination in the territory of that Party:

- (a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, ventilation, chilling, keeping in brine and like operations);
- (b) simple operations consisting of sifting, classifying, washing, cutting, slitting, bending, coiling, or uncoiling, peeling, grinding, unshelling or unflaking, dehusking, deboning, crushing or squeezing, macerating⁴;
- (c) changes of packing and breaking up and assembly of consignments;
- (d) packing, unpacking or repacking operations;
- (e) affixing of marks, labels or other like distinguishing signs on products or their packaging;
- (f) simple assembly or disassembly of parts or products to constitute a complete product unless it is for the production of a remanufactured good as listed within Annex 4A;
- (g) simple mixing;
- (h) simple making-up of sets of articles;
- (i) slaughtering of animals;
- (j) salifying or sweetening⁵; and
- (k) simple dilution with water or with any other aqueous, ionised or salted solution.

2. For the purposes of this Article, the word “**simple**” generally refers to relevant activities which need neither professional skills nor specialised machines, apparatus or equipment particularly produced or installed for carrying out the activity.

ARTICLE 4.5 ACCUMULATION

⁴ This is applicable to products in HS Chapters 7 and 8.

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1. Originating materials from the territory of a Party incorporated in the production of a good in the territory of the other Party, shall be considered to originate in the territory of the other Party.

2. For the purpose of establishing that a good is originating, the producer of a good may accumulate one's production with the production, in the territory of one or both of the Parties by one or more producers, of materials incorporated in the production of the good, so that the production of those materials is considered as done by that producer, provided that the good complies with the criteria set out in Article 4.2 (Originating Goods).

ARTICLE 4.6 DE MINIMIS

A good that does not conform to a change in tariff classification, pursuant to the provisions of Annex 4B, shall be considered to be originating if the value of all non-originating materials used in its production not meeting the change in tariff classification requirement does not exceed ten (10) percent of the transaction value of the given good pursuant to Article 4.3 (Regional Value Content), and the good meets all the other applicable criteria of this Chapter.

ARTICLE 4.7 ACCESSORIES, SPARE PARTS, AND TOOLS

1. Accessories, spare parts, or tools provided with the good as part of the standard accessories, spare parts, or tools shall be regarded as originating goods and shall be disregarded in determining whether or not all the non-originating materials used in the production of the originating goods undergo the applicable change in tariff classification, provided that:

- (a) the accessories, spare parts, or tools are not invoiced separately from the good; and
- (b) the quantities and the value of those accessories, spare parts, or tools are the customary ones for the good.

2. If the goods are subject to a regional value content requirement, the value of the accessories, spare parts, or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the goods.

ARTICLE 4.8 PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE

Packaging materials and containers in which goods are packaged for retail sale, if classified with the goods, shall be disregarded in determining whether all the non-originating materials used in the production of those goods have undergone the applicable change in tariff classification set out in Annex 4B. However, if the goods are subject to a regional value content requirement, the value of the packaging used for retail sale will be counted as originating or non-originating, as the case may be, in calculating the regional value content of the goods.

ARTICLE 4.9 PACKING MATERIALS AND CONTAINERS FOR SHIPMENT

Packing materials and containers in which a good is packed exclusively for transport shall not be taken into account for the purposes of establishing whether the good is originating.

ARTICLE 4.10 INDIRECT MATERIALS

Indirect materials shall be considered to be originating materials without regard to where they are produced and its value shall be the cost registered in the accounting records of the producer of the good.

ARTICLE 4.11 TRANSIT THROUGH NON-PARTIES

1. Preferential tariff treatment provided for in this Agreement shall be applied to goods that satisfy the requirements of this Chapter and which are directly transported among the Parties.

2. Notwithstanding paragraph 1, goods shall be authorised to transit through the territory of one or more non-Parties, and to remain stored for a reasonable period of time, which in no case shall be more than three (3) months from the date of entry of the goods into the territory of a non-Party respectively.

3. Goods shall be eligible for preferential tariff treatment in accordance with this Agreement if they are transported through the territory of one or more non-Parties, provided that the goods:

- (a) did not undergo operations other than unloading, reloading, or any other operation necessary to preserve them in good condition; and
- (b) did not enter the commerce of such non-Parties after the shipment from the Party and before the importation into the other Party.

