

CHAPTER 3

RULES OF ORIGIN AND ORIGIN PROCEDURES

Section A: Rules of Origin

Article 3.1: Definitions

For the purposes of this Chapter:

aquaculture means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants from seed stock such as eggs, fry, fingerlings or larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;

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. The valuation shall be calculated in accordance with the Customs Valuation Agreement;

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

generally accepted accounting principles means those principles recognised by consensus or with substantial authoritative support in the Area 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 principles may encompass broad guidelines for general application, as well as detailed standards, practices and procedures;

good means any merchandise, product, article or material;

Harmonized System or HS means the *Harmonized Commodity Description and Coding System* governed by the *International Convention on the Harmonized Commodity Description and Coding System*, done at Brussels on June 14, 1983, including its General Rules of Interpretation, Section Notes and Chapter Notes, and their amendments, as applied by the Parties in their respective laws;

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 used in the maintenance of buildings or the operation of equipment, associated with the production of a good, including:

- (a) fuel, energy, catalysts and solvents;

- (b) equipment, devices and supplies used to test or inspect the good;
- (c) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (d) tools, dies and moulds;
- (e) spare parts and materials used in the maintenance of equipment and buildings;
- (f) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; and
- (g) any other material that is not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production;

material means a good that is used in the production of another good;

non-originating good or **non-originating material** means a good or material that does not qualify as originating in accordance with this Chapter;

originating good or **originating material** means a good or material that qualifies as originating in accordance with this Chapter;

packing materials and containers for shipment means a good used to protect another good during its transportation, but does not include the packaging materials or containers in which a good is packaged for retail sale;

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

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

transaction value means the price actually paid or payable for the good when sold for export or other value determined in accordance with the Customs Valuation Agreement.

Article 3.2: Originating Goods

Unless otherwise provided in this Chapter, each Party shall provide that a good is an originating good if it is:

- (a) wholly obtained or produced entirely in the Area of one or both of the Parties by one or more producers as established in Article 3.3;
- (b) produced entirely in the Area of one or both of the Parties by one or more

producers, exclusively from originating materials; or

- (c) produced entirely in the Area of one or both of the Parties by one or more producers using non-originating materials provided the good satisfies all applicable requirements of Annex 3-B,

and the good satisfies all other applicable requirements of this Chapter.

Article 3.3: Wholly Obtained or Produced Goods

Each Party shall provide that for the purposes of Article 3.2, a good is wholly obtained or produced entirely in the Area of one or both of the Parties if it is:

- (a) a plant or plant good, grown, cultivated, harvested, picked or gathered there;
- (b) a live animal born and raised there;
- (c) a good obtained from a live animal there;
- (d) an animal obtained by hunting, trapping, fishing, gathering or capturing there;
- (e) a good obtained from aquaculture there;
- (f) a mineral or other naturally occurring substance, not included in subparagraph (a), subparagraph (b), subparagraph (c), subparagraph (d) and subparagraph (e), extracted or taken from there;
- (g) a good of sea-fishing and other marine goods, taken from the high seas, by vessels that are entitled to fly the flag of that Party;
- (h) a good produced from goods referred to in subparagraph (g) on board a factory ship that is registered, listed or recorded with a Party and entitled to fly the flag of that Party;
- (i) a good other than fish, shellfish and other marine life taken by a Party or a person of a Party from the seabed or subsoil outside the Areas of the Parties, and beyond territories over which non-Parties exercise jurisdiction provided that that Party or person of that Party has the right to exploit that seabed or subsoil in accordance with international law;
- (j) a good that is:
 - (i) waste or scrap derived from production and consumption there provided that it is fit only for the recovery of raw materials; or

- (ii) waste or scrap derived from used goods collected there, provided that those goods are fit only for the recovery of raw materials; and
- (k) a good produced there, exclusively from goods referred to in subparagraph (a), subparagraph (b), subparagraph (c), subparagraph (d), subparagraph (e), subparagraph (f), subparagraph (g), subparagraph (h), subparagraph (i) and subparagraph (j), or from their derivatives.

