

CHAPTER 3

RULES OF ORIGIN

SECTION A: DEFINITIONS

ARTICLE 3.1: DEFINITIONS

For the purposes of this Chapter:

carrier refers to any vehicle for air, sea, and land transport;

CIF price or CIF value refers to the price actually paid or payable to the exporter for the good when the good is loaded out of the carrier, at the port of importation. The price value includes the cost of the good, insurance and freight necessary to deliver the good to the named port of destination;

Customs Valuation Agreement means the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;

FOB price or FOB value refers to the price actually paid or payable to the exporter for the good when the good is loaded onto the carrier at the named port of exportation. The value includes the cost of the good and all costs necessary to bring the good onto the carrier;

generally accepted accounting principles refers to the recognised consensus or substantial authoritative support in the territory of a Party at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices, and procedures;

Harmonised System means the Harmonised Commodity Description and Coding System;

identical and interchangeable materials means materials 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 etc;

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:

- (a) fuel and energy;

- (b) tools, dies, and moulds;
- (c) 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

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 part of that production;

material means ingredients, raw materials, parts, components, subassemblies and goods that were physically incorporated into another good or were subject to a process in the production of another good;

non-originating material used in production means any material whose country of origin is other than the Parties (imported non-originating) and any material whose origin cannot be determined (undetermined origin);

originating material means a material that fulfils the criteria set out in either Article 3.3 or Article 3.4;

production means methods of obtaining goods including manufacturing, producing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing.

SECTION B: ORIGIN DETERMINATION

ARTICLE 3.2: ORIGINATING GOODS

For purposes of this Agreement, products shall be deemed originating and eligible for preferential treatment if they are consigned according to Article 3.14 and conform to the origin requirement under any of the following conditions:

- (a) Products wholly produced or obtained in the territory of the exporting Party, in accordance with Article 3.3; or
- (b) Products not wholly produced or obtained in the territory of the exporting Party, provided that the said products are eligible under Article 3.4.

ARTICLE 3.3: WHOLLY OBTAINED OR PRODUCED

For the purposes of this Agreement, goods wholly obtained or produced in the territory of a Party shall be treated as originating goods of that Party. The following goods only shall be considered as being wholly obtained or produced in a Party:

- (a) a raw or mineral good³⁻¹/product extracted from its soil, waters, seabed, or beneath the seabed;
- (b) a vegetable good³⁻² harvested or produced there;
- (c) an animal born and raised there;
- (d) a good obtained from animals referred to in (c) above;
- (e) a good obtained from hunting, trapping, fishing or aquaculture conducted there;
- (f) a good of sea fishing and other marine goods taken from outside its territory/territorial waters and Exclusive Economic Zone (EEZ) by vessels registered with a Party and flying its Flag;
- (g) a good processed and/or made on board factory ships registered with a Party and flying its Flag exclusively from products referred to in paragraph (f) above;
- (h) a good taken by a Party, or a person of a Party, from the sea bed or beneath the sea bed outside the territorial waters/sea of that Party, in accordance with the provisions of the United Nations Convention on the Law of the Sea;
- (i) articles collected there which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts or raw materials, or for recycling purposes³⁻³; and
- (j) a good produced there exclusively from goods referred to in (a) through (i), or from their derivatives, at any stage of production.

³⁻¹ Includes mineral fuels, lubricants and related materials as well as mineral or metal ores.

³⁻² Includes agricultural and forestry products.

³⁻³ This would cover all waste and scrap, including waste and scrap resulting from manufacturing or processing operations or consumption in the same Party, scrap machinery, discarded packaging and all products that can no longer perform the purposes for which they were produced and are fit only for disposal for the recovery of parts or raw materials. Such manufacturing or processing operations shall include all types of processing not only industrial or chemical but also mining, agriculture, construction, refining, incineration and sewage treatment operations.

ARTICLE 3.4: NOT WHOLLY OBTAINED OR PRODUCED

1. Within the meaning of paragraph (b) of Article 3.2 and subject to the provisions of Articles 3.6, 3.9 and that the final process of manufacturing is performed within the territory of the exporting Party, products would be considered as originating if:

- (a) (i) the total value of the materials, parts or produce originating from countries other than the Parties or of undetermined origin used in the manufacture of the product does not exceed 60% of the FOB value of the product so produced or obtained; and,
- (ii) the product so produced or obtained is classified in a heading, at the four digit level, of the Harmonised System different from those in which all the non-originating materials used in its manufacture are classified; or
- (b) the product satisfies the Product Specific Rules as specified in Annex 3B.

