

CHAPTER 4

RULES OF ORIGIN AND OPERATIONAL PROCEDURES

Section 1: Rules of Origin

Article 17 Definitions

For the purposes of this Chapter:

CIF 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 country of importation;

Customs Valuation Agreement means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

FOB 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 recognized accounting standards of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities, the disclosure of information and the preparation of financial statements. Those standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

Harmonized System means the Harmonized Commodity Description and Coding System of the World Customs Organization;

materials means any matter or substance used in the production or transformation of another good, including a part or ingredient;

originating materials or **originating goods** means materials or goods which qualify as originating in accordance with the provisions of this Section;

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

producer means a person who engages in the production of a good;

production means methods of obtaining goods, including growing, raising, mining, harvesting, fishing, farming, trapping, hunting, capturing, gathering, collecting, breeding, extracting, manufacturing, processing or assembling a good.

Article 18 Preferential Tariff Treatment

Preferential tariff treatment under this Agreement shall be applied to goods that satisfy the requirements of this Chapter and which are consigned directly between the Parties.

Article 19 Originating Goods

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

- (a) the good is wholly obtained or produced in the territory of a Party as set out and defined in Article 20, including where required to be so under Annex 5;
- (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 Section; or
- (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, a process requirement or other requirements specified in Annex 5, and the good meets the other applicable provisions of this Section.

Article 20 Goods Wholly Obtained

Within the meaning of Article 19(a), the following goods shall be considered as wholly obtained or produced in the territory of a Party:

- (a) plant products harvested, picked or gathered in the territory of a Party;
- (b) live animals born and raised in the territory of a Party;
- (c) goods obtained from live animals raised in the territory of a Party;
- (d) goods obtained from hunting, trapping, fishing, farming, gathering or capturing conducted in the territory of a Party;
- (e) minerals and other naturally occurring substances, not included in paragraphs (a) to (d) above, extracted or taken from its soil, waters, seabed or beneath its seabed;

- (f) goods extracted or taken by a Party, or a person of a Party, from the waters, seabed or subsoil beneath the seabed outside the territorial waters of that Party, provided that the Party has the right to exploit such waters, seabed or subsoil beneath the seabed under that Party's applicable domestic law in accordance with relevant international agreements to which that Party is a party;
- (g) goods (fish, shellfish, plant and other marine life) taken within the territorial waters or the Exclusive Economic Zone of a Party seaward of the territorial sea under that Party's applicable laws in accordance with relevant international agreements to which that Party is a party, or taken from the high seas, by a vessel registered or recorded with a Party and flying or entitled to fly the flag of that Party;
- (h) goods processed and/or made on board factory ships registered or recorded with a Party and flying or entitled to fly the flag of that Party, exclusively from goods referred to in paragraph (g) above;
- (i) scrap and waste derived from processing operations in the territory of a Party and fit only for the recovery of raw materials, or used goods collected in the territory of a Party provided that such goods are fit only for the recovery of raw materials;
- (j) goods obtained or produced in the territory of a Party solely from goods referred to in paragraphs (a) to (i) above.

Article 21 Change in Tariff Classification

A change in tariff classification under Annex 5 requires that the non-originating materials used in the production of the goods undergo a change of tariff classification as a result of processes performed in the territory of one or both Parties.

Article 22 Regional Value Content

1. Where Annex 5 refers to a Regional Value Content ("RVC"), the RVC shall be calculated as follows:

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

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 territory of 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 material from the supplier's warehouse to the producer's location.

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

Article 23 Accumulation

Where originating goods or materials of a Party are incorporated into a good in the other Party's territory, the goods or materials so incorporated shall be regarded to be originating in the latter's territory.

Article 24 Minimal Operations or Processes

1. For purposes of this Article, "simple" generally describes activities which need neither special skills nor special machines, apparatus or equipment specially produced or installed for carrying out the activity.

2. Operations or processes which contribute minimally to the essential characteristics of the goods, either by themselves or in combination, are considered to be minimal operations or processes and do not confer origin. These include:

(a) operations to ensure the preservation of goods in good condition during transport and storage, such as drying, freezing, ventilation, chilling and like operations;

(b) simple operations consisting of sifting, sorting, grading, screening, classifying, washing, cutting, slitting, bending, coiling, or uncoiling;

- (c) breaking-up and assembly of consignments;
- (d) packing, unpacking or repacking operations;
- (e) simple packaging operations, such as simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards;
- (f) affixing or printing marks, labels, logos or other like distinguishing signs on products or their packaging;
- (g) mere dilution with water or another substance that does not materially alter the characteristics of the goods;
- (h) husking, partial or total bleaching, polishing, and glazing of cereals other than rice;
- (i) operations to colour sugar or form sugar lumps.

