

CHAPTER 4
RULES OF ORIGIN
SECTION 1
RULES OF ORIGIN

Article 4.1

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 seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;

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

Declaration of Origin means a statement as to the origin of the goods made by the exporter of the exporting Party for the purposes of this Agreement, in the form specified in Annex 4.15;

FOB means free-on-board value of the good inclusive of the cost of transport to the port or site of final shipment abroad;

generally accepted accounting principles means the accounting standards of a Party with respect to:

- (a) the recording of revenues, expenses, costs, assets and liabilities;
- (b) the disclosure of information; and
- (c) the preparation of financial statements.

These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

good means any merchandise, product, article or material;

identical or interchangeable materials are goods or materials which are interchangeable for commercial purposes, whose properties are essentially identical, and between which it is impractical to differentiate by a mere visual examination;

material means a good or any matter or substance used or consumed in the production or transformation of a good or physically incorporated into a good subjected to a process in the production of another good;

non-originating good or non-originating material means a good or material which does not qualify as originating under this Chapter;

originating good or originating material means a good or material which qualifies as originating in accordance with Article 4.2;

preferential tariff treatment means the rate of customs duties of the importing Party applicable to originating goods of the exporting Party;

producer means a person who grows, cultivates, mines, raises, harvests, fishes, traps, hunts, farms, captures, gathers, collects, breeds, extracts, manufactures, processes or assembles a good; and

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

Article 4.2

Originating Goods

For the purposes of this Chapter, a good shall qualify as an originating good if it:

- (a) is wholly obtained or produced in the Area of a Party as provided for in Article 4.4;
- (b) is produced entirely in the Area of one or both Parties exclusively from originating materials from one or both Parties; or

- (c) is produced in the Area of one or both Parties using non-originating materials that conform to a change in tariff classification requirement, a regional value content requirement (as provided for in Article 4.5) or other requirements as specified in Annex 4.2;

and the good meets the other applicable provisions of this Chapter.

Article 4.3

Preferential Tariff Treatment

Preferential tariff treatment provided for in this Agreement shall be applied to goods that qualify as originating goods in accordance with Article 4.2 and other applicable provisions of this Chapter.

Article 4.4

Wholly Obtained or Produced Goods

For the purposes of Article 4.2 (a), the following goods shall be considered as wholly obtained or produced:

- (a) plant and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked or gathered in the Area of a Party;
- (b) live animals born and raised in the Area of a Party;
- (c) goods obtained from live animals in the Area of a Party;
- (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing in the Area of a Party;
- (e) minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or subsoil, in the Area of a Party;
- (f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with international law, by any vessel registered in a Party and entitled to fly the flag of that Party in accordance with the *United Nations Convention on the Law of the Sea 1982* (“UNCLOS”);

- (g) goods processed or produced on board any factory ship registered in a Party and entitled to fly the flag of that Party in accordance with UNCLOS from the goods referred to in subparagraph (f);
- (h) goods extracted or taken by a Party, or a person of a Party, from the seabed or subsoil beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which third parties exercise jurisdiction, under exploitation rights granted in accordance with international law;
- (i) goods which are:
 - (i) waste and scrap derived from production or consumption in the Area of a Party provided that such goods are fit only for the recovery of raw materials; or
 - (ii) used goods collected in the Area of a Party provided that such goods are fit only for the recovery of raw materials; and
- (j) goods obtained or produced in the Area of a Party solely from goods referred to in subparagraphs (a) to (i) or from their derivatives.

Article 4.5

Regional Value Content

For the purposes of this Chapter, the formula for calculating the regional value content ("RVC") shall be:

$$\text{RVC} = [(\text{FOB} - \text{value of non-originating materials}) / \text{FOB}] \times 100 \%$$

where:

- (a) **FOB** is the value of the good as defined in Article 4.1; and
- (b) **value of non-originating materials** is the CIF at the time of importation or the earliest ascertained price paid or payable in the Area of the Party where the production takes place for all non-originating materials, parts or produce that are acquired by the producer in the production of the good. When the producer of a

good acquires non-originating materials within that Party the value of such materials shall not include freight, insurance, packing costs and any other costs incurred in transporting the material from the supplier's warehouse to the producer's location. Non-originating materials include materials of undetermined origin but do not include a material that is self-produced.

