

**DECREE
MAKING DETAILED PROVISIONS
FOR IMPLEMENTATION OF THE COMMERCIAL LAW
WITH RESPECT TO ORIGIN OF GOODS**

The Government

Pursuant to the *Law on Organization of the Government* dated 25 December 2001;

Pursuant to the *Commercial Law* dated 14 June 2005;

On the proposal of the Minister of Trade;

Decrees:

CHAPTER I

General Provisions

Article 1 *Governing scope*

This Decree regulates origin of import goods and origin of export goods.

Article 2 *Applicable entities*

This Decree applies to:

1. Business entities.
2. State administrative body for origin of goods, and organizations issuing certificates of origin of export goods.
3. Bodies inspecting the origin of import and export goods.
4. Organizations assessing the origin of goods.
5. Other organizations and individuals engaged in trade related activities.

Article 3 Interpretation of terms

In this Decree, the following terms shall be construed as follows:

1. *Origin of goods* means the country or territory where goods were entirely manufactured, or in the case of goods for which a number of countries or territories participated in the manufacturing process where the final, fundamental processing stage was implemented.
2. *Preferential rules of origin* means rules of origin applicable to goods the subject of an agreement granting them preferential tariff or non-tariff treatment.
3. *Non-preferential rules of origin* means rules of origin applicable to goods outside those stipulated in clause 2 of this article and to which non-preferential commercial measures apply regarding most favoured nation treatment; or to which anti-dumping, anti-subsidy or self-protective measures apply; or to which restrictions on quantity or volume apply; or to which tariff quotas apply; and [means rules of origin used for] Government procurement and trade statistics.
4. *Certificate of origin of goods* means the written document specifying the origin of goods issued by an organization belonging to the country or territory which exported such goods and issued on the basis of regulations and requirements relating to origin of goods.
5. *Change of goods' code number* means a change of the HS¹ nomenclature (in the *List of Export Tariffs*) of goods created by a country or territory during the process of manufacture from raw materials not originating in such country or territory.
6. *Ad valorem*² means that part of added value compared to the total value of the manufactured goods which arises after one country or territory manufactures, processes or treats raw materials not originating from such country or territory.
7. *Goods manufacturing or processing operation* means the main manufacturing stage which creates the fundamental characteristics of the goods.
8. *Fundamental change* means that an item of goods is converted via a manufacturing stage into a new commercial item which is different in form, function, fundamental characteristics or use purpose from the initial item of goods.
9. *Manufacture* means the method used in order to create goods and includes cultivation, mining, harvesting, rearing, extracting, gathering, collecting, fishing, trapping, hunting, making, processing, treating and assembling.
10. *Raw materials* comprise crude materials, ingredients, accessories, component parts, separate sections and all goods which may be combined in order to form another item of goods after passing through a manufacturing process.
11. *Product* means an item with a commercial value which has already passed through one or a number of manufacturing processes.
12. *Goods* shall comprise both raw materials and products.

¹ Phillips Fox note: The Vietnamese text uses "HS" which is the English abbreviation of "Harmonized Commodity Description and Coding System".

² Phillips Fox note: This is the WTO English terminology. The literal translation is "percentage part of value".

CHAPTER II

Preferential Rules of Origin

Article 4 Preferential rules of origin pursuant to international treaties

A determination of the origin of import or export goods for the purposes of entitlement to the regime granting them preferential tariff or non-tariff treatment shall be made in accordance with international treaties of which Vietnam is a member and related legal instruments providing regulations for detailed implementation of such treaties.

Article 5 Preferential rules of origin pursuant to a regime on common tariff preferences and other unilateral preferences

A determination of the origin of export goods for the purposes of entitlement to a regime granting them common tariff preferences and other unilateral preferences shall be made in accordance with the rules of origin of the importing country which grants such preferences.

