

## CHAPTER 3

### RULES OF ORIGIN

#### Section A: Rules of Origin

##### Article 3.1: Definitions

For the purposes of this Chapter:

**aquaculture** means the farming of aquatic organisms, including fish, mollusks, 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;

**CIF** means the value of the good imported and includes the cost of insurance and freight up to the port or place of entry in the country of importation;

**competent authority** means the governmental authority that, according to the laws and regulations of each Party, is responsible for the issuing of a Certificate of Origin or for the designation of certification authorized entities:

- (a) for Indonesia, the Ministry of Trade; and
- (b) for Peru, the Ministry of Foreign Trade and Tourism (*Ministerio de Comercio Exterior y Turismo – MINCETUR*);

or its successors;

**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 regardless of the means of transport;

**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 recognized 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 materials** means a good used in the production, testing, or inspection of another 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, energy, catalysts, and solvents;
- (b) equipment, devices, and supplies used for testing or inspection of the goods;
- (c) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (d) tools, dies, and molds;
- (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 good which is not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

**material** means a good that is used in the production of another good, including ingredients, parts, raw materials, or components;

**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 transportation** means goods used to protect a good during its transportation, other than containers and packaging materials used for retail sale;

**packaging materials and containers for retail sale** means materials or containers in which a good is packaged or presented for its retail sale;

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

**verification authority** means the governmental authority that, according to the laws and regulations of each Party, is responsible for the verification of origin:

- (a) for Indonesia, the Directorate General of Customs and Excise; and
- (b) for Peru, the Ministry of Foreign Trade and Tourism (*Ministerio de Comercio Exterior y Turismo – MINCETUR*);

or its successors.

### Article 3.2: Origin Criteria

Except as otherwise provided in this Chapter, a good shall qualify as an originating good of a Party if the good is:

- (a) wholly obtained or produced entirely in the territory of the exporting Party as set out in Article 3.3 (Wholly Obtained or Produced Entirely Goods);
- (b) produced entirely in the territory of the exporting Party exclusively from originating materials of one or both Parties; or
- (c) produced entirely in the territory of the exporting Party using non-originating materials, provided the good satisfies the requirements set out in Annex 3-B;

and meets all other applicable requirements of this Chapter.

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

Within the meaning of Article 3.2 (Origin Criteria), the following shall be considered as wholly obtained or produced entirely goods in the territory of the exporting Party:

- (a) plants and plant goods, such as live plants, fruit, flowers, vegetables, trees, seaweed, and fungi, grown, cultivated, harvested, picked, or gathered there;
- (b) live animals born and raised there;
- (c) goods obtained from live animals referred to in subparagraph (b);
- (d) goods obtained from hunting, trapping, fishing, aquaculture, collecting, or capturing conducted there;
- (e) minerals and other naturally occurring substances, not included in subparagraphs (a) to (d), extracted or taken from there;
- (f) fish, shellfish, other goods of sea-fishing, and other marine life taken from the sea, seabed or subsoil outside the territories of the Parties, and in accordance with international law, by vessels that are registered or recorded with a Party and entitled to fly the flag of that Party;
- (g) a good other than fish, shellfish, other goods of sea-fishing, 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 the right to exploit that seabed or subsoil in accordance with international law;

- (h) goods obtained, produced, or processed on board factory ships registered or recorded with a Party and entitled to fly the flag of that Party, exclusively from goods referred to in subparagraph (f);
- (i) waste and scrap derived from:
  - (i) production in the territory of the exporting Party; or
  - (ii) used goods collected in the territory of the exporting Party provided that those goods are fit only for the recovery of raw materials; and
- (j) goods obtained or produced in territory of the exporting Party solely from goods referred to in subparagraphs (a) to (i).

### **Article 3.4: Qualifying Value Content**

1. For the purposes of this Article, the formula for calculating the qualifying value content (QVC) is as follows:

Indirect Method

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

2. The value of the non-originating materials shall be:
  - (i) the CIF value at the time of importation of the materials; or
  - (ii) the earliest ascertained price paid or payable for the materials of undetermined origin in the territory of the Party where the working or processing takes place.

### **Article 3.5: Accumulation**

Originating goods or materials of a Party, incorporated into a good in the territory of the other Party, shall be considered to be originating in the territory of the other Party.