4. Compliance with the provisions set out in paragraphs 2 and 3 shall be proved by means of supplying to the customs administration of the importing Party either customs documents of the non-Party or documents of the competent authorities, including commercial shipping or freight documents.

ARTICLE 4.12 OUTWARD PROCESSING

1. Notwithstanding the relevant provisions of Article 4.2 (Originating Goods) and the product specific requirements set out in Annex 4B, a good listed in Annex 4C shall be considered as originating even if it has undergone processes of production or operation outside the territory of a Party on a material exported from the Party and subsequently re-imported to the Party, provided that:

- (a) the total value of non-originating inputs as set out in paragraph 2 does not exceed fifty-five (55) percent of the customs value of the final good for which originating status is claimed;
- (b) the value of originating materials is not less than forty-five (45) percent of the customs value of the final good for which originating status is claimed;
- (c) the materials exported from a Party shall have been wholly obtained or produced in the Party or have undergone therein, processes of production or operation going beyond the minimal operations or processes in Article 4.4 (Operations that do not Confer Origin), prior to being exported outside the territory of the Party;
- (d) the producer of the exported material is the same producer of the final good for which originating status is claimed;
- (e) the re-imported good has been obtained through processes of production or operation of the exported material; and
- (f) the last process of production or operation⁶ takes place in the territory of the Party.

2. For the purposes of subparagraph 1(a), the total value of non-originating inputs shall be the value of any non-originating materials added in a Party as well as the value of any materials added and all other costs accumulated outside the territory of the Party, including transportation costs.

3. For greater certainty, the verification procedures referred to in Article 4.18 (Verification of Origin) shall apply in order to ensure the proper application of this Article. Such procedures include the provision of information and supporting documentation, including that relating to the export of originating materials and the subsequent re-import of the goods subsequently exported as originating goods, by the exporting customs administration or exporter upon receipt of a written request from the customs administration of the importing Party through the customs administration of the exporting Party.

4. Upon the request of a Party, the list of products in Annex 4C may be modified by the Committee on Trade in Goods.

ARTICLE 4.13 FUNGIBLE GOODS AND MATERIALS

1. Each Party shall provide that the determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each good or material, or through the use of any inventory management method, such as averaging, last-in, first-out, or first-in, first-out, recognised in the generally accepted accounting principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

⁶ The last process of production or operation does not exclude the minimal operations that do not confer origin stipulated in Article 4.4 (Operations that do not Confer Origin).

2. Once a particular inventory management method is selected under paragraph 1, that method shall continue to be used for those fungible goods or materials throughout the fiscal year of the person that selected the inventory management method.

SECTION B: CUSTOMS PROCEDURES RELATING TO ORIGIN

ARTICLE 4.14 DEFINITIONS

For the purposes of this Chapter:

competent government authority means the government authority in each Party that is responsible for the verification of origin, as specified in Annex 4D.

day means calendar days, including weekends and holidays, but for the calculation of time periods, where the last day falls on a non-working day, the last day will be extended to the next working day.

ARTICLE 4.15 CLAIMS FOR PREFERENTIAL TREATMENT

1. For the purpose of obtaining preferential tariff treatment in the other Party, a proof of origin in the form of a Declaration of Origin shall be completed in English and signed by an exporter or producer of a Party, certifying that a good qualifies as an originating good for which an importer may claim preferential treatment upon the importation of the good into the territory of the other Party.

2. The Declaration of Origin shall be in the template set out in Annex 4E, which may thereafter be revised by mutual consent of the Parties.

3. Each Party shall:

- (a) require an exporter in its territory to complete and sign a Declaration of Origin for any exportation of good for which an importer may claim preferential tariff treatment upon importation of the good into the territory of the other Party; and
- (b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign a Declaration of Origin on the basis of:
 - (i) his knowledge of whether the good qualifies as an originating good;
 - (ii) his reasonable reliance on the producer's written representation that the good qualifies as an originating good; or
 - (iii) a completed and signed certification for the good voluntarily provided to the exporter by the producer.

