

## CHAPTER 4 RULES OF ORIGIN

### Article 4.1: Definitions

For purposes of this Chapter:

**adjusted value** means the value determined under Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, for purposes of the application of the regional value content formula and the De Minimis, adjusted, if necessary, to exclude the following costs, charges, and expenses from the customs value of the goods under consideration when not already excluded in accordance with the national legislation of a Party: any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation;

**fungible goods or materials** means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

**good** means any merchandise, product, article or material;

**goods wholly obtained or produced entirely in the territory of one or both of the Parties** means:

- (a) mineral goods extracted in the territory of one or both of the Parties;
- (b) vegetable goods, as defined in the Harmonised System, grown and harvested in the territory of one or both of the Parties;
- (c) live animals born and raised in the territory of one or both of the Parties;
- (d) goods obtained from hunting, trapping or fishing in the territory of one or both of the Parties;
- (e) products of sea-fishing and other products taken from the sea outside the territory of one or both of the Parties by vessels registered or recorded with a Party and flying its flag;
- (f) goods produced on board factory ships from the goods referred to in subparagraph (e), provided such factory ships are registered or recorded with one of the Parties and fly its flag;
- (g) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;
- (h) goods taken from outer space, provided that they are obtained by a Party or a person of a Party and not processed in a non-Party;
- (i) waste and scrap derived from:
  - (i) production in the territory of one or both of the Parties; or
  - (ii) used goods collected in the territory of one or both of the Parties, provided that such goods are fit only for the recovery of raw materials; and
- (j) goods produced in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (i), or from their derivatives, at any stage of production;

**indirect material** means a good used in the production, testing or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

- (a) fuel and energy;
- (b) tools, dies and moulds;
- (c) spare 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 good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

**intermediate material** means a material that is self-produced and used in the production of a good, and designated pursuant to Article 4.4;

**material** means a good that is used in the production of another good, such as a part or an ingredient;

**non-originating good** or **non-originating material** means a good or material that does not qualify as originating under this Chapter;

**packing materials and containers for shipments** means goods used to protect a good during its transportation, different from those containers or materials used for its individual sale;

**producer** means a person who grows, mines, raises, harvests, fishes, traps, hunts, manufactures, processes or assembles a good;

**production** means growing, mining, harvesting, fishing, reproducing and breeding, trapping, hunting, manufacturing, processing or assembling a good;

**used** means used or consumed in the production of goods; and

**value of materials** means:

- (a) Except in the case of packing materials and containers for shipments, for purposes of calculating the regional value content of a good, and for purposes of applying the De Minimis rule, the value of a material that is used in the production of a good shall:
  - (i) for a material that is imported by the producer of the good, be the adjusted value of the material with respect to that importation;
  - (ii) for a material purchased in the territory where the good is produced, the producer's actual cost for the material; and
  - (iii) for a material provided to the producer without charge, or at a price reflecting a discount or similar reduction, the cost or value shall be determined by computing the sum of:
    - a. all expenses incurred in the growth, production, or manufacture of the material, including general expenses; and
    - b. an amount for profit.
- (b) The value of materials may be adjusted as follows:
  - (i) for originating materials, if not included under subparagraph (a),

the following expenses may be added to the value of the material:

- a. the costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer;
- b. duties, taxes and customs brokerage fees on the materials paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and
- c. the costs of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.

(ii) for non-originating materials, if included under subparagraph (a), the following expenses may be deducted from the value of the material:

- a. the costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer;
- b. duties, taxes and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;
- c. the costs of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and
- d. the costs of originating materials used in the production of the non-originating material in the territory of a Party.

