

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;

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 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 principles may encompass broad guidelines for general application, as well as detailed standards, practices and procedures;

good means any merchandise, product, article or material;

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 goods 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 operations including growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, collecting, breeding, extracting, aquaculture, gathering, manufacturing, processing or assembling a good;

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; and

value of the good means the transaction value of the good excluding any costs incurred in the international shipment of the good.

Article 3.2: Originating Goods

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

- (a) wholly obtained or produced entirely in the territory of one or both Parties as established in Article 3.3;
- (b) produced entirely in the territory of one or both Parties, exclusively from originating materials; or

- (c) produced entirely in the territory of one or both Parties 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 territory of one or both 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 subparagraphs (a) through (e), extracted or taken from there;
- (g) fish, shellfish, other goods of sea-fishing and other marine life taken from the sea, seabed or subsoil outside the territories of the Parties and, in accordance with international law, outside the territorial sea of non-Parties¹ by vessels that are registered or recorded with a Party and 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 or recorded with a Party and entitled to fly the flag of that Party;
- (i) a good other than fish, shellfish, other goods of sea-fishing and other marine life taken by a Party or a person of a Party from the seabed or subsoil outside the territories of the Parties, and beyond areas over which non-Parties exercise jurisdiction provided 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:

¹ Nothing in this Chapter shall prejudice the positions of the Parties with respect to matters relating to the law of the sea.

- (i) waste or scrap derived from production there, provided that such goods are 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 subparagraphs (a) through (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 Annex 3-B, to determine whether a good is originating, is calculated as follows:

- (a) build-down method: based on the value of non-originating materials:

$$RVC = \frac{\text{Value of the Good} - \text{VNM}}{\text{Value of the Good}} \times 100$$

- (b) build-up method: based on the value of originating materials:

$$RVC = \frac{\text{VOM}}{\text{Value of the Good}} \times 100$$

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;

VOM is the value of originating materials used in the production of the good in the territory of one or both Parties.

2. Each Party shall provide that all costs considered for the calculation of regional value content are recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of the 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 originating 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 counted as originating content for the purpose of determining whether the good meets a regional value content requirement:

- (a) the value of processing of the non-originating materials undertaken in the territory of one or both Parties; and
- (b) the value of any originating material used in the production of the non-originating material undertaken in the territory of one or both 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 material;
- (b) for a material acquired in the territory 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 territory of the Party; or
- (c) for a material that is self-produced:
 - (i) all the costs incurred in the production of the material, which includes general expenses; and
 - (ii) an amount equivalent to the profit added in the normal course of trade, or equal to the profit that is usually reflected in the sale of goods of the same class or kind as the self-produced material that is being valued.

Article 3.7: Further Adjustments to the Value of Materials

1. Each Party shall provide that for an originating material, the following expenses may be added to the value of the material, if not included under Article 3.6:

- (a) the costs of freight, insurance, packing and all other costs incurred to transport the material within the territories 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 territory of one or both 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. 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 territories 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 territory of one or both 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.

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

Article 3.8: Accumulation

1. Originating goods or materials of a Party, incorporated into a good in the territory of the other Party, shall be considered to be originating in the territory of the other Party.

2. A good shall be considered originating where the good is produced in the territory of one or both Parties by one or more producers, provided that the good satisfies the requirements established in Article 3.2 and all other applicable requirements in this Chapter.

Article 3.9: *De Minimis*

1. Each Party shall provide that a good that contains non-originating materials that do 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 value of the good, as defined under Article 3.1, or
- (b) the good is classified in Chapters 50 through 63 of the Harmonized System, the total weight of all such materials does not exceed 10 per cent of the total weight of the good,

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

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

3. If a good described in paragraph 1 is also subject to a regional value content requirement, the value of those non-originating materials shall be included in the value of non-originating materials for the applicable regional value content requirement.

Article 3.10: Fungible Goods or Materials

Each Party shall provide that a fungible good or material is treated as originating 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, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

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 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; and
 - (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, accessories, spare parts, tools, and instructional or other information materials are covered when:
 - (a) the accessories, spare parts, tools and instructional or other information materials are 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 are 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 entirely.
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 or non-originating, 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 originating.

Article 3.14: Indirect Materials

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

Article 3.15: Sets of Goods

1. Each Party shall provide that for a set classified as a result of the application of rule 3(a) or (b) of the General Rules for the Interpretation of the Harmonized System, the originating status of the set shall be determined in accordance with the product-specific rule of origin that applies to the set.

2. Each Party shall provide that for a set classified as a result of the application of rule 3(c) of the General Rules for the Interpretation of the Harmonized System, the set is originating only if each good in the set is originating and both the set and the goods meet the other applicable requirements of this Chapter.

3. Notwithstanding paragraph 2, for a set classified as a result of the application of rule 3(c) of the General Rules for the Interpretation of the Harmonized System, the set is originating if the value of all the non-originating goods in the set does not exceed 20 per cent of the value of the set.

