03 RULES OF ORIGIN

ARTICLE 1

Definitions

For the purposes of this Chapter:

(a) "allowable cost to manufacture" means the sum of:

(i) the allowable expenditure on materials by the principal manufacturer calculated in accordance with Article 6 (Calculation of Costs – Allowable Expenditure on Materials); and

(ii) the allowable expenditure on labour by the principal manufacturer calculated in accordance with Article 7 (Calculation of Costs – Allowable Expenditure on Labour); and

(iii) the allowable expenditure on overheads by the principal manufacturer calculated in accordance with Article 8 (Calculation of Costs – Allowable Expenditure on Overheads);

(b) "Certificate of Origin" means a certificate complying with the requirements of Annex 2A (Certificate of Origin Requirements);

(c) "Declaration" means a declaration made in accordance with Article 11.6;

(d) "Generally Accepted Accounting Principles" 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. These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

(e) "inner container" includes any container into which goods or materials, as the case may be, are packed, other than a shipping or airline container, pallet or other similar article;

(f) "input" means any matter or substance used or consumed in the manufacture or production of materials (other than matter or substance that is treated as an overhead);

(g) "manufacture" means the creation of an article essentially different from the matters or substances that go into such manufacture. Manufacture does not include the following activities, performed alone or in combination with each other:

(i) restoration or renovation processes such as repairing, re-conditioning, overhauling or refurbishing;

(ii) minimal operations such as pressing, labelling, ticketing, packaging and preparation for sale, conducted alone or in combination with each other; or

(iii) quality control inspections;

(h) "material" means any matter or substance purchased by the principal manufacturer, and used or consumed in the processing of goods that are exported to the territory of the importing Party (other than matter or substance that is treated as an overhead);

(i) "originating goods", as used in Chapter 2 (Trade in Goods) and this Chapter, means goods that qualify as originating in accordance with the relevant provisions of Section A of this Chapter;

(j) "preferential tariff treatment" means the customs duty rate that is applicable to an originating good pursuant to Article 3.1 of Chapter 2 (Trade in Goods);

(k) "principal manufacturer" means the person in the territory of a Party who performs, or has had performed on its behalf, the last process of manufacture of the goods;

(l) "process" means any operation performed on the goods and includes:

(i) a process of manufacture;

(ii) minimal operations such as pressing, labelling, ticketing, packaging and preparation for sale, conducted alone or in combination with each other; and

(iii) quality control inspections;

(m) "production", in relation to wholly obtained goods, means growing, mining, harvesting, fishing, hunting, gathering, trapping, capturing, farming, cultivating[1] or otherwise obtaining wholly obtained goods;

(n) "producer", in relation to wholly obtained goods, means a person who grows, mines, harvests, fishes, hunts, gathers, traps, captures, farms, cultivates or otherwise obtains wholly obtained goods;

(o) "produce", in relation to wholly obtained goods, means to grow, mine, harvest, fish, hunt, gather, trap, capture, farm, cultivate or otherwise obtain wholly obtained goods;

[1] Cultivating includes the process of aquaculture.

(p) "total cost to manufacture" means the sum of:

(i) the total expenditure on materials by the principal manufacturer calculated in accordance with Article 5 (Calculation of Costs – Total Expenditure on Materials);

(ii) the allowable expenditure on labour by the principal manufacturer calculated in accordance with Article 7 (Calculation of Costs – Allowable Expenditure on Labour);

(iii) the allowable expenditure on overheads by the principal manufacturer calculated in accordance with Article 8 (Calculation of Costs – Allowable Expenditure on Overheads); and

(iv) where applicable, the total expenditure by the principal manufacturer on a process, or processes, in the manufacture of the goods performed in the territory of a non-Party calculated in accordance with Article 9 (Calculation of Costs – Total Expenditure on Overseas Processing Costs);

(q) "unmanufactured raw products" means:

(i) natural or primary products that have not been subjected to an industrial process, other than an ordinary process of primary production, and includes:

(A) animals and products obtained from animals, including greasy wool;

(B) plants and products obtained from plants;

(C) minerals in their natural state and ores; and

(D) crude petroleum;

OR

(ii) raw materials recovered in the territory of a Party from waste and scrap;

(r) "waste and scrap" means only waste and scrap that:

(i) have been derived from manufacturing operations or consumption; and

(ii) are fit only for the recovery of raw materials; and

(s) "wholly obtained goods" means unmanufactured raw products, or waste and scrap.

ARTICLE 2

Recording of Costs and Tariff Classification

For the purposes of this Chapter:

(a) all costs shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the goods are produced or manufactured; and

(b) the basis for tariff classification is the Harmonized Commodity Description and Coding System.

