CHAPTER 3

RULES OF ORIGIN

SECTION I: Determination of Origin

Article 3.1: Definitions

For the purposes of this Chapter:

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

competent authority means the authority that, according to the laws and regulations of each Party, is responsible for the issuing of the Certificate of Origin and may designate or delegate the issuance of the Certificate of Origin to certifying entities:

(a) in the case of Peru, Ministry of Foreign Trade and Tourism *(Ministerio de Comercio Exterior y Turismo – MINCETUR)*; and

(b) in the case of Thailand, Ministry of Commerce

or their successors;

exporter means a natural or juridical person located in the territory of a Party from which the good is exported;

FOB means the value of the good free on board, inclusive of the cost of transport (regardless of the mode of transport) to the port or site of final shipment abroad;

Generally Accepted Accounting Principles (GAAP) means the recognised consensus or 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. GAAP may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

importer means a natural or juridical person located in the territory of a Party into which the good is imported;

indirect materials means materials used in the production, testing or inspection of the goods but not physically incorporated into the goods or materials used in the maintenance of buildings or the operation of equipment associated with the production of goods, including:

(a) fuel and energy;

(b) tools, dies and molds;

(c) parts and materials used in the maintenance of equipment and buildings;

(d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;

(e) gloves, glasses, footwear, clothing, safety equipment and supplies;

(f) equipment, devices and supplies used for testing or inspecting the goods;

(g) catalysts and solvents; and

(h) any other materials that are not incorporated into the goods but whose use in the production of the goods can reasonably be demonstrated to be a part of that production;

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

non-originating good means any good that does not qualify as an originating good of any Party, according to this Chapter;

non-originating material means any material that does not qualify as an originating material of any Party, according to this Chapter;

originating good means any good that qualifies as an originating good of any Party, according to this Chapter;

originating material means any material that qualifies as an originating material of any Party, according to this Chapter;

packing material and container for transportation means materials used to protect a good during its transportation and does not include the packaging materials and containers in which a good is packaged for retail sale;

production means cultivating, harvesting, extracting, mining, raising, picking, gathering, capturing, fishing, trapping, hunting, manufacturing, processing or assembling a good; and

relevant authority means the authority of the importing Party that is responsible for verification of origin:

(a) in the case of Peru, Ministry of Foreign Trade and Tourism *(Ministerio de Comercio Exterior y Turismo – MINCETUR)*; and

(b) in the case of Thailand, the Customs Department,

or their successors.

Article 3.2: Originating Goods

1. Except as otherwise provided in this Chapter, a good shall qualify as an originating good of a Party where:

(a) it is wholly obtained or produced entirely in the territory of one or both Parties, as defined in Article 3.3 (Wholly Obtained or Produced Entirely Goods);

(b) it satisfies the product specific rules as set out in Annex 3-A (Product Specific Rules of Origin), when it is produced in one or both Parties using non-originating materials; or

(c) it is produced in the territory of one or both Parties exclusively from originating materials.

2. Additionally, the good shall satisfy all the applicable requirements of this Chapter.

Article 3.3: Wholly Obtained or Produced Entirely Goods

Within the meaning of Article 3.2.1(a) (Originating Goods), the following goods shall be considered as wholly obtained or produced entirely goods:

(a) mineral goods extracted in the territory of one or both Parties;

(b) agricultural goods cultivated, harvested, picked or gathered in the territory of one or both Parties;

(c) live animals born and raised in the territory of one or both Parties;

(d) goods obtained from live animals in the territory of one or both Parties;

(e) goods obtained from hunting, trapping, fishing, gathering, capturing or aquaculture conducted in the territory of one or both Parties;

(f) fish, shellfish, plant and other marine life taken within maritime zones over which each Party exercises sovereignty, sovereign rights and jurisdiction in accordance with the applicable legislation of that Party or the relevant provisions of international law under the *United Nations Convention on the Law of the Sea*, done at Montego Bay on 10 December 1982; or taken from the high seas, in accordance with the relevant provisions of international law under the *United Nations Convention on the Law of the Sea*, by vessels that are entitled to fly the flag of Peru or Thailand;

