

## CHAPTER 3

### RULES OF ORIGIN AND ORIGIN PROCEDURES

#### Section A: Rules of Origin

##### Article 3.1: Definitions

For the purposes of this Chapter:

**aquaculture** means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants from seed stock such as eggs, fry, fingerlings or larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;

**fungible goods or materials** means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

**Generally Accepted Accounting Principles** means those principles recognised by consensus or with substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These principles may encompass broad guidelines for general application, as well as detailed standards, practices and procedures;

**good** means any merchandise, product, article or material;

**indirect material** means a material used in the production, testing or inspection of a good but not physically incorporated into the good; or a material used in the maintenance of buildings or the operation of equipment, associated with the production of a good, including:

- (a) fuel, energy, catalysts and solvents;
- (b) equipment, devices and supplies used to test or inspect the good;
- (c) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (d) tools, dies and moulds;
- (e) spare parts and materials used in the maintenance of equipment and buildings;

- (f) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; and
- (g) any other material that is not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production;

**material** means a good that is used in the production of another good;

**non-originating good** or **non-originating material** means a good or material that does not qualify as originating in accordance with this Chapter;

**originating good** or **originating material** means a good or material that qualifies as originating in accordance with this Chapter;

**packing materials and containers for shipment** means goods used to protect another good during its transportation, but does not include the packaging materials or containers in which a good is packaged for retail sale;

**producer** means a person who engages in the production of a good;

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

**transaction value** means the price actually paid or payable for the good when sold for export or other value determined in accordance with the Customs Valuation Agreement; and

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

### **Article 3.2: Originating Goods**

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

- (a) wholly obtained or produced entirely in the territory of one or more of the Parties as established in Article 3.3 (Wholly Obtained or Produced Goods);
- (b) produced entirely in the territory of one or more of the Parties, exclusively from originating materials; or
- (c) produced entirely in the territory of one or more of the Parties using non-originating materials provided the good satisfies all

applicable requirements of Annex 3-D (Product-Specific Rules of Origin),

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

### **Article 3.3: Wholly Obtained or Produced Goods**

Each Party shall provide that for the purposes of Article 3.2 (Originating Goods), a good is wholly obtained or produced entirely in the territory of one or more of the 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 and other marine life taken from the sea, seabed or subsoil outside the territories of the Parties and, in accordance with international law, outside the territorial sea of non-Parties<sup>1</sup> by vessels that are registered, listed or recorded with a Party and entitled to fly the flag of that Party;
- (h) a good produced from goods referred to in subparagraph (g) on board a factory ship that is registered, listed or recorded with a Party and entitled to fly the flag of that Party;
- (i) a good other than fish, shellfish and other marine life taken by a Party or a person of a Party from the seabed or subsoil outside the territories of the Parties, and beyond areas over which non-Parties exercise jurisdiction provided that Party or person of that Party has

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

the right to exploit that seabed or subsoil in accordance with international law;

- (j) a good that is:
  - (i) waste or scrap derived from production there; or
  - (ii) waste or scrap derived from used goods collected there, provided that those goods are fit only for the recovery of raw materials; and
- (k) a good produced there, exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives.

**Article 3.4: Treatment of Recovered Materials Used in Production of a Remanufactured Good**

1. Each Party shall provide that a recovered material derived in the territory of one or more of the Parties is treated as originating when it is used in the production of, and incorporated into, a remanufactured good.

2. For greater certainty:

- (a) a remanufactured good is originating only if it satisfies the applicable requirements of Article 3.2 (Originating Goods); and
- (b) a recovered material that is not used or incorporated in the production of a remanufactured good is originating only if it satisfies the applicable requirements of Article 3.2 (Originating Goods).

**Article 3.5: Regional Value Content**

1. Each Party shall provide that a regional value content requirement specified in this Chapter, including related Annexes, to determine whether a good is originating, is calculated as follows:

- (a) Focused Value Method: Based on the Value of Specified Non-Originating Materials

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

- (b) **Build-down Method:** Based on the Value of Non-Originating Materials

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

- (c) **Build-up Method:** Based on the Value of Originating Materials

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

or

- (d) **Net Cost Method (for Automotive Goods Only)**

$$\text{RVC} = \frac{\text{NC} - \text{VNM}}{\text{NC}} \times 100$$

where:

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

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

**NC** is the net cost of the good determined in accordance with Article 3.9 (Net Cost);

**FVNM** is the value of non-originating materials, including materials of undetermined origin, specified in the applicable product-specific-rule (PSR) in Annex 3-D (Product-Specific Rules of Origin) and used in the production of the good. For greater certainty, non-originating materials that are not specified in the applicable PSR in Annex 3-D (Product-Specific Rules of Origin) are not taken into account for the purpose of determining FVNM; and

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

2. Each Party shall provide that all costs considered for the calculation of regional value content are recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of a Party where the good is produced.

