

CHAPTER 4

RULES OF ORIGIN

Section A: Rules of Origin

Article 1 Definitions

For the purposes of this Chapter:

- (a) **aquaculture** means the farming of aquatic organisms, including fish, molluscs, crustaceans, crocodiles, alligators, turtles, amphibians, 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;
- (b) **CIF** or **CIF value** 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 importing Party;
- (c) **FOB** or **FOB value** means the value of the good free on board inclusive of the cost of transport to the port or site of final shipment abroad;
- (d) **generally accepted accounting principles** means the accounting standards of a Party with respect to:
 - (i) the recording of revenues, expenses, costs, assets and liabilities;
 - (ii) the disclosure of information; and
 - (iii) the preparation of financial statements.

These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

- (e) **good** means any merchandise, product, article or material;
- (f) **material** means any matter or substance used or consumed in the production or transformation of a good or physically incorporated into a good subjected to a process in the production of another good;
- (g) **non-originating good** or **non-originating material** means a good or material which does not qualify as originating under this Chapter;
- (h) **originating good** or **originating material** means a good or material which qualifies as originating in accordance with Article 2;
- (i) **producer** means a person who grows, cultivates, mines, raises, harvests, fishes, traps, hunts, farms, captures, gathers, collects, breeds, extracts, manufactures, processes or assembles a good; and
- (j) **production** means methods of obtaining goods, including growing, cultivating, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, farming, trapping, hunting, manufacturing, processing or assembling a good.

Article 2

Originating Goods

For the purposes of this Chapter, a good shall qualify as an originating good if it:

- (a) is wholly obtained or produced in the Area of a Party as provided for in Article 4;
- (b) is produced entirely in the Area of one or both Parties exclusively from originating materials from one or both Parties; or
- (c) is produced in the Area of one or both Parties using non-originating materials that conform to a change in tariff classification requirement, a regional value content requirement (as provided for in Article 5) or other requirements as specified in Annex I;

and the good meets the other applicable provisions of this Chapter.

Article 3

Preferential Tariff Treatment

Preferential tariff treatment provided for in this Agreement shall be applied to goods that qualify as originating goods in accordance with Article 2.

Article 4

Wholly Obtained or Produced Goods

For the purposes of subparagraph (a) of Article 2, the following goods shall be considered as wholly obtained or produced:

- (a) plant and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked or gathered in the Area of a Party;
- (b) live animals born and raised in the Area of a Party;
- (c) goods obtained from live animals in the Area of a Party;

- (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing in the Area of a Party;
- (e) minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or subsoil, in the Area of a Party;
- (f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with international law, by any vessel registered in a Party and entitled to fly the flag of that Party in accordance with the *United Nations Convention on the Law of the Sea 1982* ("UNCLOS");
- (g) goods processed and/or produced on board any factory ship registered in a Party and entitled to fly the flag of that Party in accordance with UNCLOS, from the goods referred to in subparagraph (f);
- (h) goods extracted or taken by a Party, or a person of a Party, from the seabed or subsoil beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which third parties exercise jurisdiction, under exploitation rights granted in accordance with international law;
- (i) goods which are:
 - (i) waste and scrap derived from production or consumption in the Area of a Party provided that such goods are fit only for the recovery of raw materials; or
 - (ii) used goods collected in the Area of a Party provided that such goods are fit only for the recovery of raw materials; and

- (j) goods obtained or produced in the Area of a Party solely from products referred to in subparagraphs (a) to (i) or from their derivatives.

