

CHAPTER 4

RULES OF ORIGIN

Article 4.01 Definitions

For purposes of this Chapter, the following terms shall be understood as:

CIF: the value of an imported good that includes the costs of insurance and freight to the port or place of entry in the importing Party;

FOB: free on board; regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer;

fungible goods or materials: goods or materials which are interchangeable for commercial purposes and whose properties are essentially identical and it is not possible to differentiate one from another by a simple eye examination;

generally accepted accounting principles: recognized consensus or substantial authorized support given in the territory of one of the Parties with respect to the recording of revenues, expenses, costs, assets and liabilities, the disclosure of information and the preparation of financial statements. Generally accepted accounting principles may encompass broad guidelines for general application, as well as detailed standards, practices and procedures;

goods wholly obtained or produced entirely in the territory of a Party:

- a) minerals extracted or obtained in the territory of that Party;
- b) vegetables and vegetable products harvested, gathered or recollected in the territory of that Party;
- c) live animals born and raised in the territory of that Party;
- d) goods obtained by hunting, trapping, fishing, aquaculture, gathering or capture in the territory of that Party;

- e) goods obtained from live animals in the territory of that Party;
- f) fish, shellfish, and other marine species obtained outside the territorial sea of that Party, by fishing vessels registered or recorded in that Party and flying its flag, or by fishing vessels rented by enterprises established in the territory of that Party;
- g) goods obtained or produced on board factory vessels from the goods referred to in subparagraph f) provided that such vessels are registered or recorded in that Party and fly its flag, or are rented by enterprises established in the territory of that Party;
- h) goods obtained from the seabed or subsoil beneath the sea bed outside the territorial sea of that Party, by that Party or a person of that Party, provided that the Party has rights to exploit such seabed or subsoil;
- i) scrap and waste derived from manufacturing or processing operations in the territory of that Party and fit only for disposal or for the recovery of raw materials; or
- j) goods produced in the territory of that Party, exclusively from goods mentioned in subparagraph a) through and i) above;

indirect material: a good used in the production, testing or inspection of another good, but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment related to the production of another good, including:

- a) fuel, energy, solvents and catalysts;
- b) equipment, devices and supplies used in the testing or inspection of goods;
- c) gloves, glasses, footwear, clothing, and safety equipment and supplies;
- d) tools, dies and molds;

- e) spare parts and materials used in the maintenance of equipment and buildings;
- f) lubricants, greases, compounding materials, and other materials used in production, or used to operate equipment and maintenance of buildings; and
- g) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

material: a good used in the production of another good including ingredients, parts, components and goods that have been physically incorporated into another good or were subject to the production process of another good;

producer: a “producer” as defined in Chapter 2 (General Definitions);

production: methods of obtaining goods including manufacturing, producing, growing, assembling, processing, harvesting, raising, breeding, mining, extracting, hunting, collecting, gathering, fishing, trapping and capturing;

transaction value of a good: the price actually paid or payable for a good related to the transaction done by the producer of the good, according to the principles of Article 1 of the *Customs Valuation Agreement*, adjusted according to paragraphs 1, 3 and 4 of Article 8 of the *Agreement*, regardless whether the good is sold for exportation. For purposes of this definition, the seller referred to in the *Customs Valuation Agreement* shall be the producer of the good;

transaction value of a material: the price actually paid or payable for a material related to the transaction done by the producer of the material, in accordance with the principles of Article 1 of the *Customs Valuation Agreement*, adjusted according to paragraphs 1, 3 and 4 of Article 8 of the said *Agreement*, regardless whether the material is sold for exportation. For purposes of this definition, the seller referred to in the *Customs Valuation Agreement* shall be the producer of the material; and

value: the value of a good or material for purposes of calculating customs

duties or for purposes of applying this Chapter according to the principles established in the *Customs Valuation Agreement*.

Article 4.02 Application and Interpretation Instruments

1. For purposes of this Chapter:
 - a) the tariff classification of goods shall be based on the Harmonized System; and
 - b) the principles and rules of the *Customs Valuation Agreement* shall be used to determine the value of a good or a material.
2. For purposes of this Chapter, the *Customs Valuation Agreement* will be applied to determine the origin of a good as follows:
 - a) the principles and rules of the *Customs Valuation Agreement* shall be applied to domestic transactions, with the modifications required by the circumstances, as they would apply to international transactions; and
 - b) the provisions of this Chapter shall prevail over those of the *Customs Valuation Agreement*, where there are inconsistencies.

