

CHAPTER 3
RULES OF ORIGIN

SECTION A: RULES OF ORIGIN

Article 1
Definitions

For the purpose of this Chapter:

aquaculture means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants from seed-stock 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 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;

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;

generally accepted accounting principles means the recognised accounting standards of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

good means any merchandise, product, article or material;

material means any matter or substance used in the production or transformation of another good or physically incorporated into another good subject to a process in the production of that other good;

non-originating good or **non-originating material** means a good or material which does not qualify as originating under this Chapter;

originating good or **originating material** means a good or material which qualifies as originating in accordance with the provisions of Article 2 of this Chapter;

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

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 be treated as an originating good if it:

- (a) is wholly obtained or produced in a Party as provided for in Article 3 (Wholly Obtained or Produced Goods); or

- (b) is produced entirely in one or both Parties exclusively from originating materials from one or both of the Parties; or
- (c) is produced in one or both Parties using non-originating materials that conform to a Change in Tariff Classification requirement (as provided for in Article 4), a Regional Value Content requirement (as provided for in Article 5) or other requirements as specified in Annex 2 (Product Specific Rules Schedule, hereinafter referred to as “PSR Schedule”);

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

Article 3

Wholly Obtained or Produced Goods

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

- (a) plant and plant goods, such as fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, grown and harvested, picked, or gathered in a Party;
- (b) live animals born and raised in a Party;
- (c) goods obtained from live animals in a Party;
- (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering, or capturing in a Party;
- (e) minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or subsoil, in 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 or recorded in a Party and entitled to fly the flag of that Party;
- (g) goods processed and/or produced on board any factory ship registered or recorded in a Party and entitled to fly the flag of a Party 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 national jurisdiction under exploitation rights granted in accordance with international law;
- (i) goods which are:
 - (i) waste and scrap derived from production or consumption in a Party provided that such goods are fit only for the recovery of raw materials; or
 - (ii) used goods collected in a Party provided that such goods are fit only for the recovery of raw materials; and
- (j) goods obtained or produced in a Party solely from products referred to in subparagraphs (a) to (i) or from their derivatives.

Article 4

Change in Tariff Classification

A change in tariff classification under Annex 2 (PSR Schedule) requires that the non-originating materials used in the production of the good

undergo a change in tariff classification as a result of processes performed in one or both of the Parties.

Article 5

Regional Value Content

1. Where Annex 2 (PSR Schedule) refers to a Regional Value Content (RVC), the RVC shall be calculated as follows:

RVC =	$\frac{\text{FOB} - \text{VNM}}{\text{FOB}}$	x 100
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where:

- RVC is the regional value content, expressed as a percentage;
- FOB is the FOB value of the goods; and
- VNM is the value in CIF terms of non-originating materials (including materials of undetermined origin).

2. The value of the non-originating materials shall be:

(a) the CIF value at the time of importation of the material; or

(b) the earliest ascertained price paid or payable for the non-originating materials in the Party where the working or processing takes place. 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 materials from the supplier to the producer.

3. Both the FOB and CIF values referred to above shall be determined pursuant to the Customs Valuation Agreement.

Article 6

Accumulation

Originating goods or materials from a Party, incorporated into a good in the other Party, shall be considered as originating in the other Party.

Article 7

Minimal Operations and Processes

1. Except as otherwise provided in Annex 2 (PSR Schedule), 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 other substances that do not materially alter the characteristics of the goods.

Article 8

De Minimis

Each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex 2 (PSR Schedule) 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 10 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 (Originating Goods) if the following conditions have been met:

- (a) the good has been transported to the importing Party without passing through 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 such 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 exclusively used 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. With regard to the change in tariff classification requirements for origin specified in Annex 2 (PSR Schedule), 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 these are classified with and not invoiced separately from the good.
2. Notwithstanding paragraph 1 of this Article, 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. This Article applies only where the accessories, spare parts, tools and instructional or other information materials are presented with the good are not invoiced separately from the originating good; and 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.

Article 12
Indirect Materials

1. In determining whether a good is an originating good, the origin of any indirect materials as defined in paragraph 2 shall be disregarded.
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 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 (Operational Procedures) as applicable.

