

# Free Trade Agreements

## Thailand-Australia Free Trade Agreement (TAFTA)

### Chapter 4 - Rules of Origin

#### Article 401

##### Definitions

For the purposes of this Chapter:

- a. "Certificate of Origin" means a certificate issued in accordance with Article 408 and complying with the requirements of Annex 4.2 (Certificate of Origin Requirements);
- b. "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;
- c. "material" means any matter or substance used or consumed in the production of goods, and physically incorporated into or classified with those goods;
- d. "originating material" means a material that qualifies as originating in accordance with the relevant provisions of this Chapter;
- e. "registered exporter" means an exporter that is registered with an authorised body as an exporter of originating goods in accordance with Article 407 (2);
- f. "registered goods" means the particular goods in respect of which a registered exporter is registered in accordance with Article 407 (2);
- g. "significant change", in relation to Articles 407 (4) and 408 (2) and Annex 4.2, means a change that may prevent those goods from continuing to satisfy the requirements of Article 402;
- h. "wholly obtained goods" means:
  - i. mineral goods extracted in the territory of a Party;
  - ii. agricultural goods harvested, picked, or gathered in the territory of a Party;
  - iii. live animals born and raised in the territory of a Party;
  - iv. goods obtained from live animals in the territory of a Party;
  - v. goods obtained directly from hunting, trapping, fishing, gathering, or capturing in the territory of a Party;
  - vi. goods (fish, shellfish, plant and other marine life) taken within the territorial sea or the relevant maritime zone of a Party seaward of the territorial sea under that Party's applicable laws in accordance with the provisions of the *United Nations Convention on the Law of the Sea*, or taken from the high seas by a vessel entitled to fly the flag of that Party;
  - vii. goods obtained or produced on board factory ships entitled to fly the flag of a Party from the goods referred to in subparagraph (vi);
  - viii. goods taken by a Party, or a person of a Party, from the seabed or subsoil beneath the seabed of the territorial sea or the continental shelf of that Party,

in accordance with the provisions of the *United Nations Convention on the Law of the Sea*;

- ix. waste and scrap derived from production in the territory of a Party, or used goods collected in the territory of a Party, provided such goods are fit only for the recovery of raw materials; and
- x. goods produced entirely in the territory of a Party exclusively from goods referred to in subparagraph (i) through (ix).

## **Article 402**

### **Originating Goods**

1. Particular goods shall originate in the territory of a Party if they:
  - a. are the wholly obtained goods of that Party; or
  - b. satisfy any applicable requirements of Annex 4.1, as a result of processes performed entirely in the territory of one or both of the Parties by one or more producers.
2. Originating materials from the territory of a Party, used in the production of particular goods in the territory of the other Party, shall be considered to originate in the territory of the other Party.
3. Particular goods that do not satisfy a change in tariff classification requirement pursuant to Annex 4.1 are nonetheless originating goods if:
  - a. the value of all non-originating materials used in the production of the goods that do not undergo the required change in tariff classification does not exceed 10 per cent of the Free on Board (FOB) value of the goods; and
  - b. the goods meet all other applicable criteria of this Article.
4. Accessories, spare parts or tools delivered with originating goods that form part of the standard accessories, spare parts, or tools for those goods, shall be treated as originating goods, and shall be disregarded in determining whether all the non-originating materials used in the production of the originating goods undergo the applicable change in tariff classification, provided that:
  - a. the accessories, spare parts, or tools are not invoiced separately from the originating goods;
  - b. the quantities and value of the accessories, spare parts, or tools are customary for the originating goods; and
  - c. if the goods are subject to a regional value content requirement, the value of the accessories, spare parts, or tools was taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the originating goods.
5. Paragraph 4 does not apply where the accessories, spare parts or tools have been added solely for the purpose of artificially raising the regional value content of the goods.
6. The determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each of the goods or materials or through the use of any inventory management method, such as averaging, last-in, first-out, or first-in, first out, recognised in the generally accepted accounting principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

7. An inventory management method selected under Paragraph 6 for particular fungible goods or materials shall continue to be used for those fungible goods or materials throughout the fiscal year of the person that selected the inventory management method.
8. Packaging materials and containers in which goods are packaged for retail sale, if classified with those goods, or for shipment, shall be disregarded in determining whether all the non-originating materials used in the production of those goods have undergone the applicable change in tariff classification set out in Annex 4.1.

