

## ANNEX 3

### PROCEDURES AND VERIFICATION

#### Article 1 Declaration of Origin

1. A claim that goods are eligible for preferential tariff treatment shall be supported by a declaration as to the origin of a good from the exporter, producer, or authorised representative.<sup>1</sup>
2. Notwithstanding paragraph 1, Malaysia may require its exporters to obtain a Certificate of Origin as specified in its domestic legislation and the Appendix on Certificate of Origin. Malaysia may elect to waive the Certificate of Origin requirement at any time.
3. The Declaration of Origin under paragraph 1 shall be made on the export invoice or the letterhead of the exporter, producer, or authorised representative, which together constitute the Declaration of Origin, be completed in English, be clearly legible and not obscure other information. The declaration shall state:

For goods wholly obtained:

“I [state name and designation], being the [exporter/producer/exporter and producer/authorised representative] hereby declare that the stipulated goods on this invoice or letterhead [item numbers...] originate in [Malaysia/New Zealand] and comply with Article 3.2(a) or (b) (Origin Criteria) of the Malaysia – New Zealand Free Trade Agreement.”

For other originating goods:

“I [state name and designation], being the [exporter/producer/exporter and producer/authorised representative] hereby declare that the stipulated goods on this invoice or letterhead [item numbers...] originate in [Malaysia/New Zealand] and comply with Article 3.2(c) and Annex 2 (Product Specific Rules) of the Malaysia – New Zealand Free Trade Agreement.”

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<sup>1</sup> For the purpose of Annex 3, an “authorised representative” means an authorised representative of the exporter or producer (excluding paragraph 8, which means an authorised representative of the exporter only). An authorised representative may be in New Zealand, Malaysia or a non-Party. The term authorised representative shall not include a customs broker or freight forwarder or any other entities that carry out a similar function, including for the purposes of paragraph 8. Wherever Annex 3 refers to “exporter or producer”, it should also cover “authorised representative.”

4. The Declaration of Origin must include the following information in the 'observations' field of the declaration (unless such information already appears on the invoice or letterhead in respect of the goods subject to the declaration):

- (a) a full description of the good(s);
- (b) six digit Harmonized System Code for the respective good(s);
- (c) the name of the exporter, producer, or authorised representative;
- (d) the importer's name(s) in respect of imported goods; and
- (e) the rule of origin under which the declarant claims the good(s) qualifies.

A pro-forma invoice shall not be used for the purposes of claiming tariff preference.

5. Slight discrepancies as between the wording and detail stated on the Declaration of Origin submitted to the Customs Administration of the importing Party in clearance of goods that have no material effect shall not, of themselves, cause any claim for preferential tariff treatment to be denied. The Customs Administration of the importing Party will not reject a Declaration of Origin or Certificate of Origin solely on the grounds that the invoice is issued in a non-Party.

6. The Declaration of Origin under paragraph 1 may be made in respect of one or more goods.

7. The Declaration of Origin under paragraph 1 or Certificate of Origin under paragraph 2 shall remain valid for a period of one year from the date on which the respective documents were issued.

8. If the exporter or its authorised representative is not the producer of the goods referred to in the Declaration of Origin under paragraph 1, that exporter or its authorised representative may complete and sign the declaration on the basis of:

- (a) the exporter's or its authorised representative's knowledge of whether the good qualifies as an originating good; or
- (b) a producer's written declaration that the good qualifies as an originating good.

9. If the Declaration of Origin is more than one page, then subsequent pages shall be numbered in sequence. For example: a three page Declaration of Origin invoice shall be numbered as 1 of 3, 2 of 3 and 3 of 3.

10. The requirements outlined in paragraphs 3 to 9 may be revised or modified by mutual decision of the Parties and set out in an Implementing Arrangement to this Chapter.

11. In the absence of sufficient evidence to prove the status of the originating good as may be required under this Article, the Customs Administration of the importing Party may require payment of Most Favoured Nation ("MFN") duties or the deposit of a security equivalent to the amount of duties that would be payable if preferential tariff treatment did not apply.