(g) goods produced on board factory ships entitled to fly the flag of Peru or Thailand from the goods taken from the high seas referred to subparagraph (f);

(h) goods taken by a Party or a person of a Party from the seabed or subsoil beneath the seabed over which that Party has exclusive rights in accordance with the applicable legislation of that Party or the relevant provisions of international law

under the *United Nations Convention on the Law of the Sea,* done at Montego Bay on 10 December 1982;

(i) waste and scrap derived from production in the territory of one or both Parties, or used goods collected in the territory of one or both Parties, provided that such goods are fit only for the recovery of raw materials; and

(j) goods produced entirely in the territory of one or both Parties exclusively from goods referred to in subparagraphs (a) to (i) of this Article.

Article 3.4: Regional Value Content

1. Where Annex 3-A (Product Specific Rules of Origin) specifies a regional value content requirement, the calculation shall be based on the following method:

$$RVC = \frac{FOB - VNM}{FOB} \times 100$$

where:

(a) "RVC" is the regional value content of the good, expressed as a percentage;

(b) "FOB" is the value of the good free on board, inclusive of the cost of transport (regardless of the mode of transport) to the port or site of final shipment abroad; and

(c) "VNM" is the value of all non-originating materials.

2. The value of a non-originating material shall be:

(a) in the case of a material imported, the CIF value at the time of importation of the material; and

(b) in the case of a material acquired by the producer in the territory where the good is produced, the transaction value, without considering the costs of freight, insurance, packing, and the other costs incurred in the transportation of the material from the warehouse of the supplier to the place where the producer is.

3. To determine the RVC, the GAAP shall be applied.

Article 3.5: Minimal Operations

1. The following minimal operations shall not confer origin to a non-originating good or material:

(a) operations to ensure the preservation of goods in good condition during transport and storage;

(b) sifting or screening, sorting, classifying, matching, washing, painting, slicing, mixing, cutting and repacking;

(c) change of packaging, breaking up and assembly of packages;

(d) affixing of marks, labels, trademarks or other distinguishing signs on goods or its packaging;

(e) disassembly of goods in its parts;

(f) simple[1] assembly of parts or products to constitute a complete product;

(g) placing in bottles, flasks, bags, cases, boxes and other packaging operation or fixing on cards or boards;

(h) cleaning, including removal of dust, oxide, oil, paint or other coverings;

(i) application of oil;

(j) slaughtering of animals;

(k) mixing of materials, dilution in water or another substance that does not materially alter the characteristics of the goods; and

(l) goods processed by a combination of two or more operations referred to in subparagraphs (a) through (k) above.

2. Paragraph 1 shall prevail over the product specific rules of origin as set out in Annex 3-A (Product Specific Rules of Origin).

Article 3.6: Accumulation

1. Originating goods or materials of one Party, incorporated into any good in the territory of the other Party, shall be considered originating goods in the territory of such other Party.

2. A good is an originating good, when the good is produced in the territory of one or both Parties, by one or more producers, provided that the good satisfies the requirements in Article 3.2 (Originating Goods) and all other requirements in this Chapter.

Article 3.7: *De Minimis*

A good produced in the territory of one or both Parties shall be an originating good if the value of all the non-originating materials used in the production of the good that do not satisfy the requirement of change in tariff classification set forth in Annex 3-A (Product Specific Rules of Origin), does not exceed 10% of the FOB value of the good.

[1] For the purposes of this Article, "**simple**" describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity.

Article 3.8: Fungible Goods and Materials

1. In determining whether a good or material is an originating good or material, any fungible good or material shall be distinguished by:

(a) physical segregation of each fungible good or material; or

(b) using any inventory management method, recognised in the GAAP of a Party in which the production is performed or otherwise accepted by that Party.

