

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;

authorised body means any body authorised under the laws and regulations of a Party to issue a Certificate of Origin;

CIF means the value of the good imported, inclusive of the cost of insurance and freight up to the port or place of entry into the importing Party;

competent authority means:

- (a) for Hong Kong, China, the Trade and Industry Department; and
- (b) for Peru, the Ministry of Foreign Trade and Tourism (Ministerio de Comercio Exterior y Turismo - MINCETUR), or its successor;

FOB means the value of the good free on board, inclusive of the cost of transportation to the port or site of final shipment abroad, regardless of the means of transportation;

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 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;

identical goods means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating;

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 material and container 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; and

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

Article 3.2: Originating Goods

Unless otherwise provided in this Chapter, a good is originating if it is:

- (a) wholly obtained or produced entirely in the Area of one or both Parties, in accordance with Article 3.3;
- (b) produced entirely in the Area of one or both Parties, exclusively from originating materials; or
- (c) produced entirely in the Area 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

For the purposes of Article 3.2(a), a good is wholly obtained or produced entirely in the Area 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 Areas of the Parties, in accordance with international law, by a vessel that is registered or recorded with a Party and entitled to fly the flag of that Party;
- (h) a good obtained or produced exclusively 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 Areas 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) waste or scrap derived from:
 - (i) production carried out there; or
 - (ii) 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. A regional value content requirement specified in this Chapter is calculated as follows:

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

where:

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

FOB is defined in Article 3.1; and

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

2. The value of the non-originating materials shall be:
- (a) the CIF value at the time of importation of the materials; or
 - (b) the earliest ascertained price paid or payable for the non-originating materials in the Area 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 materials from the supplier's warehouse to the producer's location.
3. The values referred to in this Article shall be determined in accordance with the Customs Valuation Agreement.

Article 3.5: Accumulation

1. Originating materials of a Party incorporated into a good in the Area of the other Party shall be considered as originating in the Area of that other Party.
2. The Parties shall meet at a time to be agreed by them to review this Article and any outcome of the review has to be agreed by the Parties.

Article 3.6: *De Minimis*

1. A good that does not meet the change of tariff classification requirement in accordance with Annex 3-B shall be considered as originating if the value of all non-originating materials used in its production not meeting the change of tariff classification requirement does not exceed 10% of the total value of the good.
2. If the good mentioned in paragraph 1 is also subject to a regional value content requirement, the value of all non-originating materials used in its production shall be considered for calculating the regional value content of the good.
3. For paragraph 1 and paragraph 2, the good shall satisfy all other applicable requirements of this Chapter.

Article 3.7: Minimal Operations or Processes

1. Notwithstanding any provision in this Chapter, a good shall not be considered to have satisfied the requirements for an originating good merely by reason of going through one or more of the following operations:
 - (a) operations to ensure the preservation of the good in good condition during transport and storage;
 - (b) breaking-up or assembly of consignments;
 - (c) packing, unpacking or repacking operations for retail sale purposes;
 - (d) slaughter of animals;
 - (e) simple assembly of parts of the good to constitute a complete good or disassembly of the good into parts;
 - (f) washing, cleaning or removal of dust, oxide, oil, paint or other coverings;
 - (g) ironing, folding or pressing of textiles;

- (h) simple painting and polishing operations;
- (i) sharpening, simple grinding or simple cutting;
- (j) sifting, screening, sorting, classifying, grading, matching (including the mere making-up of sets of articles);
- (k) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (l) simple mixing of products, whether or not of different kinds; or
- (m) placing in bottles, cans, flasks, bags, cases or boxes.

2. Printing of marks, labels, logos and other like distinguishing signs shall not be considered as an insufficient working or processing operation if the printed marks, labels, logos and other like distinguishing signs are the goods to be exported under preferential tariff treatment.

3. “Simple” describes an activity which needs neither special skills nor special machines, apparatus or equipment especially produced or installed for carrying out the activity.

4. “Simple mixing” describes an activity which needs neither special skills nor special machines, apparatus or equipment especially produced or installed for carrying out the activity. However, “simple mixing” does not include chemical reaction.

