

## ANNEX 1: RULES OF ORIGIN

### Article 1 Definitions

For the purposes of this Annex :

- (a) **aquaculture** means the farming of aquatic organisms, including fish, molluscs, 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.;
- (b) **Costs, Insurance and Freight (CIF)** means the value of the good imported, and includes the costs of freight and insurance up to the port or place of entry into the country of importation. The valuation shall be determined in accordance with the Customs Valuation Agreement;
- (c) **Free-on-board (FOB)** means the free-on-board value of the good, inclusive of the costs of transport to the port or site of final shipment abroad. The valuation shall be determined in accordance with the Customs Valuation Agreement;
- (d) **generally accepted accounting principles (GAAP)** means the accounting standards, recognised consensus or substantial authoritative support 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) **good** means any merchandise, product, article, or material;
- (f) **identical and interchangeable materials** means materials being of the same kind which are fungible for commercial purposes, whose properties are essentially identical, and between which it is impractical to differentiate by a mere visual examination;
- (g) **material** means any matter or substance used in the production of goods, physically incorporated into a good or subjected to a process in the production of another good;
- (h) **originating material** or **originating good** means a material or good which qualifies as originating in accordance with the provisions of this ANNEX;
- (i) **packing materials and containers for transportation** means the materials and containers used to protect a good during its transportation, different from those materials and containers used for its retail sale;
- (j) **production** means methods of obtaining goods, including growing, raising, mining, harvesting, fishing, aquaculture, farming, trapping, hunting, capturing, gathering, collecting, breeding, extracting, manufacturing, producing, processing, assembling a good, etc.;
- (k) **Product Specific Rules** means rules that specify that the materials have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a Regional Value Content criterion or a combination of any of these

criteria;

- (l) **Harmonised System** means the Harmonised Commodity Description and Coding System of the World Customs Organisation;
- (m) **neutral element** means a good used in the production, testing or inspection of another good but not physically incorporated into the good by itself;
- (n) **Customs Valuation Agreement** means the *Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is a part of the *Marrakesh Agreement Establishing the World Trade Organization*;
- (o) **non-originating good** or **non-originating material** means a good or material that does not qualify as originating under this ANNEX or a good or material of undetermined origin;

## **Article 2**

### **Originating Goods**

For the purposes of this ANNEX, a good shall be treated as an originating good and eligible for preferential tariff treatment if it is either:

- (a) wholly produced or obtained in a Party as provided in Article 3 of this ANNEX;
- (b) produced in a Party exclusively from originating materials from one or more of the Parties;
- (c) produced from non-originating materials in a Party, provided that the good has satisfied the requirements of Article 4 of this ANNEX

and meets all other applicable requirements of this ANNEX.

### **Article 3**

#### **Goods Wholly Produced or Obtained**

For the purposes of Article 2 (a), the following goods shall be considered as wholly produced or obtained:

- (a) plants and plant products (including fruits, flowers, vegetables, trees, seaweed, fungi and live plants) grown, harvested, picked, or gathered in a Party<sup>1</sup>;
- (b) live animals born and raised in a Party;
- (c) goods obtained from live animals in a Party without further processing, including milk, eggs, natural honey, hair, wool, semen and dung;
- (d) goods obtained from hunting, trapping, fishing, aquaculture, gathering, or capturing in a Party;

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<sup>1</sup> For the purposes of this Article, "*in a Party*" means:

- (i) For ASEAN Member States, the land, territorial air space, territorial sea, Exclusive Economic Zone, Continental Shelf, and areas beyond the territorial sea over which a Member State exercises sovereign rights or jurisdiction, as the case may be, under respective domestic laws in accordance with international law, including the United Nations Convention on the Law of the Sea.
- (ii) For China, the entire customs territory of the People's Republic of China, including land territory, territorial airspace, internal waters, territorial sea, and areas beyond the territorial sea within which China exercises sovereign rights or jurisdiction under its domestic laws, in accordance with international law.
- (iii) The above definitions are purely for the purpose of the implementation of Article 3 of the Annex of the Rules of Origin. For the avoidance of doubt, nothing contained in the above definitions shall be construed as conferring recognition or acceptance by one Party of the outstanding maritime and territorial positions or claims made by any other Party, nor shall be taken as pre-judging the determination of such positions or claims.

