

Chapter 3 Rules of Origin

Article 3.1: Definitions

For purposes of this Chapter:

aquaculture refers to the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seed-stock 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*;

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 the recognized 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. 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;

indirect material means a good used in the production, testing, or inspection of a 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 and energy;
- (b) tools, dies, and molds;
- (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 whose use in the production of the good can reasonably be demonstrated to be a part of that production;

material refers to a good used in the production of another good, including any parts or ingredients;

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

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

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

production means growing, harvesting, extracting, mining, raising, capturing, fishing, trapping, hunting, manufacturing, remanufacturing, processing, assembling or disassembling a good;

recovered goods means materials in the form of individual parts that result from:

- (a) the complete disassembly of used goods into individual parts; and
- (b) the cleaning, inspecting, or testing, and one or more of the following processes as necessary for improvement to sound working condition: welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding in order for such parts to be assembled with other parts, including other recovered parts in the production of a remanufactured good;

remanufactured good means an industrial good under chapters 84 to 90 of the Harmonized System, except for the goods classified under headings 8418, 8423, 8510, 8516 and 8536 that, assembled in the territory of a Party:

- (a) is entirely or partially comprised of recovered goods;
- (b) has the same life expectancy and meets the same performance standards as a new good; and

- (c) enjoys the same factory warranty as such a new good;
and

used means used or consumed in the production of goods.

Article 3.2: Originating Goods

1. Except as otherwise provided in this Chapter, each Party shall provide that a good is originating where:

- (a) the good is wholly obtained or produced entirely in the territory of one or both Parties, according to Article 3.4 (Wholly Obtained or Produced Goods);
- (b) the good is produced entirely in the territory of one or both Parties, exclusively from materials whose origin complies with the provisions of this Chapter; or
- (c) the good is produced in the territory of one or both Parties, using non-originating materials that conform to a change in tariff classification, a qualifying value content, or any other requirements, according to Article 3.5 (Not Wholly Obtained or Produced Goods).

2. In addition to paragraph 1, the good shall meet the other applicable requirements under this Chapter.

Article 3.3: Minimal Operations

Notwithstanding any provision in this Chapter and Annex 3.1 (Exceptions for the General Rule of Origin under Article 3.5), a good shall not be considered to have satisfied the requirements for an originating good merely by reason of going through any or all of the following operations:

- (a) operations to ensure the conservation or preservation of goods in good condition during transport and storage, such as ventilation, cooling, freezing, extraction of damaged parts, drying or addition of substances;
- (b) sifting, peeling, classifying, selecting, washing, filtering, cutting, shelling, and drying;
- (c) packaging, re-packaging, breaking up and putting the good for retail sale;
- (d) affixing of marks, labels, trade marks or other distinguishing signs on goods;

- (e) simple mixing, dilution in water or in another watery substance, ionized or saline;
- (f) application of oil, salt, sugar or any sweetener;
- (g) disassembly of goods in its parts;
- (h) placing in bottles, cases, boxes and other packaging operation; and
- (i) simple² assembly of parts or goods to constitute a complete good.

Article 3.4: Wholly Obtained or Produced Goods

Goods wholly obtained or produced entirely in the territory of one or both Parties means goods that are:

- (a) plants and plant products harvested or gathered in the territory of one or both Parties;
- (b) live animals born and raised in the territory of one or both Parties;
- (c) goods obtained in the territory of one or both Parties from live animals;
- (d) goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both Parties;
- (e) minerals and other non-living natural resource not included in subparagraphs (a) through (d) extracted or taken from the territory of one or both Parties;
- (f) goods of sea fishing and other marine goods taken from outside its territory by a vessel registered, recorded or licensed with that Party, and entitled to fly its flag³;
- (g) goods produced and/or made on board a factory ship from goods referred to in subparagraph (f), provided such factory ship is registered, recorded or licensed with that Party and entitled to fly its flag;

² “Simple” generally describes an activity which does not need special skills, machines, apparatus or equipment specially produced or installed for carrying out the activity.

³ Costa Rica reiterates, under its domestic laws and international instruments, the commitments undertaken on the adoption, respect and promotion of responsible fisheries through fisheries management measures.

- (h) goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed outside its territory, provided that the Party has rights to exploit such seabed;
- (i) waste and scrap derived from:
 - i. production in the territory of one or both Parties; or
 - ii. used goods collected in the territory of one or both Parties, provided that such goods are fit only for the recovery of raw materials;
- (j) recovered goods derived in the territory of one or both Parties from used goods and utilized in the territory of one or both Parties in the production of remanufactured goods; and
- (k) goods produced in the territory of one or both Parties exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives, at any stage of production.

Article 3.5: Not Wholly Obtained or Produced Goods

1. For purposes of this Agreement, goods, which have undergone sufficient production in the territory of one or both Parties, as provided under this Article, shall be treated as originating goods of that Party.

