

ANNEX 3 RULES OF ORIGIN

In determining the origin of a good eligible for preferential tariff treatment pursuant to Article 5 of this Agreement, the following Rules shall apply:

Rule 1 Definitions

For the purposes of this Annex:

CIF means the value of the good imported, and includes the cost of freight and insurance up to the port or place of entry into the country of importation;

FOB means the free-on-board value of a good, inclusive of the cost of transport from the producer to the port or site of final shipment abroad;

goods shall include materials 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 Annex, the terms “goods” and “products” can be used interchangeably and the terms “good” and “product” shall be interpreted accordingly;

Harmonized System means the nomenclature of the Harmonized Commodity Description and Coding System defined in the International Convention on the Harmonized Commodity Description and Coding System including all legal notes thereto, as in force and as amended from time to time;

identical and interchangeable materials means materials being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which once they are incorporated into the finished good cannot be distinguished from one another for origin purposes by virtue of any markings, etc.;

materials shall include ingredients, raw materials, parts, components, sub-assemblies used in the production process;

non-originating goods means products or materials that do not qualify as originating under this Annex;

originating goods means products or materials that qualify as originating under this Annex;

packing materials and containers for transportation means the goods used to protect a good during its transportation, different from those materials or containers used for its retail sale;

preferential tariff treatment means tariff concessions granted to originating goods as reflected by the tariff rates applicable under this Agreement;

Product Specific Rules means the 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 or a combination of any of these criteria;

production means methods of obtaining a good including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling a good; and

third country means a non-Party or a Party which is not an importing or exporting Party, and the phrase “third countries” shall be interpreted accordingly.

Rule 2 Origin Criteria

1. For the purposes of this Agreement, a good imported into the territory of a Party shall be deemed to be originating and eligible for preferential tariff treatment if it conforms to the origin requirements under any one of the following:

- (a) a good which is wholly obtained or produced entirely in the territory of the exporting Party as set out and defined in Rule 3; or
- (b) a good not wholly obtained or produced in the territory of the exporting Party, provided that the said good is eligible under Rule 4 or 5 or 6 or 7.

2. Except as provided for in Rule 7, the conditions for acquiring originating status set out in this Annex must be fulfilled without interruption in the territory of the exporting Party.

Rule 3 Wholly Obtained or Produced Goods

Within the meaning of paragraph 1(a) of Rule 2, the following shall be considered to be wholly obtained or produced in the territory of a Party:

- (a) plants and plant products harvested, picked or gathered after being grown there;
- (b) live animals born and raised there;
- (c) goods obtained from live animals referred to in sub-paragraph (b);
- (d) goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted there;
- (e) minerals and other naturally occurring substances, not included in sub-paragraphs (a) through (d), extracted or taken from its soil, waters, seabed or beneath its seabed;
- (f) products of sea-fishing taken by vessels registered with the Party and entitled to fly its flag, and other products taken by the Party or a person of that Party, from the waters, seabed or beneath the seabed outside the territorial waters of

the Party, provided that the Party has the rights to exploit¹ the natural resources of such waters, seabed and beneath the seabed under international law²;

- (g) products of sea-fishing and other marine products taken from the high seas by vessels registered with the Party and entitled to fly its flag;
- (h) goods produced and/or made on board factory ships registered with a Party and entitled to fly its flag, exclusively from products referred to in sub-paragraph (g);
- (i) goods taken from outer space provided that they are obtained by the Party or a person of that Party;
- (j) articles collected from there which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for the disposal or recovery of parts of raw materials, or for recycling purposes;
- (k) waste and scrap derived from:
 - (i) production there; or
 - (ii) used goods collected there, provided that such goods are fit only for the recovery of raw materials; and
- (l) goods obtained or produced in the territory of the Party solely from goods referred to in sub-paragraphs (a) through (k).

Rule 4 **Not Wholly Obtained or Produced Goods**

1. For the purposes of paragraph 1(b) of Rule 2, a good, except those covered under Rule 5 as provided for in Appendix 2, shall be deemed to be originating if the regional value content (hereinafter referred to as the “RVC”) is not less than 40% of the FOB value or if a good has undergone a change in tariff classification at four digit-level (change of tariff heading) of the Harmonized System.
2. The formula for calculating the RVC shall be³:
 - (a) Build-Up Method

¹ The Parties understand that for the purposes of determining the origin of products of sea-fishing and other products, “rights” in sub-paragraph (f) of Rule 3 include those rights of access to the fisheries resources of a coastal state, as accruing from agreements or other arrangements concluded between a Party and the coastal state at the level of governments or duly authorised private entities.

² “International law” in sub-paragraph (f) of Rule 3 refers to generally accepted international law such as the United Nations Convention on the Law of the Sea.

³ The Parties shall be given the flexibility to adopt the method of calculating the RVC, whether it is the build-up or the build-down method. In order to promote transparency, consistency and certainty, each Party shall adhere to one method. Any change in the method of calculation shall be notified to all the other Parties at least six (6) months prior to the adoption of the new method. It is understood that any verification of the RVC by the importing Party shall be done on the basis of the method used by the exporting Party.

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

VOM means value of originating materials, which includes the value of originating materials, direct labour cost, direct overhead cost, transportation cost and profit

(b) Build-Down Method

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

VNM means value of non-originating materials, which shall be: (i) the CIF value at the time of importation of the materials, parts or goods; or (ii) the earliest ascertained price paid for the materials, parts or goods of undetermined origin in the territory of the Party where the working or processing has taken place

Rule 5
Product Specific Rules

For the purposes of Rule 2, goods which satisfy the Product Specific Rules provided in Appendix 2 shall be considered to be originating in the territory of the Party where working or processing of the goods has taken place.