CHAPTER III

Non-Preferential Rules of Origin

Article 6 Goods which have a country of origin

Goods shall be deemed to have a country of origin when they belong to one of the following categories:

1. Having a single country of origin.
2. Having multiple countries of origin.

Article 7 Determination of whether goods have a single country of origin

Goods having a single country of origin as stipulated in article 6.1 of this Decree shall be recognized as originating from one country or territory when they fall into one of the following categories:

1. Crops and products from crops which are harvested in such country or territory.
2. Living animals which were born and raised in such country or territory.
3. Products from the living animals stipulated in clause 2 of this article.
4. Products obtained by shooting, laying snares, catching, cultivating, gathering or hunting in such country or territory.
5. Minerals and other natural objects which are generated, which are not listed in clauses 1 to 4 inclusive of this article, and which are extracted or taken from the land, water, ocean floor or sea of such country or territory.
6. Products taken from water, ocean floor or sea outside the territorial waters of a country or territory when such country or territory has the right pursuant to international law to exploit such water, ocean floor or sea.

7. Products caught and other aquaculture products taken on the high seas by a vessel which is registered with such country and which is permitted to fly the national flag of such country.
8. Products which are immediately processed or made on board vessels from the products stipulated in clause 7 of this article when such vessels are registered with such country or territory and when such vessels are permitted to fly the national flag of such country or territory.
9. Objects which are in such country or territory but which are not able to perform their initial function, are unable to be repaired or restored, and are only able to be discarded or used as raw materials or recycled.
10. Goods made or produced from the items stipulated in clauses 1 to 9 inclusive of this article in such country or territory.

Article 8 *Determination of whether goods have multiple countries of origin*

1. Goods having multiple countries of origin as stipulated in article 6.2 of this Decree shall be recognized as having one country or territory of origin namely the country or territory which carried out the final, fundamental processing stage which fundamentally changed such goods.
2. The "change of goods' code number" criterion shall be the main criterion to determine whether there has been a fundamental change of goods as stipulated in clause 1 of this article.

The "ad valorem" criterion and the "goods manufacturing or processing operation" criterion shall be taken as additional criteria or replacement criteria when verifying a fundamental change of goods.

3. The Ministry of Trade shall promulgate a list of goods using the ad valorem criterion and a list of goods using the goods manufacturing or processing operation criterion as stipulated in clause 2 of this article.

Article 9 *Simple manufacturing or processing operations which shall not be taken into consideration when determining origin of goods*

The following manufacturing and processing operations, when they are carried out individually or in combination with each other, shall be deemed to be simple and shall not be taken into consideration when making a determination of country of origin of goods:

1. Work of preserving goods during the process of transportation and storage (ventilating, unwinding, drying, refrigerating, pickling in salt, steaming in sulphur or other additives, extracting damaged parts and other similar work).
2. Work such as dusting, screening, selecting, classifying (including grading into sets), wiping, painting and separating each item.
3. Changing packaging and wrapping, and dismantling or assembling a consignment; bottling, wrapping, placing in cans or tins and other simple work of packing or wrapping.
4. Affixing onto products or wrapping products with trademarks, labels or other similar distinguishing signs.
5. Simple blending of a product, including blending different components of the product if one or more of such components making up the overall structure of the product do not satisfy the stipulated conditions to be deemed as originating from the country where such work was carried out.

6. Simple work of assembling sections of a product in order to create the one final product.
7. A combination of two or more of the work stages listed in clauses 1 to 6 inclusive of this article.
8. Slaughtering animals.

Article 10 *Determination of country of origin of packaging, peripheral parts, accessories, tools, and goods not yet assembled or dismantled*

1. Materials used to wrap and pack and the wrapping and packaging raw materials of goods shall be deemed to have the same country of origin as the goods contained in such wrapping and packaging where such materials are commonly used at the retail stage.
2. Documents introducing goods and instructions on use; peripheral parts, accessories and tools which accompany goods in appropriate quantities shall also be deemed to have the same country of origin as such goods.
3. With respect to goods which have not yet been assembled or which are in a state of being dismantled and which are imported via a number of journeys due to transportation or manufacturing conditions which do not allow them to be imported in the one journey, the country of origin of the goods on each journey shall be deemed to be the same country of origin if the importer so requests

Article 11 *Indirect elements which shall not be taken into consideration when making a determination of country of origin of goods*

The origin of apparatus, machinery, equipment, plant and energy which is used in order to manufacture goods or raw materials which are used during the process of manufacture but which do not exist in the final goods or which do not create any section of the goods shall not be taken into consideration when making a determination of the country of origin of such goods.

