

Chapter 4 Rules of Origin

Article 4.1: Definitions

For the purposes of this Chapter:

- (a) **adjusted value** means:
 - (i) in the case of a good to be exported from one Party to another, the value determined under the Customs Valuation Agreement, as adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incidental to the international shipment of the good from the country of exportation to the place of importation;
 - (ii) in the case of a material, the total of all prices actually paid or payable to acquire the materials to which the transaction relates in accordance with the Customs Valuation Agreement;
- (b) **Customs Valuation Agreement** means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A of the WTO Agreement;
- (c) **exporter** means a person who exports goods from the exporting Party;
- (d) **fungible goods or materials** means goods or materials that are identical or interchangeable as result of being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination;
- (e) **generally accepted accounting principles** means the recognised consensus or substantial authoritative support in the territory 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. These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;
- (f) **importer** means a person who imports goods into the importing Party;
- (g) **indirect material** means a material used in the production, testing or inspection of a good but not physically incorporated into the good, or a material or good used in the maintenance of buildings or the operation of equipment associated with the production of a good including:
 - (i) fuel and energy;
 - (ii) tools, dyes and moulds;

- (iii) spare parts and materials;
 - (iv) lubricants, greases, compounding materials and other materials used in production;
 - (v) gloves, glasses, footwear, clothing, safety equipment and supplies;
 - (vi) equipment, devices and supplies used for testing or inspecting the good;
 - (vii) catalysts and solvents; and
 - (viii) any other materials 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;
- (h) **material** means any good, used or consumed in the production of another good, and physically incorporated into or classified with that good;
- (i) **originating material** means a material that qualifies as originating in accordance with the relevant provisions of this Chapter;
- (j) **preferential tariff treatment** means the rate of customs duties applicable to an originating good of the exporting Party in accordance with Annex 3-B; and
- (k) **producer** means a person who engages in the production of goods or materials.

Article 4.2: Originating Goods

For the purposes of this Agreement, a good is an originating good of a Party and, subject to Article 4.18, eligible for a preferential tariff, if it:

- (a) is a wholly obtained good of a Party;
- (b) is produced entirely in the territory of a Party exclusively from originating materials;
- (c) satisfies all applicable requirements of Annex 4-C, as a result of processes performed entirely in the territory of one or both of the Parties by one or more producers; or
- (d) otherwise qualifies as an originating good under this Chapter;

and meets all other applicable requirements of this Chapter.

Article 4.3: Wholly Obtained Goods

For the purposes of Article 4.2, a wholly obtained good of a Party means:

- (a) mineral and other naturally occurring goods extracted in or from the territory of a Party;
- (b) vegetable goods⁴⁻³, as such goods are defined in the Harmonized System, 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, gathering, capturing or aquaculture conducted in the territory of a Party;
- (f) goods (fish, shellfish and other marine life) taken from the high seas by vessels registered or recorded with a Party and flying its flag;
- (g) goods obtained or produced on board factory ships registered or recorded with a Party and flying its flag, from the goods referred to in subparagraph (f);
- (h) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside the territorial sea, provided that a Party has a right to exploit such seabed in accordance with international law;
- (i) waste and scrap derived from:
 - (i) production in the territory of a Party; or
 - (ii) used goods collected in the territory of a Party;provided that such goods are fit only for the recovery of raw materials; and
- (j) goods produced or obtained entirely in the territory of a Party exclusively from goods referred to in subparagraphs (a) to (i).

Article 4.4: Cumulation

A good which is an originating good of a Party pursuant to Article 4.2 and is used in the production of a good or goods in the territory of the other Party shall be considered to originate in the territory of that other Party.

⁴⁻³ The definition of “vegetable products” in the Harmonized Commodity Description and Coding System shall apply as the definition of “vegetable goods” for the purposes of this Chapter.

Article 4.5: De Minimis

1. A good that does not satisfy a change in tariff classification requirement pursuant to Annex 4-C is nonetheless an originating good if:
 - (a) the value of all non-originating materials used in the production of the good that do not undergo the required change in tariff classification does not exceed 10 per cent of the adjusted value of the good (as calculated in accordance with Article 4.12); and
 - (b) the good meets all other applicable criteria of this Chapter.
2. The value of such non-originating materials shall, however, be included in the value of non-originating materials for any applicable regional value content requirement for the good.

