

## CHAPTER 3

### RULES OF ORIGIN

#### Article 1

##### Eligibility for Preferential Tariff Treatment

In determining the origin of a good eligible for preferential tariff treatment pursuant to Chapter 2 (Trade in Goods) of this Agreement, the provisions under this Chapter shall apply.

#### Article 2

##### 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) **Costs, Insurance and Freight (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 importing Party;
- (c) **Free-on-board (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;

- (d) **generally accepted accounting principles (GAAP)** 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;
- (e) **good** means a material or product, which can be wholly obtained or produced, even if it is intended for later use as a material in another production process. For the purposes of this Chapter, the terms “good” and “product” can be used interchangeably;
- (f) **identical and interchangeable materials** means materials being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which after being incorporated into the finished product cannot be distinguished from one another for origin purposes by virtue of any markings, or mere visual examination, etc.;
- (g) **material** means any matter or substance used or consumed in the production of a good or physically incorporated into another good or subjected to a process in the production of another good;
- (h) **non-originating good or non-originating material** means a good or material that does not qualify as originating in accordance with

the provisions of this Chapter;

- (i) **originating good or originating material** means a good or material that qualifies as originating in accordance with the provisions of this Chapter;
- (j) **packing material and container for transportation** means the good used to protect a good during its transportation, different from that container or material used for its retail sale;
- (k) **preferential tariff treatment** means tariff concessions granted to originating goods as reflected by the tariff rates applicable under this Agreement;
- (l) **production** means methods of obtaining goods, including growing, mining, harvesting, raising, breeding, extracting, gathering, aquaculture, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling goods; and
- (m) **Product Specific Rules** means the rules set out in Annex 3-2 (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.

## **Article 3**

### **Origin Criteria**

For the purposes of this Chapter, a good imported into a Party from another Party shall be treated as an originating good if it conforms to the origin requirements under any one of the following conditions:

- (a) a good which is wholly obtained or produced in the exporting Party as set out in Article 4 (Wholly Obtained or Produced Goods);
- (b) a good produced in the exporting Party exclusively from originating materials from one or more of the Parties; or
- (c) a good not wholly obtained or produced in the exporting Party, provided that the good is eligible under Article 5 (Not Wholly Obtained or Produced Goods);

and meets all other applicable requirements of this Chapter.

## **Article 4**

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

For the purposes of subparagraph (a) of Article 3 (Origin Criteria), the following goods shall be considered as wholly obtained or produced in the exporting Party:

- (a) plants and plant products, including fruits, flowers, vegetables, trees, seaweed, fungi

and live plants, grown, harvested, picked or gathered in a Party<sup>1</sup>;

- (b) live animals including mammals, birds, fish, crustaceans, molluscs, reptiles, bacteria and viruses, 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 conducted in a Party;
- (e) minerals and other naturally occurring substances, not included in subparagraphs (a) to (d), extracted or taken from the soil, waters, seabed or beneath the seabed in a Party;
- (f) products of sea-fishing extracted or taken by vessels registered with the exporting Party and entitled to fly the flag of that Party, and minerals and other naturally occurring substances extracted or taken from the waters, seabed or beneath the seabed outside the waters of the exporting Party, provided that that Party has the rights to

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<sup>1</sup> For the purposes of this Article, “in a Party” means:

- (i) for ASEAN Member States, 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.
- (ii) for Hong Kong, China, the Area of Hong Kong, China.

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.

exploit such waters, seabed and beneath the seabed in accordance with international law<sup>2</sup>;

- (g) products of sea-fishing and other marine products taken from the high seas by vessels registered with a Party and entitled to fly the flag of that Party;
- (h) products processed or made on board factory ships registered with a Party or entitled to fly the flag of that Party, exclusively from products referred to in subparagraph (g);
- (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 for recycling purposes; or
  - (ii) used goods collected in a Party, provided that such goods are fit only for the recovery of raw materials or for recycling purposes; and
- (j) goods obtained or produced in the exporting Party from products referred to in subparagraphs (a) to (i).

## **Article 5**

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

1. For the purposes of subparagraph (c) of Article 3 (Origin Criteria), except for those goods covered under

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<sup>2</sup> “International law” refers to generally accepted international law such as the *United Nations Convention on the Law of the Sea*, 1982.

paragraph 2, a good shall be treated as an originating good if the good has a regional value content (“Regional Value Content” or “RVC”) of not less than 40 per cent calculated using the formula set out in Article 6 (Calculation of Regional Value Content).

2. In accordance with paragraph 1, a good subject to the Product Specific Rules shall be treated as an originating good if it meets those Product Specific Rules as specified in Annex 3-2 (Product Specific Rules):

- (a) Where a Product Specific Rule provides a choice of rules from a RVC-based rule of origin, a change in tariff classification (“CTC”)-based rule of origin, a specific manufacturing or processing operation, or a combination of any of these criteria, each Party shall permit the exporter of the good to decide which rule to use in determining whether the good qualifies as an originating good of the Party.
- (b) Where a Product Specific Rule specifies a certain RVC, the RVC of a good shall be calculated using the formula set out in Article 6 (Calculation of Regional Value Content).
- (c) Where a Product Specific Rule requires that the materials used have undergone CTC or a specific manufacturing or processing operation, the rules shall apply only to non-originating materials.