Section A: Origin Conferment

ARTICLE 3

Originating Goods

1. Goods shall be deemed originating goods of a Party where they are:

(a) wholly obtained goods produced in the territory of that Party;

(b) goods wholly manufactured in that Party from one or more of the following:

(i) unmanufactured raw products;

(ii) waste and scrap produced in the territory of either Party;

(iii) materials wholly manufactured within the territory of either Party; and/or

(iv) materials that are determined by both Parties to be materials meeting the requirements of Article 3.1(b)(iii);

(c) goods partly manufactured in that Party, provided that the following conditions are met:

(i) that in relation to any goods:

(A) the last process of manufacture was performed in the territory of that Party by, or on behalf of, the principal manufacturer; and

(B) the allowable cost to manufacture the goods is not less than the percentage of the total cost to manufacture the goods specified below:

(I) 30% for the goods specified in Annex 2D (List of Goods Subject to 30% Threshold); or

(II) 50% for all other goods;

OR

(ii) that in relation to any goods other than those specified in Annex 2C (List of Goods which Must be Subject to the Last Process of Manufacture within the Territory of a Party):

(A) one or more processes of manufacture was or were performed in the territory of that Party by, or on behalf of, the principal manufacturer;

(B) one or more processes was or were performed in the territory of that Party by, or on behalf of, the principal manufacturer immediately prior to export of the goods to the territory of the other Party;

(C) the principal manufacturer in that Party incurred all the costs associated with any process performed in the territory of a non-Party; and

(D) the allowable cost to manufacture the goods is not less than the percentage of the total cost to manufacture the goods specified below:

(I) 30% for the goods specified in Annex 2D (List of Goods Subject to 30% Threshold); or

(II) 50% for all other goods.

2. Where a specific shipment or shipments of identical goods within a specified period, but for unforeseen circumstances, would have complied with Article 3.1(c), the importing Party may determine that:

(a) the percentage of 30% can be read as 28%; or

(b) the percentage of 50% can be read as 48%.

3. In exceptional circumstances, the importing Party may allow a further derogation to the percentages set out in Article 3.1(c) for a specific period in relation to particular goods, or goods of a specific class or kind, in accordance with procedures to be agreed between the Parties.

ARTICLE 4

Calculation of Costs – General Provisions

1. For the purposes of Article 3.1(c)(i):

(a) the allowable cost to manufacture the goods excludes:

(i) the cost of any material purchased by the principal manufacturer and subsequently processed in the territory of a non-Party; and

(ii) the cost of processing (including the cost of labour or overheads) any material referred to in (i) above that is performed, whether in the territory of a Party or a non-Party, up until the return of the processed material to the territory of a Party; and

(b) where minimal operations or quality control inspections are conducted by, or on behalf of, the principal manufacturer, in the territory of a Party, as part of a manufacturing process, the costs of those operations or the quality control inspections, to the extent that they relate to the cost of materials, labour or overheads, can be included in the calculation of the total expenditure on materials and the allowable expenditure on materials, labour and overheads, as appropriate.

2. For the purposes of Article 3.1(c)(ii), the allowable cost to manufacture the goods excludes the cost of processing (including the cost of labour or overheads) any material in the territory of a non-Party.

3. Where a Party finds that any input, material, labour, overhead or overseas processing cost was provided free of charge or at a price that is inconsistent with the normal market value of that input, material, labour, overhead or overseas processing cost, as the case may be, an adjustment may be made by that Party to ensure that the input, material, labour, overhead or overseas processing cost reflects the normal market value. Any such adjustment made by the exporting Party shall be subject to approval of the importing Party.

4. In the calculation of the total cost to manufacture and the allowable cost to manufacture the goods, a cost incurred, whether directly or indirectly, by the principal manufacturer of the goods, must not be taken into account more than once.

ARTICLE 5

Calculation of Costs – Total Expenditure on Materials

Subject to the provisions of Article 4 (Calculation of Costs – General Provisions), for the purposes of ascertaining the total cost to manufacture the goods, as required by Article 3 (Originating Goods), the total expenditure on materials by the

principal manufacturer shall be calculated in accordance with the following provisions:

(a) subject to Articles 5(b) and 5(c), the total expenditure on materials by the principal manufacturer is the amount incurred, directly or indirectly, by the principal manufacturer for all materials;

(b) the following costs that form part of the amount incurred, directly or indirectly, by the principal manufacturer for a material shall be included in the total expenditure on materials by the principal manufacturer:

(i) freight, insurance, shipping and packing costs, and all other costs incurred in transporting the material to the first place in the territory of either Party at which a process is performed on that material by, or on behalf, of the principal manufacturer; and

(ii) customs brokerage fees on the material paid in the territory of one or both Parties; and

(c) the following costs, imposed on the materials by either Party, that form part of the amount incurred, directly or indirectly, by the principal manufacturer for a material, shall be excluded from the total expenditure on materials by the principal manufacturer:

(i) a customs or excise duty; and

(ii) a tax in the nature of a sales tax, a goods and services tax, an anti-dumping duty or a countervailing duty.

