

## Annex II

### Provisional Rules of Origin Applicable to Products Under the Early Harvest for Trade in Goods

#### Article 1 Definitions

For the purposes of this Provisional Rules:

**Customs Valuation Agreement** means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the *Marrakesh Agreement Establishing the World Trade Organization*.

**Fungible materials** means materials that are interchangeable for commercial purposes and whose properties are essentially identical and between which it is impractical to differentiate by a mere visual examination.

**Generally Accepted Accounting Principles** means the recognized essential authoritative accounting standards of one 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.

**Material** means a good physically incorporated into another good or used in the production of another good, including ingredients, parts, components, subassemblies or semi-subassemblies.

**Neutral elements** means articles used in the production, testing or inspection of another good, but not physically incorporated into the good.

**Non-originating materials** means materials other than those qualified as originating in accordance with the provisions of this Provisional Rules.

**Originating materials or originating goods** means materials or goods which are qualified as originating in accordance with the provisions of this Provisional Rules.

**Production** means methods of obtaining goods, including but not limited to, growing, raising, mining, harvesting, fishing, farming, trapping, hunting, capturing, gathering, collecting, breeding, extracting, manufacturing, processing, or assembling.

**Harmonized System** means the *Harmonized Commodity Description and Coding System* of the World Customs Organization.

**Heading** means the four-digit code used in the Harmonized System.

**Subheading** means the six-digit code used in the Harmonized System.

#### Article 2 Originating Goods

Unless otherwise provided in this Provisional Rules, a good shall be considered as originating in one Party when:

- (a) the good is wholly obtained in one Party in accordance with Article 3;

- (b) the good is produced entirely in one or both Parties, exclusively from originating materials; or
- (c) the good is produced in one or both Parties, using non-originating materials, and conforms to the product specific rules provided in Article 4.

### **Article 3 Goods Wholly Obtained**

For the purpose of subparagraph (a) of Article 2, the following goods shall be considered as wholly obtained in one Party:

- (a) live animals born and raised in one Party;
- (b) products obtained from live animals referred to in subparagraph (a) above in one Party;
- (c) plants or plant products harvested, picked or gathered in one Party;
- (d) goods obtained by hunting, trapping, fishing, farming, gathering or capturing in one Party;
- (e) minerals extracted in one Party;
- (f) products obtained by one Party from its relevant waters, seabed or subsoil beneath the seabed;
- (g) goods processed or manufactured on board factory ships registered in one Party, exclusively from goods referred to in subparagraph (f) above;
- (h) waste and scrap derived from processing operations in one Party and fit only for the recovery of raw materials, or waste collected after consumption in one Party provided that such waste are fit only for the recovery of raw materials; and
- (i) goods obtained in one Party solely from goods referred to in subparagraphs (a) through (h) above.

### **Article 4 Product Specific Rules**

Unless otherwise provided in this Provisional Rules, the originating status of the goods, produced in one or both Parties using non-originating materials, shall be determined in accordance with the corresponding rules set forth in the Attachment to this Provisional Rules, which specifies a change in tariff classification, a regional value content, processing operation or other requirements.

The above-mentioned Attachment shall be implemented subsequent to the agreement to be reached through the consultation between the expert group on Rules of Origin of both Parties.

### **Article 5 Change in Tariff Classification**

For the purpose of a change in tariff classification criterion provided in Article 4 of this Provisional Rules, the non-originating materials used in the production of a

good shall undergo a change of tariff classification specified in the Attachment to this Provisional Rules as a result of processes performed in one or both Parties.

#### **Article 6 Regional Value Content**

1. For the purpose of the Regional Value Content (RVC) criterion provided in Article 4, the RVC shall be calculated according to the following formula:

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

where:

VNM shall be the value of non-originating materials adjusted based on CIF.

2. Both FOB and CIF values referred to in this Provisional Rules shall be determined pursuant to the *Customs Valuation Agreement* and the Generally Accepted Accounting Principles.

#### **Article 7 Processing Operations**

For the purpose of the processing operation criterion provided in Article 4, the goods concerned shall be considered as originating provided that the processing operations specified in the Attachment to this Provisional Rules, have been conducted in one or both Parties.

#### **Article 8 Accumulation Rule**

Where an originating material of one Party is incorporated into a good in the other Party, the material so incorporated shall be considered to be originating in the latter Party.