4. Nothing in paragraph 3 shall be construed to require a producer to provide a Declaration of Origin to an exporter.

5. Each Party shall provide that a Declaration of Origin that has been completed and signed by an exporter or producer in the territory of the other Party that is applicable to a single importation of one or more goods into the Party's territory shall be accepted by its

customs administration for one (1) year from the date on which the Declaration of Origin was signed.

ARTICLE 4.16 WAIVER OF DECLARATION OF ORIGIN

Each Party shall provide that a Declaration of Origin shall not be required for the importation of any good whose custom value does not exceed US\$1,000 or its equivalent amount in the Party's currency; or such higher amount as may be established by a Party which is importing, 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 declaration requirements.

ARTICLE 4.17 RECORD KEEPING REQUIREMENT

1. Each Party shall provide that an exporter or a producer in its territory that completes and signs a Declaration of Origin shall maintain in its territory, for a period at least three (3) years after the date on which the Declaration of Origin was issued or signed, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of the other Party, including records associated with:

- (a) the purchase of, cost of, value of, shipping of, and payment for, the good that is exported from its territory;
- (b) the sourcing of, purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory; and
- (c) the production of the good in the form in which the good is exported from its territory.

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain in that territory, for a period of at least three (3) years after the date of importation of the good, such documentation, including a copy of the Declaration of Origin, as the Party may require relating to the importation of the good.

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 4.18 VERIFICATION OF ORIGIN

1. For the purposes of determining whether a good imported into its territory from the territory of the other Party qualifies as an originating good, the importing Party may conduct verification by means of:

- (a) request for information from the importer;

- (b) written questionnaires or request for information to the exporter or producer of the good(s) in the territory of the other Party through the competent government authority of the exporting Party;
- (c) request for assistance from the competent government authority of the exporting Party as provided for in paragraph 3 below; or
- (d) verification visits to the premises of an exporter or a producer in the territory of the other Party, to observe the facilities and the production processes of the good and to review the records referring to origin including accounting files.

2. For the purpose of subparagraphs 1(a) and 1(b), the importer, exporter or producer:

- (a) shall answer and return the request within a period of thirty (30) days from the date on which it was received;
- (b) may have one opportunity, during the period established in subparagraph (a), to make a written request to the competent government authority of the importing Party for an extension of the answering period, for a period not exceeding thirty (30) days. For the exporter or producer, this written request will be made through the competent government authority of the exporting Party.

In the case where the importer, exporter, or producer does not return the written request for the information made by the competent government authority of the importing Party within the given period or its extension, the importing Party may deny the preferential tariff treatment.

3. For the purpose of subparagraph 1(c), the customs administration of the importing Party:

- (a) may request the competent government authority of the exporting Party to assist it in verifying:
 - (i) whether the goods declared in the Declaration of Origin qualify as originating goods; and/or
 - (ii) the accuracy of any information contained in the Declaration of Origin;
- (b) shall provide the competent government authority of the other Party with:
 - (i) the reasons why such assistance is sought;
 - (ii) the Declaration of Origin, or a copy thereof; and
 - (iii) any information and documents as may be necessary for the purpose of providing such assistance.

4. To the extent allowed by its domestic law and practices, the competent government authority of the exporting Party shall fully cooperate in any action to verify the origin as

established under subparagraph 1(b) and paragraph 3 above. In the absence of such cooperation, the importing Party shall determine the accuracy of the information contained in the Declaration of Origin with the best information available at that moment.

5. For the purpose of subparagraph 1(d), the competent government authority of the importing Party shall:

- (a) deliver, at least thirty (30) days prior to conducting a verification visit, a written notification of its intention to conduct the visit to the exporter or producer and to the competent government authority of the exporting Party; and
- (b) obtain the written consent of the exporter or producer.

6. Pursuant to paragraph 5, the exporter or producer may within fifteen (15) days of receiving the notification, request to the competent government authority of the importing Party for a postponement of the proposed verification visit, for a period not exceeding sixty (60) days. This extension shall be notified to the competent government authorities of the importing and exporting Parties.