### **Article 403**

#### **Regional Value Content**

1. Subject to Paragraphs 2 to 4 of this Article and Article 404, where Annex 4.1 requires goods to have a regional value content, the regional value content of particular goods shall be calculated as follows:

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

2. where:
  - a. "RVC" is the regional value content between the Parties, expressed as a percentage;
  - b. "FOB" is the FOB value of the goods; and
  - c. "VNM" is the CIF (Cost, Insurance and Freight) value of all non-originating materials that:
    - d. in the form in which they were first supplied to the producer of the goods, were imported into Australia or Thailand; or
    - e. in the form in which they were first supplied to a producer in the territory of a Party of non-originating materials that are supplied to the producer of the goods, were imported into Australia or Thailand.
3. Annex 4.1 may specify that the value of non-originating materials produced in developing countries and places may contribute towards the RVC for particular goods. In that case, the value of those materials, as a proportion of the FOB value of the goods equating to no more than the maximum allowable proportion specified in the Headnotes to Annex 4.1 for those goods shall be excluded from the VNM for the purposes of paragraph 1. Prior to entry into force of the Agreement, the Parties shall determine the list of countries and places to be considered developing countries and places for the purpose of this paragraph. The Parties shall, through the Committee on Rules of Origin established in Article 415, review and modify this list in the light of relevant international developments, and determine the date on which any such modifications shall take effect. This paragraph shall expire 20 years after the date of entry into force of this Agreement.
4. Packaging materials and containers in which goods are packaged for retail sale, if classified with those goods, shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content.
5. Packaging materials and containers in which goods are packaged for shipment shall be disregarded in calculating the regional value content.

## **Article 404**

### **Calculation of Values**

1. For the purposes of this Chapter, the FOB value of particular goods is to be determined under Articles 1 to 8, Article 15 and the corresponding interpretative notes of the WTO Customs Valuation Agreement, as adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incidental to the international shipment of the merchandise from the country of exportation to the port or place of importation.
2. For the purposes of determining whether a material acquired in the territory of a Party is originating, FOB value for that material shall be taken to mean the value of the material, determined in accordance with Articles 1 to 8, Article 15 and the corresponding interpretative notes of the WTO Customs Valuation Agreement, with such reasonable modifications as may be required to reflect the fact that the material was not imported.
3. For the purposes of this Chapter, the CIF value of non-originating materials is to be determined under Articles 1 to 8, Article 15, and the corresponding interpretative notes of the WTO Customs Valuation Agreement, as adjusted to include any costs, charges, or expenses incurred for transportation, insurance, and related services incidental to the international shipment of the goods from the country of exportation to the port or place of importation.

## **Article 405**

### **Recording of Costs**

For the purposes of this Chapter 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.

## **Article 406**

### **Consignment**

Goods shall not be considered to be originating if they undergo subsequent production or any other operation outside the territories of the Parties, other than operations necessary to preserve them in good condition or to transport them to the territory of the other Party, provided that the goods are not traded or used outside the territories of the Parties.

## **Article 407**

### **Registration of Exporters**

1. Subject to Article 409, the exporting Party shall require that, on receipt of an application to register as an exporter of originating goods, an authorised body referred to in Annex 4.2 (Certificate of Origin Requirements) shall, within 60 days of receipt of that application, conduct and conclude such examinations of documentation and facilities as it considers necessary to establish that the particular goods nominated in the application satisfy the requirements of Article 402.
2. Subject to Article 409, the exporting Party shall require that, where an authorised body, after conducting examinations in accordance with Paragraph 1, is satisfied that the particular goods satisfy the requirements of Article 402, the authorised body shall register the applicant as an exporter of originating goods in respect of those particular goods, and shall so notify the exporter within ten working days.