### **Article 3.6: *De Minimis***

1. A good that does not meet a change in tariff classification requirement shall be considered as originating if:
  - (a) the value of all non-originating materials used in its production that do not meet the required change in tariff classification does not exceed 10% of the FOB value

of the good and the good meets all other applicable provision set forth in this Agreement for qualifying as an originating good; or

- (b) for a good provided for in chapters 50 through 63 of the HS Code, the weight of all non-originating materials used in its production that did not undergo the required change in tariff classification does not exceed 10% of the total weight of the good and the good meets all other applicable provision set forth in this Agreement for qualifying as an originating good.

2. If a good described in paragraph 1 is subject to a qualifying value content requirement, the value of all the non-originating materials shall be considered for determining the qualifying value content of the good.

### **Article 3.7: Minimal Operations and Processes**

1. Notwithstanding any provision in this Chapter, a good shall not be considered to be originating in the territory of a Party merely by reason of going through one or in combination of the following operations:

- (a) preserving operations to ensure that the goods remain in good condition for the purposes of transport or storage;
- (b) changes of packaging, or breaking-up and assembly of packages;
- (c) washing, cleaning, including removal of dust, oxide, oil, paint, or other coverings;
- (d) painting and polishing operations;
- (e) testing or calibration;
- (f) husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- (g) sharpening, grinding, slicing, or cutting;
- (h) placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards, and all other packaging operations;
- (i) affixing or printing marks, labels, logos, and other like distinguishing signs on goods or their packaging;
- (j) simple mixing of goods, whether or not of different kinds;
- (k) simple assembly of parts of goods to constitute a complete good or disassembly of goods into parts; and

- (l) sifting, screening, sorting, classifying, grading, matching (including the mere making-up of sets of articles).
2. Printing of marks, labels, logos, and those distinguishing signs shall not be considered as an insufficient working or processing operation where the printed marks, labels, logos, and those distinguishing signs are the goods to be exported under preferential tariff treatment.
3. Simple describes activities which need neither special skills nor special machines, apparatus, or equipment especially produced or installed for carrying out the activity.
4. Simple mixing describes activities which need neither special skills nor machines, apparatus, or equipment especially produced or installed for carrying out the activity. However, simple mixing shall not include chemical reaction.

### **Article 3.8: Treatment of Packing Materials and Containers for Transportation**

Packing materials and containers for transportation of a good shall not be taken into account in determining the origin of any good.

### **Article 3.9: Treatment of Packaging Materials and Containers for Retail Sale**

1. Packaging materials and containers in which a good is packaged for retail sale, when classified together with that good, shall not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable change in tariff classification requirements for the good.
2. If a good is subject to a QVC 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 QVC of the good.

### **Article 3.10: Accessories, Spare Parts, Tools, and Instructional or other Information Materials**

1. In determining whether a good is wholly obtained or satisfies a process or change in tariff classification requirement as set out in Annex 3-B, accessories, spare parts, tools, and instructional or other information materials, as described in paragraph 3, are to be disregarded.
2. In determining whether a good meets a qualifying value content requirement, the value of the accessories, spare parts, tools, and 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 qualifying value content of the good.

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

#### **Article 3.11: Indirect Materials**

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

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

1. The determination of whether fungible goods or materials are originating goods or materials shall be made either by:

- (a) physical segregation of each fungible good or material; or
- (b) any inventory management method recognized in the use of generally accepted accounting principles of the Party in which production is performed if the fungible good or material is commingled.

2. The inventory management method used under paragraph 1 for particular identical and interchangeable goods or materials shall continue to be used for that good or material throughout the fiscal year.

#### **Article 3.13: Direct Consignment**

1. In order for an originating good to maintain its originating status as determined under this Chapter, the following conditions shall be met:

- (a) the good transported directly from the exporting Party to the importing Party; or
- (b) the good has been transported from the exporting Party to the importing Party through one or more non-Parties, with or without transshipment or temporary storage in those non-Parties, provided that:
  - (i) the good has not undergone subsequent production or any other operation outside the territories of the Parties other than unloading, reloading, or any other operations necessary to preserve it in good condition or to transport it to the importing Party;

- (ii) the good has not entered the commerce of a non-Party; and
- (iii) the good remains under customs control in those non-Parties.

2. For the purposes of this Article where transport is carried out through the territory of any non-Party, the importing Party may require the importer who claims the preferential tariff treatment for the good, to submit documentary evidence that proves the compliance of the requirements of paragraph 1(b). That documentary evidence may include transport documents, Non-Manipulation Certificate, or any document issued by the Customs Authorities or other relevant authorized entities of that non-Party.