### **Article 3.6: Materials Used in Production**

1. Each Party shall provide that if a non-originating material undergoes further production such that it satisfies the requirements of this Chapter, the material is treated as originating when determining the originating status of the subsequently produced good, regardless of whether that material was produced by the producer of the good.

2. Each Party shall provide that if a non-originating material is used in the production of a good, the following may be counted as originating content for the purpose of determining whether the good meets a regional value content requirement:

- (a) the value of processing of the non-originating materials undertaken in the territory of one or more of the Parties; and
- (b) the value of any originating material used in the production of the non-originating material undertaken in the territory of one or more of the Parties.

### **Article 3.7: Value of Materials Used in Production**

Each Party shall provide that for the purposes of this Chapter, the value of a material is:

- (a) for a material imported by the producer of the good, the transaction value of the material at the time of importation, including the costs incurred in the international shipment of the material;
- (b) for a material acquired in the territory where the good is produced:
  - (i) the price paid or payable by the producer in the Party where the producer is located;
  - (ii) the value as determined for an imported material in subparagraph (a); or
  - (iii) the earliest ascertainable price paid or payable in the territory of the Party; or
- (c) for a material that is self-produced:
  - (i) all the costs incurred in the production of the material, which includes general expenses; and

- (ii) an amount equivalent to the profit added in the normal course of trade, or equal to the profit that is usually reflected in the sale of goods of the same class or kind as the self-produced material that is being valued.

### **Article 3.8: Further Adjustments to the Value of Materials**

1. Each Party shall provide that for an originating material, the following expenses may be added to the value of the material, if not included under Article 3.7 (Value of Materials Used in Production):

- (a) the costs of freight, insurance, packing and all other costs incurred to transport the material to the location of the producer of the good;
- (b) duties, taxes and customs brokerage fees on the material, paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, which include credit against duty or tax paid or payable; and
- (c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

2. Each Party shall provide that, for a non-originating material or material of undetermined origin, the following expenses may be deducted from the value of the material:

- (a) the costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer of the good;
- (b) duties, taxes and customs brokerage fees on the material paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, which include credit against duty or tax paid or payable; and
- (c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

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

### **Article 3.9: Net Cost**

1. If Annex 3-D (Product-Specific Rules of Origin) specifies a regional value content requirement to determine whether an automotive good of subheading 8407.31 through 8407.34, 8408.20, subheading 8409.91 through 8409.99, heading 87.01 through 87.09 or heading 87.11 is originating, each Party shall provide that the requirement to determine the origin of that good based on the Net Cost Method is calculated as set out under Article 3.5 (Regional Value Content).

2. For the purposes of this Article:

- (a) **net cost** means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost; and
- (b) **net cost of the good** means the net cost that can be reasonably allocated to the good, using one of the following methods:
  - (i) calculating the total cost incurred with respect to all automotive goods produced by that producer, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all those goods, and then reasonably allocating the resulting net cost of those goods to the good;
  - (ii) calculating the total cost incurred with respect to all automotive goods produced by that producer, reasonably allocating the total cost to the good, and then subtracting any sales promotion, marketing and after-sales service costs; royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the good; or
  - (iii) reasonably allocating each cost that forms part of the total cost incurred with respect to the good, so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs, provided that the allocation of all those costs is consistent with the provisions regarding the reasonable allocation of costs set out in Generally Accepted Accounting Principles.

3. Each Party shall provide that, for the purposes of the Net Cost Method for motor vehicles of heading 87.01 through 87.06 or heading 87.11, the calculation may be averaged over the producer's fiscal year using any one of the following categories, on the basis of all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of another Party:

- (a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a Party;
- (b) the same class of motor vehicles produced in the same plant in the territory of a Party;
- (c) the same model line of motor vehicles produced in the territory of a Party; or
- (d) any other category as the Parties may decide.