Article 4.03 Originating Goods

1. Except as otherwise provided in this Chapter, a good shall be considered as originating in the territory of a Party, when:
 - a) it is wholly obtained or produced entirely in the territory of that Party;
 - b) it is produced entirely in the territory of one or both Parties exclusively from materials that qualify as originating according to this Chapter;
 - c) it is produced in the territory of one or both Parties from non-originating materials that meet with a change in tariff classification, satisfies a regional value content or other

requirements, as specified in Annex 4.03 and the good complies with all other applicable requirements of this Chapter;

- d) it is produced in the territory of one or both Parties, even though one or more of the non-originating materials, provided for as parts under the Harmonized System, that are used in the production of the good have not undergone a change in the tariff classification because:
- i) the good was imported into the territory of one or both Parties in an unassembled or a disassembled form and has been classified as an assembled good according to General Rules of Interpretation 2(a) of the Harmonized System;
 - ii) the good and its parts are classified into the same heading which describes specifically both the good itself and its parts, and that heading is not further divided into subheadings; or
 - iii) the subheading for the good is the same as for its parts and describes specifically both the good itself and its parts;

provided that the regional value content of the good, determined in accordance with Article 4.07, is not less than thirty five percent (35%), and the good fulfills all other applicable requirements of this Chapter, unless the specific rule of origin applicable to the good pursuant to Annex 4.03, specifies a different requirement of regional value content, in which case that specific requirement shall be applied.

The rules provided for in this subparagraph shall not be applicable to the goods in Chapters 61 through 63 of the Harmonized System.

2. If a good of a Party fulfills the specific rules of origin in Annex 4.03, the additional fulfillment of the requirement of regional value content established in paragraph 1 d) shall not be required.

3. For purposes of this Chapter, the production of a good from non-originating materials that fulfill a change of tariff classification and other requirements specified in Annex 4.03, shall be done totally in the territory of

one or both Parties, and the good shall satisfy all the applicable requirements of this Chapter.

4. Notwithstanding other provisions of this Article, goods shall not be considered originating, if they are exclusively the outcome of the minimal operations set out in Article 4.04 and carried out in the territory of one or both Parties, unless the specific rules of origin of Annex 4.03 indicate otherwise.

Article 4.04 Minimal Processes or Operations

The minimal processes or operations that by themselves or in combination do not confer origin to a good are as follows:

- a) the necessary operations for the preservation of a good during transportation or storage, including airing, ventilation, drying, refrigeration, freezing, elimination of damaged parts, application of oil, antirust painting or protective coatings, or the placing in salt, sulfur dioxide or some other aqueous solution;
- b) simple operations consisting of cleaning, washing, sifting or straining, or shaking, selection, classification or grading, culling, peeling, shelling or striping, grain removal, pitting, pressing or crushing, soaking, elimination of dust or of spoiled or damaged parts, sorting, division of consignments in bulk, grouping in packages, placing of marks, labels or distinctive signs on products and their packages, packing, unpacking or repackaging;
- c) combination or mixing operations of goods that have not result in any important difference in the characteristics of the goods before and after the combination or mixing;
- d) simple jointing or assembling of parts to make a complete good, or to form sets or assortments of goods;
- e) simple water dilution operations or ionization and salting, which have not changed the nature of the good; and
- f) slaughter of animals.

Article 4.05 Indirect Materials

Indirect materials shall be considered as originating, regardless where they are produced or manufactured, and the value of those materials shall be included in the costs as indicated in the accounting records of the producer of the good.

Article 4.06 Accumulation

1. A Party may only accumulate origin with goods originating from the territory of the other Party.
2. The originating materials or goods from a territory of one Party, incorporated into a good in the territory of the other Party, shall be considered as originating in the territory of the latter.
3. A good is originating when it is produced in the territory of one or both Parties by one or more producers, provided that the good satisfies the requirements established in Article 4.03 and all other applicable requirements of this Chapter.

Article 4.07 Regional Value Content

1. The regional value content of the goods shall be calculated according to the following formula:

$$\mathbf{RVC = [(TV - VMN) / TV] * 100}$$

Where:

RVC is the regional value content, expressed as a percentage;

TV is the transaction value of the good adjusted to a FOB basis, unless as stated in paragraph 2. In case this value does not exist, or cannot be determined according to the principles and rules of Article 1 of the *Customs Valuation Agreement*, it shall be calculated according to the principles and rules of Articles 2 through 7 of the *Agreement*; and

VMN is the transaction value of the non-originating materials adjusted to a CIF basis, unless as stated in paragraph 5. In case that the value does not exist or cannot be determined according to the principles and rules of Article 1 of the *Customs Valuation Agreement*, it shall be calculated according to the principles and rules of Articles 2 through 7 of the *Agreement*.

2. When the good is not exported directly by its producer, the value shall be adjusted to the point at which the buyer receives the good in the territory in which the producer is located.