Article 4.6: Accessories, Spare Parts and Tools

1. For the purposes of determining the origin of a good, accessories, spare parts, tools and instructional or other information resources presented with the good shall be considered originating goods, 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 or production process requirement.
2. If the good is subject to a regional value content requirement, the value of the accessories, spare parts, tools and instructional or other information resources presented with the good is to be taken into account as originating or non-originating, as the case may be, in calculating the regional value content of the good.
3. Paragraph 1 and 2 shall only apply provided that:
 - (a) the accessories, spare parts, tools and instructional or other information resources presented with the good are not invoiced separately from the good; and
 - (b) the quantities and value of the accessories, spare parts, tools and instructional or other information resources presented with the good are customary for that good.
4. Where accessories, spare parts and tools are not customary for the good or are invoiced separately from the good, they shall be treated as separate goods for the purpose of origin determination.

Article 4.7: Fungible Goods and Materials

1. The determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each of the materials, or through the use of an inventory management method recognised in the generally accepted accounting principles of the Party in which the production is performed or otherwise accepted by that Party.

2. A Party shall provide that an inventory management method selected under paragraph 1 for particular fungible goods or materials shall continue to be used for those fungible goods or materials throughout its fiscal year.

Article 4.8: Packaging Materials and Containers

1. Packaging materials and containers for transportation and shipment of a good shall not be taken into account in determining the origin of any good.

2. Packaging 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 or production process requirements as set out in Annex 4-C.

3. If a good is subject to a regional value content requirement then the value of the packaging materials 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.

4. Where the quantity or value of the packaging materials is not reasonable for the good, its value shall not be included as originating in a regional value content calculation for the good.

Article 4.9: Sets or Composite Goods

1. A set put up for retail sale or composite good that is classifiable pursuant to Rule 3 of the General Rules for the Interpretation of the Harmonized System, shall be considered as originating, provided that:

- (a) all the component goods are originating; or
- (b) the value of the non-originating component goods does not exceed 25 per cent of the total adjusted value (as calculated in accordance with Article 4.12) of the good put up in a set for retail sale or composite good.

2. The origin of packaging materials and containers for a set put up for retail sale or composite good shall be determined in accordance with Article 4.8.

3. This Article shall not apply to a set put up for retail sale or composite good for which the Harmonized System provides a specific description.

Article 4.10: Indirect Material

An indirect material shall be treated as an originating material without regard to where it is produced.

Article 4.11: Regional Value Content

For the purposes of Article 4.2 where Annex 4-C requires a good to meet a regional value content requirement, the regional value content of that good shall be calculated using the following method:

$$\text{Build-down Method} \frac{\text{AV} - \text{VNM}}{\text{AV}} \times 100$$

RVC

where:

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

AV is the adjusted value as defined in Article 4.1(a), and

VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good. VNM includes material of undetermined origin but does not include the value of a material that is self-produced.

Article 4.12: Calculation of the Value of Non-Originating Material

1. Each Party shall provide that the value of a non-originating material is:
 - (a) for a material imported by the producer of the good, the adjusted value of the material, adjusted by deducting the following costs and expenses:
 - (i) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within the Party's territory to the location of the producer;
 - (ii) duties, taxes, and customs brokerage fees on the material paid in the territory of the Party, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

- (iii) if the good is imported from the other Party, the cost of waste and spoilage resulting from the use of the material in the production of the good in the territory of that Party;
 - (iv) if the good is imported from the other Party, the cost of processing incurred in the territory of that Party in the production of the non-originating material;
 - (v) if the good is imported from the other Party, the cost of originating materials used or consumed in the production of the non-originating material in the territory of that Party; and
- (b) for a material acquired in the territory where the good is produced, the adjusted value of the material, adjusted by deducting the following costs and expenses:
 - (i) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within the Party's territory to the location of the producer;
 - (ii) duties, taxes, and customs brokerage fees on the material paid in the territory of the Party, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;
 - (iii) the cost of waste and spoilage resulting from the use of the material in the production of the good in the territory of the Party;
 - (iv) the cost of processing incurred in the territory of the Party in the production of the non-originating material; and
 - (v) the cost of originating materials used or consumed in the production of the non-originating material in the territory of the Party.

2. Where the cost or expense of a deduction listed in paragraph 1(a) or 1(b) is unknown or documentary evidence of the amount of the deduction is not available, then no deduction is allowable for that particular cost.

Article 4.13: Non-Qualifying Operations

1. A good shall not be considered to be an originating good of the exporting Party merely by reason of:
 - (a) operations to ensure the preservation of products in good condition for the purpose of storage during transport;
 - (b) changes of packaging and breaking up and assembly of packages;

- (c) disassembly;
 - (d) placing in bottles, cases, boxes and other simple packaging operations;
 - (e) mere making-up of sets of articles; or
 - (f) any combination of operations referred to in subparagraphs (a) to (e).
2. Paragraph 1 shall prevail over the product specific rules set out in Annex 4-C.