7. A Party shall not deny preferential tariff treatment to a good solely because a verification visit was postponed pursuant to paragraph 6.

8. In the case, where an exporter or producer does not give its written consent to a proposed verification visit within thirty (30) days from the receipt of notification, the importing Party may deny preferential treatment to the good that is subject to verification.

9. After concluding the actions related to subparagraphs 1(a), 1(b), 1(c) or 1(d), and no later than fifteen (15) days after the outcome of the actions taken, the competent government authority of the importing Party shall provide a written determination of whether the good is originating and therefore eligible for preferential tariff treatment based on the relevant law and findings of fact. In respect of subparagraphs 1(a) or 1(b), the maximum time to be taken from the start of the verification to its conclusion should not exceed one hundred and twenty (120) days. In respect of subparagraphs 1(c) or 1(d), the maximum time to be taken from the start of the verification to its conclusion should not exceed one hundred and fifty (150) days.

10. When the customs administration has a reasonable doubt on the origin of the goods at the time of importation, the goods may be released by the customs administration of the importing Party on a security or upon payment of duties, pending the outcome of the origin verification, provided that they are not held to be subject to import prohibition or restriction and there is no suspicion of fraud. The relevant duties paid shall be refunded once the outcome of the origin verification confirmed that the good qualifies as an originating good.

11. The importing Party may deny preferential treatment to an importer on any subsequent import of a good when its competent government authority had already determined that an identical good was not eligible for that treatment, provided that such good is exported by the same exporter or produced by the same producer subject to verification, until the importing Party determines that the importer, exporter, or producer is in compliance with this Chapter.

ARTICLE 4.19 OBLIGATIONS RELATING TO IMPORTATIONS

1 Any good that meets all the applicable requirements in this Chapter is eligible for preferential tariff treatment.

2. A Party may deny preferential tariff treatment under this Agreement to imported good(s) if the importer fails to comply with any requirement of this Chapter. Slight discrepancies as between the wording and details stated in the Declaration of Origin produced to the customs administration of the importing Party shall not, of itself, cause any claim for preferential tariff treatment to be denied.

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

- (a) declare in the importation document that the good qualifies as an originating good, based on a Declaration of Origin;
- (b) have the Declaration of Origin in its possession at the time the declaration is made;
- (c) provide, on the request of that Party's customs administration, a copy of the Declaration of Origin; and
- (d) promptly submit a corrected declaration in a manner required by the customs administration of the importing Party and pay any owed duties where the importer has reason to believe that a Declaration of Origin on which a declaration was based contains information that is not correct.

4. Each Party shall provide that, where a good qualified as originating when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer of the good may, no later than one (1) year after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been granted preferential tariff treatment, on presentation of:

- (a) a written declaration that the good qualified as originating;
- (b) a copy of the Declaration of Origin; and
- (c) such other documentation relating to the importation of the good as the importing Party may require.

ARTICLE 4.20 OBLIGATIONS RELATING TO EXPORTATIONS

1. Each Party shall provide that an exporter or a producer in its territory shall submit a copy of the Declaration of Origin to its competent government authority upon request.

2. When an exporter or a producer in its territory has provided a Declaration of Origin and has reason to believe that such declaration contains or is based on incorrect information, the exporter or producer shall promptly notify in writing every person to whom the exporter or producer provided the declaration of any change that could affect the accuracy or validity of the declaration, provided that such notification is made before the initiation of audit procedures. Any penalty, if applicable, for providing an incorrect Declaration of Origin for preferential tariff treatment shall be subject to the domestic law of each Party that is dealing with the offence under its jurisdiction.

ARTICLE 4.21 CUSTOMS FOCAL POINT

1. Each Party shall designate a customs focal point for all matters relating to this Chapter, one (1) month prior to the entry into force of this Agreement.

2. When the customs focal point of a Party raises any matter arising from this Chapter to the focal point of the other Party, the customs administration of the latter Party shall assign its own experts to look into the matter and to respond with its findings and proposed solution for resolving the matter within a reasonable period of time.

3. The customs focal point shall endeavour to resolve any matter raised under this Chapter through consultations.