3. When the origin is determined by the method of regional value content, the required percentage shall be specified in Annex 4.03 in the corresponding specific rule of origin.

4. All the records of the costs considered for the calculation of the regional value content shall be recorded and maintained according to the generally accepted accounting principles, applicable in the territory of the Party where the good is produced.

5. When the producer of a good acquires a non-originating material in the territory of a Party in which it is located, the value of the non-originating material shall not include freight, insurance, packing costs and any other cost incurred in the transportation of the material from the supplier's warehouse to the location of the producer.

6. For purposes of calculating the regional value content, the value of the non-originating materials used in the production of the good shall not include the value of the non-originating materials used in the production of an originating material acquired and used in the production of such good.

Article 4.08 De Minimis

1. A good shall be considered originating if the value of all non-originating materials used in the production of this good that does not satisfy the requirement of change in tariff classification set out in Annex 4.03 does not exceed ten percent (10%) of the transaction value of the good, as determined

according to Article 4.07.

2. When it refers to goods classified into chapters 50 through 63 of the Harmonized System, the percentage indicated in paragraph 1 shall refer to the weight of fibers or yarns with respect to the weight of the good being produced.

3. Paragraph 1 shall not apply to a non-originating material used in the production of goods classified into Chapters 1 through 27 of the Harmonized System, unless the non-originating material is classified in a different subheading from the good for which the origin is being determined according to this Article.

Article 4.09 Fungible Goods and Materials

1. When in the production of goods using originating or non-originating fungible goods or materials, the origin of those fungible goods or materials shall be determined either by physical segregation of each good or material, at the producer's choice, or through the application of one of the following inventory management methods:

- a) first in first out (FIFO) method;
- b) last in first out (LIFO) method; or
- c) averaging method.

2. When originating and non-originating fungible goods or materials are physically mixed or combined in the warehouse and before their exportation do not undergo any production process or any other operation in the territory of the Party in which they were mixed or physically combined, other than unloading, reloading or any other necessary movement to maintain the goods or materials in good condition or transport them to the territory of the other Party, the origin of the good or material shall be determined by one of the inventory management methods listed out in the preceding paragraph.

3. Once the inventory management method listed out in the preceding paragraph is selected by a producer, it shall be used during the entire period of a fiscal year of that producer.

Article 4.10 Sets or Assortments of Goods

1. A set or assortment of goods that is classified according to rule 3 of the General Rules of the Interpretation of the Harmonized System, as well as the goods whose description according to the nomenclature of the Harmonized System is specifically that of a set or assortment, shall qualify as originating, whenever each one of the goods contained in that set or assortment complies with the rules of origin set out in this Chapter and in Annex 4.03.
2. Notwithstanding paragraph 1, a set or assortment of goods shall be considered originating, if the value of all non-originating goods used in making the set or assortment does not exceed the percentage set out in paragraph 1 of Article 4.08 with respect to the value of the set or assortment, adjusted to the basis indicated in Article 4.07 paragraphs 1 or 2, as the case may be.
3. The provisions of this Article shall prevail over the specific rules of origin set out in Annex 4.03.

Article 4.11 Accessories, Spare Parts and Tools

1. The accessories, spare parts or tools delivered with the good that usually form part of the good shall not be taken into account in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex (4.03), provided that:
 - a) the accessories, spare parts or tools are not invoiced separately from the good; and
 - b) the amount and the value of these accessories, spare parts or tools are customary for the good.
2. When the good is subject to a requirement of regional value content, the value of the accessories, spare parts or tools will be considered as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.
3. For those accessories, spare parts or tools that do not fulfill the conditions

mentioned above, the rules of origin shall apply to each of them respectively and separately, according to this Chapter.

Article 4.12 Packaging Materials and Containers for Retail Sale

1. When packaging materials and containers in which a good is packaged for retail sales are classified in the Harmonized System with the good, they shall not be taken into account in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.03.

2. When the good is subject to a requirement of regional value content, the value of these packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.13 Packing Materials and Containers for Shipment

Containers and packing materials in which the good is packed for shipment shall not be taken into account in determining whether:

- a) the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.03; or
- b) the good satisfies the requirement of regional value content.

Article 4.14 Transit and Transshipment

An originating good shall not lose such status when it is exported from a Party to the other Party and during its transportation it passes by the territories of one or more non-Parties, as long as it fulfills the following requirements:

- a) the transit is justifiable by geographical reasons or by considerations relative to requirements of international transportation;
- b) the good has not been destined for trade, consumption, and use in the countries of transit;

- c) during its transportation and temporary storage the good has not undergone operations other than unloading, reloading or any other operation necessary to preserve them in good condition; and

the good remains under the control of the customs authority in the territory of any non-Party.