3. The exporting Party shall require that, where an authorised body, after conducting examinations in accordance with Paragraph 1, is not satisfied that the particular goods satisfy the requirements of Article 402, the authorised body shall not register the applicant as an exporter of originating goods in respect of those particular goods, and shall so notify the exporter within ten working days.
4. The exporting Party shall require that a registered exporter must, as expeditiously as possible, notify the authorised body with which it is registered if a significant change occurs in the basis for the registration of particular goods.
5. The exporting Party shall require that, on receipt of advice referred to in Paragraph 4, the authorised body shall, as expeditiously as possible, conduct such examinations of documentation and facilities as it considers necessary to assess whether the registered goods still satisfy the requirements of Article 402.
6. Where an authorised body, after conducting examinations in accordance with Paragraph 5, is satisfied that the registered goods satisfy the requirements of Article 402, it shall so notify the registered exporter within ten working days that the registration of the goods shall continue on the basis of the relevant changes.
7. The exporting Party shall require that an authorised body referred to in Annex 4.2 (Certificate of Origin Requirements) may, at any other time not specified, conduct such examinations of documentation and facilities as it considers necessary to ensure that registered goods still satisfy the requirements of Article 402.
8. The exporting Party shall require that, where an authorised body, after conducting examinations in accordance with Paragraphs 5 or 7, or for any other reason, is not satisfied that registered goods satisfy the requirements of Article 402, the authorised body shall de-register the registered exporter as an exporter of originating goods in respect of those goods, and within ten working days shall so notify:
  - a. the exporter;
  - b. all other authorised bodies referred to in Annex 4.2 (Certificate of Origin Requirements), in the territory of the exporting Party; and
  - c. the customs administration in the territory of the importing Party.

## **Article 408**

### **Certification of Origin**

1. Subject to Article 409, the exporting Party shall ensure that a registered exporter has the opportunity to apply to an authorised body referred to in Annex 4.2 (Certificate of Origin Requirements) for a Certificate of Origin in respect of a single shipment of registered goods.
2. Subject to Article 409, on receipt of an application referred to in Paragraph 1, an authorised body shall issue a Certificate of Origin in relation to the registered goods that are the subject of that application, provided that:
  - a. no significant change has occurred in the basis for the registration of those goods; or
  - b. if a significant change has occurred in the basis for the registration of those goods, the authorised body is satisfied that the goods meet the requirements of Article 402.
3. An authorised body shall not issue a Certificate of Origin:
  - a. for goods that are not registered goods; or

- b. where the circumstances set out in Paragraph 2 are not met.
4. The exporting Party shall require that an application for a Certificate of Origin and a Certificate of Origin must meet the requirements set out in Annex 4.2 (Certificate of Origin Requirements).
5. The exporting Party shall require that a Certificate of Origin may be revoked by notice in writing. A revoked Certificate of Origin shall have no force from the date specified in that notice.
6. The exporting Party shall require that a copy of a notice revoking a Certificate of Origin shall be forwarded to the applicant for the Certificate of Origin and to the importing Party, immediately upon the issue of that notice.

## **Article 409**

### **Exporter Sanctions**

1. The exporting Party shall ensure that adequate sanctions are imposed where an exporter:
  - a. secures registration as an exporter of originating goods, or obtains a Certificate of Origin, on the basis of a statement that is false or misleading in any particular, including a statement that is false or misleading due to omission;
  - b. falsifies a Certificate of Origin;
  - c. fails to notify an authorised body of significant changes in accordance with Article 407 (4); or
  - d. commits any other offence in an effort to secure registration as an exporter of originating goods or to obtain a Certificate of Origin.
2. In respect of an exporter referred to in paragraph 1, or in respect of a person who, consistent with the principles set out in the WTO Customs Valuation Agreement,<sup>[2]</sup> is related to such an exporter, sanctions imposed may include:
  - a. de-registration in respect of some or all registered goods for a particular period; and
  - b. refusal to consider an application for registration as an exporter of originating goods or for a Certificate of Origin for a particular period.
3. The exporting Party shall require that, where sanctions are imposed under Paragraph 1, the following are notified within ten working days of the decision to impose sanctions:
  - a. the exporter;
  - b. all authorised bodies referred to in Annex 4.2 (Certificate of Origin requirements) in the territory of the exporting Party; and
  - c. the customs administration in the territory of the importing Party.