## Article 6

### Calculation of Regional Value Content

1. For the purposes of Article 5 (Not Wholly Obtained or Produced Goods), the formula for calculating RVC is as follows:

(a) *Direct /Build-up Method*

$$\text{RVC} = \frac{\text{AHKFTA Material Cost} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Other Costs} + \text{Profit}}{\text{FOB Price}} \times 100\%$$

or

(b) *Indirect /Build-down Method*

$$\text{RVC} = \frac{\text{FOB Price} - \text{Value of Non-Originating Materials, Parts or Produce}}{\text{FOB Price}} \times 100\%$$

2. For the purposes of calculating the RVC provided in paragraph 1:

- (a) **AHKFTA 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) **Value of Non-Originating Materials, Parts or Produce** 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;

- (c) **Direct labour cost** includes wages, remuneration and other employee benefits associated with the manufacturing process;
- (d) **Direct overhead cost** includes, but is not limited to, real property items associated with the production process (insurance, factory rent and leasing, depreciation on buildings, repair and maintenance, taxes, interests on mortgage); leasing of and interest payments for plant and equipment; factory security; insurance (plant, equipment and materials used in the manufacture of the goods); utilities (energy, electricity, water and other utilities directly attributable to the production of the goods); research, development, design and engineering; dies, moulds, tooling and the depreciation, maintenance and repair of plant and equipment; royalties or licences (in connection with patented machines or processes used in the manufacture of the goods or the right to manufacture the goods); inspection and testing of materials and the goods; storage and handling in the factory; disposal of recyclable wastes; and cost elements in computing the value of raw materials, i.e. port and clearance charges and import duties paid for dutiable component; and

- (e) **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.

3. The value of goods under this Chapter shall be determined in accordance with the Customs Valuation Agreement. The Parties shall harmonise, to the extent possible, administrative procedures and practices in the assessment of value of goods for customs purposes.

## **Article 7**

### **Accumulation**

Unless otherwise provided in this Agreement, a good which complies with the origin requirements provided herein and which is used in another Party as a material for a finished good eligible for preferential tariff treatment shall be considered to be originating in the latter Party where working or processing of the finished goods has taken place.

## **Article 8**

### **Minimal Operations and Processes**

1. Notwithstanding any provisions in this Chapter, a good shall not be considered to be originating in the Area of a Party if the following operations are undertaken exclusively by itself or in combination in the Area of that Party:

- (a) preserving operations to ensure that the good remains in good condition during transport and storage;
- (b) changes of packaging, breaking-up and assembly of packages;
- (c) simple<sup>3</sup> washing, cleaning, removal of dust, oxide, oil, paint or other coverings;
- (d) simple<sup>3</sup> painting and polishing operations;
- (e) husking, partial or total bleaching, polishing and glazing of cereals and rice;
- (f) operations to colour sugar or form sugar lumps;
- (g) simple<sup>3</sup> peeling, stoning, or un-shelling;
- (h) sharpening, simple<sup>3</sup> grinding or simple<sup>3</sup> cutting;
- (i) sifting, screening, sorting, classifying, grading, matching;
- (j) simple<sup>3</sup> placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple<sup>3</sup> packaging operations;
- (k) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;

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<sup>3</sup> “simple” means an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity.

- (l) simple mixing<sup>4</sup> of products, whether or not of different kinds;
- (m) simple<sup>3</sup> assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (n) simple<sup>3</sup> testing or calibrations; or
- (o) slaughtering<sup>5</sup> of animals.

2. A good originating in the Area of a Party shall retain its initial originating status, when exported from another Party, where operations undertaken have not gone beyond those referred to in paragraph 1.

## **Article 9**

### **Direct Consignment**

1. Preferential tariff treatment shall be applied to goods satisfying the requirements of this Chapter and which are consigned directly between the exporting Party and the importing Party.

2. The following shall be considered as consigned directly from the exporting Party to the importing Party:

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<sup>4</sup> “simple mixing” means an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity and does not include chemical reaction. Chemical reaction means a process (including a biochemical process) which result in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

<sup>5</sup> “slaughtering” means the mere killing of animals and subsequent processes such as cutting, chilling, freezing, salting, drying or smoking, for the purpose of preservation for storage and transport.

- (a) goods transported from the exporting Party to the importing Party; or
- (b) goods transported through one or more Parties, other than the exporting Party and the importing Party, or through a non-Party, provided that:
  - (i) the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;
  - (ii) the goods have not entered into trade or consumption there; and
  - (iii) the goods have not undergone any operation there other than unloading and reloading or any other operation to preserve them in good condition.

## **Article 10**

### ***De Minimis***

1. A good that does not satisfy a CTC requirement shall be considered as originating if the value of all non-originating materials used in its production that do not undergo the required CTC does not exceed 10 per cent of the FOB value of the good and the good meets all other applicable criteria set forth in this Chapter for qualifying as an originating good.

