

## CHAPTER 3

### RULES OF ORIGIN

#### Article 1 Definitions

For the purposes of this Chapter:

- (a) **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;
- (b) **back-to-back Certificate of Origin** means a Certificate of Origin issued by an intermediate exporting Party's Issuing Authority/Body based on the Certificate of Origin issued by the first exporting Party;
- (c) **CIF** means the value of the good imported and includes the cost of freight and insurance up to the port or place of entry into the country of importation. The valuation shall be made in accordance with Article VII of GATT 1994 and the Agreement on Customs Valuation;
- (d) **FOB** means the free-on-board value of the good, inclusive of the cost of transport to the port or site of final shipment abroad. The valuation shall be made in accordance with Article VII of GATT 1994 and the Agreement on Customs Valuation;
- (e) **generally accepted accounting principles** means the recognised consensus or 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 standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

- (f) **good** means any merchandise, product, article or material;
- (g) **identical and interchangeable materials** means materials that are fungible as a result of being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which once they are incorporated into the finished product cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination;
- (h) **indirect material** means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:
  - (i) fuel and energy;
  - (ii) tools, dies and moulds;
  - (iii) spare parts and materials used in the maintenance of equipment and buildings;
  - (iv) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;

- (v) gloves, glasses, footwear, clothing, safety equipment and supplies;
  - (vi) equipment, devices and supplies used for testing or inspecting goods;
  - (vii) catalysts and solvents; and
  - (viii) 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;
- (i) **material** means any matter or substance used or consumed in the production of goods or physically incorporated into a good or subjected to a process in the production of another good;
  - (j) **non-originating good** or **non-originating material** means a good or material that does not qualify as originating under this Chapter;
  - (k) **originating material** means a material that qualifies as originating under this Chapter;
  - (l) **producer** means a person who grows, mines, raises, harvests, fishes, traps, hunts, farms, captures, gathers, collects, breeds, extracts, manufactures, processes or assembles a good;
  - (m) **production** means methods of obtaining goods including growing, mining, harvesting, farming, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling a good;

- (n) **Product Specific Rules** are rules in Annex 2 (Product Specific Rules) that specify that the materials used to produce a good have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a regional value content criterion or a combination of any of these criteria; and
- (o) **packing materials and containers for transportation** means goods used to protect a good during its transportation, different from those containers or materials used for its retail sale.

## **Article 2 Originating Goods**

1. For the purposes of this Chapter, a good shall be treated as an originating good if it is either:

- (a) wholly produced or obtained in a Party as provided in Article 3 (Goods Wholly Produced or Obtained);
- (b) not wholly produced or obtained in a Party provided that the good has satisfied the requirements of Article 4 (Goods Not Wholly Produced or Obtained); or
- (c) produced in a Party exclusively from originating materials from one or more of the Parties,

and meets all other applicable requirements of this Chapter.

2. A good which complies with the origin requirements of Paragraph 1 will retain its eligibility for preferential tariff treatment if exported to a Party and subsequently re-exported to another Party.

### **Article 3**

#### **Goods Wholly Produced or Obtained**

For the purposes of Article 2.1(a) (Originating Goods), the following goods shall be considered as wholly produced or obtained:

- (a) plants and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked, or gathered in a Party<sup>1</sup>;
- (b) live animals born and raised in a Party;
- (c) goods obtained from live animals in a Party;
- (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering, or capturing in a Party;
- (e) minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or beneath the seabed in a Party;
- (f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with international law<sup>2</sup>, by any vessel registered or recorded with a Party and entitled to fly the flag of that Party;

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<sup>1</sup> For the purposes of this Article, “in a Party” means the land, territorial sea, Exclusive Economic Zone, Continental Shelf over which a Party exercises sovereignty, sovereign rights or jurisdiction, as the case may be, in accordance with international law.

For the avoidance of doubt, nothing contained in the above definition shall be construed as conferring recognition or acceptance by one Party of the outstanding maritime and territorial claims made by any other Party, nor shall be taken as prejudging the determination of such claims.

<sup>2</sup> “International law” refers to generally accepted international law such as the *United Nations Convention on the Law of the Sea*.

- (g) goods produced on board any factory ship registered or recorded with a Party and entitled to fly the flag of that Party from the goods referred to in Subparagraph (f);
- (h) goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed 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<sup>3</sup>;
- (i) goods which are:
  - (i) waste and scrap derived from production and consumption in a Party provided that such goods are fit only for the recovery of raw materials; or
  - (ii) used goods collected in a Party provided that such goods are fit only for the recovery of raw materials; and
- (j) goods produced or obtained in a Party solely from products referred to in Subparagraphs (a) to (i) or from their derivatives.