Article 25 Direct Consignment

1. For the purposes of Article 18, the following shall be considered as consigned directly from the exporting Party to the importing Party:

- (a) goods that are transported without passing through the territory of a non-Party;
- (b) goods whose transport involves transit through one or more non-Parties with or without trans-shipment or temporary storage of up to 6 months in such non-Parties, provided that:
 - (i) the goods do not enter into trade or commerce there; and
 - (ii) the goods do not undergo any operation there other than unloading and reloading, repacking, or any operation required to keep them in good condition.

2. Compliance with the provisions set out in paragraph 1(b) shall be evidenced by presenting the customs authorities of the importing Party either with customs documents of the non-Parties or with any other documents.

Article 26 Packing and Containers for Transportation

Containers and packing materials used for the transport of goods shall not be taken into account in determining the origin of the goods.

Article 27 Packaging Materials and Containers for Retail Sale

Where goods are subject to a change in tariff classification criterion set out in Annex 5, the origin of the packaging materials and containers in which goods are packaged for retail sale shall be disregarded in determining the origin of the goods, provided that the packaging materials and containers are classified with the goods. However, if the goods are subject to an RVC requirement, the value of the packaging materials and containers used for retail sale shall be taken into account as originating materials or non-originating materials as the case may be when determining the origin of the goods.

Article 28 Accessories, Spare Parts and Tools

1. With regard to the change in tariff classification requirements for origin specified in Annex 5, accessories, spare parts, tools, instructional and information materials presented with the good upon importation shall be disregarded in the determination of the origin of the good, provided that these are classified with and not invoiced separately from the good.

2. Where the goods are subject to an RVC requirement, the value of the accessories, spare parts, tools, instructional and information materials shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the RVC of the goods.

3. This Article applies only where the quantities and values of said accessories, spare parts, tools, instructional and information materials are customary for the good.

Article 29 Neutral Elements

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

2. Neutral elements are goods used in the production, testing or inspection of another good but not physically incorporated into the good, or goods used in the maintenance of buildings or the operation of equipment associated with the production of a good. These include:

- (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;
- (g) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.

Article 30 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. 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 31 De Minimis

A good that does not meet tariff classification change requirements, pursuant to the provisions of Annex 5, shall nonetheless be considered to be an originating good if:

- (a) the value of all non-originating materials, including materials of undetermined origin, that do not meet the tariff classification change requirement does not exceed 10% of the FOB value of the given good, determined pursuant to Article 22; and
- (b) the good meets all the other applicable criteria of this Section.

Article 32 Compliance

Compliance with the requirements of this Section shall be determined in accordance with the provisions of Section 2 as applicable.

Section 2: Operational Procedures

Article 33 Definitions

For the purposes of this Section:

authorized body means any government authority or other entity authorized under the domestic legislation of a Party to issue a Certificate of Origin;

Certificate of Origin means a form issued by an authorized body of the exporting Party, identifying the goods being consigned between the Parties and certifying, for the purposes of Section 1 of this Chapter, that the goods to which the certificate relates originate in a Party;

competent authority means a government agency responsible for carrying out verification activities under Article 41, and notified by each Party to the other Party;

Declaration of Origin means a statement as to the origin of the goods made by the manufacturer, producer, supplier or exporter of those goods or by any other competent person;

origin document means a Certificate of Origin, a Declaration of Origin or other documentary evidence of origin;

other documentary evidence of origin means any other documentary evidence sufficient to substantiate the origin of the goods.

Article 34 Granting Preference

The importing Party shall grant preferential tariff treatment to goods imported from the other Party only in cases where an importer claiming preferential tariff treatment provides to the importing customs administration upon importation of the goods, in accordance with this Chapter, a Certificate of Origin, a Declaration of Origin, or any other documentary evidence of origin that the importing Party may decide.

Article 35 Refund of Import Duties or Deposits

1. Where a Certificate of Origin or a Declaration of Origin, as the case may be, is not provided at the time of importation of a good from a Party pursuant to Article 34, 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 Certificate of Origin or Declaration of Origin, as the case may be, is provided in relation to the good imported.

2. The requirement in paragraph 1(a) shall not apply for the first 12 months following entry into force of this Agreement.

Article 36 Certificate of Origin

1. A Certificate of Origin shall be in the format as set out in Annex 6, and shall:

- (a) contain a unique certificate number;
- (b) cover the goods presented under a single import customs declaration;
- (c) state the basis on which the goods are deemed to qualify as originating for the purposes of Section 1 of this Chapter;
- (d) contain security features, such as specimen signatures or stamps as advised to the importing Party by the exporting Party; and
- (e) be completed in English.

2. A Certificate of Origin shall remain valid for 12 months from the date of issue.

3. Only the original Certificate of Origin marked “ORIGINAL” shall be submitted within the said period to the importing customs administration.

