

3. The Sub-Committee shall be composed of representatives of the Governments of the Parties, and may invite representatives of relevant entities other than the Governments of the Parties with necessary expertise relevant to the issues to be discussed.

Article 26 Review

The Parties shall undertake a general review of the provisions of this Chapter, including a general review of the Schedules in Annex 1 including the originating goods that are excluded from any commitment of elimination or reduction of customs duties and commitment of negotiation, in the tenth calendar year following the calendar year in which this Agreement enters into force, or earlier only if agreed between the Parties. As a result of such review, the Parties may, only if the Parties agree, enter into negotiation on possible elimination or reduction of customs duties on originating goods on which the Parties agree, during such review, to negotiate.

Chapter 3 Rules of Origin

Article 27 Definitions

For the purposes of this Chapter:

- (a) the term "competent governmental authority" means the authority that, according to the legislation of each Party, is responsible for the issuing of the certificate of origin or for the designation of the certification entities or bodies. In the case of Japan, the Ministry of Economy, Trade and Industry or an authority succeeding this Ministry, and in the case of Thailand, the Ministry of Commerce or an authority succeeding this Ministry;
- (b) the term "customs authority" means the authority that, according to the legislation of each Party or non-Parties, is responsible for the administration and enforcement of its customs laws and regulations. In the case of Japan, the Ministry of Finance, and in the case of Thailand, the Customs Department;
- (c) the term "exporter" means a person located in an exporting Party who exports a good from the exporting Party;

- (d) the terms "factory ships of the Party" and "vessels of the Party" respectively mean factory ships and vessels:
 - (i) which are registered in the Party;
 - (ii) which sail under the flag of the Party;
 - (iii) which are owned to an extent of at least 50 per cent by nationals of the Party, or by a juridical person with its head office in the Party, of which the representatives, chairman of the board of directors, and the majority of the members of such board are nationals of the Party, and of which at least 50 per cent of the equity interest is owned by nationals or juridical persons of the Party; and
 - (iv) of which at least 75 per cent of the total of the master, officers and crew are nationals of the Parties or non-Parties which are member countries of the Association of Southeast Asian Nations (hereinafter referred to in this Agreement as "ASEAN");
- (e) the term "fungible goods" or "fungible materials" respectively means goods or materials that are interchangeable for commercial purposes, whose properties are essentially identical;
- (f) the term "Generally Accepted Accounting Principles" means the recognised consensus or substantial authoritative support within a Party at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures;
- (g) the term "importer" means a person who imports a good into the importing Party in accordance with its laws and regulations;

- (h) the term "indirect material" 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 another good, including:
 - (i) fuel and energy;
 - (ii) tools, dies and molds;
 - (iii) spare parts and goods used in the maintenance of equipment and buildings;
 - (iv) lubricants, greases, compounding materials and other goods used in production or used to operate equipment and buildings;
 - (v) gloves, glasses, footwear, clothing, safety equipment and supplies;
 - (vi) equipment, devices and supplies used for testing or inspecting the goods;
 - (vii) catalysts and solvents; and
 - (viii) 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;
- (i) the term "material" means a good that is used in the production of another good;
- (j) the term "non-originating material" means a good which is used in the production of another good and does not qualify as an originating material of a Party referred to in paragraph (k) below;
- (k) the term "originating material of a Party" means an originating good of a Party which is used in the production of another good in the Party, including that which is considered as an originating material of the Party pursuant to Article 29;
- (l) the term "packing materials and containers for shipment" means goods that are used to protect a good during transportation, other than packaging materials and containers for retail sale referred to in Article 37;

- (m) the term "preferential tariff treatment" means the rate of customs duties applicable to an originating good of the exporting Party in accordance with paragraph 1 of Article 18; and
- (n) the term "production" means methods of obtaining goods including but not limited to manufacturing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing.

Article 28
Originating Goods

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

- (a) the good is wholly obtained or produced entirely in the Party, as defined in paragraph 2 below;
- (b) the good is produced entirely in the Party exclusively from originating materials of the Party; or
- (c) the good satisfies the product specific rules set out in Annex 2, as well as all other applicable requirements of this Chapter, when the good is produced entirely in the Party using non-originating materials in whole or in part.

