

## **CHAPTER THREE RULES OF ORIGIN**

### ARTICLE 3.1: ORIGINATING GOODS

1. Except as otherwise provided in this Chapter, a good shall be treated as originating in a Party where the good is:
  - (a) wholly obtained or produced entirely in the territory of one or both of the Parties;
  - (b) produced entirely in the territory of one or both of the Parties, exclusively from originating materials under this Chapter; or
  - (c) produced entirely in the territory of one or both of the Parties using non-originating materials, satisfying the requirements under Annex 3A.
2. Additionally, the good shall satisfy all the other applicable requirements of this Chapter.

### ARTICLE 3.2: WHOLLY OBTAINED OR PRODUCED GOODS

For purposes of Article 3.1.1(a), the following goods are wholly obtained or produced entirely in the territory of one or both of the Parties:

- (a) live animals born and raised in the territory of Korea or Peru;
- (b) goods obtained from live animals born and raised in the territory of Korea or Peru;
- (c) goods obtained by hunting, trapping, fishing, or aquaculture in the territory of Korea or Peru<sup>1</sup>;
- (d) goods of sea-fishing and other goods taken from the sea outside the territory of a Party by vessels registered or recorded with a Party and flying its flag;
- (e) goods produced on board factory ships, exclusively from the goods referred to in subparagraph (d), provided that such factory ships are registered or recorded with a Party and fly its flag;
- (f) plants and plant products grown and harvested, picked, or gathered in the territory of Korea or Peru;

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<sup>1</sup> Notwithstanding this subparagraph, goods of sea-fishing and other goods taken from the sea within the territories of the Parties by vessels registered or recorded with a non-Party and flying its flag shall not be regarded as wholly obtained or produced entirely in the territory of one or both of the Parties under this Article.

- (g) mineral goods and other naturally occurring substances extracted from the soil, waters, seabed, or beneath the seabed of Korea or Peru;
- (h) goods taken or extracted by a Party or a person of a Party from the seabed or beneath the seabed outside the territory of a Party, provided that the Party has rights to exploit them;
- (i) waste and scrap derived from:
  - (i) manufacturing operations conducted in the territory of Korea or Peru; or
  - (ii) used goods collected in the territory of Korea or Peru,
 provided that such waste and scrap is fit only for the recovery of raw materials; and
- (j) goods produced exclusively from goods specified in subparagraphs (a) through (i).

ARTICLE 3.3: REGIONAL VALUE CONTENT (RVC)

1. The regional value content of a good shall be calculated on the basis of one of the following methods:

- (a) Method Based on Value of Non-Originating Materials (Build-down Method)

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

- (b) Method Based on Value of Originating Materials (Build-up Method)

$$RVC = \frac{VOM}{FOB} \times 100$$

where,

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

FOB is the free on board value of the good;

VNM is the value of the non-originating materials; and

VOM is the value of the originating materials.

2. The value of the non-originating materials shall be:

- (a) in the case of a material imported directly by the producer of a good, the CIF value at the time of importation of the material;
- (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; or
- (c) in the case of a self-produced material or where the relationship between the producer of the good and the seller of the material influences the price actually paid or payable for the material, the sum of all costs incurred in the production of the material, including general expenses. Additionally, it will be possible to add an amount for profit equivalent to the profit added in the normal course of trade.

3. The values referred to in this Article shall be determined in accordance with the Customs Valuation Agreement.

#### ARTICLE 3.4: INTERMEDIATE MATERIALS

1. When an originating good is used in the subsequent production of another good, no account shall be taken of the non-originating materials contained in the originating good for purposes of determining the originating status of the subsequently produced good.

2. When a non-originating good is used in the subsequent production of another good:

- (a) for purposes of calculating the value of the non-originating materials of the subsequently produced good, an account shall be taken only of the non-originating materials contained in the non-originating good; and
- (b) for purposes of calculating the value of the originating materials of the subsequently produced good, an account shall be taken of the originating materials contained in the non-originating good.