### **Section B: Operational Procedures**

For the purposes of implementing the Rules of Origin applicable for this Agreement, the following operational procedures on the issuance of the Certificate of Origin, verification of origin and other related administrative matters shall apply.

#### **Article 3.14: Claim for Preferential Tariff Treatment**

1. Except as otherwise provided in this Chapter, each Party shall require an importer in its territory that claims preferential tariff treatment to:
  - (a) indicate in the customs declaration, based on a valid Certificate of Origin, that the good qualifies as an originating good;
  - (b) hold the Certificate of Origin at the time the customs declaration referred to in subparagraph (a) is made;
  - (c) hold the documents which certify that the requirements established in Article 3.13 (Direct Consignment) have been met, where applicable; and
  - (d) submit the valid Certificate of Origin, as well as the documents indicated in subparagraph (c) to the Customs Authority, when it is required by domestic law and regulations of each Party.
2. When the Competent Authority of exporting Party has knowledge that a Certificate of Origin contains incorrect information that affects the originating status of the good, it shall notify to the Competent Authority and the Customs Authority of the importing Party.

#### **Article 3.15: Notifications**

1. Before the entry into force of this Agreement, the Competent Authority of each Party shall provide to the Competent Authority of the other Party, the list of the names and specimen



signatures of the official designated and specimen of official seals use for the issuance of the Certificate of Origin.

2. Any change in the information provided above shall be promptly informed, indicating the date of the entry into force of that change.

### **Article 3.16: Issuance of a Certificate of Origin**

1. The Certificate of Origin shall be issued by the Competent Authority of the exporting Party.

2. The exporter applying for the issuance of a Certificate of Origin shall submit to the Competent Authority of the exporting Party, all appropriate documents required by said authority proving that the good qualifies as an originating good according to this Chapter. These documents shall be the base for the issuance of the Certificate of Origin.

3. In order to determine the originating status of the good, the Competent Authority may request any additional evidence or to carry out any check considered appropriate, including visits to the exporter or producer's facilities.

4. The Competent Authority of the exporting Party shall carry out an examination, in accordance with its domestic laws and regulations, upon each application for a Certificate of Origin to ensure that:

- (a) the relevant Certificate of Origin is duly completed and corresponds to the supporting documentary submitted by the exporter; and
- (b) the origin of each good that is covered by the Certificate of Origin is in conformity with this Chapter.

### **Article 3.17: Certificate of Origin**

1. Any of the following shall be considered as a Certificate of Origin:

- (a) a Certificate of Origin in paper format that could be printed or submitted in such other medium; or
- (b) an electronic Certificate of Origin.

2. For claiming preferential tariff treatment, either the Certificate of Origin in paper format or electronic Certificate of Origin shall be submitted.

3. The Certificate of Origin shall be printed on ISO A4 size paper and issued in accordance with format as shown in Annex 3-A.

4. The Parties shall implement the electronic Certificate of Origin referred to in paragraph 1(b) after both Parties conclude technical work on guidelines and specifications document

through the Committee on Rules of Origin. This technical work may begin within two years of the date of entry into force of this Agreement, unless otherwise agreed by the Parties.

5. The Certificate of Origin shall be completed in English.
6. Each Certificate of Origin shall bear a unique reference number.
7. The validity of the Certificate of Origin shall be 12 months from the date of its issuance.
8. Before the entry into force of this Agreement, for the purposes to prove the authenticity of the Certificate of Origin, the Parties shall exchange websites or other appropriate system (e.g. QR), as the Parties may agree, containing at least the following information of the Certificate of Origin issued by the exporting Party: reference number, HS Code, description of goods, quantity, date of issuance, invoice number, and name of the exporter.
9. In the event of theft, loss or destruction of a Certificate of Origin, the exporter may request in writing to the Competent Authority, which issued it, for the certified true copy of the original on the basis of the export documents in the possession of the exporter, bearing the endorsement of the words “CERTIFIED TRUE COPY” in Box 5. This copy shall bear the number and the date of issuance of the original Certificate of Origin. The certified true copy of a Certificate of Origin shall be issued within and valid during the validity period of the original Certificate of Origin.