2. The inventory management method selected under paragraph 1 for a particular fungible good or material shall continue to be used for that good or material throughout all the fiscal year of the person that selected the inventory management method.

Article 3.9: Accessories, Spare Parts, Tools, and Instructional or Other Information Materials

The origin of the accessories, spare parts, tools, and instructional or other information materials classified and delivered with a good at the time of importation:

(a) shall be disregarded if the good is wholly obtained or subject to a change in tariff classification requirement or an applicable process set out in Annex 3-A (Product Specific Rules of Origin); or

(b) shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good, if the good is subject to a regional value content requirement;

provided that:

(i) accessories, spare parts, tools, and instructional or other information materials are not invoiced separately from the originating goods; and

(ii) the quantities and value of the accessories, spare parts, tools, and instructional or other information materials are customary for the originating goods.

Article 3.10: Packaging Materials and Containers for Retail Sale

1. Packaging materials and containers, in which the goods are packaged for retail sale, if classified with the goods, shall be disregarded whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification or process set out in Annex 3-A (Product Specific Rules of Origin) or whether the good is wholly obtained or produced.

2. When the goods are subject to a regional value content requirement, the value of such packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 3.11: Packing Materials and Containers for Transportation

In all cases, packing materials and containers for transportation shall be disregarded in determining the origin of the goods.

Article 3.12: Indirect Materials

Indirect materials shall be considered to be originating materials, without regard to where they are produced.

Article 3.13: Sets or Assortments of Goods

1. Sets or assortments of goods, as a result of the application of the General Rules for the Interpretation of the Harmonized System, shall be originating only if each good in the set or assortment of goods is an originating good, and both the set or assortment of goods and the goods meet all other applicable requirements in this Chapter.

2. Notwithstanding paragraph 1, a set or assortment of goods is originating, if the value of all non-originating goods in the set or assortment of goods does not exceed 15% of the FOB value of the set or assortment.

Article 3.14: Direct Transport

1. In order for originating goods to maintain their originating status, the goods shall be transported directly between the Parties. The following shall be considered to be transported directly from the exporting Party to the importing Party:

(a) goods that are transported without passing through the territory of a non-Party or non-Parties; or

(b) the goods transported in transit, through one or more non-Parties, with or without transshipment or temporary storage, under the control of the customs authority of the non-Party or non-Parties, provided that:

(i) the goods are not allocated to the trade or use in the country of transit; and

(ii) the goods have not undergone any operation in the territory of the non-Party or non-Parties other than unloading, reloading or any other operation necessary to preserve them in good condition.

2. Compliance with subparagraph 1(b) shall be demonstrated by presenting the following documentation to the importing Party:

(a) In the case of transit or transshipment: the transportation documents, such as the air waybill, the bill of lading or the multimodal or combined transportation document, that certify the transport from the exporting Party to the importing Party, as the case may be; and

(b) In the case of transit with temporary storage: the transportation documents, such as the air waybill, the bill of lading or the multimodal or combined transportation document, that certify the transport from the exporting Party to the importing Party, as the case may be. Additionally, upon request by the customs authority of the importing Party, the documents issued by the customs authority or other competent authority of the non-Party or non-Parties that authorised the storage, according to the non-Party's or non-Parties' domestic legislation.

Article 3.15: Sub-Committee on Rules of Origin

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Rules of Origin (hereinafter referred to as the "Sub-Committee").

2. The functions of the Sub-Committee shall be to:

(a) review and make recommendations to the Joint Commission on:

(i) the implementation and operation of this Chapter;

(ii) amendments to this Chapter, Annex 3-A (Product Specific Rules of Origin) and Annex 3-B (Minimal Information Requirement for the Certificate of Origin), proposed by any Party; and

(iii) amendments to Annex 3-A (Product Specific Rules of Origin) on the basis of the transposition of the Harmonized System;

(b) consider any other matter related to this Chapter, as the Parties may agree;

(c) report its findings to the Joint Commission; and

(d) any other functions assigned by the Joint Commission.

