

ANNEX 2

RULES OF ORIGIN FOR PRODUCTS ELIGIBLE FOR PREFERENTIAL TARIFF TO ACCELERATE THE LIBERALIZATION OF TRADE IN GOODS AND TRADE FACILITATION UNDER THE PROTOCOL BETWEEN THE KINGDOM OF THAILAND AND THE REPUBLIC OF PERU

SECTION A: PREAMBLE

The purpose of the Rules of Origin under the Protocol between the Kingdom of Thailand and the Republic of Peru (hereinafter referred to as the “Protocol”) is to define the rules and procedures for qualification, certification, verification and control of the origin of goods that will benefit from the preferential treatment for accelerating the liberalization of trade in goods and trade facilitation under the Protocol.

SECTION B: DETERMINATION OF ORIGIN

ARTICLE 1 Definitions

For the purposes of this Annex:

- 1. Day** means calendar day;
- 2. Exporter** means a natural or juridical person located in the territory of a Party from which the good is exported;
- 3. Harmonized system** means the Harmonized Commodity Description and Coding System as defined in the International Convention on the Harmonized Commodity Description and Coding System (done at Brussels on 14 June 1983), including all legal notes thereto, as in force and as amended;
- 4. Generally Accepted Accounting Principles** means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets and liabilities, the

ANNEX 2

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;

5. Indirect materials means materials used in the production, testing or inspection of the goods but not physically incorporated into the goods, or materials used in the maintenance of buildings or the operation of equipment associated with the production of goods, including:

- (a) fuel and energy;
- (b) tools, dies and molds;
- (c) 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 goods;
- (g) catalysts and solvents; and
- (h) any other goods that are not incorporated into the goods but whose use in the production of the goods can reasonably be demonstrated to be a part of that production;

6. Importer means a natural or juridical person located in the territory of a Party into which the good is imported;

7. Material means raw materials, ingredients, parts, components, subassemblies and goods that are physically incorporated into another goods or are subject to a process in the production of another goods;

8. Minimal operations means:

- (a) operations to ensure the preservation of goods in good condition during transport and storage;

ANNEX 2

- (b) simple operations consisting of sifting or screening, sorting, classifying, matching, making-up sets of articles, washing, painting, slicing, mixing, cutting and repacking or placing in bottles, flasks, bags, fixing on cards or boards, etc.;
- (c) change of packaging, breaking up and assembly of packages;
- (d) affixing of marks, labels, trade marks or other distinguishing signs on goods or its packing;
- (e) disassembly of goods in its parts;
- (f) simple assembly of parts or products to constitute a complete product;
- (g) placing in bottles, cases, boxes and other packaging operation;
- (h) cleaning, including removal of dust, oxide, oil, paint or other coverings;
- (i) application of oil;
- (j) the collection of goods to make sets or assortments;
- (k) the slaughtering of animals;
- (l) mixing of materials, dilution in water or another substance that does not materially alter the characteristics of the goods;
- (m) the originating goods processed by a combination of two or more operations referred to in subparagraphs (a) through (l) above;

9. Non-originating good means any good that does not qualify as originating of any Party, according to the Rules of Origin of this Protocol;

10. Non-originating material means any material that does not qualify as originating of any Party, according to the Rules of Origin of this Protocol;

11. Originating good means any good that qualifies as originating of any Party, according to the Rules of Origin of this Protocol;

ANNEX 2

12. Originating material means any material that qualifies as originating of any Party, according to the Rules of Origin of this Protocol;

13. Production means growing, harvesting, extracting, mining, raising, capturing, fishing, trapping, hunting, manufacturing, processing or assembling a good;

14. Packing material and container for shipment means goods used to protect a good during its transportation and does not include the packaging materials and containers in which a good is packaged for retail sale.