2. For the purposes of subparagraph 1(a) above, the following goods shall be considered as being wholly obtained or produced entirely in a Party:

- (a) live animals born and raised in the Party;
- (b) animals obtained by hunting, trapping, fishing, gathering or capturing in the Party;
- (c) goods obtained from live animals in the Party;
- (d) plants and plant products harvested, picked or gathered in the Party;
- (e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d) above, extracted or taken in the Party;

- (f) goods of sea-fishing and other goods taken by vessels of the Party from the sea outside the territorial seas of the Parties;
- (g) goods produced on board factory ships of the Party from the goods referred to in subparagraph (f) above;
- (h) goods taken from the seabed or subsoil beneath the seabed outside the territorial sea of the Party, provided that the Party has rights to exploit such seabed or subsoil;
- (i) articles collected in the Party which can no longer perform their original purpose in the Party nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials;
- (j) scrap and waste derived from manufacturing or processing operations or from consumption in the Party and fit only for disposal or for the recovery of raw materials;
- (k) parts or raw materials recovered in the Party from articles which can no longer perform their original purpose nor are capable of being restored or repaired; and
- (l) goods obtained or produced in the Party exclusively from the goods referred to in subparagraphs (a) through (k) above.

3. For the purposes of subparagraph 1(c) above, the product specific rules set out in Annex 2 requiring that the materials used undergo a change in tariff classification or a specific manufacturing or processing operation shall apply only to non-originating materials.

4. (a) For the purposes of subparagraph 1(c) above, the product specific rules set out in Annex 2 using the value-added method require that the qualifying value content of a good, calculated in accordance with subparagraph (b) below, is not less than the percentage specified by the rule for the good.

- (b) For the purposes of calculating the qualifying value content of a good, the following formula shall be applied:

$$Q.V.C. = \frac{F.O.B. - V.N.M.}{F.O.B.} \times 100$$

Where:

Q.V.C. is the qualifying value content of a good, expressed as a percentage;

F.O.B. is, except as provided for in paragraph 5 below, the free-on-board value of a good payable by the buyer of the good to the seller of the good, regardless of the mode of shipment, not including any internal taxes reduced, exempted, or repaid when the good is exported; and

V.N.M. is the value of non-originating materials used in the production of a good.

5. F.O.B. referred to in subparagraph 4(b) above shall be the value:

- (a) adjusted to the first ascertainable price paid for the good from the buyer to the producer of the good, if there is free-on-board value of a good, but it is unknown and cannot be ascertained; or
- (b) determined in accordance with Articles 1 through 8 of the Agreement on Customs Valuation, if there is no free-on-board value of the good.

6. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b) above, the value of a non-originating material used in the production of the good in a Party:

- (a) shall be determined in accordance with the Agreement on Customs Valuation, and shall include freight, insurance where appropriate, packing and all the other costs incurred in transporting the material to the importation port in the Party where the producer of the good is located; or

- (b) if such value is unknown and cannot be ascertained, shall be the first ascertainable price paid for the material in the Party, but may exclude all the costs incurred in the Party in transporting the material from the warehouse of the supplier of the material to the place where the producer is located such as freight, insurance and packing as well as any other known and ascertainable cost incurred in the Party.

7. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b) above in determining whether the good qualifies as an originating good of a Party, V.N.M. of the good shall not include the value of non-originating materials used in the production of originating materials of the Party which are used in the production of the good.

8. For the purposes of subparagraph 5(b) or 6(a) above, in applying the Agreement on Customs Valuation to determine the value of a good or non-originating material, the Agreement on Customs Valuation shall apply *mutatis mutandis* to domestic transactions or to the cases where there is no transaction of the good or non-originating material.

Article 29 Accumulation

For the purposes of determining whether a good qualifies as an originating good of a Party, an originating good of the other Party which is used as a material in the production of the good in the former Party may be considered as an originating material of the former Party.

Article 30 *De Minimis*

For the application of the product specific rules set out in Annex 2, non-originating materials used in the production of a good that do not satisfy an applicable rule for the good shall be disregarded, provided that the totality of such materials does not exceed specific percentages in value, weight or volume of the good and such percentages are set out in the product specific rule for the good.

Article 31 Non-qualifying Operations

A good shall not be considered to satisfy the requirement of change in tariff classification or specific manufacturing or processing operation set out in Annex 2 merely by having undergone following operations:

- (a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine) and other similar operations;
- (b) changes of packaging and breaking up and assembly of packages;
- (c) disassembly;
- (d) placing in bottles, cases, boxes and other simple packaging operations;
- (e) collection of parts and components classified as a good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;
- (f) mere making-up of sets of articles; or
- (g) any combination of operations referred to in subparagraphs (a) through (f) above.

