



VIII CONSTITUTIONAL GOVERNMENT

Draft

Decree-Law No. /2021

of

GENERAL REGIME OF RULES OF ORIGIN

The rules of origin are the set of norms and procedures used by States in specifying the criteria to qualify goods as originating from a particular country.

In face of its aspirations to join international organizations, Timor-Leste must harmonize its rules of origin in accordance with the international treaties of the World Customs Organization (WCO); World Trade Organization (WTO) and Association of Southeast Asian Nations (ASEAN).

In the context of tax and customs legislation, the Customs Code, approved by Decree-Law No. 14/2017, of April 5, in Articles 94 to 96 of Chapter III of Title VII, provides a set of standards regarding non-preferential rules of origin harmonized with the International Convention on the Simplification and Harmonization of Customs Procedures, concluded in Kyoto on May 18, 1973.

Paragraph q) of paragraph 2 of Article 19 of Decree-Law No. 12/2019 of 22 December, as amended by Decree-Law No. 66/2020 of 22 December, which approved the Organic Law of the Ministry of Tourism, Trade and Industry states that the Directorate General of Trade is responsible for: "Issuing certificate of origin for export products, while this function is not fully ensured by the structure organised and recognised by the State".

With the exception of Ministerial Diploma No. 1/2009, of 18 September, which establishes the procedures for certification of the origin of Timor-Leste Coffee, the procedures for issuing certificates of origin and preferential rules of origin with other States are not yet regulated, which makes the existing rules of origin regime largely innocuous in the customs plan.

Therefore, there is the need to endow the Timorese legal system with a general regime of rules of origin which, while respecting the existing customs legislation, defines the general principles of the rules of origin, establishes a general procedure for the issuing of certificates of origin and creates the necessary bodies for the international harmonisation of the Timorese Rules of Origin, establishing the bases for the signing of international agreements and/or treaties on rules of origin that serve the economic development interests of Timor-Leste.

The Government decrees the following, under paragraph n) of Section 115.1 and paragraph d) of Section 116 of the Constitution of the Republic, to be valid as law:

CHAPTER I

GENERAL PROVISIONS

Article 1

Object

The present Decree Law establishes the legal regime of the rules of origin and the issue of certificates of origin.

Article ..

Scope of application

The present decree-law applies to the national territory of Timor-Leste.

Article

Definitions

For the purposes of the present document:

- a) *Direção Geral de Alfândegas (DGA)* - Refers to the *Direção Geral de Alfândegas* or equivalent body, of the Ministry that oversees the area of finance and/or customs.
- b) Directorate General of Commerce (DGC) - Refers to the Directorate General of Commerce, or equivalent organism, of the Ministry that oversees the area of Commerce.
- c) Exporter: the person by, or for whom the goods are exported and includes the person who is or becomes the owner, or the holder of possession, or the beneficiary interested in such goods at the time, or after the export declaration and before they are exported;
- d) Importer - the person by or for whom the goods are imported and includes the consignee of the goods, or the person who is or becomes the owner, or the holder of possession, or the beneficiary interested in such goods from the time of importation until the completion of the customs formalities;
- e) Material - any tangible or intangible good, product, article or material used in the production of a good;
- f) Merchandise - any tangible or intangible good, product, article or material intended for commercialization;
- g) Non-originating Merchandise or non-originating material - means a merchandise or material that does not qualify as originating from a certain country, in accordance with this Decree Law;

- h) Originating Merchandise or Originating Material - means a merchandise or material that qualifies as originating in accordance with this Decree Law;
- i) Harmonized System - means the Harmonized Commodity Classification and Coding System, established in attachment to the International Convention on the Harmonized Commodity Classification and Coding System, done at Brussels on June 14, 1983, respective Amendments and Explanatory Notes";
- j) National Content Value (NCV) - the percentage of the value of the goods that results from materials and other original production costs, determined in accordance with the criteria of this Decree-Law.

Article ... Principles

Rules of origin shall be clear, predictable, transparent and aimed at international harmonisation.

Article... Interpretation

Rules of origin should be interpreted and applied in an impartial, transparent, predictable, consistent and neutral manner with a view to facilitating and not creating unnecessary obstacles to international trade.

