

CHAPTER 3 - RULES OF ORIGIN AND ORIGIN PROCEDURES

SECTION A - RULES OF ORIGIN

ARTICLE 3.1 – Definitions

For the purposes of this Chapter, the following definitions apply:

- (a) "Chapters", "headings" and "subheadings" mean the Chapters, headings and subheadings used in the nomenclature which makes up the Harmonized System;
- (b) "classified" refers to the classification of a product or material under a particular chapter, heading, or subheading of the Harmonized System;
- (c) "consignment" means a product that is either sent simultaneously from a consignor to a consignee or covered by a single transport document covering a shipment from the consignor to the consignee or, in the absence of such a document, by a single invoice;
- (d) "exporter" means a person, located in a Party, who, in accordance with the requirements set out in the laws and regulations of that Party, exports or produces the originating product and makes out a statement on origin;
- (e) "importer" means a person who imports the originating product and claims preferential tariff treatment for it;
- (f) "material" means any substance used in the production of a product, including any ingredient, raw material, component or part;
- (g) "product" means the result of production, even if it is intended for use as a material in the production of another product, and shall be understood as a good referred to in Chapter 2 (Trade in goods); and
- (h) "production" means any kind of working or processing, including such operations as growing, mining, raising, harvesting, fishing, trapping, hunting, assembly or disassembly of a product.

ARTICLE 3.2 – General requirements for originating products

1. Provided that the product satisfies all other applicable requirements of this Chapter, a product shall be considered as originating in a Party if it is:

- (a) wholly obtained in that Party within the meaning of Article 3.4 (Wholly obtained products);

- (b) produced entirely in that Party exclusively from originating materials pursuant to this Chapter; or
- (c) produced incorporating non-originating materials provided they satisfy the requirements of Annex 3-B (Product-specific rules of origin).

2. If a product has acquired originating status, the non-originating materials used in the production of that product shall not be considered non-originating when that product is incorporated as a material in another product.

3. The acquisition of originating status shall be fulfilled without interruption in Australia or the Union.

ARTICLE 3.3 – Cumulation of origin

1. A product originating in a Party is considered as originating in the other Party if it is used as a material in the production of another product in that other Party.

2. Paragraph 1 does not apply if the production carried out in the other Party does not go beyond one or more of the operations referred to in Article 3.6 (Insufficient working or processing).

ARTICLE 3.4 – Wholly obtained products

1. The following products shall be considered as wholly obtained in a Party:

- (a) a mineral or naturally occurring substance extracted or taken from a Party;
- (b) a plant or plant product grown, cultivated, picked, gathered or harvested in a Party;
- (c) a live animal born and raised in a Party;
- (d) a product obtained from live animals raised in a Party;
- (e) a product obtained from slaughtered animals born and raised in a Party;
- (f) a product obtained by hunting, trapping, fishing, gathering or capturing, conducted in a Party but not beyond the outer limits of the Party's territorial sea;
- (g) a product obtained from aquaculture in a Party, if aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants are born or raised from seed stock, such as eggs, roes, fry, fingerlings or larvae, by intervention in the rearing or growth

processes to enhance production, such as regular stocking, feeding or protection from predators;

- (h) a product of sea fishing and other products taken from the sea outside any territorial sea by a vessel of a Party;
- (i) a product made aboard a factory ship of a Party exclusively from the products referred to in point (h);
- (j) a product other than fish, shellfish and other marine life extracted from the seabed or subsoil thereof outside any territorial sea provided that the Party or a person of that Party has the right to work that seabed or subsoil in accordance with international law;¹
- (k) waste or scrap derived from production in a Party;
- (l) waste or scrap derived from used products collected in a Party, provided that those products are fit only for the recovery of raw materials; and
- (m) a product produced in a Party exclusively from the products specified in points (a) to (l) or from their derivatives.

2. The terms "vessel of a Party" and "factory ship of a Party" in points (h) and (i) of paragraph 1 apply only to a vessel or a factory ship that:

- (a) is registered in a Member State or in Australia;
- (b) sails under the flag of a Member State or of Australia; and
- (c) satisfies one of the following conditions:
 - (i) it is at least 50% owned by one or more natural persons of a Party; or
 - (ii) it is owned by one or more juridical persons which:
 - (A) have their head office and main place of business in a Member State or in Australia; and

¹ This point does not apply to the Greater Sunrise Special Regime area, established under the Treaty between Australia and the Democratic Republic of Timor-Leste Establishing Their Maritime Boundaries in the Timor Sea, done in New York on 6 March 2018, in which Australia and Timor-Leste jointly exercise continental shelf rights as coastal states.