Article 32
Consignment Criteria

1. An originating good of the other Party shall be deemed to meet the consignment criteria when it is:

- (a) transported directly from the other Party; or
- (b) transported through one or more non-Parties for the purpose of transit or temporary storage in warehouses in such non-Parties, provided that it does not undergo operations other than unloading, reloading or any other operation to preserve it in good condition.

2. If the originating good of the other Party does not meet the consignment criteria referred to in paragraph 1 above, that good shall not be considered as the originating good of the other Party.

Article 33
Unassembled or Disassembled Goods

Where a good satisfies the requirements of the relevant provisions of Articles 28 through 31 and is imported into a Party from the other Party in a disassembled form but is classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, such a good shall be considered as an originating good of the other Party.

Article 34
Fungible Goods and Materials

1. For the purposes of determining whether a good qualifies as an originating good of a Party, where fungible materials consisting of originating materials of a Party and non-originating materials that are commingled in an inventory are used in the production of the good, the origin of the materials may be determined pursuant to an inventory management method recognised in the Generally Accepted Accounting Principles in the Party.

2. Where fungible goods consisting of originating goods of a Party and non-originating goods are commingled in an inventory and, prior to exportation do not undergo any production process or any operation in the Party where they were commingled other than unloading, reloading or any other operation to preserve them in good condition, the origin of the good may be determined pursuant to an inventory management method recognised in the Generally Accepted Accounting Principles in the Party.

Article 35
Indirect Materials

Indirect materials shall be, without regard to where they are produced, considered to be originating materials of a Party where a good is produced.

Article 36
Accessories, Spare Parts and Tools

1. In determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2, accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts or tools, shall be disregarded, provided that:

- (a) the accessories, spare parts or tools are not invoiced separately from the good, without regard of whether they are separately described in the invoice; 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 the value of originating materials of a Party where the good is produced or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Article 37

Packaging Materials and Containers for Retail Sale

1. In determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2, packaging materials and containers for retail sale, which are classified with the good pursuant to Rule 5 of the General Rules for the Interpretation of the Harmonized System, shall be disregarded.

2. If the good is subject to a qualifying value content requirement, the value of such packaging materials and containers for retail sale shall be taken into account as the value of originating materials of a Party where the good is produced or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Article 38

Packing Materials and Containers for Shipment

Packing materials and containers for shipment shall be disregarded:

- (a) in determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2; and
- (b) in calculating the qualifying value content of the good.

Article 39

Claim for Preferential Tariff Treatment

1. The importing Party shall require a certificate of origin for an originating good of the exporting Party from importers who claim the preferential tariff treatment for the good.

2. Notwithstanding paragraph 1 above, the importing Party shall not require a certificate of origin from importers for:

- (a) an importation of a consignment of originating goods of the exporting Party whose aggregate customs value does not exceed 200 United States dollars or its equivalent amount in the Party's currency, or such higher amount as it may establish; or
- (b) an importation of an originating good of the exporting Party, for which the importing Party has waived the requirement for a certificate of origin.

3. Where an originating good of the exporting Party is imported through one or more non-Parties, the importing Party may require importers, who claim the preferential tariff treatment for the good, to submit:

- (a) a copy of through bill of lading; or
- (b) a certificate or any other information given by the customs authorities of such non-Parties or other relevant entities, which evidences that it has not undergone operations other than unloading, reloading or any other operation to preserve it in good condition in those non-Parties.

Article 40 Certificate of Origin

1. The certificate of origin referred to in paragraph 1 of Article 39 shall be issued by the competent governmental authority of the exporting Party on request having been made in writing by the exporter or its authorised agent. Such certificate of origin shall include minimum data specified in Annex 3.

2. For the purposes of this Article, the competent governmental authority of the exporting Party may designate other entities or bodies to be responsible for the issuance of the certificate of origin, under the authorisation given in accordance with the applicable laws and regulations of the exporting Party.

3. Where the competent governmental authority of the exporting Party designates other entities or bodies to carry out the issuance of the certificate of origin, the exporting Party shall notify in writing the other Party of its designees.

4. For the purposes of this Chapter, upon the entry into force of this Agreement, the Parties shall establish each Party's format of the certificate of origin in English in the Operational Procedures referred to in Article 24.