ARTICLE 6

Calculation of Costs – Allowable Expenditure on Materials

Subject to the provisions of Article 4 (Calculation of Costs – General Provisions), for the purposes of ascertaining the allowable cost to manufacture the goods, as required by Article 3 (Originating Goods), the allowable expenditure on materials by the principal manufacturer shall be calculated in accordance with the following provisions:

(a) subject to Articles 6(b) to 6(d), the allowable expenditure on materials by the principal manufacturer is the amount incurred, directly or indirectly, by the principal manufacturer for all materials, in the form purchased by the principal manufacturer, that were manufactured or produced in the territory of either Party;

(b) the following costs that form part of the amount incurred, directly or indirectly, by the principal manufacturer for a material specified in Article 6(a) shall be included in the allowable expenditure on materials by the principal manufacturer:

(i) freight, insurance, shipping and packing costs, and all other costs incurred in transporting the material to the first place in the territory of either Party at which a process is performed on that material by, or on behalf of, the principal manufacturer; and

(ii) customs brokerage fees on the material paid in the territory of one or both Parties;

(c) the following costs that form part of the amount incurred, directly or indirectly, by the principal manufacturer for a material specified in Article 6(a) shall be excluded from the allowable expenditure on materials by the principal manufacturer:

(i) a customs or excise duty;

(ii) a tax in the nature of a sales tax, a goods and services tax, an anti-dumping duty or a countervailing duty, imposed on the materials by either Party; and

(iii) the cost of any input that, in the form it was received by the manufacturer or producer of the material, was not manufactured or produced in the territory of either Party, unless Article 6(d) applies; and

(d) where, in relation to a particular material, other than a material that is provided for processing in a non-Party, the total cost of all inputs that would otherwise be excluded from the allowable expenditure on materials by the principal manufacturer by virtue of Article 6(c)(iii), does not exceed 50% of the total expenditure on that material by the principal manufacturer, as calculated in accordance with Article 5(a), the total cost of those inputs may be included in the allowable expenditure on materials by the principal manufacturer.

ARTICLE 7

Calculation of Costs – Allowable Expenditure on Labour

Subject to the provisions of Article 4 (Calculation of Costs – General Provisions), for the purposes of ascertaining the total cost to manufacture and the allowable cost to manufacture the goods, as required by Article 3 (Originating Goods), the allowable expenditure on labour by the principal manufacturer shall be the sum of the part of each cost set out in Section (i) (Labour Costs) of Annex 2B (Allowable Labour and Overhead Costs):

(a) that is incurred, directly or indirectly, by the principal manufacturer;

(b) that relates, directly or indirectly, and wholly or partly, to the processing of the goods in the territory of the Party; and

(c) that can reasonably be allocated to the processing of the goods in the territory of the Party.

ARTICLE 8

Calculation of Costs – Allowable Expenditure on Overheads

Subject to the provisions of Article 4 (Calculation of Costs – General Provisions), for the purposes of ascertaining the total cost to manufacture and allowable cost to manufacture the goods, as required by Article 3 (Originating Goods), the allowable expenditure on overheads by the principal manufacturer shall be the sum of the part of each cost set out in Section (ii) (Overheads) of Annex 2B (Allowable Labour and Overhead Costs):

(a) that is incurred, directly or indirectly, by the principal manufacturer; and

(b) that relates, directly or indirectly, and wholly or partly, to the processing of the goods in the territory of the Party; and

(c) that can reasonably be allocated to the processing of the goods in the territory of the Party.

ARTICLE 9

Calculation of Costs – Total Expenditure on Overseas Processing Costs

Subject to the provisions of Article 4 (Calculation of Costs – General Provisions), for the purposes of ascertaining the total cost to manufacture the goods, as required by Article 3 (Originating Goods), the total expenditure by the principal manufacturer on a process, or processes, performed in the territory of the non-Party shall be the sum of that part of each cost:

(a) that is incurred, directly or indirectly, by the principal manufacturer; and

(b) that relates, directly or indirectly, and wholly or partly, to the processing of the goods in the territory of a non-Party, including any associated transport costs; and

(c) that can reasonably be allocated to the processing of the goods in the territory of the non-Party.