Article 3.8: Fungible Goods or Materials

In determining whether a good is an originating good, any fungible good or material shall be distinguished by:

- (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 3.9: Accessories, Spare Parts, Tools or Instructional or Other Information Materials

1. In determining whether a good is an originating good in accordance with Article 3.2(a) or 3.2(b), or satisfies the applicable process or change of tariff classification requirement as set out in Annex 3-B, accessories, spare parts, tools or instructional or other information materials, as described in paragraph 4, shall be disregarded.
2. 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 4, shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.
3. A good's accessories, spare parts, tools or instructional or other information materials, as described in paragraph 4, have the originating status of the good with which they are delivered.
4. For the purposes of this Article, accessories, spare parts, tools or instructional or other information materials are covered when:
 - (a) the accessories, spare parts, tools or instructional or other information materials are classified and delivered with but not invoiced separately from the good; and
 - (b) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for that good.

Article 3.10: Packaging Materials and Containers for Retail Sale

1. Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the non-originating materials used in the production of the good have satisfied the applicable process or change of tariff classification requirement set out in Annex 3-B or whether the good is an originating good in accordance with Article 3.2(a) or 3.2(b).
2. 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 3.11: Packing Materials and Containers for Shipment

Packing materials and containers for shipment shall be disregarded in determining whether a good is originating.

Article 3.12: Indirect Materials

In order to determine whether a good is originating, the origin of the indirect materials shall not be taken into account.

Article 3.13: Sets of Goods

Sets, as defined in General Rule 3 of the HS, shall be regarded as originating when all the components of the sets are originating. Nevertheless, when a set is composed of originating and non-originating goods, the set as a whole shall be regarded as originating, provided that the value of the non-originating goods does not exceed 15% of the total value of the set.

Article 3.14: Direct Transport

1. In order for an originating good to maintain its originating status, the good shall be transported directly between the Areas of the Parties.

2. Notwithstanding paragraph 1, a good transported from the Area of the exporting Party to the Area of the importing Party through one or more non-parties in transit, with or without transshipment or temporary storage of up to three months in such non-parties, shall be considered as transported directly from the Area of the exporting Party to the Area of the importing Party, provided that:

- (a) the good remains under customs control in those non-parties; and
- (b) the good does not undergo any operation in those non-parties other than unloading, reloading, repacking, labelling required by the laws of the importing Party or any operation required to keep it in good condition or to transport it to the Area of the importing Party.

3. Compliance with paragraph 1 and paragraph 2 shall be evidenced by presenting to the customs administration of the importing Party, either with customs documents of the non-parties or with any other documents provided to the satisfaction of the customs administration of the importing Party.

4. For greater certainty, in cases of transit or transshipment without temporary storage, the importer shall submit, on request of the customs administration of the importing Party, transport documents covering the whole transporting route from the Area of the exporting Party to the Area of the importing Party, which demonstrate that the good was shipped from the Area of the exporting Party to the Area of the importing Party. In cases of storage in one or more non-parties, the importer shall additionally submit customs documents of the non-parties or supporting documents issued by other relevant agencies, in accordance with the laws and regulations of such non-parties.

Section B: Origin Procedures

Article 3.15: Certificate of Origin

1. In order for an originating good to qualify for preferential tariff treatment, the importer shall submit a Certificate of Origin issued in accordance with the format as set out in Annex 3-A.
2. The exporter of the good shall apply to the authorised body of the exporting Party for a Certificate of Origin, which shall be issued before or at the time of exportation.
3. Notwithstanding paragraph 2, a Certificate of Origin may, under exceptional circumstances, be issued retrospectively subsequent to the exportation of the good if:
 - (a) it was not issued at the time of exportation because of errors, involuntary omissions or any other circumstances; or it was issued and it contains errors that were detected before its submission to the customs administration of the importing Party; or
 - (b) it is demonstrated to the satisfaction of the authorised body of the exporting Party that a Certificate of Origin was issued but was not accepted at importation for technical reasons. The validity period of the Certificate of Origin issued retrospectively shall remain the same as that of the Certificate of Origin originally issued.

When the Certificate of Origin is issued retrospectively, it shall be indicated in the Remarks box of the Certificate of Origin the phrase “ISSUED RETROSPECTIVELY”.

4. The Certificate of Origin shall be in English.
5. The exporter of the good applying for a Certificate of Origin shall provide the commercial invoice(s) and all other appropriate supporting documents to prove the originating status of the good concerned when required by the authorised body, and fulfil all other applicable requirements of this Chapter.
6. The Certificate of Origin referred to in paragraph 1 shall be valid for one year from its date of issuance.
7. In the event of theft, loss or destruction of a Certificate of Origin, the exporter may apply in writing to the authorised body which issued the Certificate of Origin for a certified true copy of the original, on the basis of the export documents in the possession of the exporter. The certified true copy issued in this manner shall bear in the Remarks box of the Certificate of Origin the phrase “CERTIFIED TRUE COPY”. The certified true copy shall be valid during the validity period of the original Certificate of Origin.