2. The value of non-originating materials referred to in paragraph 1 shall be included in the value of non-originating materials for any applicable RVC requirement for the good.

## **Article 11**

### **Treatment of Packing and Packaging 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. Packaging materials and containers in which the good is packaged for retail sale, which are classified with the good pursuant to Rule 5 of the General Rules for the Interpretation of the Harmonized System, shall be disregarded in determining the origin of the good, provided that:
  - (a) the good is wholly obtained as set out in subparagraph (a) of Article 3 (Origin Criteria);
  - (b) the good is produced entirely in the Area of a Party as set out in subparagraph (b) of Article 3 (Origin Criteria); or
  - (c) the good is subject to a CTC requirement set out in Annex 3-2 (Product Specific Rules).
3. If a good is subject to a RVC requirement, the value of the packaging materials and containers in which the good is packaged for retail sale shall be taken into account as originating or non-originating materials, as the case may be, in calculating the RVC of the good.

## **Article 12**

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

1. If a good is subject to the requirements of CTC or specific manufacturing or processing operation, the origin of accessories, spare parts, tools and instructional or other information materials presented with the good shall not be taken into account in determining whether the good qualifies as an originating good, provided that:

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

2. If a good is subject to a RVC-based rule of origin, the value of the accessories, spare parts, tools and instructional or information materials shall be taken into account as the value of the originating or non-originating materials, as the case may be, in calculating the RVC of the good.

## **Article 13**

### **Neutral Elements**

In order to determine whether a good is an originating good, it shall not be necessary to determine the origin of the following which might be used in its production and not incorporated into the good:

- (a) fuel and energy;

- (b) tools, dies and moulds;
- (c) spare parts and materials used in the maintenance of equipment and buildings;
- (d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (f) equipment, devices and supplies used for testing or inspecting the good;
- (g) catalysts and solvents; and
- (h) any other goods that are 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.

## **Article 14**

### **Identical and Interchangeable Materials**

1. 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 GAAP of stock control applicable, or inventory management method, in the exporting Party.
2. Once a decision has been taken on the inventory management method, that method shall be used throughout the fiscal year.



## **Article 15**

### **Certificate of Origin**

Unless otherwise provided for in this Chapter, a claim that a good is eligible for preferential tariff treatment shall be supported by a Certificate of Origin (Form AHK) issued by an issuing authority designated by the exporting Party and notified to the other Parties in accordance with Annex 3-1 (Operational Certification Procedures).

## **Article 16**

### **Amendments of Annexes and Appendix**

1. The AHKFTA Joint Committee may, upon recommendation of the Sub-Committee on Rules of Origin, amend in writing Annex 3-1 (Operational Certification Procedures), and Appendix (List of Data Requirements).
2. The amendments to Annex 3-1 (Operational Certification Procedures) and the Appendix (List of Data Requirements) adopted in accordance with paragraph 1 shall be promptly published and shall come into effect on the date determined by the Parties through the AHKFTA Joint Committee.
3. The AHKFTA Joint Committee shall, upon recommendation of the Sub-Committee on Rules of Origin, adopt the transposition that is in the revised nomenclature of the HS following the World Customs Organization's periodic amendments to the HS nomenclature in Annex 3-2 (Product Specific Rules). Such transposition shall be carried out without impairing the existing commitments and shall be completed in a timely manner.

## **Article 17**

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

1. For the purposes of effective and uniform implementation of this Chapter, a Sub-Committee on Rules of Origin shall be established.
2. The functions of the Sub-Committee on Rules of Origin shall be to:
  - (a) monitor the implementation and operation of this Chapter;
  - (b) review, as and when necessary, this Chapter to provide appropriate recommendations with the view to enhancing this Chapter to make it responsive to the dynamic changes in the regional and global production processes so as to facilitate trade and investment among Parties, promote a regional production network, encourage the development of Small and Medium Enterprises and narrow the development gaps;
  - (c) review, as and when necessary, the operational procedures of this Chapter with the view to simplifying the procedures and making them transparent, predictable and standardised, taking into account the best practices of other regional and international trade agreements;
  - (d) consider any other matter as the Parties may agree related to this Chapter; and
  - (e) carry out other functions as may be delegated by the AHKFTA Joint Committee or other

higher-level body.

3. The Sub-Committee on Rules of Origin shall be composed of government representatives of the Parties, and may invite representatives of non-governmental entities of the Parties with necessary expertise relevant to the issues to be discussed, upon agreement of all Parties.

4. The Sub-Committee on Rules of Origin shall meet as mutually determined by the Parties. The meetings of the Sub-Committee on Rules of Origin may be conducted in person, or by any other means as mutually determined by the Parties.

5. The Sub-Committee on Rules of Origin shall, immediately after the date of entry into force of this Agreement, continue the negotiations on the Product Specific Rules of the tariff lines listed in Annex 3-3 (Product Specific Rules to be Reviewed).

6. The negotiations referred to in paragraph 5 shall be concluded within one year from the date of entry into force of this Agreement, unless otherwise agreed upon by the Parties. The outcome of the negotiations shall be incorporated into this Agreement in accordance with Article 2 (Amendments) of Chapter 14 (Final Provisions).