ARTICLE 2 **Originating Goods**

1. Except as otherwise provided in this Annex, each Party shall provide that a good is originating where:
 - (a) it is wholly obtained or produced entirely in the territory of one or both Parties; or
 - (b) each of the non-originating materials used in the production of the good satisfies the corresponding specific rule of origin included in Appendix I (Specific Rules of Origin) as a result of a production process carried out in the territory of one or both Parties; or
 - (c) it is produced in the territory of one or both Parties exclusively from originating materials.
2. Additionally, the good shall satisfy all the applicable requirements of this Annex.
3. A minimal operation does not confer origin to a non-originating good or material.

ANNEX 2

ARTICLE 3

Wholly Obtained or Produced Entirely Goods

Within the meaning of Article 2 (1) (a), the following shall be considered as wholly obtained or produced entirely goods in the territory of one or both Parties:

- (a) mineral goods extracted in the territory of one or both Parties;
- (b) agricultural goods harvested, picked, or gathered in the territory of one or both Parties;
- (c) live animals born and raised in the territory of one or both Parties;
- (d) goods obtained from live animals in the territory of one or both Parties;
- (e) goods obtained from hunting, trapping, fishing, gathering, capturing, or aquacultural conducted in the territory of one or both Parties;
- (f) 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 or high seas under that Party's applicable laws or in accordance with the provisions of the United Nations Convention on the Law of the Sea;
- (g) 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;
- (h) waste and scrap derived from production in the territory of one or both Parties, or used goods collected in the territory of one or both Parties, provided that such goods are fit only for the recovery of raw materials; and
- (i) goods produced entirely in the territory of one or both Parties exclusively from goods referred to in paragraphs (a) to (i) of this Article.

ANNEX 2

ARTICLE 4 Accumulation

1. Originating goods or materials of one Party, incorporated into any good in the territory of the other Party, shall be considered originating in the territory of such other Party.
2. A good is originating, when the good is produced in the territory of one or both Parties, by one or more producers, provided that the good satisfies the requirements in Article 2 and all other requirements in this Annex.

ARTICLE 5 Treatment of Packing and Packaging Materials

1. Packaging Materials and Containers for Retail Sale
 - (a) The packaging materials and containers, in which the goods are packaged for retail sale, if classified with the goods, shall be disregarded in determining the origin of the goods.
 - (b) When the goods are subject to a regional value content requirement, the value of such packaging materials and containers shall be taken into account only if they are originating materials of one or both Parties.
2. Packing Materials and Containers for Transportation

Packing materials and containers for transportation shall be disregarded in determining the origin of the goods of all cases.

ARTICLE 6 Accessories, Spare Parts or Tools

Accessories, spare parts or tools delivered with originating goods shall be treated as originating goods, provided that:

- (a) accessories, spare parts, or tools are not invoiced separately from the originating goods;

ANNEX 2

- (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 shall be taken into account only if they are originating materials of one or both Parties.

ARTICLE 7 **Regional Value Content**

1. Where Appendix I (Specific Rules of Origin) specifies a regional value content requirement, the calculation shall be based on the following method:

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

where:

- (a) “RVC” is the regional value content of the good, expressed as a percentage;
 - (b) “*FOB*” is the Free On Board value of the particular good determined in accordance with Articles 1 through 8, Article 15 and the corresponding interpretative notes of the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the “WTO Customs Valuation Agreement”);
 - (c) “*VNM*” is the value of all non-originating materials used by the producer in the production of the good determined in accordance with Articles 1 through 8, Article 15 and the corresponding interpretative notes of the WTO Customs Valuation Agreement.
2. The value of a non-originating material shall be:
- (a) the CIF (Cost, Insurance and Freight) value of the material, determined in accordance with Articles 1 through 8, Article 15 and the corresponding interpretative notes of the WTO Customs

ANNEX 2

Valuation Agreement, for a material imported directly by the producer of the good;

- (b) the transaction value, for a material acquired by the producer of the good in the territory where the good is produced.