4. Each Party shall provide that, for the purposes of the Net Cost Method in paragraphs 1 and 2, for automotive materials of subheading 8407.31 through 8407.34, 8408.20, heading 84.09, 87.06, 87.07, or 87.08, produced in the same plant, a calculation may be averaged:

- (a) over the fiscal year of the motor vehicle producer to whom the good is sold;
- (b) over any quarter or month; or
- (c) over the fiscal year of the producer of the automotive material,

provided that the good was produced during the fiscal year, quarter or month forming the basis for the calculation, in which:

- (i) the average in subparagraph (a) is calculated separately for those goods sold to one or more motor vehicle producers; or
- (ii) the average in subparagraph (a) or (b) is calculated separately for those goods that are exported to the territory of another Party.

5. For the purposes of this Article:

- (a) **class of motor vehicles** means any one of the following categories of motor vehicles:
  - (i) motor vehicles classified under subheading 8701.20, motor vehicles for the transport of 16 or more persons classified under subheading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or heading 87.05 or 87.06;

- (ii) motor vehicles classified under subheading 8701.10 or subheadings 8701.30 through 8701.90;
  - (iii) motor vehicles for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.21 or 8704.31;
  - (iv) motor vehicles classified under subheadings 8703.21 through 8703.90; or
  - (v) motor vehicles classified under heading 87.11.
- (b) **model line of motor vehicles** means a group of motor vehicles having the same platform or model name;
- (c) **non-allowable interest costs** means interest costs incurred by a producer that exceed 700 basis points above the yield on debt obligations of comparable maturities issued by the central level of government of the Party in which the producer is located;
- (d) **reasonably allocate** means to apportion in a manner appropriate under Generally Accepted Accounting Principles;
- (e) **royalty** means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright; literary, artistic or scientific work; patent; trademark; design; model; plan; secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:
- (i) personnel training, without regard to where that training is performed; or
  - (ii) engineering, tooling, die-setting, software design and similar computer services, or other services, if performed in the territory of one or more of the Parties;
- (f) **sales promotion, marketing and after-sales service costs** means the following costs related to sales promotion, marketing and after-sales service:
- (i) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature

(good brochures, catalogues, technical literature, price lists, service manuals and sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; and entertainment;

- (ii) sales and marketing incentives; consumer, retailer or wholesaler rebates; and merchandise incentives;
- (iii) salaries and wages; sales commissions; bonuses; benefits (for example, medical, insurance or pension benefits); travelling and living expenses; and membership and professional fees for sales promotion, marketing and after-sales service personnel;
- (iv) recruiting and training of sales promotion, marketing and after-sales service personnel and after-sales training of customers' employees, if those costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;
- (v) liability insurance for goods;
- (vi) office supplies for sales promotion, marketing and after-sales service of goods, if those costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;
- (vii) telephone, mail and other communications, if those costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;
- (viii) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centres;
- (ix) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centres, if those costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and
- (x) payments by the producer to other persons for warranty repairs;

- (g) **shipping and packing costs** means the costs incurred to pack a good for shipment and to ship the good from the point of direct shipment to the buyer, excluding costs to prepare and package the good for retail sale; and
- (h) **total cost** means all product costs, period costs and other costs for a good incurred in the territory of one or more of the Parties, where:
  - (i) product costs are costs that are associated with the production of a good and include the value of materials, direct labour costs and direct overheads;
  - (ii) period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses; and
  - (iii) other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest.

Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes.

### **Article 3.10: Accumulation**

1. Each Party shall provide that a good is originating if the good is produced in the territory of one or more of the Parties by one or more producers, provided that the good satisfies the requirements in Article 3.2 (Originating Goods) and all other applicable requirements in this Chapter.
2. Each Party shall provide that an originating good or material of one or more of the Parties that is used in the production of another good in the territory of another Party is considered as originating in the territory of the other Party.
3. Each Party shall provide that production undertaken on a non-originating material in the territory of one or more of the Parties by one or more producers may contribute toward the originating content of a good for the purpose of determining its origin, regardless of whether that production was sufficient to confer originating status to the material itself.