Article 4.6

Accumulation

Originating goods or materials from the Area of a Party, incorporated into a good in the Area of the other Party, shall be considered to originate in the Area of the other Party.

Article 4.7

Minimal Operations or Processes

1. Operations or processes undertaken by themselves or in combination with each other for purposes such as those listed below are considered to be minimal and shall not confer origin:

- (a) ensuring preservation in good condition for the purposes of transport or storage, such as drying, freezing, ventilation, chilling and like operations;
- (b) facilitating shipment or transportation;
- (c) packaging or presenting goods for sale;
- (d) affixing of marks, labels or other like distinguishing signs on goods or their packaging;
- (e) simple processes consisting of sifting, classifying, washing, cutting, slitting, bending, coiling and uncoiling, sharpening, simple grinding, slicing and other similar operations;
- (f) mere dilution with water or another substance that does not materially alter the characteristics of the goods;
- (g) cleaning, including removal of oxide, oil, paint or other coverings;

- (h) simple painting and polishing operations;
- (i) placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (j) simple mixing of goods, whether or not of different kinds;
- (k) simple assembly of parts of goods to constitute a complete good; and
- (l) changes of packing, unpacking or repacking operations, and breaking up and assembly of consignments.

2. For the purposes of paragraph 1:

simple generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity; and

simple mixing generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity. However, simple mixing does not include chemical reaction. Chemical reaction means a process (including a biochemical process) which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

3. Where a RVC approach has been applied, minimal processes or operations referred to in paragraph 1 shall be taken into account for the RVC calculation.

Article 4.8

De Minimis

Each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex 4.2 is nonetheless an originating good if:

- (a) the value of all non-originating materials, including materials of undetermined origin, used or consumed in the production of the good that do not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good; and
- (b) the good meets all other applicable requirements of this Chapter.

Article 4.9

Direct Consignment

A good shall retain its originating status as determined under Article 4.2 if the following conditions have been met:

- (a) the good has been transported to the importing Party without passing through the territory of any non-Party; or
- (b) the good has transited through one or more non-Parties, with or without transshipment or temporary storage in those non-Parties, provided that:
 - (i) the good has not entered trade or commerce there; and
 - (ii) the good has not undergone any operation there other than unloading and reloading, repacking, splitting up or bulk breaking, or any operation required to preserve it in good condition or to transport it to the importing Party.

Article 4.10

Treatment of Packing Materials and Containers

1. Packing materials and containers for transportation and shipment of a good shall not be taken into account in determining the origin of any good.
2. Packing materials and containers in which a good is packaged for retail sale, when classified together with that good, shall not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable change in tariff classification requirements for the good.
3. If a good is subject to a RVC requirement, the value of the packing materials and containers in which the good is packaged for retail sale shall be taken into account as originating or non-originating materials, as the case may be, in calculating the RVC of the good.

Article 4.11

Accessories, Spare Parts, Tools and Instructional or Information Material

1. For the purpose of determining the origin of a good, accessories, spare parts, tools and instructional or other information materials presented with the good shall be considered part of that good and shall be disregarded in determining whether all the non-originating materials used in the production of the originating good have undergone the applicable change in tariff classification, provided that:

- (a) the accessories, spare parts, tools and instructional or other information materials presented with the good are not invoiced separately from the originating good; and
- (b) the quantities and value of the accessories, spare parts, tools and instructional or other information materials presented with the good are customary for that good.