#### **Article 4**

#### **Goods Not Wholly Produced or Obtained**

1. For the purposes of Article 2.1(b) (Originating Goods), except for those goods covered under Paragraph 2, a good shall be treated as an originating good if:

- (a) the good has a regional value content of not less than 40 per cent of FOB calculated using the

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<sup>3</sup> "International law" refers to generally accepted international law such as the *United Nations Convention on the Law of the Sea*.

formulae as described in Article 5 (Calculation of Regional Value Content), and the final process of production is performed within a Party; or

- (b) all non-originating materials used in the production of the good have undergone a change in tariff classification at the four-digit level (i.e. a change in tariff heading) of the HS Code in a Party.

2. In accordance with Paragraph 1, a good subject to Product Specific Rules shall be treated as an originating good if it meets those Product Specific Rules.

3. For a good not specified in Annex 2 (Product Specific Rules), a Party shall permit the producer or exporter of the good to decide whether to use Paragraph 1(a) or (b) when determining if the good is originating.

4. If a good is specified in Annex 2 (Product Specific Rules) and the relevant provisions of that Annex provide a choice of rule between a regional value content based rule of origin, a change in tariff classification based rule of origin, a specific process of production, or a combination of any of these, a Party shall permit the producer or exporter of the good to decide which rule to use in determining if the good is originating.

## **Article 5**

### **Calculation of Regional Value Content**

1. For the purposes of Article 4 (Goods Not Wholly Produced or Obtained), the formula for calculating the regional value content will be either:

(a) Direct Formula

$$\frac{\text{AANZFTA Material Cost} + \text{Labour Cost} + \text{Overhead Cost} + \text{Profit} + \text{Other Costs}}{\text{FOB}} \times 100\%$$

or

(b) Indirect/Build-Down Formula

$$\frac{\text{FOB} - \text{Value of Non-Originating Materials}}{\text{FOB}} \times 100\%$$

where:

- (a) **AANZFTA Material Cost** is the value of originating materials, parts or produce that are acquired or self-produced by the producer in the production of the good;
- (b) **Labour Cost** includes wages, remuneration and other employee benefits;
- (c) **Overhead Cost** is the total overhead expense;
- (d) **Other Costs** are the costs incurred in placing the good in the ship or other means of transport for export including, but not limited to, domestic transport costs, storage and warehousing, port handling, brokerage fees and service charges;
- (e) **FOB** is the free-on-board value of the goods as defined in Article 1 (Definitions); and

- (f) **Value of Non-Originating Materials** is the CIF value at the time of importation or the earliest ascertained price paid for all non-originating materials, parts or produce that are acquired by the producer in the production of the good. Non-originating materials include materials of undetermined origin but do not include a material that is self-produced.

2. The value of goods under this Chapter shall be determined in accordance with Article VII of GATT 1994 and the Agreement on Customs Valuation.

### **Article 6 Cumulative Rules of Origin**

For the purposes of Article 2 (Originating Goods), a good which complies with the origin requirements provided therein and which is used in another Party as a material in the production of another good shall be considered to originate in the Party where working or processing of the finished good has taken place.

### **Article 7 Minimal Operations and Processes**

Where a claim for origin is based solely on a regional value content, the operations or processes listed below, undertaken by themselves or in combination with each other, are considered to be minimal and shall not be taken into account in determining whether or not a good is originating:

- (a) ensuring preservation of goods in good condition for the purposes of transport or storage;
- (b) facilitating shipment or transportation;

- (c) packaging<sup>4</sup> or presenting goods for transportation or sale;
- (d) simple processes, consisting of sifting, classifying, washing, cutting, slitting, bending, coiling and uncoiling and other similar operations;
- (e) affixing of marks, labels or other like distinguishing signs on products or their packaging; and
- (f) mere dilution with water or another substance that does not materially alter the characteristics of the goods.

### **Article 8 De Minimis**

1. A good that does not satisfy a change in tariff classification requirement pursuant to Article 4 (Goods Not Wholly Produced or Obtained) will nonetheless be an originating good if:

- (a) (i) for a good, other than that provided for in Chapters 50 to 63 of the HS Code, the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good;
- (ii) for a good provided for in Chapters 50 to 63 of the HS Code, the weight of all non-originating materials used in its production that did not undergo the required change in tariff classification does not exceed 10 per cent of the total weight of the good, or the

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<sup>4</sup> This excludes encapsulation which is termed “packaging” by the electronics industry.

value of all non-originating materials used in the production of the good that did 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 criteria of this Chapter.