### **Article 3.11: *De Minimis***

1. Except as provided in Annex 3-C (Exceptions to Article 3.11 (*De Minimis*)), each Party shall provide that a good that contains non-originating materials that do not satisfy the applicable change in tariff classification requirement specified in Annex 3-D (Product-Specific Rules of Origin) for the good is nonetheless an originating good if the value of all those materials does not exceed 10 per cent of the value of the good, as defined under Article 3.1 (Definitions), and the good meets all the other applicable requirements of this Chapter.
2. Paragraph 1 applies only when using a non-originating material in the production of another good.
3. If a good described in paragraph 1 is also subject to a regional value content requirement, the value of those non-originating materials shall be included in the value of non-originating materials for the applicable regional value content requirement.
4. With respect to a textile or apparel good, Article 4.2 (Rules of Origin and Related Matters) applies in place of paragraph 1.

### **Article 3.12: Fungible Goods or Materials**

Each Party shall provide that a fungible good or material is treated as originating based on the:

- (a) physical segregation of each fungible good or material; or
- (b) use of any inventory management method recognised in the Generally Accepted Accounting Principles if the fungible good or material is commingled, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

### **Article 3.13: Accessories, Spare Parts, Tools and Instructional or Other Information Materials**

1. Each Party shall provide that:
  - (a) in determining whether a good is wholly obtained, or satisfies a process or change in tariff classification requirement as set out in Annex 3-D (Product-Specific Rules of Origin), accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be disregarded; and

- (b) in determining whether a good meets a regional value content requirement, the value of the accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

2. Each Party shall provide that a good's accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, have the originating status of the good with which they are delivered.

3. For the purposes of this Article, accessories, spare parts, tools, and instructional or other information materials are covered when:

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

#### **Article 3.14: Packaging Materials and Containers for Retail Sale**

1. Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, are disregarded in determining whether all the non-originating materials used in the production of the good have satisfied the applicable process or change in tariff classification requirement set out in Annex 3-D (Product-Specific Rules of Origin) or whether the good is wholly obtained or produced.

2. Each Party shall provide that if a good is subject to a regional value content requirement, the value of the packaging materials and containers in which the good is packaged for retail sale, if classified with the good, are taken into account as originating or non-originating, as the case may be, in calculating the regional value content of the good.

#### **Article 3.15: Packing Materials and Containers for Shipment**

Each Party shall provide that packing materials and containers for shipment are disregarded in determining whether a good is originating.

### **Article 3.16: Indirect materials**

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

### **Article 3.17: Sets of Goods**

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

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

3. Notwithstanding paragraph 2, for a set classified as a result of the application of rule 3(c) of the General Rules for the Interpretation of the Harmonized System, the set is originating if the value of all the non-originating goods in the set does not exceed 10 per cent of the value of the set.

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

### **Article 3.18: Transit and Transshipment**

1. Each Party shall provide that an originating good retains its originating status if the good has been transported to the importing Party without passing through the territory of a non-Party.

2. Each Party shall provide that if an originating good is transported through the territory of one or more non-Parties, the good retains its originating status provided that the good:

- (a) does not undergo any operation outside the territories of the Parties other than: unloading; reloading; separation from a bulk shipment; storing; labelling or marking required by the importing Party; or any other operation necessary to preserve it in good condition or to transport the good to the territory of the importing Party; and
- (b) remains under the control of the customs administration in the territory of a non-Party.

## **Section B: Origin Procedures**

### **Article 3.19: Application of Origin Procedures**

Except as otherwise provided in Annex 3-A (Other Arrangements), each Party shall apply the procedures in this Section.

### **Article 3.20: Claims for Preferential Treatment**

1. Except as otherwise provided in Annex 3-A (Other Arrangements), each Party shall provide that an importer may make a claim for preferential tariff treatment, based on a certification of origin completed by the exporter, producer or importer.<sup>2, 3</sup>

2. An importing Party may:

- (a) require that an importer who completes a certification of origin provide documents or other information to support the certification;
- (b) establish in its law conditions that an importer shall meet to complete a certification of origin;
- (c) if an importer fails to meet or no longer meets the conditions established under subparagraph (b), prohibit that importer from providing its own certification as the basis of a claim for preferential tariff treatment; or
- (d) if a claim for preferential tariff treatment is based on a certification of origin completed by an importer, prohibit that importer from making a subsequent claim for preferential tariff treatment for the same importation based on a certification of origin completed by the exporter or producer.