CHAPTER IV

Issuance of Certificates of Origin of Goods; Procedures for Inspection of Origin of Goods

Article 12 *Issuance of Certificates of origin of export goods*

1. Organizations issuing Certificates of origin of goods shall issue such certificates on the stipulated form.
2. An applicant for the grant of a Certificate of origin of export goods must lodge an application file with the organization issuing such certificates, and the applicant shall be legally liable for the accuracy and truthfulness of the contents of such application file.
3. The organization issuing Certificates of origin of goods shall inspect an application file in order to verify the country of origin of the export goods and shall issue a Certificate of origin of goods within a time frame of three business days as from the date of receipt of a complete and valid application file. In cases where it is necessary to conduct an actual inspection, the time frame for issuance of the certificate may be extended but shall not exceed five business days.
4. A Certificate of origin of goods shall not be issued if export goods fail to satisfy the criteria on country of origin of goods stipulated in this Decree or if the application file for issuance of the Certificate is invalid.

5. If the customs office or other competent body of the country or territory importing Vietnamese goods or if the competent body of Vietnam requests an inspection of the authenticity of country of origin of goods, the organization issuing Certificates of origin of goods shall be responsible to verify the country of origin of such goods and to notify such verification to the body making the request.

Article 13 *Provisions on cases when Certificates of origin of import goods must be lodged with the customs office*

A Certificate of origin of goods applicable to import goods must be lodged with the customs office at the time when customs procedures are conducted in the following cases:

1. The goods originate in a country or in a group of countries to which Vietnam grants tariff or non-tariff preferences in accordance with the law of Vietnam and international treaties of which Vietnam is a member, if the importer wishes to be granted such preferences.
2. The goods originate from countries which are entitled to most favoured nation duty rates on the basis of mutual grant or one-way grant of such preferences.

If there is no Certificate of origin of the goods then the importer must provide an undertaking that the goods originated in [one of] such countries and the importer shall be legally liable for the accuracy and truthfulness of the contents of such undertaking.

3. The goods are in the category of goods which are compulsorily subject to the import management regime stipulated by the law of Vietnam or by international treaties of which two or more parties including Vietnam and the country or group of countries are members.
4. The goods are in the category announced by Vietnam or international institutions to be currently dangerous in that they may cause harm to social safety, to the health of the citizens or to environmental hygiene and need to be controlled.
5. The goods are imported from countries in the category to which Vietnam has announced that it is currently applying anti-dumping or anti-subsidy duties, self-protective measures, tariff quotas or discriminatory quantitative restrictions.

Article 14 *Prior determination of country of origin of import goods*

If an importer has a requirement for advance confirmation of the country of origin of import goods, the importer must lodge the relevant documents and data requesting such verification with the customs office in respect of the consignment of goods which is about to be imported.

Article 15 *Procedures for verification and inspection of country of origin of import goods*

1. After the customs office receives the file on registration of the import declaration by the importer, the customs office shall consider and determine the country of origin of the import goods.
2. Where import goods are consistent with the goods listed in the advance confirmation of the country of origin, the customs office shall not conduct a re-determination of the country of origin. If it is discovered that the import goods are inconsistent with the goods listed in the advance confirmation of country of origin, the customs office shall rely on the provisions of this Decree to conduct a re-determination of the country of origin of the import goods.
3. In a case where there is doubt about the authenticity of source documents or about the level of accuracy of information relevant to the country of origin of goods, the customs office may forward a

request for inspection together with the relevant Certificate of origin of goods to an organization issuing Certificates of origin of goods. The request for inspection must specify the reasons why there is doubt about the authenticity of the Certificate of origin and doubt about the origin of the goods under consideration.

4. While awaiting the results of an inspection, goods shall not be entitled to tariff preferences but shall still be entitled to be cleared by customs in accordance with normal customs procedures.
5. The inspection stipulated in clause 3 of this article must be completed as soon as possible and within a time frame not to exceed one hundred and fifty (150) days from the date an importer submits a complete and valid file.