SECTION B: OPERATIONAL PROCEDURES

Article 15 **Definitions**

For the purpose of this Section:

declaration of origin means a statement made by the producer, supplier, exporter, importer or other competent person that the goods to which the declaration relates are originating goods in accordance with the provisions of Section A of this Chapter; and

certificate of origin means a form identifying the goods, in which the producer, supplier, exporter, importer or other competent person certifies expressly that the goods to which the certificate relates are originating goods in accordance with the provisions of Section A of this Chapter.

Article 16 **Treatment of Goods for which Preference is Claimed**

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment based on any of the following:
 - (a) a written or electronic declaration of origin;
 - (b) a written or electronic certificate of origin; or
 - (c) other evidence to substantiate the tariff preference claimed for the goods.

2. The declaration of origin and the certificate of origin shall be in the form set out in the Implementing Arrangement on Rules of Origin Operational Procedures attached to this Chapter. The Implementing Arrangement may be revised or modified by mutual decision of the Parties.
3. The declaration or certificate of origin shall be completed in English.
4. The declaration of origin shall include the following information in the “observations” field of the declaration (unless such information already appears on the export invoice in respect of the goods subject to the declaration):
 - (a) a full description of the good(s);
 - (b) six digit Harmonized System Code for the respective good(s);
 - (c) the producer’s name(s) if known;
 - (d) the importer’s name(s) in respect of imported goods, if known;
and
 - (e) the rule of origin under which the declarant claims the good(s) qualifies.
5. Slight discrepancies as between the wording of the declaration or certificate of origin and the detail stated on the export invoice shall not, of themselves, cause any claim for preferential tariff treatment to be denied.
6. Each Party shall provide that where the competent person making a declaration or completing a certificate of origin is not the producer of

the good, the competent person may complete and sign the declaration of origin on the basis of:

- (a) specific knowledge that the good qualifies as an originating good; or
- (b) a reasonable reliance on the producer's written representation that the good qualifies as an originating good.

Article 17

Exceptions from Declaration of Origin

1. An importing Party shall not require a declaration or certificate of origin to admit goods pursuant to tariff preference where:
 - (a) the customs value does not exceed US\$1,000 or the equivalent amount in the importing Party's currency or a higher amount as it may establish; or
 - (b) in respect of specific goods, the importing Party has waived the requirement for such evidence.
2. Where an importation forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purposes of avoiding the origin requirements of this Article in accordance with paragraph 1, the customs administration of the importing Party may deny preferential tariff treatment.

Article 18

Records

Each Party shall require that producers, exporters and importers in their respective jurisdictions maintain for a period specified in its domestic law, as the case may be, all records relating to that 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.

Article 19

Direct Consignment – Compliance

Compliance with the direct consignment provisions set out in Article 9 of this Chapter may be evidenced by providing the relevant commercial shipping or freight documents and, if the good has transited through a non-Party, providing any other documents that demonstrate the good has not undergone subsequent production in that non-Party.

Article 20

Third-Party Invoicing

Where goods meet the requirements of Section A of this Chapter (Rules of Origin) the importing Party shall not reject a claim for origin if the invoice is issued in a third party.

Article 21
Verification of Origin

1. For the purposes of determining whether a good imported from 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 addressed to the importer;
 - (b) requests for information to the exporter or producer in the other Party;
 - (c) visits to the premises of an exporter or producer in the other Party to review the records referred to in Article 18 (Records) and to observe the facilities used in the production of the good; or
 - (d) such other procedures as the Parties may agree.
2. Any such verification activities shall only be undertaken if the amount of tariff duty foregone is sufficiently material to warrant the action.
3. All requests for information shall be accompanied by sufficient information to identify the good about which the request was made.

Article 22

Decision on Origin

1. If, as a result of questions put or visits made to the exporter or producer, the requesting Party is satisfied the goods about which those questions were put or visits made are originating goods pursuant to the provisions of this Chapter, it shall permit preferential tariff treatment for those goods.
2. Preferential tariff treatment may be denied if:
 - (a) the goods do not or did not meet the requirements of this Chapter;
 - (b) the verification procedures undertaken under Article 21 (Verification of Origin) are unable to verify the origin of a good.
3. In the event preferential tariff treatment is denied, the importing Party shall ensure that its customs administration provides in writing to the importer full reasons for that decision and the avenues available to the importer for review of that decision.
4. Where verifications by a Party indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that an imported good qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods exported or produced by such a person until it is satisfied that the exporter or producer is no longer making false or unsupported representations as to origin.