Article 4.14: Recording of Costs

For the purposes of this Chapter, all costs shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Party in which the good is produced or manufactured.

Article 4.15: Third Country Transshipment

1. A good shall continue to be considered an originating good provided that the good undergoes no subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, storing, repacking, relabelling or any other necessary operations to preserve it in good condition or to transport the good to the territory of a Party.
2. Notwithstanding paragraph 1, an originating good of a Party imported into the other Party after an exhibition in a non-Party shall continue to qualify as an originating good.
3. To ensure compliance with paragraphs 1 or 2, the Customs Administration of the importing Party may request documents, including customs documents of the third country, or any other documents, including transport documents.

Article 4.16: Certificate of Origin

1. A claim that a good should be treated as originating and accepted as eligible for a preferential tariff shall be supported by a Certificate of Origin.
2. The Certificate of Origin shall be completed by the exporter. The Certificate of Origin shall contain a set of minimum requirements as detailed in Annex 4-A and shall:
 - (a) specify that the goods enumerated therein are the origin of the exporting Party and meet the terms of this Chapter;
 - (b) be made in respect of one or more goods and may include a variety of goods; and

- (c) be completed in English or Spanish.
- 3. An example of a Certificate of Origin in English and Spanish is provided in Annex 4-B.
- 4. The Certificate of Origin shall remain valid for a period of one year from the date the document was issued.
- 5. If the exporter is not the producer of the good referred to in the Certificate of Origin, that exporter may complete and sign the Certificate of Origin on the basis of:
 - (a) the exporter's knowledge that the good qualifies as an originating good; or
 - (b) a producer's written declaration or statement that the good qualifies as an originating good of a Party.
- 6. Nothing in paragraph 5(b) shall be construed to require a producer who is not the exporter of the good to make a written declaration or statement that the good qualifies as an originating good of a Party.

Article 4.17: Exceptions from Certificate of Origin

Notwithstanding paragraph 1 of Article 4.16, the Customs Administration of the importing Party shall not require a Certificate of Origin from importers when:

- (a) the total customs value of the originating goods does not exceed 1000 United States dollars or the equivalent amount in that Party's currency, or such higher amount as the Party may establish; or
- (b) the Customs Administration of the importing Party has waived the requirement for evidence,

provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the requirements of this Chapter.

Article 4.18: Claim for Preferential Tariff Treatment

1. Subject to Article 4.24, the Customs Administration of the importing Party shall grant preferential tariff treatment to a good imported into its territory from the other Party, provided that the importer:

- (a) makes a Customs Import Declaration that the good qualifies as an originating good of the exporting Party;
- (b) complies with Article 4.15; and

- (c) submits the Certificate of Origin and, where appropriate, other evidence to substantiate the tariff preference claimed for the good upon request.
- 2. Where an importer has reason to believe that the Certificate of Origin contains incorrect information, the importer should promptly make a corrected declaration and pay any owed duties.

Article 4.19: Customs Duty Refund

If at the time of importation of a good the importer does not claim or is unable to claim preferential tariff treatment, the importer may within one year from the date of importation, or within a longer period if provided for by a Party in its domestic legislation, apply for a refund of any excess customs duty paid on production of:

- (a) a Certificate of Origin and, where appropriate, other evidence that the good qualifies as an originating good; and
- (b) other documentation relating to the importation of the good as the Customs Administration of the importing Party may require.

Article 4.20: Records

- 1. Each Party shall require that:
 - (a) an exporter or producer shall maintain, for five years from the date of the Certificate of Origin, all records relating to the origin of a good for which preferential tariff treatment is claimed in the importing Party, including the Certificate of Origin relevant to the good, or a copy thereof; and
 - (b) an importer claiming preferential tariff treatment shall maintain, for five years after the date of importation of a good, all records relating to the importation of the good, including the Certificate of Origin relevant to the good, or a copy thereof in accordance with the laws, regulations and practices of the relevant Party.
- 2. The records to be maintained pursuant to this Article and Article 4.21 shall include electronic records. Any such records in electronic form shall be maintained in accordance with the laws, regulations and practices of the relevant Party.

Article 4.21: Obligations Regarding Exportation

1. Where the exporter becomes aware that it has provided an erroneous or false Certificate of Origin or any other such erroneous or false evidence, the exporter shall endeavour to give notice as soon as possible to the Customs Administration of the importing and exporting Party, as well as the importer, of any change that would affect the accuracy or validity of a Certificate of Origin.
2. The exporter that has provided a Certificate of Origin shall provide a copy of this document to the exporting Party's Customs Administration upon request.
3. Each Party shall, to the extent permitted by its laws, regulations and practices, maintain penalties for false Certificates of Origin or documentation related to the origin of a good submitted to a Customs Administration by an exporter in its territory.