(B) are at least 50% owned by a person of a Party.

ARTICLE 3.5 – Tolerances

1. If the non-originating materials used in the production of a product do not satisfy the requirements of Annex 3-B (Product-specific rules of origin), the product shall be considered as originating in a Party, provided that it satisfies all the other applicable requirements of this Chapter and:
 - (a) except for products classified under Chapters 50 to 63 of the Harmonized System, the total value of such non-originating materials does not exceed 10 % of the ex-works or free-on-board price of those products; or
 - (b) for products classified under Chapters 50 to 63 of the Harmonized System, a tolerance applies as stipulated in Notes 7 and 8 of Annex 3-A (Introductory notes to product-specific rules of origin).
2. Paragraph 1 does not apply if:
 - (a) the value or weight of non-originating materials used in the production of a product exceeds any of the percentages for the maximum value or weight of non-originating materials as specified in Annex 3-B (Product-specific rules of origin); or
 - (b) the product is subject to a regional value content rule and the value of originating materials does not satisfy the minimum regional value content requirement as specified in Annex 3-B (Product-specific rules of origin).
3. Paragraph 1 does not apply to products wholly obtained in a Party within the meaning of Article 3.4 (Wholly obtained products). If Annex 3-B (Product-specific rules of origin) requires that the materials used in the production of a product are wholly obtained in a Party within the meaning of Article 3.4 (Wholly obtained products), paragraphs 1 and 2 apply.

ARTICLE 3.6 – Insufficient working or processing

1. Notwithstanding point (c) of Article 3.2(1) (General requirements for originating products), a product shall not be considered as originating in a Party if the production of the product in a Party consists only of one or more of the following operations conducted exclusively on non-originating materials:
 - (a) preserving operations the sole purpose of which is to ensure that the products remain in good condition during transport and storage;
 - (b) breaking-up or assembly of packages;

- (c) washing, cleaning, removal of dust, oxide, oil, paint or other coverings;
- (d) ironing or pressing of textiles and textile articles;
- (e) simple painting and polishing operations;
- (f) husking and partial or total milling of rice;
- (g) polishing and glazing of cereals and rice;
- (h) operations to colour or flavour sugar or form sugar lumps;
- (i) partial or total milling of crystal sugar;
- (j) peeling, stoning and shelling, of fruits, nuts and vegetables;
- (k) sharpening, simple grinding or simple cutting;
- (l) sifting, screening, sorting, classifying, grading or matching including the making-up of sets of articles;
- (m) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (n) affixing or printing marks, labels, logos and other like distinguishing signs on the product or its packaging;
- (o) simple mixing of product, whether or not of different kinds;
- (p) mixing of sugar with any material;
- (q) simple addition of water dilution or dehydration or denaturation of the product;
- (r) simple assembly of parts of articles to constitute a complete article or disassembly of the product into parts; or
- (s) slaughter of animals.

2. For the purposes of paragraph 1, operations shall be considered simple if neither special skills nor machines, apparatus or equipment especially produced or installed are needed for carrying out

those operations.

ARTICLE 3.7 – Unit of qualification

1. The unit of qualification for the application of this Chapter shall be the particular product which is considered as the basic unit when classifying the product under the Harmonized System.
2. If a consignment consists of identical products classified under the same heading of the Harmonized System, each individual product shall be taken into account when applying this Chapter.

ARTICLE 3.8 – Packing materials and containers for shipment

Packing materials and containers for shipment that are used to transport or protect a product during transportation shall be disregarded in determining whether that product is originating in a Party.