Article ... Non-preferential and preferential rules of origin

1. Non-preferential rules of origin are the body of laws, regulations and administrative determinations of general application used by any State in specifying the criteria for qualifying goods as originating in a country in the absence of preferential trade arrangements.
2. Preferential rules of origin are those resulting from international treaties or agreements established between the State of Timor-Leste and another State or group of States.
3. Preferential rules of origin shall prevail over non-preferential rules of origin under the terms of the international treaties or agreements instituting them.

Article ... Criteria

The Rules of Origin, whether Preferential or Non-Preferential, shall define the following criteria:

- a. Criteria of Origin;
- b. Rules of Referral;
- c. Procedure for the issue and verification of certificates of origin.

CHAPTER II CRITERIA OF ORIGIN

Article ... Country of origin

1. Goods wholly obtained or produced in a given country shall be considered as originating in that country; or
2. When the production of goods involves two or more countries, the goods shall be deemed to originate in the country where they last underwent substantial transformation.
3. The rules on preferential and non-preferential origin apply to all goods.

Article ... Goods wholly obtained or produced in a country

1. The following are considered as goods wholly obtained in a country:
 - a) mineral products extracted in that country;
 - b) products of the vegetable kingdom harvested in that country;
 - c) live animals born and raised there;
 - d) products obtained from live animals raised therein;
 - e) products obtained by hunting or fishing conducted there;
 - f) f) Sea-fishing products and other products taken from the sea, outside the territorial sea of any country, by vessels registered or recorded in that country and flying its flag;
 - g) goods obtained on board factory ships from products referred to in subparagraph (f) originating in that country, provided that such factory ships are registered or recorded in that country and flying its flag;
 - h) products extracted from marine soil or subsoil outside the territorial sea provided that that country has exclusive rights to work that soil or subsoil;
 - i) waste and scrap resulting from manufacturing operations, and discarded articles, provided that they have been collected there and can be used only for the recovery of raw materials;
 - j) those which are obtained therefrom solely from the goods referred to in subparagraphs (a) to (i) or from derivatives thereof, whatever their stage of manufacture;

2. For the purpose of the application of the preceding paragraph, the concept of country also includes the territorial waters of that country.

Article...

Goods produced in two or more countries

In order to determine the existence of a substantial transformation for the purposes of classification as merchandise originating from Timor-Leste, when the production involves two or more countries, one or more of the following criteria may be used:

- a) National Content Value (NCV); or
- b) b) Change of tariff classification; or
- c) Special production processes.

Article

Value of National Content

1. The NCV may be calculated by direct method or indirect method according to percentages.
2. The criteria for calculation of the NCV are defined by Ministerial statute of the Government member responsible for the area of trade, under proposal from the Rules of Origin Committee.
3. For all matters not expressly provided for in this statute and in the respective regulations, the Rules of Origin Committee shall be responsible for interpreting the rules provided for in paragraph 1 of this article.

Article ...

Change of Tariff Classification

It is considered that there is a change in the tariff classification relevant for the classification of a good as original of a certain country, when the good resulting from the transformation of non-original materials undergoes a change in the tariff classification that consists of:

- a) changes in classification at the two-digit level of the harmonised system (chapter) and four-digit level of the harmonised system (heading) for preferential rules of origin;
- b) changes in classification at the six-digit level of the harmonised system (subheading) for non-preferential rules of origin.

Article ...

Special production process

1. Goods are considered original goods resulting from the transformation of non-original materials through a special production process foreseen in the rules of origin.
2. The special production process referred to in Paragraph 1 may consist of alterations resulting from chemical reactions or recourse to special production techniques or processes provided for in the rules of origin.

CHAPTER III RULES OF CONSIGNMENT

Article Rules of consignment

An exported or imported merchandise keeps its quality of origin of a certain country whenever:

- a) it is sent directly from the country in which it originates to the country of export destination; or
- b) transits in one or more third countries without the goods undergoing any operation other than unloading and reloading or any operation necessary to keep them in good condition.

CHAPTER IV CERTIFICATES OF ORIGIN

Article Concept

1. The certificate of origin is a document whereby the competent authority or the body authorised to issue it identifies and attests that the goods covered by the certificate originate in a given country.
2. It is the responsibility of the Directorate General of Customs, under the terms of the customs legislation, to supervise and verify the origin of imported products for the purpose of applying customs tariffs.