2. The value of such materials shall, however, be included in the value of non-originating materials for any applicable regional value content requirement.

### **Article 9 Accessories, Spare Parts and Tools**

1. For the purposes 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 the good is subject to a regional value content 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 regional value content of the good.

3. Paragraphs 1 and 2 do not apply where accessories, spare parts, tools and instructional or other information materials presented with the good have been added solely for the purpose of artificially raising the regional value content of that good, provided it is proven subsequently by the importing Party that they are not sold therewith.

### **Article 10** **Identical and Interchangeable Materials**

The determination of whether identical and interchangeable materials are originating materials shall be made either by physical segregation of each of the materials or by the use of generally accepted accounting principles of stock control applicable, or inventory management practice, in the exporting Party.

### **Article 11** **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 regional value content 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 regional value content of the good.

### **Article 12 Indirect Materials**

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.

### **Article 13 Recording of Costs**

For the purposes of this Chapter, all costs shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the Party in which the goods are produced.

### **Article 14 Direct Consignment**

A good will retain its originating status as determined under Article 2 (Originating Goods) if the following conditions have been met:

- (a) the good has been transported to the importing Party without passing through any non-Party; or
- (b) the good has transited through a non-Party, provided that:
  - (i) the good has not undergone subsequent production or any other operation outside the territories of the Parties other than

unloading, reloading, storing, or any other operations necessary to preserve them in good condition or to transport them to the importing Party;

- (ii) the good has not entered the commerce of a non-Party; and
- (iii) the transit entry is justified for geographical, economic or logistical reasons.

### **Article 15 Certificate of Origin**

A claim that goods are eligible for preferential tariff treatment shall be supported by a Certificate of Origin issued by an Issuing Authority/Body notified to the other Parties as set out in this Chapter's Annex on Operational Certification Procedures.

### **Article 16 Denial of Preferential Tariff Treatment**

The Customs Authority of the importing Party may deny a claim for preferential tariff treatment when:

- (a) the good does not qualify as an originating good;  
or
- (b) the importer, exporter or producer fails to comply with any of the relevant requirements of this Chapter.

### **Article 17 Review and Appeal**

The importing Party shall grant the right of appeal in matters relating to the eligibility for preferential tariff treatment to producers, exporters or importers of goods traded or to be

traded between the Parties, in accordance with its domestic laws, regulations and administrative practices.

## **Article 18**

### **Sub-Committee on Rules of Origin**

1. For the purpose of the effective and uniform implementation of this Chapter, the Parties hereby establish a Sub-Committee on Rules of Origin (ROO Sub-Committee). The functions of the ROO Sub-Committee shall include:

- (a) monitoring of the implementation and administration of this Chapter;
- (b) discussion of any issue that may have arisen in the course of implementation, including any matters that may have been referred to the ROO Sub-Committee by the Goods Committee established pursuant to Article 11 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods) or the FTA Joint Committee;
- (c) discussion of any proposed modifications of the rules of origin under this Chapter; and
- (d) consultation on issues relating to rules of origin and administrative co-operation.

2. The ROO Sub-Committee shall consist of representatives of the Parties. It shall meet from time to time as mutually determined by the Parties.

3. The ROO Sub-Committee shall commence a review of Article 6 (Cumulative Rules of Origin) no earlier than 12 months, and no later than 18 months following entry into force of this Agreement. This review will consider the extension of the application of cumulation to all value added to a good within AANZFTA. The ROO Sub-Committee shall submit to the Goods Committee established pursuant to

Article 11 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods) a final report, including any recommendations, within three years of entry into force of this Agreement.

4. The ROO Sub-Committee shall commence a review of the application of the chemical reaction rule and other chemical process rules to Chapters 28 to 40 of the HS Code and other Product Specific Rules identified by Parties, no earlier than 12 months and no later than 18 months, following entry into force of this Agreement. The ROO Sub-Committee shall submit to the Goods Committee established pursuant to Article 11 (Committee on Trade in Goods ) of Chapter 2 (Trade in Goods) a final report, including any recommendations, within three years of entry into force of this Agreement.

### **Article 19**

#### **Consultations, Review and Modification**

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently in order to achieve the spirit and objectives of this Agreement.

2. This Chapter may be reviewed and modified in accordance with Article 6 (Amendments) of Chapter 18 (Final Provisions) as and when necessary, upon request of a Party, and subject to the agreement of the Parties, and may be open to such reviews and modifications as may be agreed upon by the FTA Joint Committee.