SECTION II: Operational Procedures

Article 3.16: Claim of Preferential Tariff Treatment

Except as otherwise provided for in Article 3.25 (Refund), each Party shall require an importer in its territory that claims preferential tariff treatment to:

(a) make a declaration in the customs declaration indicating that the good qualifies as an originating good;

(b) have a valid Certificate of Origin in its possession at the time the declaration referred to in subparagraph (a) is made;

(c) have in its possession the documents which certify that the requirements established in Article 3.14 (Direct Transport) have been met, where applicable; and

(d) submit the valid Certificate of Origin, as well as the documents referred to in subparagraph (c) to the customs authority, where it is required.

Article 3.17: Certificate of Origin

1. The Certificate of Origin is used to provide evidence that the good exported from the territory of one Party to the territory of the other Party is an originating good, as provided under this Chapter.

2. The Certificate of Origin shall contain information specified in the minimum information requirement as set out in Annex 3-B (Minimal Information Requirement for the Certificate of Origin). For the purposes of the entry into force of this Agreement, the Parties shall exchange their respective Certificate of Origin format. Any change to the Certificate of Origin format shall be notified in writing and in English to the other Party, indicating the date of entry into force of such change.

3. Each Certificate of Origin shall cover one shipment of one or several goods that are transported by one or more means of transport.

4. The issuance of Certificates of Origin shall be responsibility of the competent authorities of each Party. The Certificates of Origin shall be issued by the competent authority, in accordance with the respective laws and regulations of the Party.

5. Application for a Certificate of Origin shall be made by the exporter of the good. That exporter shall provide to the competent authority of the exporting Party its application with the commercial invoice and any other necessary documents that evidence that the good complies with the rules of origin under this Chapter.

6. The Certificate of Origin shall be submitted in English. However, the customs authority of the importing Party may require the importer to submit a translation of the Certificate of Origin in the language of the importing Party.

7. The Certificate of Origin shall include the name and signature of the officer designated by the competent authority of the exporting Party, as well as the official seal of the competent authority of the exporting Party. The Certificate of Origin shall not have any amendment.

8. Before the entry into force of this Agreement, Parties shall agree whether the signature of the exporter and the officer designated by the competent authority of the exporting Party and the official seal of the competent authority of the exporting Party can be scanned, applied manually or electronically. Any change in the format of the signature or the official seal shall be agreed by the Parties.

9. The Certificate of Origin shall be valid for one year from the date of issuance. It shall not be issued prior to the date of issuance of the commercial invoice and no later than the date of shipment.

10. Notwithstanding paragraph 9, a Certificate of Origin may, under exceptional circumstances, be issued retroactively subsequent to the shipment of the good if:

(a) a Certificate of Origin has not been issued at the time of shipment due to errors, omissions or any other circumstances or the Certificate of Origin was issued and it contains errors that were detected before the Certificate of Origin is submitted to the customs authority of the importing Party. The Certificate of Origin shall be issued no later than one year after the date of shipment; or

(b) the Certificate of Origin was issued but was not accepted at importation for technical reasons. The Certificate of Origin issued retroactively shall include the number of the original Certificate of Origin and the date of its issuance. The validation period shall remain the same as indicated in the original Certificate of Origin.

In such cases, in the Certificate of Origin shall be indicated "ISSUED RETROACTIVELY".

11. In the event of theft, loss or destruction of a Certificate of Origin, the exporter may apply in writing to the competent authority of the exporting Party which issued it for a certified true copy of the original to be made on the basis of the export documents in its possession bearing the endorsement of the phrase "CERTIFIED TRUE COPY". The certified true copy shall include the number of the original Certificate of Origin and the date of its issuance. The certified true copy shall be valid during the validity period of the original Certificate of Origin.

Article 3.18: Competent Authorities

1. The competent authority of a Party shall notify to the relevant authority of the other Party the names and specimen signatures of the officers designated and specimen of official seals used for the issuance of the Certificate of Origin.