5. The certificate of origin shall be completed in English.

6. The issued certificate of origin shall be applicable to a single importation of an originating good of the exporting Party into the importing Party and be valid for 12 months from the date of issuance.

7. Where the exporter is not the producer of a good, the exporter may request a certificate of origin on the basis of:

- (a) a declaration provided by the exporter to the competent governmental authority or its designees based on the information provided by the producer of the good to that exporter; or
- (b) a declaration voluntarily provided by the producer of the good directly to the competent governmental authority or its designees by the request of the exporter.

8. The certificate of origin shall be issued only after the exporter who requests a certificate of origin, or the producer of a good in the exporting Party referred to in subparagraph 7(b) above, proves to the competent governmental authority or its designees that the good to be exported qualifies as an originating good of the exporting Party.

9. The competent governmental authority of the exporting Party shall provide the other Party with specimen signatures and impressions of stamps used in the offices of the competent governmental authority of the exporting Party or its designees.

10. Each Party shall ensure that the competent governmental authority or its designees shall keep a record of the certificates of origin issued for a period of 5 years after the date on which the certificate was issued. Such record will include all antecedents, which were presented to prove the qualification as an originating good of the exporting Party.

Article 41
Response to Inquiries

The customs authority of the importing Party shall endeavour to, prior to the importation of a good, provide a response to inquiries in accordance with its laws and regulations as to whether the good to be imported qualifies as an originating good of the exporting Party to importers of the good of the exporting Party or their authorised agents, where a written application is made with all the necessary information.

Article 42
Obligations Regarding Exportations

Each Party shall, in accordance with its laws and regulations, ensure that the exporter to whom a certificate of origin has been issued, or the producer of a good in the exporting Party referred to in subparagraph 7(b) of Article 40:

- (a) shall notify in writing the competent governmental authority of the exporting Party or its designees without delay when he knows that such good does not qualify as an originating good of the exporting Party; and
- (b) shall keep the records relating to the origin of a good for 5 years after the date on which the certificate of origin was issued.

Article 43
Request for Checking of Certificate of Origin

1. For the purposes of determining whether a good imported from the other Party under preferential tariff treatment qualifies as an originating good of the other Party, the customs authority of the importing Party may request information relating to the origin of the good from the competent governmental authority of the exporting Party on the basis of a certificate of origin.

2. For the purposes of paragraph 1 above, the competent governmental authority of the exporting Party shall, in accordance with its laws and regulations, provide the information requested within a period of 3 months from the date of receipt of the request.

If the customs authority of the importing Party considers necessary, it may require additional information relating to the origin of the good. If additional information is requested by the customs authority of the importing Party, the competent governmental authority of the exporting Party shall, in accordance with its laws and regulations, provide the information requested within a period of 2 months from the date of receipt of the request.

3. For the purposes of paragraph 2 above, the competent governmental authority of the exporting Party may request the exporter to whom a certificate of origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 7(b) of Article 40 to provide the former with the information requested.

4. The requesting of the information in accordance with paragraph 1 above shall not preclude the use of a verification method provided for in Article 44.

Article 44 Verification Visit

1. The customs authority of the importing Party may request the exporting Party to:

- (a) collect and provide information relating to the origin of the good and check, for that purpose, the facilities used in the production of the good, through a visit by its competent governmental authority along with the customs authority of the importing Party to the premises of the exporter to whom a certificate of origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 7(b) of Article 40; and
- (b) provide information relating to the origin of the good in the possession of the competent governmental authority or its designee during the visit pursuant to subparagraph (a) above.

2. When requesting the exporting Party to conduct a visit pursuant to paragraph 1 above, the importing Party shall deliver a written communication with such request to the exporting Party at least 40 days in advance of the proposed date of the visit, the receipt of which is to be confirmed by the latter Party. The competent governmental authority of the exporting Party shall request the written consent of the exporter, or the producer of the good in the exporting Party whose premises are to be visited.

3. The communication referred to in paragraph 2 above shall include:

- (a) the identity of the customs authority issuing the communication;
- (b) the name of the exporter, or the producer of the good in the exporting Party whose premises are requested to be visited;
- (c) the proposed date and place of the visit;
- (d) the object and scope of the proposed visit, including specific reference to the good subject of the verification referred to in the certificate of origin; and
- (e) the names and titles of the officials of the customs authority of the importing Party to be present during the visit.