Rule 6
Treatment for Certain Goods

Notwithstanding Rules 2, 4 and 5, certain goods shall be considered to be originating even if the production process or operation has been undertaken in an area outside the territories of Korea and ASEAN Member Countries (i.e. industrial zone) on materials exported from a Party and subsequently re-imported to that Party. The application of this Rule, including the list of products and the specific procedures related to this application shall be mutually agreed upon by the Parties.

Rule 7
Accumulation

Unless otherwise provided for in this Annex, a good originating in the territory of a Party, which is used in the territory of another Party as material for a finished good eligible for preferential tariff treatment, shall be considered to be originating in the territory of the latter Party where working or processing of the finished good has taken place.

Rule 8

Non-Qualifying Operations

1. Notwithstanding any provisions in this Annex, a good shall not be considered to be originating in the territory of a Party if the following operations are undertaken exclusively by itself or in combination in the territory of that Party:

- (a) preserving operations to ensure that the good remains in good condition during transport and storage;
- (b) changes of packaging, breaking-up and assembly of packages;
- (c) simple⁴ washing, cleaning, removal of dust, oxide, oil, paint or other coverings;
- (d) simple⁴ painting and polishing operations;
- (e) husking, partial or total bleaching, polishing and glazing of cereals and rice;
- (f) operations to colour sugar or form sugar lumps;
- (g) simple⁴ peeling, stoning, or un-shelling;
- (h) sharpening, simple grinding or simple cutting;
- (i) sifting, screening, sorting, classifying, grading, matching;
- (j) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (k) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (l) simple mixing⁵ of products, whether or not of different kinds;
- (m) simple⁴ assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (n) simple⁴ testing or calibrations; or
- (o) slaughtering of animals⁶

⁴ "simple" generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity.

⁵ "simple mixing" generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity. However, simple mixing does not include chemical reaction. Chemical reaction means a process (including a biochemical process) which result in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

⁶ Slaughtering means the mere killing of animals and subsequent processes such as cutting, chilling, freezing, salting, drying or smoking, for the purpose of preservation for storage and transport.

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

Rule 9 Direct Consignment

1. Preferential tariff treatment shall be applied to a good satisfying the requirements of this Annex and which is transported directly between the territories of the exporting Party and the importing Party.

2. Notwithstanding paragraph 1, a good of which transport involves transit through one or more intermediate third countries, other than the territories of the exporting Party and the importing Party, shall be considered to be consigned directly, provided that:

- (a) the transit is justified for geographical reason or by consideration related exclusively to transport requirement;
- (b) the good has not entered into trade or consumption there; and
- (c) the good has not undergone any operation other than unloading and reloading or any operation required to keep it in good condition.

Rule 10 De Minimis

1. A good that does not undergo a change in tariff classification shall be considered as originating if:

- (a) for a good, other than that provided for in Chapters 50 through 63 of the Harmonized System, 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 (10) percent of the FOB value of the good;
- (b) for a good provided for in Chapters 50 through 63 of the Harmonized System, the weight of all non-originating materials used in its production that do not undergo the required change in tariff classification does not exceed ten (10) percent of the total weight of the good;

and the good specified in sub-paragraph (a) and (b) meets all other applicable criteria set forth in this Annex for qualifying as an originating good.

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

Rule 11
Treatment of Packaging and Packing Materials

1. (a) If a good is subject to the RVC criterion as set out in Rule 4, the value of the packaging and packing materials for retail sale shall be taken into account in its determination of origin, where the packaging and packing materials are considered to be forming a whole with the good.
 - (b) Where sub-paragraph (a) 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 the good fulfil the criterion corresponding to a change in tariff classification of the said good.
2. Packing materials and containers for transportation of a good shall not be taken into account in determining the origin of the good.

Rule 12
Accessories, Spare Parts and Tools

The origin of accessories, spare parts, tools, and instructional or other informational materials presented with a good shall not be taken into account in determining the origin of the good, provided that such accessories, spare parts, tools, and instructional or other informational materials are classified with the good and their customs duties are collected with the good by the importing Party.

Rule 13
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; and

- (g) 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.

Rule 14
Identical and Interchangeable Materials

1. For the purposes of establishing the origin of a good, when the good is manufactured utilising originating and non-originating materials, mixed or physically combined, the origin of such materials can be determined by generally accepted accounting principles of inventory management practiced in the territory of the exporting Party.
2. Once a decision has been taken on the inventory management method, that method shall be used throughout the fiscal year.

Rule 15
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 issued by a competent authority designated by the exporting Party and notified to all the other Parties in accordance with the Operational Certification Procedures, as set out in Appendix 1.

Rule 16
Consultations, Review and Modification

1. The Parties shall consult regularly to ensure that the Rules in this Annex are administered effectively, uniformly and consistently in order to achieve the spirit and objectives of this Annex.
2. This Annex may be reviewed and modified as and when necessary upon request of a Party and may be open to such reviews and modifications as may be agreed upon in the Implementing Committee established under Article 5.3 of the Framework Agreement.

Rule 17
Institutional Arrangement

Subject to Article 5.3 of the Framework Agreement, the Korea-ASEAN Rules of Origin Committee shall be established and be responsible for administering and enforcing the general rules of origin and customs procedures as provided for in this Annex and endeavour to resolve any differences arising therefrom.

Rule 18
Settlement of Disputes

1. In the case of differences concerning origin determination, classification of a good or other matters relevant to the implementation of this Annex, the government authorities concerned of the importing Party and the exporting Party shall consult each other with a view to resolving the differences, and the result shall be notified to all the other Parties for information.

2. Where no mutually satisfactory solution to the differences has been reached through the consultations mentioned in paragraph 1, the Party concerned may invoke the dispute settlement procedures as set out in the Agreement on Dispute Settlement Mechanism under the Framework Agreement.