- (e) minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or beneath the seabed in a Party;
- (f) goods taken from the waters, seabed or beneath the seabed outside the territorial waters of that Party, provided that that Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with international law<sup>2</sup>
- (g) goods of sea fishing and other marine products taken from the high seas by vessels registered with a Party or entitled to fly the flag of that Party;
- (h) goods processed and/or made on board factory ships registered with a Party or entitled to fly the flag of that Party, exclusively from products referred to in paragraph (g) above;
- (i) waste and scrap derived from production process or from consumption in a Party provided that such goods are fit only for the recovery of raw materials; or
- (j) used goods consumed and collected in a Party provided that such goods are fit only for the recovery of raw materials; and
- (k) goods produced or obtained in a Party exclusively from products referred to in Subparagraphs (a) to (j) or from derivatives of the goods produced or obtained in the Party exclusively from products referred to in Subparagraphs (a) to (j).

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<sup>2</sup> "International law" refers to universally recognised international law, including the 1982 *United Nations Convention on the Law of the Sea*.

## Article 4

### Goods Not Wholly Produced or Obtained

1. For the purposes of Article 2(c) of this ANNEX, except for those goods covered under Paragraph 2, a good shall be treated as an originating good:

- (a) if the good has a regional value content of not less than 40 per cent of FOB calculated using the formula as described in Article 5 of this ANNEX, and the final process of production is performed within a Party; or
- (b) for the purpose of goods classified in Chapters 25, 26, 28, 29<sup>3</sup>, 31<sup>4</sup>, 39<sup>5</sup>, 42-49, 57-59, 61, 62, 64, 66-71, 73-83, 86, 88, 91-97 of the Harmonised System if all non-originating materials used in the production of the goods have undergone a change in tariff classification (hereinafter referred to as “CTC”) at the four-digit level, which is a change in tariff heading, of the Harmonised System.

2. In accordance with Paragraph 1, and unless otherwise provided for in the Product Specific Rules as specified in Attachment B, a good shall be treated as an originating good if it meets a regional value content of not less than 40 per cent or those criteria in the Product Specific Rules.

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<sup>3</sup> For Headings 29.01 and 29.02, the applied criterion is RVC 40%, unless otherwise mutually agreed by the Parties.

<sup>4</sup> For Headings 31.05, the applied criterion is RVC 40%, unless otherwise mutually agreed by the Parties.

<sup>5</sup> For Headings 39.01, 39.02, 39.03, 39.07 and 39.08, the applied criterion is RVC 40%, unless otherwise mutually agreed by the Parties.

## Article 5

### Calculation of Regional Value Content

1. The Regional Value Content (RVC) shall be calculated as follows:

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

where:

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

**VNM** is the value of the non-originating materials.

2. VNM shall be determined according to the following circumstances:

- (a) in case of the imported non-originating materials, VNM shall be the CIF value of the materials at the time of importation;
- (b) in case of the non-originating materials obtained in a Party, VNM shall be the earliest ascertainable price paid or payable for the non-originating materials in that Party. The value of such non-originating materials shall not include freight, insurance, packing costs and any other costs incurred in transporting the material from the supplier's warehouse to the producer's location.

3. If a product which has acquired originating status in accordance with paragraph 1 in a Party is further processed in that Party and used as material in the manufacture of another product, no account shall be taken of the non-originating

components of that material in the determination of the originating status of the product.

4. The valuation shall be determined in accordance with the Customs Valuation Agreement.

### **Article 6 Accumulation**

Unless otherwise provided in this ANNEX, goods originating in a Party, which are used in another Party as materials for finished goods eligible for preferential tariff treatment, shall be treated as originating in the latter Party where working or processing of the finished goods has taken place

### **Article 7 Minimal Operations and Processes**

Operations or processes undertaken, by themselves or in combination with each other for the purposes listed below, are considered to be minimal and shall not be taken into account in determining whether a good has been wholly obtained in a Party:

- (a) ensuring preservation of goods in good condition for the purposes of transport or storage;
- (b) facilitating shipment or transportation;
- (c) packaging<sup>6</sup> or presenting goods for sale.