Article 3.4: Regional Value Content

1. Each Party shall provide that a regional value content requirement specified in this Chapter, including related annexes, to determine whether a good is an originating good, is calculated as follows:

Build-down Method: Based on Value of Non-Originating Materials

$$RVC = \frac{\text{Adjusted Value} - \text{VNM}}{\text{Adjusted Value}} \times 100$$

where:

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

VNM is the value of non-originating materials, including materials of undetermined origin, used in the production of the good; and

Adjusted Value is

- (a) the FOB value as defined in Article 3.1; or
- (b) if there is no FOB value or it is unknown or cannot be ascertained, the “customs value of imported goods” determined in accordance with the Customs Valuation Agreement.

2. Each Party shall provide that all costs considered for the purposes of this Chapter are recorded and maintained in conformity with the generally accepted accounting principles applicable in the Area of a Party where the good is produced.

Article 3.5: Materials Used in Production

1. Each Party shall provide that if a non-originating material undergoes further production such that it satisfies the requirements of this Chapter, the material is treated as an originating material when determining the originating status of the subsequently

produced good, regardless of whether that material was produced by the producer of the good.

2. Each Party shall provide that if a non-originating material is used in the production of a good, the following may be excluded from VNM for the purpose of determining whether the good meets a regional value content requirement:

- (a) the value of processing of the non-originating material undertaken in the Area of one or both of the Parties; and
- (b) the value of any originating material, including any indirect material, used in the production of the non-originating material undertaken in the Area of one or both of the Parties.

Article 3.6: Value of Materials Used in Production

Each Party shall provide that for the purposes of this Chapter, the value of a material is:

- (a) for a material imported by the producer of the good, the transaction value of the material at the time of importation, including the costs incurred in the international shipment of the good;
- (b) for a material acquired in the Area where the good is produced:
 - (i) the price paid or payable by the producer in the Party where the producer is located;
 - (ii) the value as determined for an imported material in subparagraph (a);
or
 - (iii) the earliest ascertainable price paid or payable in the Area of the Party.

Article 3.7: Further Adjustments to the Value of Materials

1. Each Party shall provide that, for a non-originating material or material of undetermined origin, the following expenses may be deducted from the value of the material:

- (a) the costs of freight, insurance, packing and all other costs incurred in transporting the material within the Area of the Parties to the location of the producer of the good;
- (b) duties, taxes and customs brokerage fees on the material paid in the Area of

one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, which include credit against duty or tax paid or payable; and

- (c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

2. If any expense listed in paragraph 1 is unknown or documentary evidence of the amount of the adjustment is not available, then no adjustment is allowed for that particular expense.

Article 3.8: Accumulation

1. A good which is to be treated as an originating good pursuant to Article 3.2 and is used in the production of a good in the Area of the other Party shall be treated as an originating material in the Area of that other Party.

2. Production that occurs in the Area of one or both of the Parties by one or more producers shall contribute to the originating content in the origin determination of a good regardless of whether that production was sufficient to confer originating status on the material used in the production of that good.

3. The Parties shall meet within two years after the date of entry into force of this Agreement, under the auspices of the Joint Commission, to review this Article, particularly taking into account new approaches such as cross-accumulation. Further meetings shall occur at a time agreed by the Parties.

Article 3.9: *De Minimis*

1. Each Party shall provide that a good that contains non-originating material that does not satisfy the applicable change in tariff classification requirement specified in Annex 3-B for the good is nonetheless an originating good if:

- (a) the value of all these materials does not exceed 10 per cent of the Adjusted Value, as calculated in accordance with Article 3.4, and the good meets all the other applicable requirements of this Chapter; or
- (b) for a good classified in Chapters 50 through 63 of the HS, the total weight of all such materials does not exceed 10 per cent of the total weight of the good, or the total value of all such materials does not exceed 10 per cent of the Adjusted Value.

2. Paragraph 1 applies only when using a non-originating material in the production of another good.

Article 3.10: Fungible Goods or Materials

Each Party shall provide that a fungible good or material is treated as an originating good or an originating material based on the:

- (a) physical segregation of each fungible good or material; or
- (b) use of any inventory management method recognised in the generally accepted accounting principles if the fungible good or material is commingled.