Article 4.22: Origin Verification

1. The Customs Administration of the importing Party may verify the eligibility of a good for preferential tariff treatment in accordance with its laws, regulations and practices.
2. If the Customs Administration of the importing Party has reasonable doubts as to the authenticity or accuracy of the information included in the Certificate of Origin it may:
 - (a) institute measures to establish the validity of the Certificate of Origin;
 - (b) issue written requests for information to the relevant importers of the good for which preferential tariff treatment was claimed; and
 - (c) issue written requests for information to the exporter in the exporting Party on the basis of a Certificate of Origin.
3. A request for information in accordance with subparagraph 2(c) shall not preclude the use of the verification method provided for in Article 4.23.
4. The Customs Administration of the importing Party shall complete any action to verify eligibility for preferential tariff treatment within 90 days from the commencement of such action, and make a decision and provide written advice as to whether the good is eligible for preferential tariff treatment to all relevant parties within 30 days.

Article 4.23: Verification Visit

1. The Customs Administration of the importing Party may request the exporter to:

- (a) permit the Customs Administration to visit the exporter's factory or premises;
 - (b) arrange a visit to the factory or premises of the producer, if the exporter is not the producer; and
 - (c) provide information relating to the origin of the good.
- 2. The Customs Administration of the importing Party shall issue a written communication with such a request to the exporter in advance of the proposed date of the visit.
- 3. The Customs Administration of the importing Party shall not visit the factory or premises of any exporter or producer in the territory of the exporting Party without written prior consent from the exporter or producer.
- 4. The above written communication shall at a minimum include:
 - (a) the identity of the Customs Administration issuing the request;
 - (b) the name of the exporter of the good in the exporting Party to whom the request is addressed;
 - (c) the date the written request is made;
 - (d) the proposed date and place of the visit;
 - (e) the objective and scope of the proposed visit, including specific reference to the good subject of the verification referred to in the Certificate of Origin; and
 - (f) the names and titles of the officials of the Customs Administration of the importing Party who will participate in the visit.
- 5. The Customs Administration of the importing Party shall notify the Customs Administration of the exporting Party when it initiates a verification action under this Article.
- 6. The Customs Administration of the importing Party shall complete any action to verify eligibility for preferential tariff treatment within 90 days from the commencement of such action, and make a decision and provide written advice as to whether the good is eligible for preferential tariff treatment to all relevant parties within 30 days.

Article 4.24: Determination of Origin and Preferential Tariff Treatment

- 1. Each Party shall provide that, when an importer in its territory does not comply with any requirement of this Chapter and Chapter 3 (National Treatment and

Market Access for Goods), the claimed preferential tariff treatment may be suspended or denied for the imported good from the territory of the other Party.

2. The Customs Administration of the importing Party may suspend the application of preferential tariff treatment to a good that is the subject of an origin verification action under Article 4.22 or 4.23, for the duration of that action or any part thereof.

3. The Customs Administration of the importing Party may deny a claim for preferential tariff treatment when:

- (a) the good does not qualify as an originating good; or
- (b) the importer or the exporter fails to comply with any of the relevant requirements of this Chapter.

Article 4.25: Appeal

The importing Party shall grant the right of appeal in matters relating to eligibility for preferential tariff treatment to an importer, exporter or producer of a good traded or to be traded between the Parties, in accordance with its laws and regulations and practices.

Article 4.26: Consultation, Review and Modification

The Parties shall consult regularly to ensure that the provisions in this Chapter are administered effectively, uniformly and consistently in order to achieve the spirit and objectives of this Chapter.

Article 4.27: Non-Party Invoices

The Customs Administration of the importing Party shall not reject a Certificate of Origin only for the reason that the invoice is issued in a non-Party.

Article 4.28: Confidentiality

For greater certainty, the Parties confirm that Article 5.9 (Confidentiality - Customs Administration Chapter) applies to this Chapter.

Article 4.29: Goods in Storage

In accordance with Article 4.18 or Article 4.19, the Customs Administration of the importing Party shall grant preferential tariff treatment for a good which, on the date of entry into force of this Agreement, is customs duty unpaid and stored in a warehouse regulated by the Customs Administration, provided:

- (a) the good satisfies all applicable requirements of this Chapter; and
- (b) the importer submits a Certificate of Origin in accordance with this Chapter to the Customs Administration of the importing Party.