#### ARTICLE 3.5: NON-QUALIFYING OPERATIONS

1. The following operations shall be considered to be non-qualifying operations to confer the status of originating goods, whether or not the requirements under this Chapter are satisfied:

- (a) operations to ensure the preservation of goods in good condition during transport and storage;
- (b) changes of packing or breaking-up or assembly of packages;

- (c) washing, cleaning, removal of dust, oxide, oil, paint, or other coverings;
- (d) ironing or pressing of textiles;
- (e) simple painting and polishing operations;
- (f) husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- (g) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards, and all other simple packing operations;
- (h) simple mixing of products, whether or not of different kinds;
- (i) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (j) slaughter of animals; or
- (k) a combination of two or more operations specified in subparagraphs (a) through (j).

2. All operations carried out in a Party on a given good shall be considered together when determining whether the operations undergone by that good are to be regarded as non-qualifying within the meaning of paragraph 1.

3. For purposes of this Article:

- (a) **simple** means activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity;
- (b) **simple mixing** means activities which need neither special skills nor machines, apparatus, or equipment especially produced or installed for carrying out the activity but does not include chemical reaction; and
- (c) **chemical reaction** means a process (including a biochemical process) which results 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.

#### ARTICLE 3.6: ACCUMULATION

1. Originating goods or materials from the territory 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.

2. Production carried out by a producer in the territory of a Party may be accumulated with the production of one or more producers in the territory of that Party or the other Party,

in such way that the production of the materials incorporated into the good shall be considered as carried out by that producer, provided that the good satisfies the requirements established in Article 3.1 and all other applicable requirements in this Chapter.

#### ARTICLE 3.7: DE MINIMIS

1. A good that does not undergo a change in tariff classification in accordance with Annex 3A shall nonetheless be considered to be originating if the value of all non-originating materials that have been used in its production and do not undergo the applicable change in tariff classification does not exceed 10 percent of the value of the good, determined in accordance with Article 3.3 if:

- (a) the value of such non-originating materials is included in the value of non-originating materials for any applicable regional value content requirement; and
- (b) the good satisfies all other applicable requirements in this Chapter.

2. Paragraph 1 shall not apply to goods classified in Chapters 1 through 14 and in Chapters 50 through 63 of the HS. A good classified in Chapters 50 through 63 of the HS, produced in the territory of a Party, shall be considered an originating good if the total weight of all non-originating fibers or yarns used in the production of the component that determines the tariff classification of that good, that do not undergo the applicable change in tariff classification, does not exceed 10 percent of the weight of the good.

#### ARTICLE 3.8: FUNGIBLE GOODS OR MATERIALS

1. In determining whether a good or material is originating for purposes of granting preferential tariff treatment, any fungible goods or materials shall be distinguished by:

- (a) physically separating each fungible good or material; or
- (b) using any inventory management method, such as averaging, last-in-first-out (LIFO) or first-in-first-out (FIFO), recognized in the generally accepted accounting principles of a Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

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 the fiscal year of the person that selected the inventory management method.

#### ARTICLE 3.9: SETS

A set, as defined in General Rule 3 of the HS, shall be regarded as originating when all the components of the set are originating. Nevertheless, when a set is composed of originating and non-originating goods, the set as a whole shall be regarded as originating, provided that

the value of the non-originating goods does not exceed 15 percent of the total value of the set, determined in accordance with Article 3.3.

#### ARTICLE 3.10: ACCESSORIES, SPARE PARTS, AND TOOLS

The origin of the accessories, spare parts, or tools delivered with a good at the time of importation:

- (a) shall be disregarded if the good is subject to a change in tariff classification requirement; and
- (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:

- (a) the accessories, spare parts, or tools are not invoiced separately from the good, regardless of whether they appear specified or separately identified in the invoice itself; and
- (b) the quantities and value of the accessories, spare parts, or tools are customary for the good.