Article ... Procedures

1. It is incumbent upon the Minister in charge of the commerce area to define the procedures for issuing certificates of origin through a Ministerial Diploma.
2. In the definition of the procedures for issuing certificates of origin, the Committee of Rules of Origin shall be heard and issue a binding opinion thereon.

Article ...
Issuing Entities

1. It is incumbent upon the Directorate-General of Commerce to issue certificates of origin for Timorese products with a view to their export.
2. Through a Government Decree, upon the initiative of the Minister with authority over the area of trade, the Government may transfer the competence for issuing certificates of origin, for all or some products of Timorese origin, to one or more business associations of the sector that are legally established.

Article
Supervision

In the situations provided for in paragraph two of the previous article, the Directorate-General of Commerce has the power of inspection over the entities and procedures for issuing certificates of origin.

Article ...
Revocation

1. The rejection of a request for certification of origin of goods may be appealed against hierarchically to the Minister of Tourism, Commerce and Industry, within 30 days counting from the notification of the decision.
2. The deadline for a decision on the hierarchical appeal is 90 days and the Rules of Origin Committee shall be heard prior to the decision.
3. The decision by the Minister of Tourism, Commerce and Industry shall be subject to judicial appeal under the general terms.

CHAPTER IV
RULES OF ORIGIN COMMITTEE

Article
Composition

1. The Rules of Origin Committee is hereby established, comprising:
 - a) The Director General of Trade, who shall chair it;

- b) a representative of the Government member responsible for the area of trade, who chairs it
 - c) A representative of the Government member responsible for agriculture and fisheries;
 - d) A representative of the member of the Government responsible for the area of finance;
 - e) The Director-General of Customs;
2. The secretariat and the administrative and logistical support necessary for the functioning of the Rules of Origin Committee shall be provided by the Directorate General of Trade.
 3. The Rules of Origin Committee shall meet ordinarily twice a year and extraordinarily when convened by the Chairperson.
 4. The Committee of Rules of Origin shall approve its functioning regulations, in compliance with the provisions of the present Decree Law.

Article ... Functions

Without prejudice to other functions that may be assigned to it by law, the functions of the Rules of Origin Committee shall be

- a) Submit proposals for regulation of this statute to the Government member responsible for the area of trade for the purposes of Article _(2)
- b) Issue a binding opinion on the procedures for certificates of origin under the terms of paragraph 2 of Article _;
 - a. issue a non-binding opinion on proposals for international agreements and treaties that establish preferential rules of origin and/or procedures for the issue and recognition of certificates of origin
 - b. to monitor the negotiation and implementation of international treaties on rules of origin;

Article.. Reports

1. The Rules of Origin Committee shall prepare an annual report assessing the status of regulation and implementation of rules of origin and certificates of origin.

2. The report referred to in the preceding paragraph shall be forwarded to all members of the Government represented on the Rules of Origin Committee and to the Prime Minister.
3. The Rules of Origin Committee may submit to the Government, or to the competent line ministers, extraordinary reports on any relevant matters in the area of rules of origin and certificates of origin.

CHAPTER V

Final and Transitory Provisions

Article

Application of law in time

1. 1. Certificates of origin issued on a date prior to the entry into force of this statute shall remain valid and effective for the time period and conditions established therein.
2. 2. Ministerial Diploma No. 1/2009, of 18 September, which establishes the procedures for certification of the origin of Timor-Leste coffee remains in effect, it being understood that all references made in this decree-law to the Ministry of Tourism, Commerce and Industry refer to the Directorate-General of Commerce.

Article ...

Regulation

The Government shall regulate the present Decree-law within 90 days from its entry into force.

Article ...

Amendments

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Article ...

Revocation

(...).

Article ...

Entry into force

This Decree-law shall enter into force on the day following its publication.

Approved by the Council of Ministers on the ____ day of ____ 2021.

The Prime Minister,

Taur Matan Ruak

The Coordinating Minister for Economic Affairs

Joaquim Amaral

Minister for Tourism, Trade and Industry

José Lucas do Carmo da Silva

Promulgated on

To be published.

The President of the Republic,

José Ramos-Horta