Article 3.16: Exemption of Certificate of Origin

1. Neither Party shall require a Certificate of Origin demonstrating that a good is originating if the customs value of the importation does not exceed US\$600 or an equivalent amount in the currency of the importing Party, unless the importing Party considers the importation to be part of a series of importations carried out or planned for the purposes of evading compliance with the importing Party's laws and regulations for claiming preferential tariff treatment under this Agreement.
2. Paragraph 1 shall apply to goods that are covered under a single invoice and imported under a single import customs declaration.

Article 3.17: Authorised Body

1. The competent authority of each Party shall inform the competent authority of the other Party of the name of each of its authorised bodies and shall provide impression specimens of the stamps used for the issuance of Certificates of Origin. Any change in the information so provided shall be communicated in advance to the competent authority of the other Party. A Certificate of Origin containing a name of an authorised body or a stamp not communicated in advance shall be rejected.
2. The authorised body shall carry out proper examination in accordance with its laws and regulations to ensure that the information covered by a Certificate of Origin, including the originating status of the goods concerned, is correct.
3. A Party shall provide the other Party with a website access to check information of the Certificates of Origin issued by its authorised bodies.

Article 3.18: Minor Errors or Slight Discrepancies

If the origin of an imported good is not in doubt, minor transcription errors in a Certificate of Origin or slight discrepancies with other documentation related to the importation shall not cause the rejection of the Certificate of Origin if it does in fact correspond to the good. However, this does not prevent the importing Party from initiating a verification process in accordance with Article 3.23.

Article 3.19: Obligations Regarding Importations

1. Unless otherwise provided in this Chapter, an importer claiming preferential tariff treatment shall:
 - (a) make a written statement in the import customs declaration, based on a valid Certificate of Origin, indicating that a good qualifies as an originating good;

- (b) hold the Certificate of Origin at the time the statement referred to in subparagraph (a) is made;
- (c) hold the documents which evidence that the requirements in Article 3.14 have been met, if applicable; and
- (d) submit the valid Certificate of Origin as well as the documents indicated in subparagraph (c) to the customs administration of the importing Party, when required.

2. When an importer has reason to believe that a Certificate of Origin on which the statement referred to in paragraph 1(a) was based contains incorrect information, the importer shall correct the import customs declaration and pay any customs duty and, if applicable, penalties owed.

Article 3.20: Refund of Import Customs Duty

1. If an originating good is imported into the Area of a Party without a Certificate of Origin under this Agreement, the importer may apply for a refund of any excess import customs duty paid, if applicable, within one year of the date on which the good was imported, on presentation of:

- (a) a valid Certificate of Origin, which shall comply with Article 3.15; and
- (b) other documentation related to the importation of the good as the customs administration of the importing Party may require,

provided that the importer, before the release of the good, had already provided a written declaration or record in the import customs declaration that the good was eligible for preferential tariff treatment.

2. No customs duty shall be refunded in the case where the importer failed to declare to the customs administration of the importing Party, before the release of the good, that the good was eligible for preferential tariff treatment under this Agreement, even though a valid Certificate of Origin was provided to the customs administration subsequently.

Article 3.21: Supporting Documents

The documents used for the purposes of proving that a good covered by a Certificate of Origin is originating and fulfils all applicable requirements of this Chapter may include the following:

- (a) direct evidence of the processes carried out by the exporter or producer to obtain the good, contained for example in the accounts or internal book-keeping of the exporter or producer;
- (b) documents proving the originating status of the materials used, including the certificates of origin; and
- (c) documents proving the working or processing of materials.

Article 3.22: Record Keeping of Certificate of Origin and Supporting Documents

1. The exporter applying for a Certificate of Origin shall keep the documents referred to in Article 3.21 for at least three years from the date of issuance of the Certificate of Origin.
2. The competent authority or an authorised body of the exporting Party issuing a Certificate of Origin shall keep a copy of the Certificate of Origin for at least three years from its date of issuance.
3. The producer of a good that provides supporting documents to the exporter or to an authorised body for the purposes of issuance of a Certificate of Origin shall keep the records relating to the origin of the good for at least three years from the date of the delivery of such documents.
4. The importer claiming preferential tariff treatment for a good imported into the Area of a Party shall keep the records related to the importation, including a copy of the Certificate of Origin, for at least three years from the date of importation of the good.