### **Article 3.18: Certificate of Origin Issued Retroactively**

1. The Certificate of Origin shall be issued by the Competent Authority of the exporting Party before or at the time of shipment whenever the exported good can be considered as originating good. If any change is required in the Certificate of Origin, the Competent Authority may amend the information contained in it before the importer submits the Certificate of Origin to the Customs Authority of the importing Party by issuing a new Certificate of Origin.
2. In exceptional circumstances, a Certificate of Origin may be issued retroactively after the date of shipment of the good:
  - (a) But no longer than 12 months from the date of shipment, where a Certificate of Origin has not been issued at the time of shipment due to involuntary errors, omissions or other valid causes; or
  - (b) Where a Certificate of Origin was issued and it contains errors that were detected before its submission to the Customs Authority of the importing Party.

In those circumstances, in the Certificate of Origin shall be indicated “ISSUED RETROACTIVELY” in Box 5 of Form I-P CEPA.

### **Article 3.19: Correction of an Erroneous Certificate of Origin**

1. Neither erasures nor superimpositions shall be allowed on a Certificate of Origin.
2. Any alteration shall be made by striking out the erroneous information and making any addition required. Those alterations shall be certified by the Competent Authority of the exporting Party. Unused spaces shall be crossed out to prevent any subsequent addition.
3. Alternatively, a new Certificate of Origin may be issued to replace the erroneous Certificate of Origin.

### **Article 3.20: Treatment of Slight Discrepancies and Minor Errors**

1. The discovery of slight discrepancies between the statements made in the Certificate of Origin and those made in the documents submitted to the Customs Authority of the importing Party for the purpose of carrying out the formalities for importing the goods shall not *ipso-facto* invalidate the Certificate of Origin, if it does in fact correspond to the goods submitted.
2. Minor errors, such as typing errors, on a Certificate of Origin shall not cause this document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in this document.

### **Article 3.21: Post-Importation Claims for Preferential Tariff Treatment**

1. Each Party, subject to its laws and regulations, shall provide that where a good would have qualified as an originating good when it was imported into that Party, the importer of the good may, within one year after the date on which the good was imported, apply for a refund of any excess duties, deposit, or guarantee paid as the result of the good not having been granted preferential tariff treatment, on presentation of the following to the Customs Authority of that Party:
  - (a) a valid Certificate of Origin; and
  - (b) any other documentation in relation to the importation as the Customs Authority may require to satisfactorily evidence the preferential tariff treatment claimed.
2. Notwithstanding paragraph 1, each Party may require, in accordance with its laws and regulations, that the importer notify the Customs Authority of that Party of its intention to claim preferential tariff treatment at the time of importation.

### **Article 3.22: Record Keeping Requirement**

1. The producer or exporter applying for the issuance of a Certificate of Origin shall keep the supporting records, including those that demonstrate that the good is an originating good, for not less than four years from the date of issuance of the Certificate of Origin.

2. The importer shall keep records relevant to the importation, including the Certificate of Origin, at least four years from the day of importation of the good.

3. The Competent Authority of the exporting Party shall keep a record of the Certificate of Origin and all documents related to the issuance of the Certificate of origin for at least four years after the date on which the Certificate of Origin was issued.

### **Article 3.23: Verification of Origin**

1. For the purposes of determining whether a good imported into one Party from the other Party qualifies as an originating good under this Chapter, the Verification Authority of the importing Party may conduct a verification process through the following means:

- (a) a written request for information addressed to the importer;
- (b) a written request for information addressed to the exporter or producer;
- (c) a verification visit to the premises of the exporter or producer in the exporting Party to observe the facilities and production processes of the good, and to review records, including accounting files, limited to information and documentation necessary to determine whether the good is originating; or
- (d) any other procedures as may be agreed by the Parties.

2. The Verification Authority of the importing Party shall:

- (a) for the purposes of paragraph 1(b), send a written request in English accompanied by a copy of the Certificate of Origin and an explanation of the reasons for the request;
- (b) for the purposes of paragraph 1(c), send the written request in English and shall include:
  - (i) the name of the Verification Authority;
  - (ii) the name of the producer or exporter whose premises are to be visited and location of those premises;
  - (iii) the proposed date of the verification visit;
  - (iv) the coverage of the proposed verification visit, including reference to the good subject to the verification;
  - (v) a copy of the Certificate of Origin; and
  - (vi) the names and designation of the officials performing the verification visit.

3. Pursuant to verification process under paragraphs 1(a) to 1(c), the Verification Authority of the importing Party shall provide:

- (a) the importer, exporter or producer at least 30 days from the date of receipt of the written request under paragraph 1(a) or paragraph 1(b) to respond; and
- (b) the exporter or producer 30 days from the date of receipt of the written request under paragraph 1(c) to either consent to or decline the request.