Annex 4-A
Minimum Requirements for a Certificate of Origin

- Exporter name and address;
- Consignee name and address;
- Marks and numbers;
- Number and kind of packages;
- Description of goods;
- Harmonized System Code;
- The applicable rule of origin;
- Declaration certifying goods meet the applicable rule of origin;
- Name, title and signature of person completing the Certificate of Origin;
- Date of issue; and
- Number of Certificate of Origin.

ANNEX 4-B
Example of a Certificate of Origin

AUSTRALIA-CHILE FREE TRADE AGREEMENT / TRATADO DE LIBRE COMERCIO CERTIFICATE OF ORIGIN / CERTIFICADO DE ORIGEN				
Certificate / Certificado No.				
1. Exporter / Exportador				
2. Consignee / Consignatario				
3. Marks and Numbers / Marcas y Números	4. Number and Kind of Packages / Número y clase de bultos	5. Description of Goods / Descripción de las Mercancías	6. Rule of Origin / Regla de Origen	7. Harmonized System Code / Clasificación Sistema Armonizado
8. Remarks / Observaciones				
9. Declaration by the exporter / Declaración del exportador: I, the undersigned, declare that the above details are true and accurate and the good(s) described above meet the condition(s) required for the issuance of this certificate / El que suscribe declara que la(s) mercancía(s) arriba descrita(s) cumple(n) la(s) condición(es) exigida(s) para la emisión del presente certificado. Country of origin / País de origen..... Place and date / Lugar y fecha..... Name / Nombre..... Title / Cargo..... Signature / Firma.....				

**AUSTRALIA-CHILE FREE TRADE AGREEMENT
CERTIFICATE OF ORIGIN INSTRUCTIONS**

For purposes of obtaining preferential tariff treatment, this document must be completed legibly and in full by the exporter and be in the possession of the importer at the time the Customs Import Declaration is made. Please print or type.

Certificate No: Provide a unique number for the Certificate of Origin.

- Field 1: State the full legal name, address (including country) and legal tax identification number of the exporter. Legal tax identification number is: in Australia, the Australian Business Number; in Chile, the Unique Tax Number ("Rol Unico Tributario").
- Field 2: State the full legal name, address (including country) of the consignee.
- Field 3: Marks and numbers on the packages.
- Field 4: Number and kind of packages.
- Field 5: Provide a full description of each good. The description should be sufficient to relate it to the invoice description and to the Harmonized System (HS) description of the good. If the Certificate of Origin covers a single shipment of a good, include the invoice number as shown on the commercial invoice.
- Field 6: For each good described in Field 5, state which criterion (A to D) is applicable. The rules of origin are contained in Chapter 4 and Annex 4-C of the Agreement. NOTE: Indicate at least one of the preference criteria below.

Preference Criteria:

- A The good is a wholly obtained good of a Party.
- B The good is produced entirely in the territory of the Party exclusively from originating material.
- C Satisfies all applicable requirements of Annex 4-C (Rules of Origin Schedule), as a result of processes performed entirely in the territory of one or both of the Parties by one or more producers.
- D Otherwise qualifies as an originating good under the Rules of Origin Chapter.
- Field 7: For each good described in Field 5 identify the HS tariff classification to 6 digits.
- Field 8: Remarks. For example, if a good is invoiced by a non-Party operator, indicate "Invoice by a non-Party".
- Field 9: This field must be completed, signed and dated by the exporter. The date must be the date the Certificate of Origin was completed and signed. Title refers to the title or position within the company of the person who completes and signs the certificate of origin.

Annex 4-C

Rules of Origin Schedule

Headnotes to the Schedule

1. The following definitions apply:
 - (a) **Subheading** means the first six digits in the tariff classification number under the Harmonized System;
 - (b) **Heading** means the first four digits in the tariff classification number under the Harmonized System; and
 - (c) **Chapter** means the first two digits in the tariff classification number under the Harmonized System.
2. The specific rule, or specific set of rules, that applies to a particular heading (4-digit code) or subheading (6-digit code) is set out immediately adjacent to the heading or subheading.
3. A requirement of a change in tariff classification applies only to non-originating materials.
4. When a heading or subheading is subject to alternative specific rules of origin, the rule will be considered to be met if a good satisfies one of the alternatives.
5. Where a specific rule of origin is defined using the criterion of a change in tariff classification, and the rule is written to exclude tariff provisions at the level of a chapter, heading or subheading of the Harmonized System, each Party shall construe the rule of origin to require that materials classified in those excluded provisions be originating for the good to qualify as originating.
6. Chapter notes within this Schedule apply to all headings or subheadings within the indicated chapter or group of chapters unless there exists a specific exclusion.