Article 3.11: Accessories, Spare Parts, Tools, and Instructional or Other Information Materials

1. Each Party shall provide that:

- (a) in determining whether a good is wholly obtained, or whether the good is produced entirely from originating materials, or satisfies a process or change in tariff classification requirement as set out in Annex 3-B, accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be disregarded; or
- (b) in determining whether a good meets a regional value content requirement, the value of the accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

2. Each Party shall provide that a good's accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, have the originating status of the good with which they are delivered.

3. For the purposes of this Article:

- (a) the accessories, spare parts, tools, and instructional or other information materials must be classified with, delivered with but not invoiced separately from the good; and
- (b) the types, quantities, and value of the accessories, spare parts, tools, and instructional or other information materials must be customary for that good.

Article 3.12: Packaging Materials and Containers for Retail Sale

1. Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, are disregarded in determining whether all the non-originating materials used in the production of the good have satisfied the applicable process or change in tariff classification requirement set out in Annex 3-B or whether the good is wholly obtained or produced or whether the good is produced entirely from originating materials.

2. Each Party shall provide that if a good is subject to a regional value content requirement, the value of the packaging materials and containers in which the good is packaged for retail sale, if classified with the good, are taken into account as originating materials or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 3.13: Packing Materials and Containers for Shipment

Each Party shall provide that packing materials and containers for shipment are disregarded in determining whether a good is an originating good.

Article 3.14: Indirect materials

Each Party shall provide that an indirect material is considered to be an originating material without regard to where it is produced.

Article 3.15: Consignment

1. Each Party shall provide that an originating good retains its originating status if the good has been transported to the importing Party without passing through the territory of a non-Party.

2. Each Party shall provide that if an originating good is transported through the territory of one or more non-Parties, the good retains its originating status provided that the good does not undergo any operation outside the Area of the Parties other than: unloading; reloading; separation from a bulk shipment; repacking; storing; labelling or marking required by the importing Party; or any other operation necessary to preserve it in good condition or to transport the good to the Area of the importing Party.

Section B: Origin Procedures

Article 3.16: Claims for Preferential Treatment

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment, based on a declaration of origin completed by the exporter, producer or importer or an authorised representative of the exporter, producer or importer.
2. Each Party shall provide that a declaration of origin:
 - (a) need not follow a prescribed format;
 - (b) be in writing, including electronic format;
 - (c) be in English;
 - (d) specifies that the good is both an originating good and meets the requirements of this Chapter; and
 - (e) contains a set of minimum data requirements as set out in Annex 3-A.
3. Each Party shall provide that a declaration of origin may apply to:
 - (a) a single shipment of a good into the Area of a Party; or
 - (b) multiple shipments of an identical good within any period specified in the declaration of origin, from or after the date of issuance but not exceeding the period of validity of the declaration.
4. Each Party shall provide that a declaration of origin is valid for one year after the date that it was issued or for such longer period specified by the laws and regulations of the importing Party.

Article 3.17: Basis of a Declaration of Origin

1. Each Party shall provide that if a producer declares the origin of a good, the declaration of origin is completed on the basis of the producer having information that the good is an originating good.
2. Each Party shall provide that if the exporter is not the producer of the good, a declaration of origin may be completed by the exporter of the good on the basis of:
 - (a) the exporter having information that the good is an originating good; or

- (b) reasonable reliance on the producer's information that the good is an originating good, which may include a written or electronic declaration or statement, by the producer, that the good is an originating good.

3. Each Party shall provide that a declaration of origin may be completed by the importer of the good on the basis of:

- (a) the importer having documentation that the good is an originating good; or
- (b) reasonable reliance on supporting documentation provided by the exporter or producer that the good is an originating good, which may include a written or electronic declaration or statement, by the exporter or producer, that the good is an originating good.

4. Each Party shall provide that a declaration of origin may be completed by an authorised representative of the exporter, producer or importer of the good on the basis of reasonable reliance on supporting documentation provided by the exporter, producer or importer that the good is an originating good, which may include a written or electronic declaration or statement, by the importer, exporter or producer, that the good is an originating good.