2. For the purposes of calculating the local value added content, either of the following methods can be applied:

- (a) Direct Method

$$\frac{\text{Value of Originating materials} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Profit}}{\text{FOB Price}} \times 100 \% \geq 40\%$$

- (b) Indirect Method

$$\frac{\text{Value of Non-originating materials}^{3-4}}{\text{FOB Price}} \times 100 \% \leq 60\%$$

3. For the purpose of paragraph 2, if the material does not satisfy the requirements of paragraph 1, the non-qualifying value of the materials shall be that proportion which cannot be attributed to one or both of the Parties, provided that the requirements of Article 3.6 at each stage of value accumulation are satisfied.

ARTICLE 3.5: INDIRECT MATERIALS

In order to determine whether a product originates in the territory of a Party, any indirect material used to obtain such products shall be treated as originating whether such material originates in third countries or not, and its value shall be the cost registered in the accounting records of the producer of the good.

³⁻⁴ As defined in Article 3.1.

ARTICLE 3.6: INSUFFICIENT OPERATIONS

1. The following operations or processes shall not be considered as sufficient transformation provided for in Article 3.4:

- (a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine, ventilation, spreading out, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations);
- (b) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting;
- (c) changes of packing and breaking up and assembly of consignments;
- (d) simple cutting, slicing and repacking or placing in bottles, flasks, bags, boxes, fixing on cards or boards, and all other simple packing operations;
- (e) affixing of marks, labels or other like distinguishing signs on products or their packaging;
- (f) simple mixing of products whether or not of different kinds, where one or more components of the mixture do not meet the conditions laid down in this Chapter to enable them to be considered as originating products;
- (g) simple assembly of parts of products to constitute a complete product;
- (h) disassembly;
- (i) slaughter of animals;
- (j) mere dilution with water or another substance that does not materially alter the characteristics of the goods; and
- (k) a combination of two or more operations referred to in paragraphs (a) to (j).

ARTICLE 3.7: VALUE OF NON-ORIGINATING MATERIALS

The value of a non-originating material used in the production of a good shall be:

- (a) For imported materials, parts or produce, the CIF value at the time of importation determined in accordance with the Agreement on Customs Valuation; and/or

- (b) For materials, parts or produce of undetermined origin, the earliest price as ascertained by the certifying authority to have been paid for in the territory of the Party where the working or processing takes place.

ARTICLE 3.8: DETERMINATION OF ORIGIN

No product shall be deemed to be a produce or manufacture of either Party unless the conditions specified in these rules are complied with in relation to such products, to the satisfaction of the authority issuing the certificate of origin.

ARTICLE 3.9: ACCUMULATION

1. A product manufactured in one Party and used in the territory of the other Party as a material for the finished product shall be considered as a product originating in the territory of the latter Party provided that it:

- (a) complies with the origin requirements provided for in Articles 3.3 or 3.4; and
- (b) fulfils the criteria in Article 3.6.

2. The origin of the finished product would be determined under Article 3.4.

ARTICLE 3.10: ACCESSORIES, SPARE PARTS AND TOOLS

Each Party shall provide that accessories, spare parts and tools delivered with a good that form part of the good's standard accessories, spare parts and tools, shall be treated as originating goods if the good is an originating good, and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification, provided that:

- (a) the accessories, spare parts and tools are not invoiced separately from the good;
- (b) the quantities and value of the accessories, spare parts and tools are standard trade practice for the good in the domestic market of the exporting Party; and
- (c) if the good is subject to a qualifying value content requirement, the value of the accessories, spare parts, or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

ARTICLE 3.11: TREATMENT OF PACKING

- (a) Packages and packing materials for retail sale:

- (i) Packages and packing materials for retail sale, when classified together with the packaged product, according to General Rule 5(b) of the Harmonised System, shall not be taken into account for considering whether all non-originating materials used in the manufacture of a product fulfil the criterion corresponding to a change of tariff classification of the said product.
 - (ii) If the product is subject to an *ad valorem* percentage criterion, the value of the packages and packing materials for retail sale shall be taken into account in its origin assessment, in case they are treated as being one for customs purposes with the products in question.
- (b) Containers and packing materials for transport:

The containers and packing materials exclusively used for the transport of a product shall not be taken into account for determining the origin of any product, in accordance with General Rule 5(b) of the Harmonised System.

ARTICLE 3.12: IDENTICAL AND INTERCHANGEABLE MATERIALS

1. Where identical and interchangeable originating and non-originating materials including materials of undetermined origin are used in the manufacture of a product, those materials shall be physically segregated, according to their origin, during storage.

2. A producer facing considerable costs or material difficulties in keeping separate stocks of identical and interchangeable originating and non-originating materials including materials of undetermined origin used in the manufacture of a product, may use the so-called “accounting segregation” method for managing stocks.

3. The accounting method shall be recorded, applied and maintained in accordance with generally accepted accounting principles applicable in the Party in which the product is manufactured. The method chosen must:

- (a) permit a clear distinction to be made between originating and non originating materials including materials of undetermined origin acquired and/or kept in stock; and
- (b) guarantee that no more products receive originating status than would be the case if the materials had been physically segregated.