2. Notwithstanding paragraph 1, if a good is subject to a RVC requirement, the value of the accessories, spare parts, tools and instructional or other information materials presented with the good shall be taken into account as originating or non-originating materials, as the case may be, in calculating the RVC of the good.

Article 4.12

Indirect Materials

1. An indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in the accounting records of the producer of the good.

2. For the purposes of this Article, **indirect material** means a good used or consumed in the production, testing or inspection of a good but not physically incorporated into the good, or a good used or consumed in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

- (a) fuel and energy;
- (b) tools, dies and moulds;

- (c) spare parts and materials used in the maintenance of equipment and buildings;
- (d) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (f) equipment, devices, and supplies used for testing or inspecting the goods;
- (g) catalysts and solvents; and
- (h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.

Article 4.13

Identical and Interchangeable Materials

In determining whether a good is an originating good, any identical or interchangeable materials shall be distinguished by:

- (a) physical separation of the goods; or
- (b) an inventory management method recognised in the generally accepted accounting principles of the exporting Party.

SECTION 2

OPERATIONAL PROCEDURES

Article 4.14

Treatment of Goods for which Preference is Claimed

Each Party may require a Declaration of Origin of a good for which preferential tariff treatment is claimed. Where a Party requires a Declaration of

Origin of a good, the importing Party shall grant preferential tariff treatment to goods imported into its Area from the other Party only in cases where an importer claiming preferential tariff treatment:

- (a) provides a Declaration of Origin of the good in accordance with this Chapter; and
- (b) provides other evidence to substantiate the origin of the goods, upon request.

Article 4.15

Declaration of Origin

1. The Declaration of Origin:
 - (a) shall be completed in English;
 - (b) may be made in respect of one or more goods in the shipment; and
 - (c) shall be in conformity to the form as specified in Annex 4.15.
2. A Declaration of Origin shall be valid for 1 year from the date of issuance.
3. The Parties shall seek the possibility to implement a system of electronic Declaration of Origin. The Committee on Trade in Goods will evaluate a time-frame for its implementation.

Article 4.16

Exceptions from Declaration of Origin

1. An importing Party may waive the requirement for a Declaration of Origin to admit goods pursuant to tariff preference where:
 - (a) the customs value of the importation does not exceed US\$1,000 or the equivalent amount in the Party's currency or a higher amount as it may establish;
 - (b) the goods are for personal use forming part of the personal luggage of a traveller; or

- (c) in respect of specific goods, the importing Party has waived the requirement for a Declaration of Origin.

2. Where an importation forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the requirement for a Declaration of Origin, the customs authority of the importing Party may deny preferential tariff treatment.

Article 4.17

Records

1. Each Party shall inform exporters in its Area that they should maintain for a period of not less than 3 years after the issuance of the Declaration of Origin, all records relating to that exportation which are necessary to demonstrate to the importing Party that a good for which a claim for tariff preference was made qualifies for preferential tariff treatment under this Agreement.

2. All records identified in paragraph 1 may be maintained in paper or electronic form.

Article 4.18

Compliance with Direct Consignment

Compliance with Article 4.9 may be evidenced by means of supplying to the customs authority of the importing Party either customs documents of a non-Party or documents of the relevant authorities of a non-Party or commercial shipping or freight documents.

Article 4.19

Non-Party Invoicing

1. The customs authority of the importing Party shall accept a Declaration of Origin in cases where the invoice is issued by a company located in a non-Party, provided that the goods meet the requirements of Section 1.

2. The exporter shall indicate “Non-Party invoicing” in the Declaration of Origin.

Article 4.20

Verification of Origin

1. For the purposes of determining whether a good imported into its Area from the Area of the other Party qualifies as an originating good, the customs authority of the importing Party should conduct a verification of eligibility for preferential tariff treatment by means of:

- (a) requests for information to the importer;
- (b) requests for information to the exporter or producer in the Area of the other Party on the basis of a Declaration of Origin through the customs authority of the other Party;
- (c) requests for information to the customs authority of the other Party;
- (d) requests for visits to the factory or premises of an exporter or producer in the Area of the other Party in accordance with Article 4.21; or
- (e) such other procedures as the customs authorities of the Parties may agree.