2. Any change to the information provided in paragraph 1 shall be notified by the competent authority of a Party to the relevant authority of the other Party, indicating the date of the entry into force of such change.

3. The competent authority of each Party shall:

(a) verify that the goods are originating goods according to the rules of origin of this Chapter;

(b) ensure that the statements of the Certificate of Origin correspond to supporting documentary evidence submitted;

(c) ensure that the description, quantity and weight of goods, as specified, conform to the consignment to be exported;

(d) ensure that each Certificate of Origin bears a unique reference number; and

(e) provide the means necessary for supervising their actions.

Article 3.19: Control of the Certificates of Origin

1. When the importing Party has a reasonable doubt on the origin of a good or the authenticity of a Certificate of Origin, the good may be released upon a guarantee or the payment of duties, pending the outcome of the verification of origin. The guarantee or duties paid shall be refunded once the outcome of the verification confirms that the good qualifies as an originating good.

2. When the Certificate of Origin contains mistakes or is incomplete, the customs authority of the importing Party shall notify the importer and grant a term of 60 days following the date of reception of the notification to submit the correction of the Certificate of Origin, upon a guarantee or the payment of duties. If the importer fails to submit the correction within the 60 days, the customs authority of the importing Party shall deny preferential tariff treatment and the deposit shall be effective or the corresponding duties shall be collected.

3. The Parties shall exchange electronic access to verify the authenticity of the Certificates of Origin issued by their competent authorities. This information shall be for exclusively use of the competent and the relevant authorities.

4. The customs authority of the importing Party shall not reject a Certificate of Origin due to minor discrepancies such as slight discrepancies between documents or errors such as typing errors or protrusions from the designated field, provided that these minor discrepancies or errors do not create doubt as to the originating status of the good.

Article 3.20: Record Keeping Requirements

1. The exporter shall maintain, for a minimum of five years from the date the Certificate of Origin was issued, all records necessary to demonstrate that a good for which the exporter provided a Certificate of Origin was an originating good.

2. The importer claiming preferential tariff treatment for a good imported into the territory of a Party shall maintain, for a minimum of five years from the date of importation of the good, all records necessary to demonstrate the good qualified for the preferential tariff treatment.

3. The competent authority shall maintain, for a minimum of five years from the date of the issuance of the Certificate of Origin, a copy of the Certificate of Origin and all the supporting documents for the issuance of the Certificate of Origin.

Article 3.21: Verification of Origin

1. For the purposes of determining whether a good imported into the territory of a Party from the territory of the other Party qualifies as an originating good, the relevant authority of the importing Party may conduct verification of origin by one or more of the following means:

(a) written requests for information from the importer;

(b) written requests for information from the exporter or producer through the competent authority of the exporting Party;

(c) requests that the competent authority of the exporting Party assists in verifying the origin of the good; or

(d) verification visits to the premises of an exporter or producer in the territory of the other Party, along with officials of the competent authority of the exporting Party, to observe the facilities and the production processes of the good and to review the records referred to in Article 3.20 (Record Keeping Requirements), including accounting files.

2. Requests made under subparagraph 1(b) or 1(c) by the relevant authority of the importing Party and all the information provided in response by the competent authority of the exporting Party shall be in English.

3. Where the importer, exporter or producer fails to answer the written request for additional information that the importing Party made under subparagraph 1(a) or 1(b) within 90 days following the date of the receipt of the request, the importing Party may deny preferential tariff treatment to the relevant good.

4. Where the relevant authority of the importing Party requests assistance under subparagraph 1(c):

(a) it shall provide the competent authority of the exporting Party with:

(i) the reasons why such assistance for verification is requested;

(ii) the Certificate of Origin of the good or a copy thereof; and

(iii) any information and documents as may be necessary for the purposes of such request;

(b) the competent authority of the exporting Party shall provide the relevant authority of the importing Party with a written statement in English, including facts and findings, and any supporting documents made available by the exporter or producer. This statement shall indicate clearly whether the good concerned is an originating good and has fulfilled other applicable requirements under this Chapter. If the good can be considered to be an originating good, the statement shall include a detailed explanation of how the good obtained the originating status; and

(c) in case where the competent authority of the exporting Party fails to provide the written statement within 180 days following the date of the receipt of the request or where the written statement provided does not contain sufficient information, the importing Party may deny preferential tariff treatment to the relevant good.