3. Each Party shall provide that a certification of origin:

- (a) need not follow a prescribed format;
- (b) be in writing, including electronic format;

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<sup>2</sup> Nothing in this Chapter shall prevent a Party from requiring an importer, exporter or producer in its territory that completes a certification of origin to demonstrate that it is able to support that certification.

<sup>3</sup> For Brunei Darussalam, Malaysia, Mexico, Peru and Viet Nam, implementation of paragraph 1 with respect to a certification of origin by the importer shall be no later than five years after their respective dates of entry into force of this Agreement.

- (c) specifies that the good is both originating and meets the requirements of this Chapter; and
  - (d) contains a set of minimum data requirements as set out in Annex 3-B (Minimum Data Requirements).
4. Each Party shall provide that a certification of origin may apply to:
- (a) a single shipment of a good into the territory of a Party; or
  - (b) multiple shipments of identical goods within any period specified in the certification of origin, but not exceeding 12 months.
5. Each Party shall provide that a certification of origin is valid for one year after the date that it was issued or for such longer period specified by the laws and regulations of the importing Party.
6. Each Party shall allow an importer to submit a certification of origin in English. If the certification of origin is not in English, the importing Party may require the importer to submit a translation in the language of the importing Party.

### **Article 3.21: Basis of a Certification of Origin**

1. Each Party shall provide that if a producer certifies the origin of a good, the certification of origin is completed on the basis of the producer having information that the good is originating.
2. Each Party shall provide that if the exporter is not the producer of the good, a certification of origin may be completed by the exporter of the good on the basis of:
- (a) the exporter having information that the good is originating; or
  - (b) reasonable reliance on the producer's information that the good is originating.
3. Each Party shall provide that a certification of origin may be completed by the importer of the good on the basis of:
- (a) the importer having documentation that the good is originating; or
  - (b) reasonable reliance on supporting documentation provided by the exporter or producer that the good is originating.

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

### **Article 3.22: Discrepancies**

Each Party shall provide that it shall not reject a certification of origin due to minor errors or discrepancies in the certification of origin.

### **Article 3.23: Waiver of Certification of Origin**

No Party shall require a certification of origin if:

- (a) the customs value of the importation does not exceed US \$1,000 or the equivalent amount in the importing Party's currency or any higher amount as the importing Party may establish; or
- (b) it is a good for which the importing Party has waived the requirement or does not require the importer to present a certification of origin,

provided that the importation does not form part of a series of importations carried out or planned for the purpose of evading compliance with the importing Party's laws governing claims for preferential tariff treatment under this Agreement.

### **Article 3.24: Obligations Relating to Importation**

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

- (a) make a declaration<sup>4</sup> that the good qualifies as an originating good;
- (b) have a valid certification of origin in its possession at the time the declaration referred to in subparagraph (a) is made;
- (c) provide a copy of the certification of origin to the importing Party if required by the Party; and

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<sup>4</sup> A Party shall specify its declaration requirements in its laws, regulations or procedures that are published or otherwise made available in a manner as to enable interested persons to become acquainted with them.

- (d) if required by a Party to demonstrate that the requirements in Article 3.18 (Transit and Transshipment) have been satisfied, provide relevant documents, such as transport documents, and in the case of storage, storage or customs documents.

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

3. No importing Party shall subject an importer to a penalty for making an invalid claim for preferential tariff treatment if the importer, on becoming aware that such a claim is not valid and prior to discovery of the error by that Party, voluntarily corrects the claim and pays any applicable customs duty under the circumstances provided for in the Party's law.

### **Article 3.25: Obligations Relating to Exportation**

1. Each Party shall provide that an exporter or producer in its territory that completes a certification of origin shall submit a copy of that certification of origin to the exporting Party, on its request.

2. Each Party may provide that a false certification of origin or other false information provided by an exporter or a producer in its territory to support a claim that a good exported to the territory of another Party is originating has the same legal consequences, with appropriate modifications, as those that would apply to an importer in its territory that makes a false statement or representation in connection with an importation.

3. Each Party shall provide that if an exporter or a producer in its territory has provided a certification of origin and has reason to believe that it contains or is based on incorrect information, the exporter or producer shall promptly notify, in writing, every person and every Party to whom the exporter or producer provided the certification of origin of any change that could affect the accuracy or validity of the certification of origin.