3. To determine the RVC value, the Generally Accepted Accounting Principles shall be applied.

ARTICLE 8 “De Minimis” Rule

Notwithstanding Article 2, a good produced in the territory of one or both Parties shall be originating if the value of all the non-originating materials used in the production of the good that does not satisfy the requirement of change in tariff classification set forth in Appendix I (Specific Rules of Origin), does not exceed 10% of the FOB value of the good.

ARTICLE 9 Fungible Goods and Materials

1. In order to consider if a good is originating, when in the production process originating and non-originating fungible materials physically mixed or combined are used, the origin of materials may be determined through the physical segregation of each fungible good or material or through the use of any inventory management method as set forth in domestic laws in force by each Party.

2. The inventory management method selected under paragraph 1 for a particular fungible good or material shall continue to be used for that good or material throughout all the fiscal year of the person that selected the inventory management method.

ARTICLE 10 Indirect Materials

Indirect materials shall be considered to be an originating material, without regards to where it is produced.

ANNEX 2

ARTICLE 11 Set of Goods

1. Sets or assortments of goods, as a result of the application of rule 3 of the General Rules for the Interpretation of the Harmonized System, shall be originating only if each good in the set or assortment is originating, and both the set or assortment and the goods meet with all other applicable requirements in this Annex.

2. Notwithstanding paragraph 1 of this Article, a set or assortment of goods is originating, if the value of all non-originating goods in the set or assortment does not exceed 15% of the FOB value of the set or assortment.

ARTICLE 12 Direct Consignment

For the purpose of this Article, the preferential treatment as stated in this Protocol, shall be given to the originating goods, consigned directly from the exporting Party to the importing Party. For such purposes, direct consignment shall mean:

- (a) the goods transported only through the territory of the Party; or
- (b) the goods transported in transit, through one or more countries that are not parties to the Protocol, with or without transshipment or temporary storage, under the control or surveillance of the customs authority of transited country, provided that:
 - (i) the transit is justified by geographic reasons or considerations related to transportation requirements;
 - (ii) the goods are not allocated to the trade, use or employment in the country of transit; and
 - (iii) the goods have not undergone any operation there other than the loading, unloading or handling to keep them in good conditions or to ensure conservation.

ANNEX 2

ARTICLE 13 **Review and Modification of Rules of Origin**

1. A Party that considers that a specific rule of origin set forth in Appendix I (Specific Rule of Origin) requires modification to take into account developments in production processes, lack of supply of originating materials, or other relevant factors may submit a proposed modification along with supporting rationale and any studies to the Joint Commission for consideration.
2. On submission by a Party of a proposed modification under paragraph 1 of this Article, the Joint Commission may refer the matter to a working group within thirty (30) days or on such other date as the Joint Commission may decide. The working group shall meet to consider the proposed modification within ninety (90) days of the date of referral or on such other date as the Joint Commission may decide.
3. Unless the Joint Commission agrees otherwise, within this period of time, the working group shall supply a report to the Joint Commission, setting out its conclusions and recommendations, if any.
4. The Parties shall conclude the review and modification process within one hundred and eighty (180) days following the date of referral of the request. Nevertheless, the Parties may agree to extend the period of that process.

SECTION C: OPERATIONAL PROCEDURES

ARTICLE 14 **Claim of Preferential Tariff Treatment**

1. An importer claiming preferential tariff treatment for a good under this Protocol shall make a written declaration that the good is originating on the importation document based on the Certificate of Origin submitted to the customs authorities of the importing Party.
2. An importer shall claim preferential treatment only before the release of the good.

