

or suspension of the concession, Member States with substantial supplying interest shall be free to take action after thirty (30) days, but not later than ninety (90) days after the applicant Member State effects its modification or suspension of concessions, to modify or suspend substantially equivalent concessions from the applicant Member State. The concerned Member States shall immediately notify the AFTA Council of such actions.

Article 24 Special Treatment on Rice and Sugar

The *Protocol to Provide Special Consideration for Rice and Sugar* signed on 23 August 2007 shall form an integral part of this Agreement.

CHAPTER 3 RULES OF ORIGIN

Article 25 Definitions

For the purposes of this Chapter:

- (a) **aquaculture** means the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from feedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators;
- (b) **Costs, Insurance and Freight (CIF)** means the value of the goods 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 made in accordance with Article VII of GATT 1994 and *the Agreement on the Implementation of Article VII of GATT 1994* as contained in Annex 1A to the WTO Agreement;
- (c) **FOB** means the free-on-board value of the goods, inclusive of the costs of transport to the port or site of final shipment abroad. The valuation shall be made in accordance with Article VII of GATT 1994 and *the Agreement on the Implementation of Article VII of GATT 1994* as contained in Annex 1A to the WTO Agreement;

- (d) **generally accepted accounting principles (GAAP)** means the recognised consensus or substantial authoritative support in the territory of a Member State, 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) **goods** shall include materials and/or products, which can be wholly obtained or produced, even if they are intended for later use as materials in another production process. For the purposes of this Chapter, the terms “goods” and “products” can be used interchangeably;
- (f) **identical and interchangeable materials** means materials being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which after being incorporated into the finished product cannot be distinguished from one another for origin purposes by virtue of any markings, etc.;
- (g) **materials** means any matter or substance used or consumed in the production of goods or physically incorporated into another good or are subject to a process in the production of another good;
- (h) **originating goods** or **originating material** means goods or material that qualifies as originating in accordance with the provisions of this Chapter;
- (i) **packing materials and containers for transportation** means the goods used to protect a good during its transportation, different from those containers or materials used for its retail sale;
- (j) **production** means methods of obtaining goods, including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling goods; and
- (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.

Article 26 Origin Criteria

For the purposes of this Agreement, a good imported into the territory of a Member State from another Member State shall be treated as an originating good if it conforms to the origin requirements under any one of the following conditions:

- (a) a good which is wholly obtained or produced in the exporting Member State as set out and defined in Article 27; or
- (b) a good not wholly obtained or produced in the exporting Member State, provided that the said goods are eligible under Article 28 or Article 30.

Article 27 Wholly Obtained or Produced Goods

Within the meaning of Article 26(a), the following shall be considered as wholly obtained or produced in the exporting Member State:

- (a) Plant and plant products, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown and harvested, picked or gathered in the exporting Member State;
- (b) Live animals, including mammals, birds, fish, crustaceans, molluscs, reptiles, bacteria and viruses, born and raised in the exporting Member State;
- (c) Goods obtained from live animals in the exporting Member State;
- (d) Goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing conducted in the exporting Member State;
- (e) Minerals and other naturally occurring substances, not included in paragraphs (a) to (d) of this Article, extracted or taken from its soil, waters, seabed or beneath its seabed;

- (f) Products of sea-fishing taken by vessels registered with a Member State and entitled to fly its flag and other products⁴ taken from the waters, seabed or beneath the seabed outside the territorial waters⁵ of that Member State, provided that that Member State has the rights to exploit such waters, seabed and beneath the seabed in accordance with international law⁶;
- (g) Products of sea-fishing and other marine products taken from the high seas by vessels registered with a Member State and entitled to fly the flag of that Member State;
- (h) Products processed and/or made on board factory ships registered with a Member State and entitled to fly the flag of that Member State, exclusively from products referred to in paragraph (g) of this Article;
- (i) Articles collected there which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts of raw materials, or for recycling purposes;
- (j) Waste and scrap derived from:
 - (i) production in the exporting Member State; or
 - (ii) used goods collected in the exporting Member State, provided that such goods are fit only for the recovery of raw materials; and
- (k) Goods obtained or produced in the exporting Member State from products referred to in paragraphs (a) to (j) of this Article.

Article 28
Not Wholly Obtained or Produced Goods

⁴ "Other products" refers to minerals and other naturally occurring substances extracted from the waters, seabed or beneath the seabed outside the territorial waters.

⁵ For products of sea-fishing obtained from outside the territorial waters (e.g. Exclusive Economic Zone), originating status would be conferred to that Member State with whom the vessels used to obtain such products are registered with and whose flag is flown in the said vessel, and provided that that Member State has the rights to exploit it under international law.

⁶ In accordance with international law, registration of vessels could only be made in one Member State.