### **Article 3.26: Record Keeping Requirements**

1. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the territory of that Party shall maintain, for a period of no less than five years from the date of importation of the good:

- (a) the documentation related to the importation, including the certification of origin that served as the basis for the claim; and

- (b) all records necessary to demonstrate that the good is originating and qualified for preferential tariff treatment, if the claim was based on a certification of origin completed by the importer.

2. Each Party shall provide that a producer or exporter in its territory that provides a certification of origin shall maintain, for a period of no less than five years from the date the certification of origin was issued, all records necessary to demonstrate that a good for which the exporter or producer provided a certification of origin is originating. Each Party shall endeavour to make available information on types of records that may be used to demonstrate that a good is originating.

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

### **Article 3.27: Verification of Origin**

1. For the purpose of determining whether a good imported into its territory is originating, the importing Party may conduct a verification of any claim for preferential tariff treatment by one or more of the following:<sup>5</sup>

- (a) a written request for information from the importer of the good;
- (b) a written request for information from the exporter or producer of the good;
- (c) a verification visit to the premises of the exporter or producer of the good;
- (d) for a textile or apparel good, the procedures set out in Article 4.6 (Verification); or
- (e) other procedures as may be decided by the importing Party and the Party where an exporter or producer of the good is located.

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

3. If a claim for preferential tariff treatment is based on a certification of origin completed by the exporter or producer and, in response to a request for

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<sup>5</sup> For the purposes of this Article, the information collected in accordance with this Article shall be used for the purpose of ensuring the effective implementation of this Chapter. A Party shall not use these procedures to collect information for other purposes.

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

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

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

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

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

- (a) ensure that a written request for information, or for documentation to be reviewed during a verification visit, is limited to information and documentation to determine whether the good is originating;

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<sup>6</sup> For greater certainty, a Party is not required to request information from the exporter or producer to support a claim for preferential tariff treatment or complete a verification through the exporter or producer if the claim for preferential tariff treatment is based on the importer's certification of origin.

- (b) describe the information or documentation in sufficient detail to allow the importer, exporter or producer to identify the information and documentation necessary to respond;
- (c) allow the importer, exporter or producer at least 30 days from the date of receipt of the written request for information under paragraph 1(a) or 1(b) to respond;
- (d) allow the exporter or producer 30 days from the date of receipt of the written request for a visit under paragraph 1(c) to consent or refuse the request; and
- (e) make a determination following a verification as expeditiously as possible and no later than 90 days after it receives the information necessary to make the determination, including, if applicable, any information received under paragraph 9, and no later than 365 days after the first request for information or other action under paragraph 1. If permitted by its law, a Party may extend the 365 day period in exceptional cases, such as where the technical information concerned is very complex.

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

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

9. Prior to issuing a written determination, the importing Party shall inform the importer and any exporter or producer that provided information directly to the importing Party, of the results of the verification and, if the importing Party intends to deny preferential tariff treatment, provide those persons a period of at

least 30 days for the submission of additional information relating to the origin of the good.

10. The importing Party shall:

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

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

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

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

### **Article 3.28: Determinations on Claims for Preferential Tariff Treatment**

1. Except as otherwise provided in paragraph 2 or Article 4.7 (Determinations), each Party shall grant a claim for preferential tariff treatment made in accordance with this Chapter for a good that arrives in its territory on or after the date of entry into force of this Agreement for that Party. In addition, if permitted by the importing Party, the importing Party shall grant a claim for preferential tariff treatment made in accordance with this Chapter for a good which is imported into its territory or released from customs control on or after the date of entry into force of this Agreement for that Party.

2. The importing Party may deny a claim for preferential tariff treatment if:

- (a) it determines that the good does not qualify for preferential treatment;
- (b) pursuant to a verification under Article 3.27 (Verification of Origin), it has not received sufficient information to determine that the good qualifies as originating;
- (c) the exporter, producer or importer fails to respond to a written request for information in accordance with Article 3.27 (Verification of Origin);
- (d) after receipt of a written notification for a verification visit, the exporter or producer does not provide its written consent in accordance with Article 3.27 (Verification of Origin); or
- (e) the importer, exporter or producer fails to comply with the requirements of this Chapter.

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

4. A Party shall not reject a claim for preferential tariff treatment for the sole reason that the invoice was issued in a non-Party. If an invoice is issued in a non-Party, a Party shall require that the certification of origin be separate from the invoice.