#### ARTICLE 3.11: PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE

1. Where packaging materials and containers are classified with a good, the origin of the packaging materials and containers in which the good is packaged for retail sale, shall be disregarded in determining the origin of the good, provided that:

- (a) the good is wholly obtained or produced entirely in the territory of one or both of the Parties as set out in Article 3.1.1(a);
- (b) the good is produced exclusively from originating materials, as set out in Article 3.1.1(b); or
- (c) the good is subject to a change in tariff classification requirement set out in Annex 3A.

2. Where a good is subject to a regional value content requirement, the value of the packaging materials and containers used for retail sale shall be taken into account when determining the origin of the good.

#### ARTICLE 3.12: PACKING MATERIALS AND CONTAINERS FOR SHIPMENT

Packing materials and containers used to protect a good during its transportation shall not be taken into account when determining the origin of the good.

#### ARTICLE 3.13: INDIRECT MATERIALS

1. For purposes of determining whether a good is originating, the origin of the indirect materials defined in paragraph 2 shall not be taken into account.

2. **Indirect materials** means articles used in the production of a good which are neither physically incorporated into it, nor form part of it, including:

- (a) fuel, energy, catalysts, and solvents;
- (b) equipment, devices, and supplies used for testing or inspecting 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 goods that are 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.

#### 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.

2. Notwithstanding paragraph 1, 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; and
- (b) goods whose transport involves transit through one or more non-Parties, with or without trans-shipment or temporary storage in such non-Parties, under control of the customs authority, provided that the goods do not:
  - (i) enter into trade or commerce there; and
  - (ii) undergo any operation there other than unloading and reloading, repacking, or any operation required to keep them in good condition.

3. Compliance with paragraphs 1 and 2 shall be demonstrated by presenting the following documentation to the customs authority of the importing Party:

- (a) in the case of transit or trans-shipment, the transportation documents, such as the airway bill, the bill of lading, or the multimodal or combined transportation document, that certify the transport from the country of origin to the importing country, as the case may be; and
- (b) in the case of storage, the transportation documents, such as the airway bill, the bill of lading, or the multimodal or combined transportation document, that certify the transport from the country of origin to the importing country, as the case may be, as well as the documents issued by the customs authority or other competent authority that authorized this operation in accordance with the domestic legislation of the non-Party.

#### ARTICLE 3.15: PRINCIPLE OF TERRITORIALITY

1. The conditions for acquiring originating status set out in Articles 3.1 through 3.14 must be fulfilled without interruption in the territory of one or both of the Parties.

2. Notwithstanding paragraph 1, an originating good exported from a Party to a non-Party shall when returned be considered to be non-originating unless it can be demonstrated to the satisfaction of the customs authorities in accordance with laws and regulations of the importing Party concerned that the returning good:

- (a) is the same as that exported; and
- (b) has not undergone any operation beyond that necessary to preserve it in good condition while being exported.

3. Notwithstanding paragraphs 1 and 2, goods listed in Annex 3B shall be considered to be originating in accordance with Annex 3B, even if such goods have undergone operations and processes outside the territories of the Parties.

#### ARTICLE 3.16: DEFINITIONS

For purposes of this Chapter:

**aquaculture** means the farming of aquatic organisms, including fish, mollusks, 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, protection from predators, etc.;

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



**competent authority** means:

- (a) for Korea, the *Ministry of Strategy and Finance*, or its successor; and
- (b) for Peru, the *Ministry of Foreign Trade and Tourism*, or its successor;

**exporter** means a person located in the territory of a Party from where a good is exported by such a person;

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

**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 recognized consensus or substantial authoritative support given 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. Generally accepted accounting principles may encompass broad guidelines for general application, as well as detailed standards, practices, and procedures;

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

**importer** means a person located in the territory of a Party where a good is imported by such a person;

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

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

**originating material** means a material that qualifies as originating under Article 3.1;

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

**production** means growing, raising, extracting, picking, gathering, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, or assembling a good.