#### **Article 9 Minimal Operations or Processes**

1. For the purposes of this Article, “simple” is used to describe operations or processes which need neither professional skill nor specialized machine, apparatus or equipment.
2. Simple operations or processes which contribute minimally to the essential characteristics of the goods, either by themselves or in combination, shall be considered to be minimal operations or processes and do not confer origin. These include but not limited to:
  - (a) operations to ensure the preservation of goods in good condition during transportation or storage, such as ventilation, dehumidification, refrigeration, freezing, chilling, oiling, antirust painting, protection wrapping, or placing in salt or aqueous solutions;
  - (b) breaking-up and assembling of goods for the purpose of facilitating

- consignments;
- (c) packaging, unpackaging or repackaging for sale or exhibition purposes;
  - (d) slaughtering, freezing, cutting and slicing of animals;
  - (e) sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles), slitting, bending, coiling, or uncoiling;
  - (f) washing, cleaning, removing dust, oxide, oil, paints and other coverings;
  - (g) simple painting, polishing, sharpening, grinding, cutting, assembling or disassembling;
  - (h) bottling, canning, bagging, casing, boxing, fixing on cards or boards, and other similar packaging operations;
  - (i) affixing or printing marks, labels, logos or other like distinguishing signs on products or their packaging;
  - (j) diluting, dissolving or simple mixing that does not materially alter the characteristics of the goods;
  - (k) husking, partial or complete bleaching, polishing and glazing of cereals other than rice;
  - (l) operations to color sugar or form sugar lumps;
  - (m) ironing or pressing of textiles;
  - (n) peeling, stoning and shelling of fruits, nuts and vegetables.

#### **Article 10 *De Minimis***

A good that fails to meet the criterion of change in tariff classification, pursuant to the provisions of the Attachment to this Provisional Rules, shall nonetheless be considered to be originating, provided that:

- (a) the value of all non-originating materials, determined pursuant to Article 6, that fail to meet the criterion of change in tariff classification, does not exceed ten percent (10%) of the FOB value of the given good; and
- (b) the good meets all the other applicable requirements of this Provisional Rules.

#### **Article 11 *Fungible Materials***

1. In determining whether a good is originating, any fungible material shall be distinguished by the physical separation of the goods; or by one of the inventory management methods recognized in the Generally Accepted Accounting Principles of the exporting Party.
2. The selected inventory management method shall be used continuously for that good or material throughout the entire fiscal year.

#### **Article 12 *Neutral Elements***

In determining whether a good is originating, 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 molds;
- (e) spare parts and materials used in the maintenance of equipment and buildings; and
- (f) any other goods that are not incorporated into the good, whose use in the production of that good can reasonably be demonstrated to be a part of that production.

### **Article 13 Sets**

Sets, as defined in General Rule 3 for the Interpretation of the Harmonized System, shall be considered to be originating in one Party provided all the products of the sets are originating in that Party. Nevertheless, when a set is composed of originating and non-originating products, the set as a whole shall be considered to be originating, provided that the value of the non-originating materials, pursuant to Article 6, does not exceed ten percent (10%) of the FOB value of the set.

### **Article 14 Packaging Materials and Containers**

1. Where goods are subject to a change in tariff classification criterion set out in the Attachment to this Provisional Rules, the origin of the packaging materials and containers in which the goods are packaged for retail sale shall be disregarded in determining the origin of the goods, provided that the packaging materials and containers are classified with the goods. Nevertheless, if the goods are subject to a regional value content requirement, the value of the packaging materials and containers used for retail sale shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the region value content of the goods.
2. The packaging materials and containers used for transportation shall not be taken into account in determining the origin of the goods.

### **Article 15 Accessories, Spare Parts and Tools**

1. For the purpose of a change in tariff classification criterion provided in the Attachment to this Provisional Rules, accessories, spare parts, tools, manuals and informative materials presented with the goods upon importation shall be disregarded in the determination of the origin of the goods, provided that these are classified with and not invoiced separately from the good.

2. Where the goods are subject to a regional value content requirement, the value of the accessories, spare parts, tools, manuals and informative materials shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the region value content of the goods, provided that these are presented with and not invoiced separately from the goods.
3. This Article applies where the quantities and values of the accessories, spare parts, tools, manuals and informative materials are customary for the goods.

#### **Article 16 Direct Consignment**

1. Originating goods claiming for preferential tariff treatment shall be directly consigned between the Parties.
2. Goods whose transportation involves transit through one or more third parties, with or without transshipment or temporary storage, shall still be considered as directly consigned between the Parties, provided that:
  - (a) the transit entry is justified for geographical reasons or transportation requirements;
  - (b) the goods do not enter into trade, commerce or consumption in the third party; and
  - (c) the goods do not undergo any operation in the third party other than unloading and reloading, repackaging, or any operation required to keep them in good condition.
3. Under the condition set forth in paragraph 2 of this Article, the duration of temporary storage of the goods in the third party shall not exceed sixty (60) days from the date of their entry into that third party, and during the whole period of its temporary storage, the goods shall remain under the custody of Customs of that third party.
4. For the purpose of the goods as set out in paragraph 2 of this Article, documentation issued by the Customs of the transit party and other evidentiary documents recognized by the customs of the importing Party shall be submitted upon import declaration.

#### **Article 17 Operational Procedures Related to Rules of Origin**

Operational procedures for the implementation of this Provisional Rules shall be implemented subsequent to the agreement to be reached through the consultation between the expert group on Rules of Origin of both Parties.