2. A good is considered to have undergone sufficient production in the territory of one or both Parties if:

- (a) it fulfills the product-specific rule as set out in Annex 3.1 (Exceptions for the General Rule of Origin under Article 3.5); or
- (b) where there is no product-specific rule as set out in Annex 3.1 (Exceptions for the General Rule of Origin under Article 3.5), it shall undergo a change in tariff classification at the six digit level of the Harmonized System from that of the good (“change in tariff subheading”); or the good shall fulfill a qualifying value content of not less than 35% determined in accordance with Article 3.6 (Qualifying Value Content).

Article 3.6: Qualifying Value Content

1. For the purpose of paragraph 2 of Article 3.5 (Not Wholly Obtained or Produced Goods), the following formula for qualifying value content shall be applied:

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

Where:

- (a) "QVC" is the qualifying value content of the good, expressed as a percentage;
- (b) "FOB" is the Free On Board value of the particular good determined in accordance with the Customs Valuation Agreement; and
- (c) "VNM" is the value of non-originating materials used by the producer in the production of the good, calculated in accordance with paragraph 2 below.

2. For the purpose of calculating the value of non-originating materials pursuant to subparagraph (c) above, the following formula shall be applied:

$$VNM = TVM - QVM$$

Where:

- (a) "TVM" is the total value of materials; and
- (b) "QVM" is the qualifying value of materials, which shall be calculated as:
 - i. the total value of the material if the material satisfies the rule established in Article 3.2 (Originating Goods), and the material has undergone its last production or operation in the territory of either Party; or
 - ii. the value of the material that can be attributed to one or both of the Parties if the material does not satisfy the rule established in Article 3.2 (Originating Goods).

3. All costs considered for the calculation of qualifying value content shall be recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of the Party where the good is produced.

Article 3.7: Value of Materials

For purposes of Article 3.6 (Qualifying Value Content), the value of a material shall be:

- (a) the CIF (Cost, Insurance and Freight) value of the material, determined in accordance with the Customs Valuation Agreement, for a material imported directly by the producer of the good;
- (b) for a material acquired by the producer in the territory where the good is produced, the transaction value, or if this is not known and cannot be ascertained, the first ascertainable price paid for the material in the Party; or
- (c) for a material that is self-produced, 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, including a material obtained without charge, the sum of:
 - i. all expenses incurred in the production of the material, including general expenses; and
 - ii. an amount for profit equivalent to the profit added in the normal course of trade.

Article 3.8: De Minimis

Notwithstanding Article 3.5 (Not Wholly Obtained or Produced Goods), a good shall be considered to be originating if the value of all non-originating materials used in the production of that good, which do not satisfy the requirement of change in tariff classification as set out in Article 3.5 (Not Wholly Obtained or Produced Goods) is not more than 10% of the FOB value of the good.

Article 3.9: Accumulation

1. Originating goods or materials from the territory of one or both Parties, used in the production of a good in the territory of the other Party, shall be considered to originate in the territory of the other Party.
2. The production of one or both Parties includes the production at different stages undertaken by one or more producers located in its territory.

Article 3.10: Accessories, Spare Parts, Tools

1. Each Party shall provide that accessories, spare parts, or tools delivered with a good that form part of the good's standard accessories, spare parts, or tools, shall be treated as originating goods if the good is an originating good, and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification, provided that:

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

2. If the good is subject to a qualifying value content requirement, the value of the accessories, spare parts, or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Article 3.11: Packaging Materials and Containers for Retail Sale

Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Article 3.5 (Not Wholly Obtained or Produced Goods) and, if the good is subject to qualifying 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 qualifying value content of the good.

Article 3.12: Packing Materials and Containers for Shipment

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

Article 3.13: Fungible Goods and Materials

1. Each Party shall provide that the determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each good or material or through the use of any inventory management method, such as averaging, last-in first-out, or first-in first-out, recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

2. Each Party shall provide that an inventory management method selected under paragraph 1 for particular fungible goods or materials shall continue to be used for those fungible goods or materials throughout the fiscal year of the person that selected the inventory management method.

Article 3.14: Indirect Materials Used in Production

Each Party shall provide that an indirect material shall be treated as originating 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 3.15: Transit Through Non-Parties

1. Preferential tariff treatment provided for in this Agreement shall be applied to goods that satisfy the requirements of this Chapter and which are directly transported among the Parties.

2. Notwithstanding paragraph 1, goods that transit through non-Party countries, with or without transshipment or temporary storage, shall be eligible for preferential treatment when proved to the satisfaction of the importing country's customs authority, that:

- (a) the goods have not undergone any operation there other than unloading, reloading, or any operation necessary to preserve them in good condition;
- (b) the goods have not entered into the commerce of such non-Parties after the shipment from the Party and before the importation into the other Party;
- (c) the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements; and
- (d) the goods remain under the control of customs authorities⁴ in the territory of a non-Party.

⁴ The control referred to in subparagraph (d) refers to that which is exercised by the customs authority or the entity designated by the government of the non-Party to exercise customs functions or administer free trade zones.