Article 3.23: Verification Process

1. For the purposes of determining whether a good imported into a Party from the other Party qualifies as an originating good, the importing Party may conduct a verification process by means of:
 - (a) written requests for information from the importer;
 - (b) written requests for information from the exporter or producer through the exporting Party;
 - (c) requests that the exporting Party assist in verifying the origin of the good; or
 - (d) on-site visits to the premises of the exporter or producer in the Area of the exporting Party, in company with the exporting Party in a manner to be jointly

agreed by the Parties, to observe the facilities and the production process of the good.

2. For the purposes of paragraph 1(b), paragraph 1(c) and paragraph 1(d), all requests for information by the importing Party and information provided by the exporting Party shall be in English and communicated through the competent authority of each Party.

3. For the purposes of paragraph 1(a) and paragraph 1(b), if the importer, exporter or producer does not respond to the written request for information made by the importing Party within 90 days of its receipt, the importing Party may deny preferential tariff treatment for the relevant good.

4. For the purposes of paragraph 1(c), the importing Party shall provide the exporting Party with:

- (a) the reasons why such assistance for verification is requested;
- (b) the Certificate of Origin of the good, or a copy thereof; and
- (c) any information and documents as may be necessary for the purposes of such request.

The exporting Party shall provide the importing Party with a written statement in English, regarding the origin of the good under the verification process, including the following information:

- (a) description of the production process of the good;
- (b) description and tariff classification of originating and non-originating materials, indicating the producer of such materials; and
- (c) detailed explanation of how the good obtained the status of an originating good.

In the cases where the exporting Party does not provide the written statement within 150 days of the request or where the written statement does not contain sufficient information, the importing Party shall determine the origin of the good based on the best information available at that moment.

5. For the purposes of paragraph 1(d), the importing Party shall notify the exporting Party by writing, 30 days prior to the on-site visit, indicating the reasons for such request. In the case where the exporting Party does not give its written consent to such request within 30 days of the receipt of the notification, the importing Party may deny preferential tariff treatment for the relevant good.

6. The importing Party shall, within 300 days of the request made by the importing Party pursuant to paragraph 1, notify the exporting Party in writing of the results of the determination on the origin of the good, as well as the legal basis and findings of fact, based on which the determination is made.

7. If, at the time of importation, the customs administration of the importing Party has a reasonable doubt about the origin of a good covered under a Certificate of Origin, the good may be released upon a deposit or the payment of customs duty, pending the outcome of the verification process. The above deposit or duty paid shall be refunded once the outcome of the verification process confirms that the good qualifies as an originating good.

8. If the result of verifications of identical goods by the importing Party in accordance with this Article indicates a pattern of conduct by an importer, exporter or producer of false representations, statements or declarations pertaining to claims that the imported goods qualify as originating, the importing Party may deny preferential tariff treatment for any subsequent imports of identical goods that are imported, exported or produced by the same person, until it is demonstrated that the goods qualify as originating in accordance with this Chapter.

Article 3.24: Denial of Preferential Tariff Treatment

1. Unless otherwise provided in this Chapter, the importing Party may deny a claim for preferential tariff treatment if:

- (a) the Certificate of Origin does not meet the requirements of this Chapter;
- (b) compliance with Article 3.14 is not proven;
- (c) it is proven based on the results of the origin verification pursuant to Article 3.23 in the exporting Party that the documentary evidence of origin is not authentic or not accurate;
- (d) it is determined through a verification process pursuant to Article 3.23 that the good does not meet the requirements of this Chapter;
- (e) there is material evidence that shows the good does not qualify as an originating good in accordance with the applicable provisions of this Chapter;
or
- (f) the importer does not comply with any requirements of this Chapter.

2. In the event that preferential tariff treatment is denied, the importing Party shall ensure that its customs administration provides in writing to the importer the reasons for that decision.

Article 3.25: Electronic Origin Data Exchange

1. The Parties shall exchange electronic origin data in a manner to be jointly determined by them.
2. The technical aspects of the electronic origin data exchange shall be agreed by the Parties.

Article 3.26: Penalties

Penalties may be imposed in accordance with the laws and regulations of each Party for infringement of the provisions of this Chapter.

Article 3.27: Confidentiality

Information provided by a Party to the other Party in accordance with this Chapter shall not be disclosed without the specific written permission of the Party providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.