### **Article 3.29: Refunds and Claims for Preferential Tariff Treatment after Importation**

1. Each Party shall provide that an importer may apply for preferential tariff treatment and a refund of any excess duties paid for a good if the importer did not make a claim for preferential tariff treatment at the time of importation, provided that the good would have qualified for preferential tariff treatment when it was imported into the territory of the Party.

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

- (a) make a claim for preferential tariff treatment;
- (b) provide a statement that the good was originating at the time of importation;
- (c) provide a copy of the certification of origin; and

- (d) provide such other documentation relating to the importation of the good as the importing Party may require,

no later than one year after the date of importation or a longer period if specified in the importing Party's law.

### **Article 3.30: Penalties**

A Party may establish or maintain appropriate penalties for violations of its laws and regulations related to this Chapter.

### **Article 3.31: Confidentiality**

Each Party shall maintain the confidentiality of the information collected in accordance with this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.

## **Section C: Other Matters**

### **Article 3.32: Committee on Rules of Origin and Origin Procedures**

1. The Parties hereby establish a Committee on Rules of Origin and Origin Procedures (Committee), composed of government representatives of each Party, to consider any matters arising under this Chapter.
2. The Committee shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter.
3. The Committee shall consult to discuss possible amendments or modifications to this Chapter and its Annexes, taking into account developments in technology, production processes or other related matters.
4. Prior to the entry into force of an amended version of the Harmonized System, the Committee shall consult to prepare updates to this Chapter that are necessary to reflect changes to the Harmonized System.
5. With respect to a textile or apparel good, Article 4.8 (Committee on Textile and Apparel Trade Matters) applies in place of this Article.
6. The Committee shall consult on the technical aspects of submission and the format of the electronic certification of origin.

## ANNEX 3-A

### OTHER ARRANGEMENTS

1. This Annex shall remain in force for a period of 12 years from the date of entry into force of this Agreement according to Article 30.5.1 (Entry into Force).
2. A Party may apply the arrangements under paragraph 5 only if it has notified the other Parties of its intention to apply those arrangements at the time of entry into force of this Agreement for that Party. That Party (the notifying Party) may apply these arrangements for a period not exceeding five years after the date of entry into force of this Agreement for that Party.
3. The notifying Party may extend the period under paragraph 2 for one additional period of no more than five years if it notifies the other Parties no later than 60 days prior to the expiration of the initial period.
4. In no case shall a Party apply the arrangements under paragraph 5 beyond 12 years from the date of entry into force of this Agreement according to Article 30.5.1 (Entry into Force).
5. An exporting Party may require that a certification of origin for a good exported from its territory be either:
  - (a) issued by a competent authority; or
  - (b) completed by an approved exporter.
6. If an exporting Party applies the arrangements under paragraph 5, it shall provide the requirements for those arrangements in publicly available laws or regulations, inform the other Parties at the time of the notification under paragraph 2, and inform the other Parties at least 90 days before any modification to the requirements comes into effect.
7. An importing Party may treat a certification of origin issued by a competent authority or completed by an approved exporter in the same manner as a certification of origin under Section B.
8. An importing Party may condition acceptance of a certification of origin issued by a competent authority or completed by an approved exporter on the authentication of elements such as stamps, signatures or approved exporter numbers. To facilitate that authentication, the Parties concerned shall exchange information on those elements.

9. If a claim for preferential tariff treatment is based on a certification of origin issued by a competent authority or completed by an approved exporter, the importing Party may make a verification request to the exporter or producer in accordance with Article 3.27 (Verification of Origin) or to the competent authority that issued the certification of origin.

10. If a Party makes a verification request to the competent authority, the competent authority shall respond to it in the same manner as an exporter or producer under Article 3.27 (Verification of Origin). A competent authority shall maintain records in the same manner as an exporter or producer under Article 3.26 (Record Keeping Requirements). If the competent authority that issued the certification of origin fails to respond to a verification request, the importing Party may deny the claim for preferential tariff treatment.

11. If an importing Party makes a verification request under Article 3.27.1(b) (Verification of Origin), it shall, on request of the Party where the exporter or producer is located and in accordance with the importing Party's laws and regulations, inform that Party. The Parties concerned shall decide the manner and timing of informing the Party where the exporter or producer is located of the verification request. In addition, on request of the importing Party, the competent authority of the Party where the exporter or producer is located may, as it deems appropriate and in accordance with the laws and regulations of the Party where the exporter or producer is located, assist in the verification in the same manner as Article 3.27.7 (Verification of Origin).