ARTICLE 3.9 – Packaging materials and containers for retail sale

1. Packaging materials and containers in which a product is packaged for retail sale, if classified with that product, shall be disregarded in determining whether all the non-originating materials used in the production of the product have undergone the applicable change in tariff classification or a specific production or processing operation set out in Annex 3-B (Product-specific rules of origin), or whether the product is wholly obtained in a Party within the meaning of Article 3.4 (Wholly obtained products).
2. If a product is subject to a value requirement set out in Annex 3-B (Product-specific rules of origin), the value of the packaging materials and containers in which the product is packaged for retail sale, if classified with that product, shall be taken into account as originating or non-originating, as the case may be, in the calculation of the value requirement applicable to the product.

ARTICLE 3.10 – Accessories, spare parts and tools

1. Accessories, spare parts, tools and instructional or other information materials shall be regarded as one with the product in question if they are:
 - (a) classified and delivered with, but not invoiced separately from, the product; and
 - (b) of the type, quantity and value that are customary for that product.
2. Accessories, spare parts, tools and instructional or other information materials referred to in paragraph 1 shall be disregarded in determining the origin of the product except for the purposes of calculating the value of non-originating materials if a product is subject to a maximum value of

non-originating materials or a minimum regional value content as set out in Annex 3-B (Product-specific rules of origin).

ARTICLE 3.11 – Sets

1. A set, classified pursuant to points (b) and (c) of Rule 3 of the General Rules for the Interpretation of the Harmonized System, shall be considered as originating in a Party if all of its components are originating components.
2. If a set is composed of originating and non-originating components, it shall, as a whole, be considered as originating in a Party, provided that the value of the non-originating components does not exceed 15 % of the ex-works or free-on-board price of the set.

ARTICLE 3.12 – Neutral elements

In order to determine whether a product is originating in a Party, the origin of the following neutral elements shall be disregarded:

- (a) energy and fuel;
- (b) plant and equipment, including goods used for their maintenance;
- (c) machines, tools, dies and moulds;
- (d) spare parts and materials used in the maintenance of equipment and buildings;
- (e) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;
- (f) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (g) equipment, devices and supplies used for testing or inspecting the product;
- (h) catalysts and solvents; and
- (i) other materials used in production that are neither incorporated into the product nor intended to be incorporated into the final composition of the product.

ARTICLE 3.13 – Fungible materials and accounting segregation

1. For the purposes of this Article, "fungible materials" means materials that:
 - (a) are of the same kind and commercial quality;
 - (b) have the same technical and physical characteristics; and
 - (c) cannot be distinguished from one another once they are incorporated into the finished product.
2. Originating and non-originating fungible materials shall be physically segregated during storage in order to maintain their originating and non-originating status, as the case may be. These materials may be used in the working or processing of a product without being physically segregated provided an accounting segregation method is used.
3. The accounting segregation method referred to in paragraph 2 shall be applied in conformity with a stock management method under accounting principles which are generally accepted in the Party where the accounting segregation method is used. The accounting segregation method shall ensure that, at any time, the number of materials considered as originating in a Party is the same as the number that would have been obtained by physical segregation of the stocks.
4. A Party may require, under conditions set out in its laws and regulations, that the use of an accounting segregation method is subject to prior authorisation by the customs authority of that Party. The customs authority of the Party may withdraw the authorisation if the producer makes improper use of the accounting segregation or fails to fulfil any of the other conditions set out in this Chapter.

ARTICLE 3.14 – Returned products

If an originating product of a Party exported from that Party to a third country returns to that Party, it shall be considered as non-originating unless the returned product:

- (a) is the same product as that exported; and
- (b) has not undergone any operation other than that necessary to preserve it in good condition while in that third country or while being exported.

ARTICLE 3.15 – Non-alteration

1. An originating product declared for home use in the importing Party shall not, after exportation from the exporting Party and prior to being declared for home use, have been altered, transformed in any way or subjected to operations other than to preserve it in good condition or adding or affixing marks, labels, seals or any other documentation to ensure compliance with specific requirements of the importing Party.

2. Originating products may be stored or exhibited in a third country, provided that those products are not cleared for home use in that third country.
3. A consignment of originating products may be split in a third country, provided that those originating products are not cleared for home use in that third country.
4. In case of doubt as to whether the requirements in paragraphs 1 to 3 are complied with, the customs authority of the importing Party may request the importer to provide evidence of compliance, which may be given by any means, including contractual transport documents, such as bills of lading, or evidence based on marking or numbering of packages or any evidence related to the product itself.