Article 5 Regional Value Content

For the purposes of this Chapter, the formula for calculating the regional value content ("RVC") shall be either:

- (a) build-up formula

$$\text{RVC} = [(\text{material cost} + \text{labour cost} + \text{overhead cost} + \text{profit} + \text{other costs})/\text{FOB}] \times 100 \%$$

or

- (b) build-down formula

$$\text{RVC} = [(\text{FOB} - \text{value of non-originating materials})/\text{FOB}] \times 100 \%$$

where:

- (i) **material cost** is the value of originating materials, parts or produce that are acquired or self-produced by the producer in the production of the good;
- (ii) **labour cost** includes wages, remuneration and other employee benefits;
- (iii) **overhead cost** is the total overhead expense including product development and other production costs;
- (iv) **other costs** are the costs incurred in placing the good in the ship or other means of transport for export, including domestic

transport costs, storage and warehousing, port handling, brokerage fees and service charges;

- (v) **FOB** is the free-on-board value of the goods as defined in Article 1; and
- (vi) **value of non-originating materials** is the CIF value at the time of importation or the earliest ascertained price paid or payable in the Area of the Party where the production takes place for all non-originating materials, parts or produce that are acquired by the producer in the production of the good. 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. Non-originating materials include materials of undetermined origin but do not include a material that is self-produced.

Article 6

Accumulation

Originating materials from the Area of a Party, incorporated into a good in the Area of the other Party, shall be considered to originate in the Area of the other Party.

Article 7

Minimal Operations and Processes

1. Operations or processes undertaken by themselves or in combination with each other for purposes such as those listed below are considered to be minimal and shall not confer origin:

- (a) ensuring preservation in good condition for the purposes of transport or storage;
- (b) facilitating shipment or transportation;
- (c) packaging or presenting goods for sale;
- (d) affixing of marks, labels or other like distinguishing signs on products or their packaging;
- (e) simple processes consisting of sifting, classifying, washing, cutting, slitting, bending, coiling and uncoiling and other similar operations; and
- (f) mere dilution with water or another substance that does not materially alter the characteristics of the goods.

2. Where a RVC approach has been applied, minimal processes and operations referred to in Paragraph 1 shall be taken into account for the RVC calculation.

Article 8 ***De Minimis***

Each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex I is nonetheless an originating good if:

- (a) the value of all non-originating materials, including materials of undetermined origin, used or consumed in the production of the good that do not undergo the required change in tariff classification does not exceed ten percent of the FOB value of the good; and
- (b) the good meets all other applicable requirements of this Chapter.

Article 9

Direct Consignment

A good shall retain its originating status as determined under Article 2 if the following conditions have been met:

- (a) the good has been transported to the importing Party without passing through the territory of any non-Party; or
- (b) the good has transited through one or more non-Parties, with or without transshipment or temporary storage of up to six months in those non-Parties, provided that:
 - (i) the good has not entered trade or commerce there; and
 - (ii) the good has not undergone any operation there other than unloading and reloading, repacking, or any operation required to preserve it in good condition or to transport it to the importing Party.

Article 10

Treatment of Packing Materials and Containers

1. Packing materials and containers for transportation and shipment of a good shall not be taken into account in determining the origin of any good.
2. Packing materials and containers in which a good is packaged for retail sale, when classified together with that good, shall not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable change in tariff classification requirements for the good.

3. If a good is subject to a regional value content requirement, the value of the packing materials and containers in which the good is packaged for retail sale shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 11

Accessories, Spare Parts, Tools and Instructional or Information Material

1. For the purpose of determining the origin of a good, accessories, spare parts, tools and instructional or other information materials presented with the good shall be considered part of that good and shall be disregarded in determining whether all the non-originating materials used in the production of the originating good have undergone the applicable change in tariff classification, provided that:

- (a) the accessories, spare parts, tools and instructional or other information materials presented with the good are not invoiced separately from the originating good; and
- (b) the quantities and value of the accessories, spare parts, tools and instructional or other information materials presented with the good are customary for that good.

2. Notwithstanding Paragraph 1, if a good is subject to a regional value content requirement, the value of the accessories, spare parts, tools and instructional or other information materials presented with the good shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

3. Paragraph 2 shall not apply where accessories, spare parts, tools and instructional or other information materials

presented with the good have been added solely for the purpose of artificially raising the regional value content of that good.