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<sup>6</sup> This excludes encapsulation which is termed "packaging" by the electronics industry



## **Article 8**

### **Direct Consignment**

1. Preferential tariff treatment shall be applied to goods satisfying the requirements of this ANNEX and which are consigned directly between the exporting Party and the importing Party.

2. The following shall be considered as consigned directly from the exporting Party to the importing Party:

- (a) goods transported directly from an exporting Party to the importing Party; or
- (b) goods transported through one or more Parties, other than the exporting Party and the importing Party, or through a non-Party, provided that:
  - (i) the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;
  - (ii) the goods have not entered into trade or consumption there; and
  - (iii) the goods have not undergone any operation there other than unloading and reloading or any other operation to preserve them in good condition.

## **Article 9**

### ***De Minimis***

A good that does not satisfy a change in tariff classification requirement pursuant to Article 4 of this ANNEX will

nonetheless be an originating good if:

- (a) for a good, other than that provided for in Chapters 50 to 63 of the Harmonised System, the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good;
- (b) for a good provided for in Chapters 50 to 63 of the Harmonised System, the weight of all non-originating materials used in its production that did not undergo the required change in tariff classification does not exceed 10 per cent of the total weight of the good, or the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good;

and the good meets all other applicable criteria of this ANNEX.

## **Article 10**

### **Treatment of Packing Materials, Packages and Containers**

1. Packing materials, packages and containers for transportation shall not be taken into account in determining the origin of the goods.
2. Packing materials, packages and containers for use in packaging goods for retail sale:
  - (a) Where the goods are subject to a regional value content criterion, the value of the packing materials, packages and containers used for packaging goods

for retail sale shall be taken into account in origin determination, provided that the packing materials, packages and containers are classified with the goods.

- (b) Where the goods are subject to a change in tariff classification criterion, the origin of the packing materials, packages and containers in which goods are packaged for retail sale shall not be taken into account in origin determination, provided that the packing materials, packages and containers are classified with the goods.

## **Article 11**

### **Accessories, Spare Parts and Tools**

1. Accessories, spare parts, or tools presented and classified with the good shall be considered as part of the good, provided:

- (a) they are invoiced together with the good; and
- (b) their quantity and value are commercially customary for the good.

2. Where a good is subject to change in tariff classification criterion set out in Attachment B, accessories, spare parts, or tools described in paragraph 1 shall be disregarded when determining the origin of the good.

3. Where a good is subject to a regional value content criterion, the value of the accessories, spare parts or tools described in paragraph 1 shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the regional value content of the good.

## **Article 12**

### **Neutral Elements**

In determining whether a good is an originating good, the origin of the following neutral elements shall be disregarded:

- (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 moulds;
- (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 13**

### **Identical and Interchangeable Materials**

Where originating and non-originating identical and interchangeable materials are used in the production of a good, the following methods shall be adopted in determining whether the materials used are originating:

- a) physical separation of the materials; or
- b) an inventory management method recognised in the generally accepted accounting principles of the exporting Party. Once a decision has been taken on the inventory management method, that method shall be used throughout the fiscal year.

#### **Article 14**

#### **Certificate of Origin**

Unless otherwise provided, a claim that goods are eligible for preferential tariff treatment shall be supported by a Certificate of Origin issued by an Issuing Authority notified to the other Parties as set out in Appendix 1 of Attachment A of this ANNEX.

#### **Article 15**

#### **Consultations, Review and Modification**

1. The Parties shall consult regularly to ensure that this ANNEX is administered effectively, uniformly and consistently in order to achieve the spirit and objectives of the Agreement.
2. This ANNEX may be reviewed and modified as and when necessary, upon request of a Party, and subject to the agreement of the Parties, and may be open to such reviews and modifications as may be agreed upon by the ACFTA Joint Committee.