5. Where the relevant authority of the importing Party intends to conduct verification under subparagraph 1(d), it shall notify in writing, 45 days prior to the verification visit, to the producer or exporter, through the competent authority of the exporting Party of such a request. In case where the producer or exporter, does not give its written consent to such request, through the competent authority of the exporting Party, within 45 days following the date of

the receipt of the notification, the importing Party may deny preferential tariff treatment to the relevant good.

6. Where the relevant authority of the importing Party intends to conduct a verification visit under paragraph 5, it shall notify the competent authority of the exporting Party with:

(a) the name of the producer or exporter, whose premises are requested to be visited;

(b) the proposed date and place of the visit;

(c) the scope of the proposed visit, including specific reference to the good subject to the verification, referred in the Certificate of Origin; and

(d) the names and titles of the officials of the relevant authority of the importing Party that are in charge of the visit.

7. The importing Party shall, within one year following the initiation of the verification, notify the importer and the exporting Party, including the exporter or producer through the competent authority of the exporting Party, in writing, of the determination whether the good is an originating good, as well as factual findings and the legal basis for the determination.

8. In accordance with its respective domestic legislation, the importing Party may suspend preferential tariff treatment to an importer on any subsequent import of a good when the relevant authority of the importing Party had already determined that the good that was produced by the same producer was not eligible for such treatment, until it is demonstrated that the good complies with the requirements under this Chapter.

Article 3.22: Determination of the Verification of Origin

If as a result of the verification of origin:

(a) the originating status of the good is acknowledged, the importing Party shall deem the verification process as terminated and shall return the guarantee given or the value of the corresponding liens.

(b) the good does not qualify as an originating good, the importing Party shall collect the corresponding liens or shall honour the guarantee. Additionally, the importing Party may apply the corresponding penalties according to its domestic laws.

Article 3.23: Penalties

Each Party shall adopt or maintain measures that allow the imposition of civil, administrative or criminal penalties against violations of its laws and regulations relating to this Chapter.

Article 3.24: Non-Party Invoicing

For the purposes of granting preferential tariff treatment, the customs authority of the importing Party shall accept a Certificate of Origin in cases where the commercial invoice covering the goods included in the Certificate of Origin is issued by an operator located in the exporting Party or in a non-Party, provided that the goods meet all the applicable requirements of this Chapter.

Article 3.25: Refund

1. Where a good would have qualified as an originating good when it was imported into the territory of the importing Party, but no claim for preferential tariff treatment was made at the time of importation, the importer may within one year following the date of importation claim preferential tariff treatment and apply for refund of any excess duties, provided that before the release of the good, the importer has declared in the customs declaration his intention to claim preferential tariff treatment later.

2. In this case, the importer shall submit to the customs authority of the importing Party the following documentation:

(a) a valid Certificate of Origin demonstrating that the good was an originating good; and

(b) such other documents related to the importation of the good as the importing Party may require.

Article 3.26: Electronic Certificate of Origin

The Parties may begin to develop the electronic Certificate of Origin with the aim of implementing it, if they agree.

Article 3.27: Contact Points

1. Each competent authority and relevant authority shall designate one or more contact points for the purposes of this Chapter and provide contact details of such contact points to the competent authority and relevant authority of the other Party.

2. The contact details shall include the names, position, address, telephone number and e-mail address.

3. Any change to contact details shall be notified in writing and in English to the other Party within 30 days after the date of modification.

Article 3.28: Future Working Plan

For the goods indicated as “For Future Negotiation” in the Annex 3-A (Product Specific Rules of Origin), the Parties shall agree the respective product specific rules of origin.