Article 16 Archiving and retention of confidentiality of information

1. Files relating to the issuance of Certificates of origin of goods, to determination of the country of origin by organizations issuing Certificates of origin, to the customs office and to applicants for issuance of Certificates of origin of goods shall be archived for at least three years from the date of issuance of a Certificate or as from the date of the making of a determination.
2. All bodies concerned must retain confidentiality of all information and data used for inspections and determinations of origin of goods, except where such information and data is supplied to competent bodies.

CHAPTER V

State Administration of Origin of Goods

Article 17 Duties and powers of the Ministry of Trade

1. To formulate and to submit to the competent level to promulgate, or to promulgate in accordance with its own authority, legal instruments on country of origin of goods.
2. To organize the issuance of Certificates of origin of export goods; to directly issue or to authorize the Vietnam Chamber of Commerce and Industry and other organizations to issue Certificates of origin of goods.
3. To administer research activities and to engage in international co-operation in the sector of origin of goods.
4. To preside over negotiations regarding Rules of Origin of Goods in accordance with international treaties.

Article 18 Duties and powers of the Ministry of Finance

1. To formulate and to submit to the authorized level to promulgate, or to promulgate in accordance with its own authority, legal instruments on inspections of origin of import and export goods.
2. To organize implementation of rules on inspections of country of origin of import and export goods.
3. To arrange an information network, a reporting regime, and to construct and manage an information database servicing and facilitating entities to carry out the work of inspections of country of origin of import and export goods.

Article 19 *Duties and powers of other relevant ministries and bodies*

Relevant ministries, ministerial equivalent bodies and Government bodies shall, within the scope of their respective functions, duties and powers be responsible to co-ordinate with the Ministry of Trade and the Ministry of Finance to exercise State administration of origin of goods in accordance with the provisions of this Decree and other relevant laws.

CHAPTER VI

**Dealing with Breaches
And Complaints****Article 20** *Dealing with breaches*

1. Any conduct in breach of the provisions on Certificates of origin of goods stipulated in this Decree shall, depending on the seriousness of the breach, be subject to administrative penalty or criminal prosecution in accordance with current law.
2. Any State official or State employee, or any individual belonging to an organization delegated with authority to issue Certificates of origin of goods, or any individual belonging to a body which inspects origin of goods or to a body which assesses goods who breaches the provisions of this Decree or who takes advantage of his or her position and powers to issue a Certificate of origin of goods contrary to the provisions of this Decree, or who causes difficulties for or who hinders the work of issuance of Certificates of origin of goods, or who causes difficulties for or prevents the work of inspection of origin of goods, or who conducts any other act in breach during the course of exercise of his or her duties shall, depending on the nature and seriousness of the breach, be subject to a disciplinary or administrative penalty or be subject to criminal prosecution. If such breach causes loss and damage to the interests of the State or to those of any other body, organization or individual, then the offender must pay compensation for such loss and damage in accordance with law.
3. Any Certificate of origin of goods which is used for the incorrect purpose or which is issued in order to conduct an illegal act shall be revoked.

Article 21 *Resolution of complaints about country of origin of goods*

In the case of refusal to grant a Certificate of origin of export goods, or in the case of refusal to recognize the country of origin of import goods, the applicant for the Certificate or the importer shall have the right to lodge a complaint in accordance with the law on complaints and denunciations.

CHAPTER VII

Implementing Provisions**Article 22** *Effectiveness*

1. This Decree shall be of full force and effect fifteen (15) days after the date of its publication in the Official Gazette.
2. With the exception of legal instruments relating to origin of goods which are granted preferential treatment in implementation of international treaties, any provisions on country of origin of import and export goods which are inconsistent with the provisions in this Decree are hereby repealed.

3. Ministers, heads of ministerial equivalent bodies, heads of Government bodies and chairmen of people's committees of provinces and cities under central authority shall be responsible for providing implementing guidelines and for implementation of this Decree.

For the Government
The Prime Minister

PHAN VAN KHAI