## **Article 4.2: Originating Goods**

1. Except as otherwise provided in this Chapter, a good shall originate in the territory of a Party where:

- (a) the good is wholly obtained or produced entirely in the territory of one or both of the Parties, as defined in Article 4.1;
- (b) each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification set out in Annex 4 as a result of production occurring entirely in the territory of one or both of the Parties, or the good otherwise satisfies the applicable requirements of that Annex where no change in tariff classification is required, and the good satisfies all other applicable requirements of this Chapter;
- (c) the good is produced entirely in the territory of one or both of the Parties exclusively from originating materials pursuant to this Chapter; or
- (d) except for a good provided for in Chapters 61 through 63 of the Harmonised System, the good is produced entirely in the territory of one or both of the Parties but one or more of the non-originating materials that are used in the production of the good do not undergo a change in tariff classification because:
  - (i) the good was imported into the territory of a Party in an unassembled or a disassembled form but was classified as an assembled good pursuant to Rule 2(a) of the General Rules for

the Interpretation of the Harmonised System, or

(ii) the heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings, or the subheading for the good provides for and specifically describes both the good itself and its parts, provided that the regional value content of the good, determined in accordance with Article 4.3, is not less than 45 per cent, where the build-down method is used, or 30 per cent, where the build-up method is used and that the good satisfies all other applicable requirements of this Chapter. However, if the applicable rule of Annex 4, where the good is classified, specifies a different amount of regional value-content requirement, then such a requirement shall be applied.

2. For the purpose of this Chapter, the production of a good from non-originating materials that undergo a change in tariff classification and satisfy other requirements pursuant to Annex 4, shall be made entirely in the territory of one or both of the Parties and the regional value content of the good shall be met entirely in the territory of one or both of the Parties.

3. Notwithstanding the requirements of this Article, goods shall not be considered originating if they result exclusively from operations under Article 4.13 carried out in the territory of the Parties, when in those operations non-originating materials are used.

#### **Article 4.3: Regional Value Content**

When a regional value content is required to determine if a good is originating, each Party shall provide that the regional value content of a good may be calculated on the basis of one or the other of the following two methods:

Method 1: Build-down method

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

Method 2: Build-up method

$$RVC = \frac{VOM}{AV} \times 100$$

where

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

AV is the adjusted value;

VNM is the value of non-originating materials used by the producer in the production of the good; and

VOM is the value of originating materials used by the producer in the production of the good.

#### **Article 4.4: Intermediate Materials**

Any self-produced material that is used in the production of a good may be designated by the producer of the good as an intermediate material for the purpose of calculating the regional value content of the good under Article 4.3, provided that where the intermediate material is subject to a regional value-content requirement, no other self-produced material subject to a regional value-content requirement used in the production of that intermediate material may itself be designated by the producer as an intermediate material.

#### **Article 4.5: Accumulation**

1. Originating goods or materials from the territory of a Party incorporated to a good in the territory of the other Party shall be considered originating from the territory of the latter Party.

2. For the purpose of establishing that a good is originating, the producer of a good may accumulate one's production with the production in the territory of one or both of the Parties by one or more producers, of materials incorporated in the good, so that the production of those materials is considered as done by that producer, provided that the good complies with the criteria set out in Article 4.2.

#### **Article 4.6: De Minimis**

1. A good that does not undergo a change in tariff classification pursuant to Annex 4, shall be considered originating if the value of all non-originating materials used in its production that do not undergo change in tariff classification does not exceed eight per cent of the adjusted value of the good determined pursuant to Article 4.3.

2. Paragraph 1 shall not apply to a non-originating material used in the production of a good provided for in Chapters 1 through 24 of the Harmonized System, unless the non-originating material is provided for in a different subheading from that of the good for which the origin is being determined under this Article.

3. A good provided for in Chapters 50 through 63 of the Harmonized System that does not originate because certain fibres or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo the applicable change in tariff classification set out in Annex 4, shall nonetheless be considered to originate if the total weight of all such fibres or yarns in that component is not more than eight per cent of the total weight of that component.

#### **Article 4.7: Fungible Goods and Materials**

1. For purposes of determining whether a good is an originating good:
  - (a) where originating and non-originating fungible materials are used in the production of a good, the determination of whether the materials are originating need not be made through the identification of any specific fungible material, but shall be determined on the basis of any of the inventory management methods set out in the Uniform Regulations; and
  - (b) where originating and non-originating fungible goods are commingled and exported in the same form, the determination shall be made on the basis of any of the inventory management methods set out in the Uniform Regulations.
2. Once a decision has been taken on the inventory management method, this method shall be used throughout the fiscal year.