4. In the event of theft, loss or damage of a Certificate of Origin, the exporter or manufacturer may make a written request to the authorized bodies of the exporting Party for issuing a certified copy, provided that the exporter or manufacturer makes sure that the original copy previously issued has not been used. The certified copy shall bear the words “CERTIFIED TRUE COPY of the original Certificate of Origin number ____ dated ____”. If the importing customs administration ascertains that the original copy has been used, the certified copy shall be invalid and vice versa.

5. The format and any requirements set out in Annex 6 may be revised or modified by joint decision through an exchange of letters between the Parties.

Article 37 Declaration of Origin

1. A Declaration of Origin shall be in the format as set out in Annex 7, and shall be accepted in place of a Certificate of Origin:
 - (a) for any consignment whose aggregate customs value does not exceed US\$1,000 or its equivalent in the currency of the importing Party, or such higher amount as that Party may establish;
 - (b) for any consignment of goods covered by an advance ruling in accordance with Article 52 that deems the good to qualify as originating, so long as the facts and circumstances on which the ruling was based remain unchanged and the ruling remains legally valid; or
 - (c) when the importing Party otherwise decides, for any reason, that a Certificate of Origin is not required in relation to a specific consignment or in general.
2. Notwithstanding paragraph 1, 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 circumventing the requirements of this Section, the importing Party may deny preferential tariff treatment.
3. A Declaration of Origin shall cover the goods presented under a single import customs declaration, and shall remain valid for 12 months from the date of issue.
4. The format and any requirements set out in Annex 7 may be revised or modified by joint decision through an exchange of letters between the Parties.

Article 38 Amendments to Origin Documents

1. Neither erasures nor superimpositions shall be permitted on any origin documents. Any amendment shall be made by striking out the erroneous information and making any addition which might be required. Such alterations shall be endorsed by the person who made them.
2. Any unused space shall be crossed out to prevent any addition subsequent to certification.

Article 39 Retention of Origin Documents

1. Each Party shall require its producers, exporters and importers to retain origin documents for a period specified in its domestic legislation.

2. Each Party shall ensure that its authorized bodies retain copies of Certificates of Origin and other documentary evidence of origin for a period specified in its domestic legislation.

Article 40 Authorized Bodies

1. A Certificate of Origin shall be issued only by an authorized body in the exporting Party.

2. Each Party shall inform the customs administration of the other Party of the name of each authorized body, as well as relevant contact details, and shall provide details of any security features for relevant forms and documents used by each authorized body, prior to the issuance of any certificates by that body. Any change in the information provided above shall be advised promptly to the customs administration of the other Party.

Article 41 Verification of Origin

1. For the purposes of determining whether goods imported into the territory of a Party from the territory of the other Party qualify as originating goods, the importing customs administration may verify any claims for tariff preference by means of:

- (a) written requests for additional information from the importer;
- (b) written requests for additional information from the exporter or producer in the territory of the exporting Party;
- (c) requests that the competent authorities of the exporting Party verify the origin of a good; or
- (d) such other procedures as the customs administrations of the Parties may jointly decide.

2. A verification process under paragraph 1 shall only be initiated when there are reasonable grounds to doubt the accuracy or authenticity of origin documents, the origin status of the goods concerned or the fulfilment of any other requirements under this Section, and when customs duty is sufficiently material to warrant the request.

3. A verification request to the competent authority of the exporting Party shall specify the reasons, and any documents and information obtained justifying the verification activities shall be forwarded to the competent authority of the requested Party.

4. The Parties shall develop an electronic verification system to ensure the effective and efficient implementation of this Section in a manner and within a timeframe to be jointly determined by the Parties.

Article 42 Denial of Preferential Tariff Treatment

1. A Party may deny preferential tariff treatment to a good when:
 - (a) the name of the relevant authorized body or any security features for relevant forms and documents used by that authorized body, or any change in the above information, has not been advised to the customs administration of the other Party;
 - (b) the importer, exporter, manufacturer or producer, as appropriate, fails to provide information which the Party has requested in the course of a verification process under Article 41, or the requested competent authority is unable for any reason to respond to the request to the satisfaction of the importing customs administration, within 6 months of the date of request; or
 - (c) the good does not or did not comply with the other requirements of this Chapter, including where:
 - (i) the Certificate of Origin has not been duly completed and signed;
 - (ii) the origin of the goods is not in conformity with Section 1;
 - (iii) the data provided under the Certificate of Origin does not correspond to those of the supporting documents submitted; or
 - (iv) the description, quantity and weight of goods, marks and number of packages, number and kinds of packages, as specified, do not conform to the goods imported.
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 43 Review

The competent authorities of the Parties shall review the procedures under this Section as they mutually deem necessary.