4. For the purposes of paragraph 3, the value of the non-originating goods in the set and the value of the set shall be calculated in the same manner as the value of non-originating materials and the value of the good.

Article 3.16: Transport through non- Parties

Each Party shall provide that if an originating good is transported from the exporting Party to the importing Party through the territory of one or more non-Parties, the good retains its originating status provided that the good does not undergo subsequent production or any other operation in non-Parties, other than unloading, reloading, storing, separating from a bulk shipment, labelling or any other operation necessary to preserve it in good condition or to transport the good to the territory of the importing Party and the good remains under customs control in the territory of that or those non-Parties.

Section B: Origin Procedures

Article 3.17: Claims for Preferential Treatment

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment, based on certificate of origin completed by the exporter, producer, or an authorised representative of the exporter or producer.
2. Each Party shall provide that the certificate of origin:
 - (a) need not follow a prescribed format;
 - (b) be in writing;
 - (c) specifies that the good is both originating and meets the requirements of this Chapter;
 - (d) contains a set of data requirements as set out in Annex 3-A; and
 - (e) be in English or in Spanish. The importing Party may require the importer to submit a translation in the language of the importing Party.
3. Each Party shall provide that a certificate of origin may apply to:
 - (a) a single shipment of a good into the territory of a Party; or
 - (b) multiple shipments of identical goods within any period specified in the certificate of origin, from or after the date of issuance but not exceeding the period of validity of the certificate.
4. Each Party shall provide that the certificate 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 3.18: Basis of a certificate of origin

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

(b) reasonable reliance on the producer's information that the good is originating.

3. Each Party shall provide that a certificate of origin may be completed by an authorised representative of an exporter or producer of the good on the basis of reasonable reliance on supporting documentation provided by the exporter or producer that the good is originating.

4. For greater certainty, nothing in paragraph 1 or 2 shall be construed to allow a Party to require an exporter or producer to complete or provide a certificate of origin to another person.

Article 3.19: Discrepancies and Minor Errors

Each Party shall provide that it shall not reject a certificate of origin due to minor errors contained in it, such as typing errors, or discrepancies with other documentation², provided the errors or discrepancies do not cast doubt on the origin of the good.

Article 3.20: Waiver of Certificate of Origin

Neither Party shall require a certificate of origin if:

- (a) the customs value of the importation does not exceed AUD \$1000 for Australia or US \$800 for Peru, or any higher amount as the importing Party may establish; or
- (b) it is a good for which the importing Party has waived the requirement or does not require the importer to present a certificate of origin,

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 importing Party's laws governing claims for preferential tariff treatment under this Agreement.

Article 3.21: Obligations Relating to Importation

1. Except as otherwise provided for in this Chapter, each Party shall provide that, for the purpose of claiming preferential tariff treatment, the importer shall:

- (a) declare that the good qualifies as an originating good;

² For greater certainty, a difference between the HS code on the certificate of origin and the import declaration would not constitute a minor error.

- (b) have valid a certificate of origin in its possession at the time the declaration referred to in subparagraph (a) is made;
- (c) provide a copy of the certificate of origin to the importing Party if required by the Party; and
- (d) if required by a Party to demonstrate that the requirements in Article 3.16 have been satisfied, provide transport documents, and in the case of storage, additional relevant documents, such as storage or customs documents. If the good has been transported directly from the territory of the exporting Party to the importing Party nothing shall prevent a Party from requiring the importer to present transport documents which show that the good has been transported from the territory of the exporting Party to the importing Party.

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

3. Neither 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 Party's law.

Article 3.22: Record Keeping Requirements

1. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the territory of that Party shall maintain documentation related to the importation, including the certificate of origin that served as the basis for the claim, for a period of no less than five years from the date of importation of the good.

2. Each Party shall provide that a producer or exporter in its territory that provides a certificate of origin shall maintain all records necessary to demonstrate that a good for which the exporter or producer provided the certificate of origin is originating, for a period of no less than five years from the date the certificate of origin was issued.

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

Article 3.23: Verification of Origin

1. For the purpose of determining whether a good imported into its territory is originating, the importing Party may conduct a verification of any claim for preferential tariff treatment by one or more of the following:

- (a) a written request for information from the importer of the good;
- (b) a written request for information from the exporter or producer of the good;
- (c) a verification visit to the premises of the exporter or producer of the good; or
- (d) other procedures as may be decided by the Parties.

2. If the importing Party conducts a verification, it shall accept information directly from the importer, exporter or producer.

3. In response to a request for information by the importing Party under paragraph 1(a), the importer does not provide information to the importing Party or the information provided is not sufficient to support a claim for preferential tariff treatment, the importing Party shall request information from the exporter or producer under paragraph 1(b) or 1(c) before it may deny the claim for preferential tariff treatment. The importing Party shall complete the verification, including any additional request to the exporter or producer under paragraph 1(b) or 1(c), within the time provided in paragraph 6(e).