4. The exporting Party shall respond in writing to the importing Party, within 30 days of the receipt of the communication referred to in paragraph 2 above, if it accepts or refuses to conduct a visit requested pursuant to paragraph 1 above.

5. The competent governmental authority of the exporting Party shall, in accordance with its laws and regulations, provide within 45 days or any other mutually agreed period from the last day of the visit, to the customs authority of the importing Party the information obtained pursuant to paragraph 1 above.

Article 45
Determination of Origin
and Preferential Tariff Treatment

1. The customs authority of the importing Party may deny preferential tariff treatment to a good for which an importer claims preferential tariff treatment where the good does not qualify as an originating good of the exporting Party or where the importer fails to comply with any of the relevant requirements of this Chapter.

2. The competent governmental authority of the exporting Party shall, when it cancels the decision to issue the certificate of origin, promptly notify the cancellation to the exporter to whom the certificate of origin has been issued, and to the customs authority of the importing Party except where the certificate has been returned to the competent governmental authority. The customs authority of the importing Party may determine that the good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment where it receives the notification.

3. The customs authority of the importing Party may determine that a good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment, and a written determination thereof shall be sent to the competent governmental authority of the exporting Party:

- (a) where the competent governmental authority of the exporting Party fails to respond to the request within the period referred to in paragraph 2 of Article 43 or paragraph 5 of Article 44;
- (b) where the exporting Party refuses to conduct a visit, or that Party fails to respond to the communication referred to in paragraph 2 of Article 44 within the period referred to in paragraph 4 of Article 44; or
- (c) where the information provided to the customs authority of the importing Party pursuant to Article 43 or 44, is not sufficient to prove that the good qualifies as an originating good of the exporting Party.

4. After carrying out the procedures outlined in Article 43 or 44 as the case may be, the customs authority of the importing Party shall provide the competent governmental authority of the exporting Party with a written determination of whether or not the good qualifies as an originating good of the exporting Party, including findings of fact and the legal basis for the determination. The competent governmental authority of the exporting Party shall inform such determination by the customs authority of the importing Party to the exporter, or the producer of the good in the exporting Party, whose premises were subject to the visit referred to in Article 44.

Article 46
Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it as confidential pursuant to this Chapter, and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

2. Information obtained by the customs authority of the importing Party pursuant to this Chapter:

- (a) may only be used by such authority for the purposes of this Chapter; and
- (b) shall not be used by the importing Party in any criminal proceedings carried out by a court or a judge, unless the information is requested to the other Party and provided to the former Party, through the diplomatic channels or other channels established in accordance with the applicable laws of the requested Party.

Article 47
Penalties and Measures against False Declaration

1. Each Party shall establish or maintain, in accordance with its laws and regulations, appropriate penalties or other sanctions against its exporters to whom a certificate of origin has been issued and its producers of the goods in the exporting Party referred to in subparagraph 7(b) of Article 40, for providing false declaration or documents to its competent governmental authority or its designees prior to the issuance of certificate of origin.

2. Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against its exporters to whom a certificate of origin has been issued and its producers of the goods in the exporting Party referred to in subparagraph 7(b) of Article 40, for failing to notify in writing to the competent governmental authority of the exporting Party or its designees without delay after having known, after the issuance of certificate of origin, that such good does not qualify as an originating good of the exporting Party.

Article 48
Miscellaneous Provisions

For the application of the relevant product specific rules set out in Annex 2 and the determination of origin, the Generally Accepted Accounting Principles in the exporting Party shall be applied.

Article 49
Sub-Committee on Rules of Origin

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Rules of Origin (hereinafter referred to in this Article as "Sub-Committee") shall be established pursuant to Article 13.

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

- (a) reviewing and making appropriate recommendations, as needed, to the Joint Committee on:
 - (i) the implementation and operation of this Chapter;
 - (ii) any amendments to Annexes 2 and 3, proposed by either Party; and
 - (iii) the Operational Procedures referred to in Article 24;
- (b) considering any other matter as the Parties may agree related to this Chapter;
- (c) reporting the findings of the Sub-Committee to the Joint Committee; and
- (d) carrying out other functions as may be delegated by the Joint Committee pursuant to Article 13.

3. The Sub-committee shall be composed of representatives of the Governments of the Parties, and may invite representatives of relevant entities other than the Governments of the Parties with necessary expertise relevant to the issues to be discussed.

4. The Sub-Committee shall meet at such venues and times as may be agreed upon.