## **ANNEX 3-B**

### **MINIMUM DATA REQUIREMENTS**

A certification of origin that is the basis for a claim for preferential tariff treatment under this Agreement shall include the following elements:

**1. Importer, Exporter or Producer Certification of Origin**

Indicate whether the certifier is the exporter, producer or importer in accordance with Article 3.20 (Claims for Preferential Treatment).

**2. Certifier**

Provide the certifier's name, address (including country), telephone number and e-mail address.

**3. Exporter**

Provide the exporter's name, address (including country), e-mail address and telephone number if different from the certifier. This information is not required if the producer is completing the certification of origin and does not know the identity of the exporter. The address of the exporter shall be the place of export of the good in a TPP country.

**4. Producer**

Provide the producer's name, address (including country), e-mail address and telephone number, if different from the certifier or exporter or, if there are multiple producers, state "Various" or provide a list of producers. A person that wishes for this information to remain confidential may state "Available upon request by the importing authorities". The address of a producer shall be the place of production of the good in a TPP country.

**5. Importer**

Provide, if known, the importer's name, address, e-mail address and telephone number. The address of the importer shall be in a TPP country.

**6. Description and HS Tariff Classification of the Good**

- (a) Provide a description of the good and the HS tariff classification of the good to the 6-digit level. The description should be sufficient to relate it to the good covered by the certification; and

- (b) If the certification of origin covers a single shipment of a good, indicate, if known, the invoice number related to the exportation.

**7. Origin Criterion**

Specify the rule of origin under which the good qualifies.

**8. Blanket Period**

Include the period if the certification covers multiple shipments of identical goods for a specified period of up to 12 months as set out in Article 3.20.4 (Claims for Preferential Treatment).

**9. Authorised Signature and Date**

The certification must be signed and dated by the certifier and accompanied by the following statement:

I certify that the goods described in this document qualify as originating and the information contained in this document is true and accurate. I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification.

## ANNEX 3-C

### EXCEPTIONS TO ARTICLE 3.11 (*De Minimis*)

Each Party shall provide that Article 3.11 (*De Minimis*) shall not apply to:

- (a) non-originating materials of heading 04.01 through 04.06, or non-originating dairy preparations containing over 10 per cent by dry weight of milk solids of subheading 1901.90 or 2106.90, used in the production of a good of heading 04.01 through 04.06 other than a good of subheading 0402.10 through 0402.29 or 0406.30<sup>7</sup>;
- (b) non-originating materials of heading 04.01 through 04.06, or non-originating dairy preparations containing over 10 per cent by dry weight of milk solids of subheading 1901.90, used in the production of the following goods:
  - (i) infant preparations containing over 10 per cent by dry weight of milk solids of subheading 1901.10;
  - (ii) mixes and doughs, containing over 25 per cent by dry weight of butterfat, not put up for retail sale of subheading 1901.20;
  - (iii) dairy preparations containing over 10 per cent by dry weight of milk solids of subheading 1901.90 or 2106.90;
  - (iv) goods of heading 21.05;
  - (v) beverages containing milk of subheading 2202.90; or
  - (vi) animal feeds containing over 10 per cent by dry weight of milk solids of subheading 2309.90;
- (c) non-originating materials of heading 08.05 or subheading 2009.11 through 2009.39, used in the production of a good of subheading 2009.11 through 2009.39 or a fruit or vegetable juice of any single

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<sup>7</sup> For greater certainty, milk powder of subheading 0402.10 through 0402.29, and processed cheese of subheading 0406.30, that is originating as a result of the application of the 10 per cent *de minimis* allowance in Article 3.11 (*De Minimis*), shall be an originating material when used in the production of any good of heading 04.01 through 04.06 as referred to in subparagraph (a) or the goods listed in subparagraph (b).

fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, of subheading 2106.90 or 2202.90;

- (d) non-originating materials of Chapter 15 of the Harmonized System, used in the production of a good of headings 15.07, 15.08, 15.12, or 15.14; or
- (e) non-originating peaches, pears or apricots of Chapter 8 or 20 of the Harmonized System, used in the production of a good of heading 20.08.