4. A written request for information or for a verification visit under paragraphs 1(a) through 1(c) shall:

- (a) be in English or in the official language of the Party of the person to whom the request is made;
- (b) include the identity of the government authority issuing the request;
- (c) state the reason for the request, including the specific issue the requesting Party seeks to resolve with the verification;
- (d) include sufficient information to identify the good that is being verified;
- (e) include a copy of relevant information submitted with the good, including the certificate of origin; and
- (f) in the case of a verification visit, request the written consent of the exporter or producer whose premises are going to be visited, and state the proposed date and location for the visit and its specific purpose.

5. If the importing Party has initiated a verification in accordance with paragraph 1(b) or 1(c), it shall inform the importer of the initiation of the verification.

6. For a verification under paragraphs 1(a) through 1(c), the importing Party shall:

- (a) ensure that a written request for information or for documentation to be reviewed during a verification visit, is limited to information and documentation to determine whether the good is originating;
- (b) describe the information or documentation in sufficient detail to allow the importer, exporter or producer to identify the information and documentation necessary to respond;
- (c) allow the importer, exporter or producer at least 45 days from the date of receipt of the written request for information under paragraph 1(a) or 1(b) to respond;
- (d) allow the exporter or producer 30 days from the date of receipt of the written request for a visit under paragraph 1(c) to consent or refuse the request; and
- (e) make a determination following a verification as expeditiously as possible and no later than 90 days after it receives the information necessary to make the determination, including, if applicable, any information received under paragraph 9, and no later than 365 days after the first request for information or other action under paragraph 1.

7. If the importing Party makes a verification request for information from an exporter or producer under paragraph 1(b), it shall inform the exporting Party. In addition, on request of the importing Party, the exporting Party may, as it deems appropriate and in accordance with its laws and regulations, assist with the verification. This assistance may include providing a contact point for the verification, collecting information from the exporter or producer on behalf of the importing Party, or other activities in order that the importing Party may make a determination as to whether the good is originating. The importing Party shall not deny a claim for preferential tariff treatment solely on the ground that the exporting Party did not provide requested assistance.

8. If the importing Party initiates a verification under paragraph 1(c), it shall, at the time of the request for the visit, inform the Party where the exporter or producer is located and provide the opportunity for the officials of the Party where the exporter or producer is located to accompany them during the visit.

9. Prior to issuing a written determination, the importing Party shall inform the importer and the exporter or producer that provided information directly to the importing Party, of the results of the verification and, if the importing Party intends to deny preferential tariff treatment, provide those persons a period of at least 30 days for the submission of additional information relating to the origin of the good.

10. The importing Party shall:

- (a) provide the importer with a written determination of whether the good is originating that includes the basis for the determination; and
- (b) provide the importer, exporter or producer that provided information during the verification or to the exporter or the producer that certified that the good was originating with the results of the verification and the reasons for that result.

11. During verification, the importing Party shall allow the release of the good, subject to payment of duties or provision of security as provided for in its law. If as a result of the verification the importing Party determines that the good is an originating good, it shall grant preferential tariff treatment to the good and refund any excess duties paid or release any security provided, unless the security also covers other obligations.

12. If verifications of identical goods by a Party indicate a pattern of conduct³ by an importer, exporter or producer of false or unsupported representations, statements, declarations or certificates relevant to a claim that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods imported, exported or produced by that person until that person demonstrates that the identical goods qualify as originating. For the purposes of this paragraph, “identical goods” means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating.

13. For the purpose of a verification request, it is sufficient for a Party to rely on the contact information of an exporter, producer or importer in a Party provided in a certificate of origin.

Article 3.24: Determinations on Claims for Preferential Tariff Treatment

1. Except as otherwise provided in paragraph 2, each Party shall grant a claim for preferential tariff treatment made in accordance with this Chapter 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 originating;

³ Pattern of conduct means a series of acts over a period of time, however short, evidencing a breach of the provisions of this Chapter.

- (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 3.23;
- (e) the importer, exporter or producer fails to comply with the requirements of this Chapter; or
- (f) the goods entered into home consumption of a Party before entry into force of the Agreement.

3. If the importing Party denies a claim for preferential tariff treatment, it shall issue a determination to the importer that includes the reasons for the determination.

4. A Party shall not reject a claim for preferential tariff treatment for the sole reason that the invoice was issued in a non-Party, provided that the good covered by the certificate of origin corresponds to that described in any other documentation submitted to the importing Party.

Article 3.25: Refunds and Claims for Preferential Tariff Treatment after Importation

1. 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 territory of the Party.

2. As a condition for preferential tariff treatment under paragraph 1, the importing Party may require that the importer:

- (a) make a claim for preferential tariff treatment;
- (b) provide a statement that the good was originating at the time of importation;
- (c) provide a copy of the certificate of origin; and
- (d) 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 within a longer period if specified in the laws or regulations of the importing 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.