5. For greater certainty, nothing in paragraph 1 or paragraph 2 shall be construed to allow a Party to require an exporter or producer to complete a declaration of origin.

Article 3.18: Discrepancies

Each Party shall not reject a declaration of origin due to minor transcription errors or discrepancies¹ in the declaration of origin, provided the errors or discrepancies do not cast doubt on the origin of the good.

Article 3.19: Waiver of Declaration of Origin

Neither Party shall require a declaration of origin if:

- (a) the customs value of the importation does not exceed 1,000 Australian dollars or the equivalent amount in the importing Party's currency or any higher amount as the importing Party may establish; or
- (b) an importation of a good for which the importing Party has waived the requirement for a declaration of origin,

¹ For greater certainty, a difference between the HS tariff classification on the declaration of origin and the import declaration would not constitute a minor transcription error or discrepancy.

provided that the importation does not form part of a series of importations carried out or planned for the purpose of evading compliance with the laws of the importing Party governing claims for preferential tariff treatment under this Agreement.

Article 3.20: Obligations Relating to Importation

1. Unless otherwise provided for in this Chapter, for the purpose of claiming preferential tariff treatment for a good imported into the Area of a Party, that Party shall provide that the importer shall:

- (a) make a declaration² that the good qualifies as an originating good;
- (b) have a valid declaration of origin in its possession at the time the declaration referred to in subparagraph (a) is made; and
- (c) provide a copy of the declaration of origin to the importing Party if required by the Party.

2. Each Party shall provide that, if the importer has reason to believe that the declaration of origin is based on incorrect information that could affect the accuracy or validity of the declaration of origin, the importer shall correct the importation document and pay any customs duty and, if applicable, penalties owed.

3. No importing Party shall subject an importer to a penalty for making an invalid claim for preferential tariff treatment if the importer, on becoming aware that such a claim is not valid and prior to discovery of the error by that Party, voluntarily corrects the claim and pays any applicable customs duty under the circumstances provided for in the laws of the Party.

Article 3.21: Refunds and Claims for Preferential Tariff Treatment after Importation

1. An importer may make a claim for preferential tariff treatment on or after the date of entry into force of this Agreement.

2. Each Party shall provide that an importer may apply for preferential tariff treatment and a refund of any excess duties paid for a good provided that the good would have qualified for preferential tariff treatment when it was imported into the Area of the Party.

3. As a condition for preferential tariff treatment under paragraph 2, the importing Party may require that the importer:

² A Party shall specify its declaration requirements in its laws, regulations or procedures that are published or otherwise made available in a manner as to enable interested persons to become acquainted with them.

- (a) has paid the prevailing non-preferential rate of duty on the good;
- (b) make a claim for preferential tariff treatment;
- (c) provide a statement that the good was originating at the time of importation;
- (d) provide a copy of the declaration of origin; and
- (e) provide such other documentation relating to the importation of the good as the importing Party may require,

no later than one year after the date of importation or a longer period if specified in the laws of the importing Party.

Article 3.22: Record Keeping Requirements

1. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Area of that Party shall maintain, for a period of no less than five years from the date of importation of the good:

- (a) the documentation related to the importation, including the declaration of origin that served as the basis for the claim; and
- (b) all records necessary to demonstrate that the good is an originating good and qualified for preferential tariff treatment, if the claim was based on a declaration of origin completed by the importer.

2. Each Party shall inform a producer or exporter in its Area that provides a declaration of origin to maintain, for a period of no less than five years from the date of importation, all records necessary to demonstrate that a good for which the exporter or producer provided a declaration of origin is an originating good. Each Party shall endeavour to make available information on types of records that may be used to demonstrate that a good is an originating good.

3. Each Party shall provide that an importer, exporter or producer in its Area may choose to maintain the records specified in paragraph 1 and paragraph 2 in any medium that allows for prompt retrieval, including electronic, optical, magnetic or written form in accordance with the laws of that Party.

