

CHAPTER THREE

RULES OF ORIGIN

Article 3.1: Originating Goods

Except as otherwise provided in this Chapter, a good is originating under this Agreement if:

- (a) the good satisfies one of the following conditions:
 - (i) the good is wholly obtained or produced entirely in the territory of one or both of the Parties as defined in Article 3.2;
 - (ii) the good has undergone sufficient production as defined in Article 3.3; or
 - (iii) the good is produced entirely in the territory of one or both of the Parties, exclusively from originating materials; and
- (b) the good satisfies all other applicable requirements under this Chapter.

Article 3.2: Wholly Obtained

The following goods are considered wholly obtained and therefore originating in the territory of one or both of the Parties:

- (a) mineral goods and other non-living natural resources extracted or taken from the territory of one or both of the Parties;
- (b) vegetable goods grown and harvested in the territory of one or both of the Parties;
- (c) live animals born and entirely raised in the territory of one or both of the Parties;
- (d) goods obtained from live animals referred to in subparagraph (c) in the territory of one or both of the Parties;
- (e) goods obtained from hunting, trapping, or fishing conducted within the land territory, internal waters, and the outer limit of the territorial sea of one or both of the Parties;

- (f) fish, shellfish, and other marine life taken from the sea, seabed, ocean floor, or subsoil outside the territorial seas of one or both of the Parties by a vessel registered, recorded, or listed with a Party and entitled to fly its flag;
- (g) goods produced on board a factory vessel from the fish, shellfish, or other marine life referred to in subparagraph (f), provided that the factory vessel is registered, recorded, or listed with a Party and entitled to fly its flag;
- (h) goods, other than fish, shellfish, and other marine life, taken or extracted from the seabed, ocean floor, or subsoil, outside the territory of one or both of the Parties by a Party or a person of a Party, provided that the Party or person of the Party has rights to exploit that seabed, ocean floor, or subsoil in accordance with Part XI of UNCLOS;
- (i) goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-party;
- (j) waste and scrap resulting from production conducted in the territory of one or both of the Parties;
- (k) components recovered from used goods collected in the territory of one or both of the Parties, provided that the used goods are fit only for such recovery and the components recovered therefrom have undergone a process necessary to ensure their good working condition; and
- (l) goods produced entirely in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (k), or from their derivatives, at any stage of production.

Article 3.3: Sufficient Production

1. A good is considered to have undergone sufficient production and therefore is originating when the conditions set out for that good in Annex 3-A are fulfilled entirely in the territory of one or both of the Parties and all other applicable requirements of this Chapter are satisfied.

2. Notwithstanding Annex 3-A and except for a good of Chapters 1 through 21, headings 39.01 through 39.15 or Chapters 50 through 63 of the Harmonized System, a good is considered to have undergone sufficient production and therefore is originating, provided that:

- (a) the good cannot satisfy the conditions in Annex 3-A because both the good and one or more of the non-originating materials used in the production of that good are classified in the same subheading, or heading that is not further subdivided into subheadings; and
- (b) the value of the non-originating materials classified in the same subheading, or heading that is not further subdivided into subheadings, as the good does not exceed 55 percent of the transaction value or ex-works price of the good.

Article 3.4: Value Test

1. Except as provided in paragraphs 2 and 3, where Annex 3-A specifies a value test to determine whether a good is originating, the good is originating provided that the value of non-originating materials used in the production of the good does not exceed a given percentage of the transaction value or ex-works price of the good as specified in Annex 3-A.

2. For the purposes of a good of headings 87.01 through 87.08, at the choice of an exporter or a producer of such goods, the good is originating provided that the value of non-originating materials used in the production of the good does not exceed the given percentage of either the transaction value or ex-works price of the good, or the net cost of the good.

3. Notwithstanding paragraph 2, for the purposes of a good of headings 87.01 through 87.06, at the choice of an exporter or a producer of such goods, the good is originating provided that the value of originating materials used in the production of the good is not less than a given percentage of the transaction value or ex-works price of the good.

4. For the purposes of calculating the net cost of a good under paragraph 2, the producer of the good may:

- (a) calculate the total cost incurred with respect to all goods produced by that producer, subtract any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all those goods, and then reasonably allocate the resulting net cost of those goods to the good;
- (b) Calculate the total cost incurred with respect to all goods produced by that producer, reasonably allocate the total cost to the good, and then subtract any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs that are included in the portion of the total cost allocated to the good; or
- (c) reasonably allocate each cost that forms part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

5. For the purposes of calculating the net cost of a good of headings 87.01 through 87.05 under paragraph 4, the producer may average its calculation over its fiscal year using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of the other Party:

- (a) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a Party;
- (b) the same model line of motor vehicles produced in the same plant in the territory of a Party;
- (c) the same model line of motor vehicles produced in the territory of a Party;
- (d) the same class of motor vehicles produced in the same plant in the territory of a Party; or

(e) any other category as the Parties may agree.