Section B: Consignment Criteria

ARTICLE 10

Consignment

Preferential tariff treatment shall apply only to originating goods of a Party where they are:

(a) transported directly from the territory of that Party to the territory of the other Party;

(b) transported through the territories of one or more non-Parties, provided that the goods:

(i) did not undergo operations other than packing, packaging, unloading, reloading or operations to preserve them in good condition in the territory of any such non-Party; and

(ii) were not traded or used in the territory of any such non-Party; or

(c) transported from a non-Party where minimal operations were performed immediately after import from the Party in which the last process of manufacture was performed and immediately prior to export to the other Party.

Section C: Documentary Evidence

ARTICLE 11

Certification of Origin

1. The exporting Party shall provide the opportunity for a principal manufacturer, a producer or an exporter to apply to an authorised body referred to in Annex 2A (Certificate of Origin Requirements) for a Certificate of Origin.

2. An application for a Certificate of Origin and a Certificate of Origin shall meet the requirements of Annex 2A (Certificate of Origin Requirements).

3. A Certificate of Origin may be used for a single shipment or for multiple shipments of the goods described therein.

4. The exporting Party may revoke a Certificate of Origin by notice in writing. A revoked Certificate of Origin shall have no force from the date specified in that notice.

5. The exporting Party shall forward a copy of a notice revoking a Certificate of Origin to the applicant for the Certificate of Origin and to the importing Party, immediately upon the issue of that notice.

6. The importer of goods, for which preferential tariff treatment is claimed, must possess, before the goods enter the territory of the importing Party for domestic use , a declaration, which shall be made by the exporter of the goods in writing, that the goods for which preferential tariff treatment is claimed are originating goods. The Declaration shall be completed by a representative of the exporter competent to make the Declaration and must include:

(a) a reference to the exporter's invoice for the goods;

(b) a statement that the goods are identical to goods specified in a valid Certificate of Origin nominated in the Declaration;

(c) a statement that the goods are originating goods that comply with the rule specified in the nominated Certificate of Origin; and

(d) the signature, name and designation of the exporter's representative, and the date the Declaration is signed.

7. A Declaration shall not be required where a Certificate of Origin is to be used for a single shipment. Where a Certificate of Origin is to be used for multiple shipments, a Declaration is not required for the first shipment but shall be required for all subsequent shipments.

8. Where the exporter of the goods is not the producer or principal manufacturer of the goods, the exporting Party shall require that, prior to making a Declaration pursuant to Article 11.6, the exporter must ensure that the producer or principal manufacturer has a copy of the relevant Certificate of Origin and has obtained from that producer or principal manufacturer written confirmation that the goods are originating goods. The confirmation shall be completed by the representative of the producer or principal manufacturer who is competent to make the confirmation, and shall include:

(a) a reference to the evidence of sale of the goods between the producer or principal manufacturer and the exporter;

(b) a statement that the goods are identical to goods specified in a valid Certificate of Origin nominated in the confirmation;

(c) a statement that the goods are originating goods that comply with the rule specified in the nominated Certificate of Origin; and

(d) the signature, name and designation of the principal manufacturer's representative, and the date the confirmation is signed.

9. A Certificate of Origin for a single shipment shall be valid provided that the Certificate of Origin is issued before the goods referred to therein enter the territory of the importing Party for domestic use, the certificate is used within one year from the date of issue and has not been revoked.

10. A Certificate of Origin for multiple shipments shall be valid provided that the Certificate of Origin is issued before the goods referred to therein enter the territory of the importing Party for domestic use, the certificate is used within two years from the date of issue, provided that the first shipment occurs within the first year of issue and has not been revoked.

11. A Declaration shall be valid if it is made before the goods for which preferential tariff treatment is claimed enter the territory of the importing Party for domestic use.

ARTICLE 12

Claim for Preferential Tariff Treatment

1. Subject to Article 12.2 and Article 11, the importing Party shall grant preferential tariff treatment to goods imported into its territory from the other Party, provided that the goods are originating goods, the consignment criteria specified in Article 10 (Consignment) have been met, and the importer claiming preferential tariff treatment, has in its possession and provides a copy, if so requested by the importing Party:

(a) a valid Certificate of Origin when it is used for first shipment; or

(b) a valid Certificate of Origin and a declaration when the Certificate of Origin is used subsequently for multiple shipments.

2. The importing Party may waive the requirement for a Certificate of Origin or a Declaration in certain circumstances, in accordance with its domestic laws and practices.