4. On request of the importing Party, the Party in which the exporter or producer is located may, as it deems appropriate and in accordance with its laws and regulations, provide assistance in the verification process. This assistance may include identifying a contact point, collecting relevant information from the exporter or producer on behalf of the importing Party, or undertaking other appropriate actions to facilitate a determination as to whether the good is originating. The importing Party shall not deny a claim for preferential tariff treatment solely on the grounds that the requested assistance was not provided by the exporting Party.

5. The Verification Authority of the importing Party shall make a determination as expeditiously as possible, and in any case no later than 90 days after receiving all necessary information to make the determination, including, where applicable, information received under paragraph 1. In all circumstances, the verification process shall be concluded no later than 365 days from the date of the first action under paragraph 1.

6. If the Verification Authority of the importing Party initiates a verification process in accordance with paragraph 1(b) or paragraph 1(c), it shall notify the importer of the initiation of the verification process.

7. If the Verification Authority of the importing Party initiates a verification process under paragraph 1(c), it shall, at the time of the request for the visit, notify the Party where the exporter or producer is located and offer that Party the opportunity for its officials to accompany the verification team during the visit.

8. Prior to issuing a written determination, the Verification Authority of the importing Party shall notify the importer and any exporter or producer that submitted information directly to the preliminary results of the verification process. If the importing Party intends to deny preferential tariff treatment, it shall allow those persons a period of at least 30 days to submit additional information related to the origin of the good.

9. The Verification Authority of the importing Party shall:

- (a) issue to the importer a written determination indicating whether the good is originating, including the basis for the determination; and
- (b) provide the results of the verification process, including the reasons therefor, to the exporter or producer, in the case this last one provided the information during the verification process.

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

#### **Article 3.24: Denial of Preferential Tariff Treatment**

1. The importing Party may deny preferential tariff treatment where:
  - (a) the Certificate of Origin has not complied with the provision in accordance with this Chapter;
  - (b) the importer fails to submit the Certificate of Origin to the Customs Authority of the importing Party in accordance with Article 3.14 (Claim for Preferential Tariff Treatment);
  - (c) the producer, exporter, or importer fails to respond to the request within the period referred to in Article 3.23.3(a) (Verification of Origin);
  - (d) the producer or exporter fails to respond or refuses the request for a verification visit referred to in Article 3.23.3(b) (Verification of Origin);
  - (e) the producer, exporter, or importer fails to respond to the notification within the period referred to in Article 3.23.8 (Verification of Origin);
  - (f) the information provided to the importing Party pursuant to Article 3.23 (Verification of Origin) is not sufficient to prove that the good qualifies as an originating good of the exporting Party;
  - (g) a notification has been received by the importing Party pursuant to Article 3.14.2 (Claim for Preferential Tariff Treatment);
  - (h) the good does not meet the requirements of this Chapter; or
  - (i) the importer fails to comply with the requirements of this Chapter.
2. If the importing Party denies a claim for preferential tariff treatment, it shall promptly provide the written notification to the importer that includes the reasons for denial.

### **Article 3.25: Non-Party Invoicing**

1. The importing Party shall not reject a claim for preferential tariff treatment for the sole reason that the invoice issued by an operator located in the exporting Party or in a non-Party, provided that the goods meet the requirements of this Chapter.
2. In case the invoice is issued by an operator located in a non-Party, the exporter of the goods shall indicate in the Certificate of Origin “NON-PARTY INVOICE” and the following information: name and legal address (including city and country) of the operator located in the non-Party.

### **Article 3.26: Confidentiality**

All information provided pursuant to this Chapter shall be treated by the Parties as confidential in accordance with their respective laws and regulations. It shall not be disclosed without the written permission of the person or authority of the Party providing it.

### **Article 3.27: Committee on Rules of Origin**

1. The Parties hereby establish a Committee on Rules of Origin, composed of government representatives of each Party, to consider any matters arising under this Chapter.
2. The Committee on Rules of Origin shall have the following functions:
  - (a) monitor the implementation and administration of this Chapter;
  - (b) propose to the Joint Commission:
    - i. modifications to the Annex 3-B as a result of the amendments to the Harmonized System (HS); and
    - ii. solutions to address issues related to interpretation, application, and administration of this Chapter; and
  - (c) address any other matter relating to this Chapter.