4. The producer using this facilitation shall only complete origin declarations for the quantity of products considered as originating and shall assume full responsibility for the origin declarations and for keeping all documentary evidence of origin of the materials. At the request of the competent authorities of the exporting Party, the producer shall provide satisfactory information on how the stocks have been managed.

5. A Party may require that the application of the method for managing stocks as provided for in this Article is subject to prior authorisation.

ARTICLE 3.13: ADVANCE RULINGS

1. Each Party shall provide for the issuance of written advance rulings, prior to the importation of a good into its territory, to an importer of the good in its territory or to an exporter or producer of the good in the exporting party, as to whether the good qualifies as an originating good. The importing Party may request, at any time during the course of evaluating the request for an advance ruling, additional information necessary to evaluate the request. The importing party shall issue its determination regarding the origin of the good within 120 days after receipt of all necessary information.

2. The importing Party shall apply an advance ruling to importation into its territory of the good for which the ruling was issued, for such period, which may be specified in the ruling.

3. The importing Party may modify or revoke an advance ruling:

- (a) if the ruling was based on an error of fact;
- (b) if there is a change in the material facts or circumstances on which the ruling was based; or
- (c) to conform with a modification of this Chapter.

4. Where the importing Party modifies or revokes an advance ruling, such modification or revocation shall only take effect 60 days after the date on which the modification or revocation is issued, and shall not apply to importation of a good that has occurred prior to the effective date.

5. Notwithstanding paragraphs 3 and 4 above, the importing Party may revoke any advance ruling *ab initio*, if the importer or exporter to whom the advance ruling was issued had provided false or incorrect information pursuant to the application for the ruling.

6. Apart from the advance ruling being revoked *ab initio*, the person who had provided the false or incorrect information shall also be liable to appropriate penalties under the domestic laws of the respective Parties.

ARTICLE 3.14: CONSIGNMENT CRITERIA

The originating goods of the other Party shall be deemed to meet the consignment criteria when they are:

- (a) transported directly from the territory of the other Party; or
- (b) transported through the territory or territories of one or more non-Parties for the purpose of transit or temporary storing in warehouses in such territory or territories, and the products have not entered into trade or consumption there, provided that

- (i) they do not undergo operations other than unloading, reloading or operations to preserve them in good condition; or
- (ii) the transit entry is justified for geographical reason or by considerations related exclusively to transport requirements.

SECTION C: DOCUMENTATION REQUIREMENTS

ARTICLE 3.15: CERTIFICATE OF ORIGIN

Products eligible for preferential concessions shall be supported by a Certificate of Origin issued by a government authority designated by the government of the exporting Party and notified to the other Party (referred to herein as “the certifying authority”) in accordance with the Operational Certification Procedures, as set out in Annex 3B.

SECTION D : VERIFICATION OF ORIGIN

ARTICLE 3.16: CO-OPERATION ON VERIFICATION OF CERTIFICATES OF ORIGIN

1. The Parties shall co-operate with each other to verify the authenticity and the correctness of the information given in the certificates of origin.
2. For the purpose of implementing the provisions of paragraph 1, the customs administration of the importing Party shall return the certificate of origin, or a copy of the document, to the certifying authority of the exporting Party, giving the reason for the enquiry. Any document and/or information obtained suggesting that the information given on the certificate of origin is incorrect shall be forwarded in support of the request for verification.
3. The verification shall be carried out by the certifying authority of the exporting Party.

ARTICLE 3.17: DENIAL OF PREFERENTIAL TARIFF TREATMENT

1. Export of consignments accompanied by an authentic Certificate of Origin will not be subjected to any detention or delays by the Customs Authorities of the importing country.
2. In case of reasonable doubt about the authenticity of Certificate of Origin, the Customs authority of the importing country may seek a clarification from the certifying authority of the exporting country, which will furnish the same within a period of 30 days. Meanwhile, the subject consignment will be allowed entry into the importing country on a provisional basis against a bond or a guarantee i.e. a legally binding undertaking as may be required. After examining the information so provided by the

certifying authority, the Customs Authority in the importing country would take appropriate action to finalise the provisional assessment.

3. Where the clarification carried on in above paragraph 2 is not conclusive, the importing Party may, upon informing the exporting Party and with the knowledge of the importer concerned and with the consent of the exporter or manufacturer concerned, visit the exporter or manufacturer concerned for the purpose of verifying the preference claim. If no consent is given by the exporter or manufacturer concerned within a period of 45 days, the importing party may disallow the tariff preference for the particular Certificate of Origin.

SECTION E : CONSULTATION AND MODIFICATIONS

ARTICLE 3.18: CONSULTATION AND MODIFICATIONS

These rules may be reviewed as and when necessary upon the request of either Party and may be modified by mutual agreement pursuant to Article 16.7.