ANNEX 2

ARTICLE 15 Certificate of Origin

1. The certificate of origin is used to provide evidence that the good exported from the territory of one Party to the territory of the other Party is originating, as provided under this Annex.
2. The certificate of origin shall be issued with the minimal data included in Appendix II, which may be modified by the Parties upon mutual agreement. Each certificate of origin shall cover one shipment of one or several goods.
3. The issue and control of certificates of origin shall be responsibility of the competent authorities of each Party. The certificates of origin may be issued by the authorities directly or by other responsible bodies, according to the domestic regulations.
4. The application for a certificate of origin shall be made by an exporter or final producer of the good. That producer or exporter shall provide to the certifying entity its application with the commercial invoice and all any other necessary documents that evidences that the good complies with the rules of origin set under this Annex, including a Declaration of the Producer containing minimal information as set forth in Appendix III. When the exporter is not the producer, the exporter shall supply the declaration of origin.
5. The certificate of origin shall be submitted in the English language. However, the customs authority of the importing Party may require the importer to submit a translation of the certification in the language of the importing Party.
6. The certificate of origin shall include the name and signature of the officer designated by the exporting Party, as well as the seal of the certifying body. The certificate of origin shall not have any amendment.
7. The certificate of origin shall indicate the applicable rules of origin.
8. The certificate of origin shall be issued within the five (5) days following the submission of the application, and shall be effective for three hundred and sixty five (365) days from the date of issue. It shall not be issued prior to the date of issue of the commercial invoice, and no later than the date of shipment.

ANNEX 2

9. In exceptional cases where a certificate of origin has not been issued at the time of shipment due to involuntary errors or omissions or other valid cause, the certificate of origin may be issued bearing “ISSUED RETROACTIVELY” no longer than six (6) months from the time of shipment.

10. In the event of theft, loss or destruction of a certificate of origin, the exporter may apply in writing to the certifying entities which issued it for a certified true copy of the original to be made on the basis of the export documents in their possession bearing the endorsement of the word “CERTIFIED TRUE COPY”. The copy should have the same effective days as the original certification.

11. In the event that the goods are temporarily stored under control of the customs authority of the Party of destination, the certificate of origin shall remain in effect for the additional amount of time the customs administration has established for such operations.

12. The Parties shall exchange the procedures regarding the issue of certificate of origin within three (3) months after the signature of the Protocol.

ARTICLE 16 **Certifying Entities**

1. Each Party shall notify to the other Party the names of the certifying entities, as well as the registry of the names, signatures and seals of the officials accredited to issue certificates of origin and shall maintain an updated record of the names, signatures and seals of officials who are authorized to countersign them.

2. Any change to the registry, signatures, seals of officials, or the entities authorized to issue certificates of origin, shall be notified to the Joint Commission, indicating the dates of which officials are authorized or no longer authorized to issue certificates of origin.

3. Accreditation and notice of names, signature and seals of officials authorized to countersign the certificates of origin, as well as the entities authorized to issue them shall be in force for thirty (30) days after the notification to the Joint Commission.

ANNEX 2

4. The Certifying Bodies of each Party shall:

- (a) verify that the goods are originating according to the Rules of Origin of this Protocol;
- (b) ensure that the statements of the certificate of origin correspond to supporting documentary evidence submitted;
- (c) ensure that the description, quantity and weight of goods, as specified, conform to the consignment to be exported;
- (d) number correlatively the certificates issued. Each certificate of origin shall bear a printed correlative number and a reference number separately given by each certify entity;
- (e) keep one copy of all the certificates of origin issued on file for five (5) years as from the date of issue. The file shall include all background information used for the issuance of the certificate.
- (f) present reports in compliance with the present Annex;
- (g) provide the means necessary for supervising their actions; and
- (h) provide the other Party with the necessary administrative cooperation and information for the control of evidence of origin.

ARTICLE 17

Control of the Certificates of Origin

1. In case of doubts relating to the authenticity of the certificate of origin, the truthfulness of the information contained in the certificate or the presumption of breach of the provisions of this Annex, the customs authorities of the importing Party may require a guarantee equivalent to the value of the corresponding customs duty or its payment, in accordance with their respective domestic legislation. The customs authorities shall, in no case, prevent the continuation of the import process and the release of the goods.