## **Article 2**

### **Circumstances When Declaration Not Required**

In accordance with its domestic laws and regulations, the importing Party shall not require a Declaration of Origin under Article 1(1) (Declaration of Origin) or Certificate of Origin under Article 1(2) (Declaration of Origin) for claiming preferential tariff treatment for:

- (a) commercial and non-commercial importations which do not exceed US\$ 600 FOB or the equivalent amount in the importing Party's currency, or such higher amount as that importing Party may establish; or
- (b) any good for which a Party has waived the requirement for a declaration or Certification of Origin.

## **Article 3**

### **Verification of Origin**

1. When there is a reasonable doubt as to the origin of a good the importing Party may, through its relevant Government authority, conduct a verification of eligibility for preferential tariff treatment by means of:

- (a) requests for information to the importer;
- (b) written, electronic or verbal questions and requests for information addressed to an exporter or producer in the territory of the exporting Party;
- (c) requests to the relevant Government authority of the exporting Party to verify the origin of the good;
- (d) if the request established in subparagraph (b) fails to determine the origin of good, requests through the relevant Government authority of the exporting Party to visit the premises of the exporter or producer of the goods; or
- (e) such other procedures as the Parties may agree.

2. Where a request is made by the importing Party to the exporting Party to verify the origin of the good:

- (a) such request shall only be made if the Customs value for duty is sufficiently material to warrant the request;
- (b) the request shall be accompanied by sufficient information to identify the good about which the request was made;
- (c) the requested Party shall, within 90 days of receiving the request, advise the importing Party as to:
  - (i) the origin of the good; or
  - (ii) the progress of the verification as to the origin of the good.

3. Prior to conducting a verification visit pursuant to paragraph 1(d), the importing Party shall:

- (a) deliver a written notification of its intention to conduct the visit to:
  - (i) the exporter or producer whose premises are to be visited;
  - (ii) the relevant Government authority of the exporting Party; and
- (b) obtain the written consent of the exporter or producer whose premises are to be visited.

#### **Article 4**

##### **Treatment of Goods for which Preference is Claimed**

1. The Customs Administration of the importing Party shall grant preferential treatment to goods of the other Party only in those instances that an importer:

- (a) provides to the Customs Administration, as appropriate, the declaration under Article 1(1) (Declaration of Origin), or Certificate of Origin under Article 1(2) (Declaration of Origin); and
- (b) if required, provides additional documentary or other evidence, as appropriate, to substantiate the claim for preferential tariff treatment in subparagraph (a).

2. Notwithstanding paragraph 1, the importing Party may suspend the application of preferential tariff treatment to goods that are the subject of origin verification action under Article 3 (Verification of Origin) for the duration of that action, or any part thereof.

3. The importing Party may deny preferential tariff treatment to an imported good or recover unpaid duties where:

- (a) the goods do not, or did not, meet the requirements of Chapter 3 (Rules of Origin);
- (b) the producer, exporter or importer of the goods fails to comply with any of the relevant requirements of Chapter 3 (Rules of Origin) for obtaining preferential tariff treatment; or
- (c) action taken under Article 3 (Verification of Origin) failed to verify the eligibility of the goods for preferential tariff treatment.

4. Each Party shall provide that, where a good would have qualified as an originating good when it was imported into the territory of that Party but was not accorded preferential tariff treatment, the importer may, in accordance with the domestic laws and regulations of the importing Party, apply for a refund of any Customs duties paid on presentation of the information required in Articles 1(3) and 1(7) (Declaration of Origin).

#### **Article 5 Records**

Both Parties shall require that exporters, producers, and importers in their respective territories maintain for a period of not less than six years after the date of exportation or importation, as the case may be, all records relating to that exportation or importation which are necessary to evidence that a good for which a claim for tariff preference was made qualified for preferential tariff treatment.