Article 12

Indirect Materials

1. An indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in the accounting records of the producer of the good.

2. For the purposes of this Article, indirect material means a good used or consumed in the production, testing or inspection of a good but not physically incorporated into the good, or a good used or consumed in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

- (a) fuel and energy;
- (b) tools, dies and moulds;
- (c) spare parts and materials used in the maintenance of equipment and buildings;
- (d) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (f) equipment, devices, and supplies used for testing or inspecting the goods;
- (g) catalysts and solvents; and

- (h) 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 13

Identical and Interchangeable Materials

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

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

2. Identical or 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 14

Compliance

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

Section B: Operational Procedures

Article 15

Definitions

For the purposes of this Section:

- (a) **certificate of origin** means a certificate issued by the Trade and Industry Department of Hong Kong, China or by a Government Approved Certification Organisation of Hong Kong, China which certifies that the goods to which the certificate relates are originating goods in accordance with this Chapter; and
- (b) **declaration of origin** means an appropriate statement as to the origin of the goods made, in connection with their exportation, by the manufacturer, producer, supplier, exporter or other competent person on the commercial invoice or any other document relating to the goods.

Article 16

Treatment of Goods for which Preference is Claimed

1. Each Party may require a declaration of origin of a good for which preferential tariff treatment is claimed. Where a Party requires a declaration of origin of a good, the importing Party shall grant preferential tariff treatment to goods imported into its Area from the other Party only in cases where an importer claiming preferential tariff treatment:

- (a) provides a declaration of origin of the good in accordance with this Chapter; or
- (b) provides other evidence to substantiate the origin of the goods.

2. With respect to any good falling within Chapter 61 or Chapter 62 of the Harmonized System, New Zealand shall require that a certificate of origin of a good be obtained by the importer for goods imported from the Area of Hong Kong, China where preferential tariff treatment is claimed.

Article 17

Declaration of Origin and Certificate of Origin

1. The declaration of origin or certificate of origin shall specify on the face of the document issued in respect of the good that the goods enumerated thereon are the origin of the exporting Party and meet the requirements of this Chapter, and shall include:

- (a) a full description of the goods;
- (b) the goods' six digit Harmonized System reference;
- (c) the rule of origin by which the goods qualify (wholly obtained, produced entirely from originating materials or by product-specific rule including, where applicable, the regional value content);
- (d) the producer's name(s);
- (e) the exporter's name(s), address and contact details;
- (f) the consignee's name(s), address and contact details; and
- (g) the importer's name(s) in respect of imported goods, if known.

2. The declaration of origin or certificate of origin:

- (a) shall be completed in English; and
- (b) may be made in respect of one or more goods in the shipment.

3. The certificate of origin shall also:

- (a) bear a unique reference number given by the issuer of the certificate of origin; and

- (b) contain sufficient details to identify the consignment to which it relates¹.

4. Further operational certification procedures that shall apply to the application for and issuing of a certificate of origin shall be mutually determined between the relevant agencies of the Parties in an exchange of letters. Any subsequent amendments shall be similarly mutually determined in an exchange of letters between the relevant agencies of the Parties.

Article 18

Exceptions from Declaration of Origin

1. An importing Party may not require a declaration of origin to admit goods pursuant to tariff preference where:

- (a) the customs value of the importation does not exceed US\$1,000 or the equivalent amount in the Party's currency or a higher amount as it may establish; or
- (b) in respect of specific goods, a Party has waived the requirement for a declaration of origin.

2. Where an 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 requirement for a declaration of origin, the customs administration of the importing Party may deny preferential tariff treatment.

¹ Examples include the shipping marks, importer's purchase order number, exporter's invoice number, or number and types of packages.