2. When the certificate of origin contains mistakes or is incomplete, the customs authorities of the importing Party shall notify the importer and grant a term of sixty (60) days as from the date of reception of the notification for

ANNEX 2

due submission of the said document. Upon expiration of the term, the guaranties may be effective or the corresponding liens may be collected.

ARTICLE 18 Verification of Origin

1. In case of doubts relating to the authenticity of the certificate of origin, the truthfulness of the information contained in the certificate or the presumption of breach of the provisions of this Annex, the competent authority of the importing Party may initiate an investigation in order to verify the compliance of this Annex.
2. Once an investigation has been initiated, the importing Party shall notify the exporting Party of the beginning of the said investigation and may request:
 - (a) necessary information to verify the authenticity of the certificate of origin, as well as of the information contained therein, including the background information that accompany the application for preferential treatment in accordance with this Annex;
 - (b) answers to written questionnaires with additional information sent to the producer, exporter or importer, in order to verify the truthfulness of the information contained in the certificate of origin;
 - (c) verification visits to the premises of the producer in the territory of the other Party, to review the records referred to paragraph 4 of Article 16 or to observe the facilities used in the production of the good under investigation, as well as any information and document that justifies the origin of the good; or
 - (d) other procedures agreed between the importing and the exporting Parties for verifying the origin of the good.
3. Any information communicated between the Parties concerned shall be treated as confidential and shall be used only for the validation of certificate of origin purpose.

ANNEX 2

ARTICLE 19 **Terms**

1. In the event that the information requested in accordance with the Article 18 is not delivered within the time of one hundred and twenty (120) days, or if the reply does not provide sufficient information to determine the authenticity of the certificate of origin or the truthfulness of the information contained in said document, the competent authority of the importing Party may deny preferential tariff treatment for the goods covered by the certificates subject to the verification procedure. The Resolution that denied the preferential treatment may not be claimed at a later stage.
2. In the event that the importing Party requests a verification visit to the facilities of the producer or exporter, the exporting Party shall have forty five (45) days after the date of receipt of the application to grant its consent. If the request for verification visit is not accepted, the investigation shall be deemed as terminated and the importing Party shall refuse a preferential treatment to the said import. The Resolution that denied the preferential treatment may not be claimed at a later stage.
3. The investigation, including the verification visit, shall not exceed three hundred and sixty five (365) days from the date of notification to the exporting Party.

ARTICLE 20 **Determination of Investigation**

1. If, as a result of the investigation of origin:
 - (a) the originating nature of the good is acknowledged, the competent authority of the importing Party shall deem the investigation as terminated and shall return the guaranties given or the value of the corresponding liens.
 - (b) it is verified that the certificate contains false information or that the good does not qualify as originating, the importing Party shall collect the corresponding liens or shall honor the guaranties. Additionally, the importing Party may apply the corresponding sanctions according to its domestic laws.

ANNEX 2

2. The determination of qualification of origin must be issued through a Resolution of the competent authority.

ARTICLE 21

Sanctions

1. The certifying entities of each Party for the issuance of certificates of origin shall be jointly liable with the producer or exporter, as far as authenticity of information contained in the certificate of origin is concerned.

2. Each Party shall adopt or keep measures that allow the imposition of civil, administrative and criminal sanctions in case of any violation regarding the certification of origin.

ARTICLE 22

Post Clearance Review

1. The competent authorities of the importing Party may conduct an investigation of origin of the goods after the clearance of the goods, according to its domestic legislation.

2. The procedure for this investigation shall be the procedure set forth in Articles 18 through 21 of this Annex.

ARTICLE 23

Consultation and Dispute Settlement

If the conclusions of the investigation are not satisfactory to any of the Parties, they shall enter into bilateral consultation. If the Parties fail to resolve the matter through such consultation, dispute settlement mechanisms provided under Annex 7 of this Protocol may be invoked.