Article 3.23: Verification of Origin

1. For the purposes of determining whether a good imported into a Party from the other Party qualifies as an originating good, the customs administration of the importing

Party may conduct a verification process in sequence by means of:

- (a) written requests for information from the importer;
- (b) written requests for information from the exporter or producer of the exporting Party;
- (c) requests that the customs administration of the exporting Party assist in verifying the origin of the good; or
- (d) verification visits, according to procedures jointly decided by the customs administrations of the Parties, to the premises of the exporter or the producer in the Area of the other Party to observe the facilities and the production processes of the good and to review relevant records referring to origin. The verification visit shall only be initiated when responses to the requests made under subparagraph (a), subparagraph (b) or subparagraph (c) are not forthcoming, inadequate or contradictory and there are reasonable grounds to doubt the accuracy or authenticity of the originating status of the good or the fulfilment of any other requirement under this Chapter.

2. For the purposes of paragraph 1(a), paragraph 1(b) and paragraph 1(c), the customs administration shall allow the importer, exporter or producer a period of 30 days from the date of the written request to respond. During this period the importer, exporter, or producer may request, in writing, an extension not exceeding 30 days.

3. For the purposes of this Article and Article 3.24, all the information requested by the importing Party and responded to by the exporting Party shall be communicated in English.

4. The customs administration of the importing Party shall complete any action set out in paragraph 1 to verify eligibility for preferential tariff treatment within 90 days of receipt of all information necessary to make the determination. Upon completion of the verification action, the customs administration of the importing Party shall provide written advice to the importer, exporter or producer of its decision as well as the legal basis and findings of fact on which the decision was made.

5. Where a verification visit was undertaken, the customs administration shall also provide advice of the decision to the exporting Party.

Article 3.24: Verification Visit

1. Prior to conducting a verification visit in accordance with Article 3.23.1(d), the customs administration of the importing Party shall:

- (a) make a written request to the exporter or producer to conduct a verification

visit of their premises; and

- (b) obtain the written consent of the exporter or producer whose premises are to be visited.

2. An exporter or producer should provide its written consent to a proposed verification visit within 30 days from the date of receipt of notification in accordance with paragraph 1(a).

3. The written request referred to in paragraph 1(a) shall include:

- (a) the identity of the customs administration issuing the request;
- (b) the name of the exporter or producer 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 that is the subject of the verification referred to in the declaration 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.

4. The customs administration of the importing Party shall promptly notify the customs administration of the exporting Party when it requests a verification visit in accordance with paragraph 1(a).

5. Officials of the customs administration of the exporting Party shall accompany the customs administration of the importing Party in the verification visit, unless the customs administration of the exporting Party considers it unnecessary.

Article 3.25: Determinations on Claims for Preferential Tariff Treatment

1. Unless otherwise provided in paragraph 2, each Party shall grant a claim for preferential tariff treatment made on or after the date of entry into force of this Agreement.

2. The importing Party may deny a claim for preferential tariff treatment if:

- (a) it determines that the good does not qualify for preferential treatment;
- (b) pursuant to a verification under Article 3.23, it has not received sufficient

information to determine that the good qualifies as an originating good;

- (c) the exporter, producer or importer fails to respond to a written request for information in accordance with Article 3.23;
- (d) after receipt of a written notification for a verification visit, the exporter or producer does not provide its written consent in accordance with Article 3.24; or
- (e) the importer, exporter or producer fails to comply with the requirements of this Chapter.

3. If an importing Party denies a claim for preferential tariff treatment, it shall issue the importer with a written reason for denying the claim.

4. The importing Party shall not reject a claim for preferential tariff treatment for the sole reason that the invoice was issued in a non-Party.

Article 3.26: Penalties

A Party may establish or maintain appropriate penalties for violations of its laws and regulations related to this Chapter.

Article 3.27: Confidentiality

Each Party shall maintain the confidentiality of the information collected in accordance with this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.

Section C: Other Matters

Article 3.28: Consultations on Rules of Origin and Origin Procedures

The Parties shall consult to discuss possible amendments or modifications to this Chapter and its annexes, including amendments to reflect periodic amendments to the Harmonized System.