6. For the purposes of calculating the net cost under paragraph 4 for a good of headings 87.06 through 87.08 produced in the same plant, the producer may:

(a) average its calculation,

(i) over the fiscal year of the motor vehicle producer to whom the good is sold;

(ii) over any quarter or month, provided that the good was produced during the quarter or month forming the basis for the calculation;
or

(iii) over the automotive material producer's fiscal year;

(b) calculate the average referred to in subparagraph (a) separately for any or all goods sold to one or more motor vehicle producers; or

(c) calculate the average in subparagraph (a) or (b) separately for those goods that are exported to the territory of the other Party.

Article 3.5: Materials Used in Production

1. If a non-originating material undergoes sufficient production in the territory of one or both of the Parties, the resulting good is originating and no account shall be taken of the non-originating material contained therein when that good is used in the subsequent production of another good.

2. Except as provided in Article 3.6.2, the "value of non-originating materials", including, for the purposes of this definition, non-originating component goods and non-originating packaging materials and containers as referred to in Article 3.12 and in Annex 3-A, means:

(a) the transaction value or the customs value of the materials at the time of their importation into a Party, adjusted, if necessary, to include freight, insurance, packing, and all other costs incurred in transporting the materials to the place of importation; or

- (b) in the case of domestic transactions, the value of the materials determined in accordance with the principles of the Customs Valuation Agreement in the same manner as international transactions, with such modifications as may be required.

3. Except as provided in Article 3.6.2, the “value of originating materials” means the price paid or payable for the material by the producer in the Party where the producer is located, in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party where the good is produced. If there is no price paid or payable, the “value of originating materials” will be the value as determined under paragraph 2(b).

Article 3.6: Self-Produced Materials

1. For the purposes of determining the origin of a good, a producer of a good may, at the producer’s choice, designate any self-produced material as a material to be taken into account as an originating or non-originating material, as the case may be, in determining whether the good satisfies the applicable requirements of the rules of origin.

2. The value of a self-produced material shall be:

- (a) the total cost incurred with respect to all goods produced by the producer of the good that can be reasonably allocated to that self-produced material;
or
- (b) the sum of all costs that comprise the total cost incurred with respect to that self-produced material that can be reasonably allocated to that self-produced material.

Article 3.7: Accumulation

1. For the purposes of determining whether a good is an originating good, a good originating in the territory of one or both of the Parties shall be considered as originating in the territory of either of the Parties.

2. For the purposes of determining whether a good is an originating good, the production of the good in the territory of one or both of the Parties by one or more producers is, at the choice of the exporter or producer of the good for which preferential tariff treatment is claimed, considered to have been performed in the territory of either of the Parties by that exporter or producer, if:

- (a) all non-originating materials used in the production of the good undergo sufficient production as defined in Article 3.3, entirely in the territory of one or both of the Parties; and
- (b) the good satisfies all other applicable requirements of this Chapter.

3. The Parties may agree to review this Article with a view to providing for other forms of cumulation, such as cross-cumulation or pan-free-trade-agreement-cumulation for the purpose of qualifying goods as originating goods under this Agreement.

Article 3.8: *De Minimis*

1. Notwithstanding Article 3.3 and except for a good of Chapters 50 through 63 of the Harmonized System, a good is considered originating, where the value of all non-originating materials used in the production of the good, which do not undergo the applicable change in tariff classification or fulfil any other condition set out in Annex 3-A, does not exceed 10 percent of the transaction value or ex-works price of the good, provided that:

- (a) if the rule of Annex 3-A applicable to the good contains a percentage for the maximum value of non-originating materials, the value of those non-originating materials shall be included in calculating the value of non-originating materials; and
- (b) the good satisfies all other applicable requirements of this Chapter.

2. A good of Chapters 50 through 60 of the Harmonized System, that does not originate because certain non-originating yarns used in the production of the good do not fulfil the conditions set out for that good in Annex 3-A, is considered originating if the total weight of all such yarns does not exceed 10 percent of the total weight of that good.

3. A good of Chapters 61 through 63 of the Harmonized System, that does not originate because certain non-originating yarns used in the production of the component of the good that determines the tariff classification of that good do not fulfil the conditions set out for that good in Annex 3-A, is considered originating if the total weight of all such yarns in that component does not exceed 10 percent of the total weight of that component.