2. Any such verification activities shall only be undertaken if:

- (a) there are reasonable grounds to doubt the accuracy or authenticity of the Declaration of Origin, or the origin status of the goods concerned; or
- (b) the purpose is to ascertain the fulfilment of any other requirement of this Chapter.

3. Any request that is made pursuant to paragraphs 1(b), 1(c) and 1(d) shall specify the reasons, and any documents and information supporting the request shall be forwarded to the customs authority of the exporting Party.

4. All requests for information shall be accompanied by sufficient information to identify the good about which the request is made.

5. For the purposes of paragraph 1(b), the exporter or producer shall provide the information requested, to the customs authority of the importing Party, within a period of 90 days from the date of receipt of the request from the customs authority of the exporting Party.

6. The customs authority of the importing Party shall complete any action to verify eligibility for preferential tariff treatment within 270 days from the commencement of the conduct of verification pursuant to paragraph 1, and make a decision and provide written advice as to whether the good is eligible for preferential tariff treatment to all relevant parties within 30 days from the date of completion of such action.

Article 4.21

Exporter or Producer Visit

1. The customs authority of the importing Party, through the customs authority of the exporting Party, may request the exporter to:

- (a) subject to the consent of the exporter, permit the customs authority of the importing Party to visit the factory or premises of the exporter in company with the customs authority of the exporting Party;
- (b) subject to the consent of the producer, arrange a visit to the factory or premises of the producer in company with the customs authority of the exporting Party, if the exporter is not the producer; and
- (c) provide information relating to the origin of the good.

2. Prior to conducting a visit pursuant to paragraph 1, the customs authority of the importing Party shall issue a written communication with such a request to the exporter through the customs authority of the exporting Party in advance of the proposed date of the visit.

3. The customs authority of the importing Party shall not visit the factory or premises of any exporter or producer in the Area of the exporting Party without written prior consent from the exporter or producer given through the customs authority of the exporting Party.

4. For the purposes of paragraph 2, the written communication shall at a minimum include:

- (a) the identity of the customs authority issuing the request;
- (b) the name of the exporter 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, reference number of the Declarations of Origin and specific reference to the good subject to the visit referred to in the Declarations of Origin; and
- (f) the names and titles of the officials of the customs authority of the importing Party who will participate in the visit.

Article 4.22

Denial of Preferential Tariff Treatment

1. Either Party may deny preferential tariff treatment for a good when:
 - (a) the good does not qualify as an originating good pursuant to this Chapter;
 - (b) the importer, exporter or producer, as appropriate, fails to provide information which the Party has requested in the course of a verification process under Article 4.20, or otherwise fails to comply with any of the relevant requirements of this Chapter; or
 - (c) under Article 4.20, no reply within 270 days from the date of the verification request was received from the customs authority of the exporting Party or if the reply does not contain sufficient information to determine the authenticity of the document in question or the origin of the goods.
2. In the event preferential tariff treatment is denied, the importing Party shall ensure that its customs authority provides in writing to the exporter, the importer or producer, as the case may be, the reasons for that decision.

Article 4.23

Refund of Import Duties

Where a Declaration of Origin is not provided at the time of importation of a good from a Party pursuant to Article 4.14, the importing Party may impose the applied non-preferential import customs duty or require payment of a deposit on that good, where applicable. In such a case, the importer may apply for a refund of any excess import customs duty or deposit paid within 1 year of the date on which the good was imported, provided that:

- (a) a written declaration that the good presented qualifies as an originating good was provided to the customs authority of the importing Party at the time of importation;
- (b) the Declaration of Origin is provided; and
- (c) other documentation relating to the importation of the good as the customs authority of the importing Party may require is provided.