#### **Article 4.8: Accessories, Spare Parts and Tools**

1. Accessories, spare parts or tools delivered with the good that form part of standard accessories, spare parts or tools of the good, shall be considered as originating if the good originates and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4, provided that:
  - (a) the accessories, spare parts or tools are not invoiced separately from the good; and
  - (b) the quantities and value of the accessories, spare parts or tools are customary for the good.

2. If the good is subject to a regional value-content requirement, the value of the accessories, spare parts or tools 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 4.9: Indirect Materials**

1. An indirect material shall be considered to be an originating material without regard to where it is produced. The value of its materials shall be the costs registered in the accounting records of the producer of the good.
2. The value of an indirect material shall be based on the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

#### **Article 4.10: Packaging Materials and Containers for Retail Sale**

Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4, and, if the good is subject to a regional value-content requirement, the value of such 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 4.11: Packing Materials and Containers for Shipment**

Packing materials and containers in which a good is packed for shipment shall be disregarded 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; and
- (b) the good satisfies a regional value-content requirement.

#### **Article 4.12: Transhipment**

A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of Article 4.2, if, subsequent to that production, the good outside the territories of the Parties:

- (a) undergoes further production or any operation, other than unloading, reloading, crating, packing and repacking or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party; or
- (b) does not remain under the control or observation of the customs authority in the territory of the non-Party.

#### **Article 4.13: Non-Qualifying Operations**

1. A good shall not be considered to be originating merely by reason of:
  - (a) operations or processes that assure the preservation of goods in good conditions for the purpose of transportation or storage;
  - (b) operations or processes to facilitate shipment or transportation; or
  - (c) operations or processes relating to packaging or presentation of the goods for their respective sale.
2. Operations or processes under paragraph 1 shall include, *inter alia*:
  - (a) airing, ventilation, drying, refrigeration, freezing;
  - (b) cleaning, washing, sieving, shaking, selection, classification or grading, picking out, mixing, cutting;
  - (c) peeling, unshelling or unflaking, grain removing, removal of bones, crushing or squeezing, macerating;
  - (d) elimination of dust from broken or damaged parts, application of oil, paint for rust treatment or other protecting materials thereof;
  - (e) testing or calibrations, division of bulk shipments, assemble into packages, adherent of marks, labels or distinctive signs on the products or packing;
  - (f) packing, unpacking or repackaging;
  - (g) dilution with water or with any other aqueous, ionised or salted solution;
  - (h) the simple assembly of goods, formation of sets;
  - (i) salifying, sweetening;
  - (j) slaughter of animals;

- (j) disassembly; and
- (k) the combination of one or more of these operations.

#### **Article 4.14: Interpretation and Application**

For purposes of this Chapter:

- (a) the basis for tariff classification in this Chapter is the Harmonised System;
- (b) where applying subparagraph 1(d) of Article 4.2, the determination of whether a heading or subheading under the Harmonised System provides for and specifically describes both a good and its parts shall be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonised System;
- (c) in applying the Customs Valuation Agreement for the determination of the origin of a good under this Chapter:
  - (i) the principles of the Customs Valuation Agreement shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions;
  - (ii) the provisions of this Chapter shall take precedence over the Customs Valuation Agreement to the extent of any difference; and
  - (iii) the definitions in Article 4.1 shall take precedence over the definitions in the Customs Valuation Agreement to the extent of any difference; and
- (d) all costs referred to in this Chapter shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

#### **Article 4.15: Consultations and Modifications**

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter in accordance with Chapter 5.

2. A Party that considers that this Chapter requires modification to take into account developments in production processes or other matters may submit to the other Party for consideration a proposed modification along with supporting rationale, any studies and any appropriate action that needs to be taken under Chapter 5.