3. The importing Party shall grant preferential tariff treatment to goods imported after the date of entry into force of this Agreement and for which no preferential tariff treatment was earlier applied, if:

(a) the claim for preferential tariff treatment is made within 12 months from the date of payment of customs duties, subject to domestic laws and practices in the importing Party; and

(b) the importer provides a copy of the valid Certificate of Origin and Declaration relevant to those goods.

ARTICLE 13

Records

1. Each Party shall require that:

(a) a producer, a principal manufacturer or an exporter that obtains a Certificate of Origin, an exporter that makes a Declaration pursuant to Article 11.6, or a producer or principal manufacturer that makes a confirmation pursuant to Article 11.7 must maintain, for 5 years from the date of the Certificate of Origin, Declaration or confirmation, as the case may be, all records relating to the origin of the goods for which preferential tariff treatment is claimed in the importing Party, including records associated with:

(i) the purchase of, cost of, value of, and payment for, the goods that were exported from its territory;

(ii) the purchase of, cost of, value of, and payment for, all materials used or consumed in the manufacture or production of the goods that were exported from its territory;

(iii) the manufacture or production of the goods in the form in which the goods were exported from its territory; and

(iv) the Certificate of Origin, Declaration and confirmation, as the case may be, relevant to the goods; and

(b) an importer claiming preferential tariff treatment must maintain, for 5 years after the date of importation of the goods, all records relating to the importation of the goods, including a copy of the Certificate of Origin and the Declaration relevant to those goods.

2. The records to be maintained pursuant to this Article shall include electronic records. Any such records in electronic form shall be maintained in accordance with the domestic laws and practices of the relevant Party.

ARTICLE 14

Origin Verifications

1. The importing Party may verify the eligibility of goods for preferential tariff treatment in accordance with its domestic laws and practices.

2. Verification of eligibility for preferential tariff treatment may include either Party taking the following courses of action, in accordance with mutually agreed procedures:

(a) instituting measures to establish the validity of the Certificate of Origin, Declaration or confirmation;

(b) issuing written questionnaires to be completed within a period of 30 days;

(c) requesting the supply of records relating to the production, manufacture or export of the goods; and

(d) visiting the factory or premises of the producer, principal manufacturer, or exporter or any other party in the territory of a Party associated with the production, manufacture, import or export, of the goods or of the materials or inputs used therein.

3. The importing Party shall notify the exporting Party when it approaches any party listed in Article 14.2(d) within the territory of the exporting Party during an action to verify eligibility.

4. The importing Party shall not visit the factory or premises of any party listed in Article 14.2(d) within the territory of the exporting Party without the prior consent of that party.

5. To the extent allowed by its domestic laws and practices, the exporting Party shall fully co-operate in any action to verify eligibility and shall require that producers, manufacturers and exporters co-operate in any action to verify eligibility.

6. Action to verify eligibility for preferential tariff treatment shall be completed and a decision shall be made within 90 days of the commencement of such action. Written advice as to whether goods are eligible for preferential tariff treatment must be provided to all relevant parties within 10 days of the decision being made.

ARTICLE 15

Suspension and Denial of Preferential Tariff Treatment

1. Notwithstanding Article 12.1, the importing Party may suspend the application of preferential tariff treatment to goods that are the subject of origin verification action under Article 14 (Origin Verifications) for the duration of that action, or any part thereof.

2. The importing Party may deny a claim for preferential tariff treatment or recover unpaid duties where:

(a) the goods do or did not meet the requirements of this Chapter;

(b) the producer, principal manufacturer, exporter, or importer of goods fails or has failed to comply with any of the relevant requirements for obtaining preferential tariff treatment; or

(c) action taken under Article 14 (Origin Verifications) failed to verify eligibility of the goods for preferential tariff treatment.

Section D – Review and Appeal of Origin Determinations

ARTICLE 16

Review and Appeal

The importing Party shall grant the right of appeal in matters relating to eligibility for preferential tariff treatment to producers, principal manufacturers, exporters or importers of goods traded or to be traded between the Parties, in accordance with its domestic laws and practices.

Section E – Consultation and Modifications

ARTICLE 17

Consultation and Modifications

1. The Parties shall consult and cooperate to ensure that this Chapter is applied in an effective and uniform manner, in accordance with the spirit and the objectives of this Agreement.

2. In the event of any change to the coverage of goods in Section (ii) of Annex 2D (List of Goods Subject to 30% Threshold) which significantly affects a Party's principal manufacturer, producer or exporter, the Parties shall enter into consultations on the possibility of including the goods in question into Section (i) of Annex 2D (List of Goods Subject to 30% Threshold).