1. (a) For the purposes of Article 26(b), goods shall be deemed to be originating in the Member State where working or processing of the goods has taken place:
 - (i) if the goods have a regional value content (hereinafter referred to as “ASEAN Value Content” or the “Regional Value Content (RVC)”) of not less than forty percent (40%) calculated using the formula set out in Article 29; or
 - (ii) 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 four-digit level (i.e. a change in tariff heading) of the Harmonized System.
- (b) Each Member State shall permit the exporter of the good to decide whether to use paragraph 1(a)(i) or 1(a)(ii) of this Article when determining whether the goods qualify as originating goods of the Member State.
2. (a) Notwithstanding paragraph 1 of this Article, goods listed in Annex 3 shall qualify as originating goods if the goods satisfy the product specific rules set out therein.
- (b) Where a product specific rule provides a choice of rules from a RVC-based rule of origin, a CTC-based rule of origin, a specific manufacturing or processing operation, or a combination of any of these, each Member State shall permit the exporter of the goods to decide which rule to use in determining whether the goods qualify as originating goods of the Member State.
- (c) Where product specific rules specify a certain RVC, it is required that the RVC of a good is calculated using the formula set out in Article 29.
- (d) Where product specific rules requiring that the materials used have undergone CTC or a specific manufacturing or processing operation, the rules shall apply only to non-originating materials.
3. Notwithstanding paragraphs 1 and 2 of this Article, a good which is covered by Attachment A or B of the *Ministerial Declaration on Trade in Information Technology Products* adopted in the Ministerial

Conference of the WTO on 13 December 1996, set out as Annex 4, shall be deemed to be originating in a Member State if it is assembled from materials covered under the same Annex.

Article 29
Calculation of Regional Value Content

1. For the purposes of Article 28, the formula for calculating ASEAN Value Content or RVC is as follows:

(a) *Direct Method*

$$RVC = \frac{\text{ASEAN Material Cost} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Other Cost} + \text{Profit}}{\text{FOB Price}} \times 100 \%$$

or

(b) *Indirect Method*

$$RVC = \frac{\text{FOB Price} - \text{Value of Non-Originating Materials, Parts or Goods}}{\text{FOB Price}} \times 100 \%$$

2. For the purposes of calculating the RVC provided in paragraph 1 of this Article:

- (a) **ASEAN Material Cost** is the CIF value of originating materials, parts or goods that are acquired or self-produced by the producer in the production of the good;
- (b) **Value of Non-Originating Materials, Parts or Goods** shall be:
 - (i) The CIF value at the time of importation of the goods or importation can be proven; or

- (ii) The earliest ascertained price paid for the goods of undetermined origin in the territory of the Member State where the working or processing takes place;
- (c) **Direct labour cost** shall include wages, remuneration and other employee benefits associated with the manufacturing process;
- (d) **The calculation of direct overhead cost** shall include, but is not limited to, real property items associated with the production process (insurance, factory rent and leasing, depreciation on buildings, repair and maintenance, taxes, interests on mortgage); leasing of and interest payments for plant and equipment; factory security; insurance (plant, equipment and materials used in the manufacture of the goods); utilities (energy, electricity, water and other utilities directly attributable to the production of the goods); research, development, design and engineering; dies, moulds, tooling and the depreciation, maintenance and repair of plant and equipment; royalties or licences (in connection with patented machines or processes used in the manufacture of the goods or the right to manufacture the goods); inspection and testing of materials and the goods; storage and handling in the factory; disposal of recyclable wastes; and cost elements in computing the value of raw materials, i.e. port and clearance charges and import duties paid for dutiable component; and
- (e) **FOB price** means the free-on-board value of the goods as defined in Article 25. FOB price shall be determined by adding the value of materials, production cost, profit and other costs.

3. Member States shall determine and adhere to only one (1) method of calculating the RVC. Member States shall be given the flexibility to change their calculation method provided that such change is notified to the AFTA Council at least six (6) months prior to the adoption of the new method. Any verification to the ASEAN Value Content calculation by the importing Member State shall be done on the basis of the method used by the exporting Member State.

4. In determining the ASEAN Value Content, Member States shall closely adhere to the guidelines for costing methodologies set out in Annex 5.

5. Locally-procured materials produced by established licensed manufacturers, in compliance with domestic regulations, shall be deemed to have fulfilled the origin requirement of this Agreement; locally-procured materials from other sources shall be subjected to the origin verification pursuant to Article 57 for the purpose of origin determination.

6. The value of goods under this Chapter shall be determined in accordance with the provisions of Article 57.

Article 30 Accumulation

1. Unless otherwise provided in this Agreement, goods originating in a Member State, which are used in another Member State as materials for finished goods eligible for preferential tariff treatment, shall be considered to be originating in the latter Member State where working or processing of the finished goods has taken place.

2. If the RVC of the material is less than forty percent (40%), the qualifying ASEAN Value Content to be cumulated using the RVC criterion shall be in direct proportion to the actual domestic content provided that it is equal to or more than twenty percent (20%). The Implementing Guidelines are set out in Annex 6.

Article 31 Minimal Operations and Processes

1. 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 originating in one Member State:

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

2. A good originating in the territory of a Member State shall retain its initial originating status, when exported from another Member State, where operations undertaken have not gone beyond those referred to in paragraph 1 of this Article.