## **Article 410**

### **Claim for Preferential Treatment**

1. Subject to Article 413, 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 406 have been met, and the importer claiming preferential tariff treatment:

- a. Has a valid Certificate of Origin or a copy thereof relevant to those goods in its possession when claiming preferential tariff treatment; and
  - b. provides a copy of that Certificate of Origin if requested by the importing Party.
2. The importing Party may waive the requirement for a Certificate of Origin in certain circumstances, in accordance with its laws, regulations and policies.
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 the laws, regulations and policies in the importing Party; and
  - b. the importer provides a copy of a valid Certificate of Origin relevant to those goods.

## **Article 411**

### **Records**

1. Each Party shall require that:
  - a. a producer, or an exporter must maintain, for five years from the date of the Certificate of Origin, all records relating to the origin of the goods for which preferential tariff treatment is claimed in the importing Party, including the Certificate of Origin relevant to the goods, or a copy thereof; and
  - b. an importer claiming preferential tariff treatment shall maintain, for five years after the date of importation of the goods, all records relating to the importation of the goods, including the Certificate of Origin relevant to the goods, or a copy thereof.
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 laws, regulations and policies of the relevant Party.

## **Article 412**

### **Origin Verification**

1. The importing Party may verify the eligibility of goods for preferential tariff treatment in accordance with its laws, regulations and policies.
2. Verification of eligibility for preferential tariff treatment may include either Party taking the following courses of action, in accordance with mutually determined procedures:
  - a. instituting measures to establish the validity of the Certificate of Origin;
  - b. issuing written questionnaires, to be completed within a period of 30 days, to relevant producers, exporters or importers of goods for which preferential tariff treatment was claimed in the territory of the importing Party, or of the materials used or consumed in the production of those goods;
  - c. requesting the supply of records relating to the production, manufacture or export of the goods for which preferential tariff treatment was claimed in the territory of the importing Party, or of the materials used or consumed in the production of those goods; and
  - d. visiting the factory or premises of the producer, importer, exporter or any other party in the territory of a Party associated with the production, import or export

of the goods for which preferential tariff treatment was claimed in the territory of the importing Party, or of the materials used or consumed in the production of those goods.

3. The importing Party shall notify the exporting Party in writing when it approaches any party listed in Sub-paragraph(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 Sub-paragraph (2)(d) within the territory of the exporting Party without the prior consent of that party.
5. To the extent allowed by its laws, regulations and policies, the exporting Party shall fully cooperate in any action to verify eligibility and shall require that producers and exporters cooperate 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 413**

#### **Suspension and Denial of Preferential Tariff Treatment**

1. Notwithstanding Article 410 (1), the importing Party may suspend the application of preferential tariff treatment to goods that are the subject of origin verification action under Article 412 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, 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 412 failed to verify the eligibility of the goods for preferential tariff treatment.

### **Article 414**

#### **Review and Appeal**

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

### **Article 415**

#### **Committee on Rules of Origin**

1. For the purposes of the effective and uniform implementation of this Chapter, a Committee on Rules of Origin ("the Committee") shall be established. The functions of the Committee shall include:
  - a. the monitoring of the implementation and administration of the provisions of this Chapter;
  - b. the discussion of any issue that may have arisen in the course of implementation, including any matters that may have been referred to the Committee by the Joint Commission;

- c. the discussion of any proposed modifications of the rules of origin under this Chapter; and
  - d. consultation on issues relating to rules of origin and administrative cooperation.
- 2. The Committee shall be comprised of representatives of the Parties. It shall meet at least once a year and more often as may be mutually determined from time to time between the Parties.