Article 19

Records

1. Each Party shall require that, consistent with its domestic law, producers, exporters or importers, as appropriate, maintain for a period specified in its domestic law all records relating to an exportation or importation which are necessary to demonstrate that a good for which a claim for tariff preference was made qualifies for preferential tariff treatment. In addition, Hong Kong, China shall inform producers in its Area that they should maintain for a period of not less than seven years after the date of exportation all records relating to that exportation which are necessary to demonstrate to New Zealand that a good for which a claim for tariff preference was made qualifies for preferential tariff treatment.

2. In addition, with respect to any good falling within Chapter 61 or Chapter 62 of the Harmonized System, Hong Kong, China shall seek a written commitment from the producer of the good that all records relating to that exportation which are necessary to demonstrate that a good for which a claim for tariff preference was made qualifies for preferential tariff treatment shall be maintained for a period of not less than seven years after the date of exportation. Where the producer provides such a written commitment, Hong Kong, China shall ensure that is recorded in the certificate of origin issued in respect of that good, and shall retain that written commitment for a period of not less than seven years.

3. The Trade and Industry Department of Hong Kong, China and each Government Approved Certification Organisation of Hong Kong, China shall maintain copies of certificates of origin and the application details submitted for a period of not less than seven years.

Article 20

Compliance with Direct Consignment

Compliance with Article 9 may be evidenced by means of supplying to the customs authorities of the importing Party either customs documents of a non-Party or documents of the competent authorities of a non-Party, together with commercial shipping or freight documents.

Article 21

Non-Party Invoicing

The customs administration of the importing Party may accept a declaration of origin in cases where the sales invoice is issued either by a company located in a non-Party or by an exporter for the account of that company, provided that the goods meet the requirements of Section A.

Article 22

Verification of Origin

1. For the purposes of determining whether a good imported into its Area from the Area of the other Party qualifies as an originating good, the importing Party may, through its customs administration, conduct a verification of eligibility for preferential tariff treatment by means of:

- (a) requests for information to the importer;
- (b) requests for information to the exporter or producer in the Area of the other Party;
- (c) requests for information to the customs administration of the other Party;
- (d) subject to the consent of the relevant exporter or producer, visits to the premises of an exporter or producer in the Area of the other Party arranged by

and in company with the customs administration of the other Party²; or

- (e) such other procedures as the customs administrations of the Parties may agree.

2. Any such verification activities shall only be undertaken if:

- (a) there are reasonable grounds to doubt the accuracy or authenticity of the declaration of origin, certificate of origin, or the origin status of the goods concerned;
- (b) the purpose is to facilitate audit checks by the importing Party on a risk management basis; or
- (c) the purpose is to ascertain the fulfilment of any other requirement of this Chapter.

3. Any request that is made to the customs administration of the exporting Party pursuant to Paragraph 1 shall specify the reasons, and any documents and information supporting the request shall be forwarded to the customs administration of the exporting Party.

4. All requests for information shall be accompanied by sufficient information to identify the good about which the request is made.

Article 23

Denial of Preferential Tariff Treatment

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

² For greater certainty, a visit shall not include the review of records kept by the exporter or producer including those records referred to in Article 19, unless the customs administrations of the Parties otherwise agree.

- (a) the good does not qualify as an originating good pursuant to this Chapter; or
- (b) the importer, exporter or producer, as appropriate, fails to provide information which the Party has requested in the course of a verification process under Article 22, or otherwise fails to comply with any of the relevant requirements of this Chapter.

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 24

Refund of Import Duties

1. Where a declaration of origin is not provided at the time of importation of a good from a Party pursuant to Paragraph 1 of Article 16, 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 customs 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 declaration of origin or other evidence to substantiate the origin of the goods is provided in relation to the good imported.

2. Where a certificate of origin has not been obtained at the time of importation of a good from Hong Kong, China to New Zealand pursuant to Paragraph 2 of Article 16,

New Zealand shall impose the applied non-preferential import customs duty. In such a case, the importer may apply for a refund of any excess import customs duty within one year of the date on which the good was imported, provided that a valid certificate of origin in relation to the good imported is provided to the customs administration of New Zealand.