Article 32 Direct Consignment

1. Preferential tariff treatment shall be applied to goods satisfying the requirements of this Chapter and which are consigned directly between the territories of the exporting Member State and the importing Member State.

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

- (a) goods transported from an exporting Member State to the importing Member State; or
- (b) goods transported through one or more Member States, other than the exporting Member State and the importing Member State, or through a non-Member State, 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 33 *De Minimis*

1. A good that does not undergo a change in tariff classification shall be considered as originating if the value of all non-originating materials used in its production that do not undergo the required change in tariff classification does not exceed ten percent (10%) of the FOB value of the good and the good meets all other applicable criteria set forth in this Agreement for qualifying as an originating good.

2. The value of non-originating materials referred to in paragraph 1 of this Article shall, however, be included in the value of non-originating materials for any applicable RVC requirement for the good.

Article 34
Treatment of Packages and Packing Materials

1. Packaging and Packing Materials for retail sale:

- (a) If a good is subject to the RVC-based rule of origin, the value of the packaging and packing materials for retail sale shall be taken into account in its origin assessment, where the packaging and packing materials for retail sale are considered to be forming a whole with the good.
- (b) Where paragraph 1 (a) of this Article is not applicable, the packaging and packing materials for retail sale, when classified together with the packaged good shall not be taken into account in considering whether all non-originating materials used in the manufacture of a product fulfils the criterion corresponding to a change of tariff classification of the said good.

2. The containers and packing materials exclusively used for the transport of a good shall not be taken into account for determining the origin of the said good.

Article 35
Accessories, Spare Parts and Tools

1. If a good is subject to the requirements of CTC or specific manufacturing or processing operation, the origin of accessories, spare parts, tools and instructional or other information materials presented with the good shall not be taken into account in determining whether the good qualifies as an originating good, provided that:

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

2. If a good is subject to the RVC-based rule of origin, the value of the accessories, spare parts, tools and instructional or other

information materials shall be taken into account as the value of the originating or non-originating materials, as the case may be, in calculating the RVC of the originating good.

Article 36 Neutral Elements

In order to determine whether a good originates, it shall not be necessary to determine the origin of the following which might be used in its production and not incorporated into the good:

- (a) fuel and energy;
- (b) tools, dies and moulds;
- (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) catalyst and solvent; and
- (h) any other goods that are not incorporated into the good but of which use in the production of the good can reasonably be demonstrated to be a part of that production.

Article 37 Identical and Interchangeable Materials

1. The determination of whether identical and interchangeable materials are originating materials shall be made either by physical segregation of each of the materials or by the use of generally accepted accounting principles of stock control applicable, or inventory management practice, in the exporting Member States.

2. Once a decision has been taken on the inventory management method, that method shall be used throughout the fiscal year.

Article 38
Certificate of Origin

A claim that a good shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin (Form D), as set out in Annex 7 issued by a Government authority designated by the exporting Member State and notified to the other Member States in accordance with the Operational Certification Procedures, as set out in Annex 8.

Article 39
Sub-Committee on Rules of Origin

1. For the purposes of the effective and uniform implementation of this Chapter, a Sub-Committee on Rules of Origin shall be established pursuant to Article 90.

2. The functions of the Sub-Committee on Rules of Origin shall include:

- (a) monitoring of the implementation and operation of this Chapter;
- (b) reviewing, as and when necessary, this Chapter to provide appropriate recommendations with the view to enhancing this Chapter to make it responsive to the dynamic changes in the regional and global production processes so as to facilitate trade and investment among Member States, promote a regional production network, encourage the development of Small and Medium Enterprises (SMEs) and narrowing the development gaps;
- (c) reviewing, as and when necessary, the operational procedures of this Chapter with the view to simplifying the procedures and making them transparent, predictable and standardised, taking into account the best practices of other regional and international trade agreements;
- (d) considering any other matter as Member States may agree related to this Chapter; and

- (e) carrying out other functions as may be delegated by the CCA, SEOM and the AFTA Council.

3. The Sub-Committee on Rules of Origin shall be composed of representatives of the Governments of Member States, and may invite representatives of relevant entities other than the Governments of the Member States with necessary expertise relevant to the issues to be discussed, upon agreement of all Member States.

CHAPTER 4 NON-TARIFF MEASURES

Article 40 Application of Non-Tariff Measures

1. Each Member State shall not adopt or maintain any non-tariff measure on the importation of any good of any other Member State or on the exportation of any good destined for the territory of any other Member State, except in accordance with its WTO rights and obligations or in accordance with this Agreement.

2. Each Member State shall ensure the transparency of its non-tariff measures permitted in paragraph 1 of this Article in accordance with Article 12 and shall ensure that any such measures are not prepared, adopted or applied with the view to, or with the effect of, creating unnecessary obstacles in trade among the Member States.

3. Any new measure or modification to the existing measure shall be duly notified in accordance with Article 11.

4. The database on non-tariff measures applied in Member States shall be further developed and included in the ASEAN Trade Repository as referred in Article 13.

Article 41 General Elimination of Quantitative Restrictions