4. Except as provided in Annex 3-A, paragraph 1 does not apply to a non-originating material used in the production of a good provided for in Chapters 1 through 21 of the Harmonized System unless the non-originating materials are provided for in a different subheading from that of the good for which the origin is being determined under this Article.

Article 3.9: Fungible Materials and Goods

1. For the purposes of determining whether a material or good is an originating material or good, any fungible material or good shall be distinguished by:

- (a) physically separating each fungible material or good; or
- (b) using any inventory management method recognised in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that Party in which the production is performed.

2. Once a particular inventory management method is selected under paragraph 1, that method shall continue to be used for those fungible materials or goods throughout the fiscal year of the person that selected the inventory management method.

Article 3.10: Sets or Assortments of Goods

Except as provided in Annex 3-A, a set or assortment of goods, as referred to in General Rule 3 of the Harmonized System, is originating, if:

- (a) all of the component goods, including packaging materials and containers, are originating; or

- (b) when the set or assortment of goods contains non-originating component goods, including packaging materials and containers, the value of the non-originating goods, including any non-originating packaging materials and containers for the set or assortment of goods, does not exceed 15 percent of the transaction value or ex-works price of the set or assortment of goods.

Article 3.11: Accessories, Spare Parts and Tools

Accessories, spare parts, and tools delivered with a good that form part of its standard accessories, spare parts, or tools are considered originating if the good originates and shall be disregarded in determining whether all the non-originating materials undergo the applicable conditions set out in Annex 3-A, 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.

Article 3.12: Packaging Materials and Containers for Retail Sale

Except as provided for in Article 3.10 and in Annex 3-A, packaging materials and containers in which a good is packaged for sale shall be disregarded in determining whether all the non-originating materials undergo the applicable conditions as set out in Annex 3-A.

Article 3.13: Packing Materials and Containers for Shipment

Packing materials, containers, pallets, or similar articles, in which a good is packed for shipment is disregarded in determining the origin of that good.

Article 3.14: Indirect Materials

For the purposes of determining whether a good is originating, it is not necessary to determine the origin of indirect materials used in production, testing or inspection of that good, but which have not entered into the final composition of the good, or which have been used in the maintenance of equipment and buildings or the operation of equipment associated with the production of a good including:

- (a) energy and fuel;
- (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 safety supplies;
- (f) equipment, devices, and supplies used for testing or inspecting goods; and
- (g) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be part of that production.

Article 3.15: Principle of Territoriality

1. The conditions for acquiring originating status set out in Articles 3.1 through 3.20 must be fulfilled without interruption in the territory of one or both of the Parties.

2. Notwithstanding paragraph 1, an originating good exported from a Party to a non-party shall, when returned, be considered originating if it is demonstrated to the satisfaction of the customs authorities in accordance with the laws and regulations of the importing Party concerned that the returning good:

- (a) is the same as that exported; and

- (b) has not undergone any operation beyond that necessary to preserve it in good condition while in that non-party or being exported.

Article 3.16: Transit and Transshipment

An originating good that is transported through the territory of a non-party is non-originating unless it can be demonstrated that the good:

- (a) undergoes no further production or other operation in the territory of that non-party, other than unloading, splitting up of loads for transport reasons, reloading, or any other operation necessary to preserve it in good condition;
- (b) remains under the customs control while outside the territory of one or both of the Parties; and
- (c) does not enter into trade or consumption in the territory of that non-party.

Article 3.17: Application and Interpretation

For the purposes of this Chapter:

- (a) the basis for tariff classification is the Harmonized System;
- (b) if applying Article 3.3.2, the determination of whether a heading or subheading under the Harmonized System provides for both a good and the materials that are used in the production of the good is 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 Harmonized System*;
- (c) in applying the Customs Valuation Agreement under this Chapter:
 - (i) the principles of the Customs Valuation Agreement apply to domestic transactions, with any modifications required by the circumstances, as they would apply to international transactions;

- (ii) the provisions of this Chapter take precedence over the Customs Valuation Agreement to the extent of any difference; and
- (iii) the definitions in Article 3.20 shall take precedence over the definitions in the Customs Valuation Agreement to the extent of any difference.

Article 3.18: Discussions and Modifications

1. The Parties shall discuss regularly to ensure that this Chapter is administered effectively, uniformly, and consistently with the spirit and objectives of this Agreement, and cooperate in the administration of this Chapter in accordance with Chapter Four (Origin Procedures and Trade Facilitation).

2. A Party that considers that this Chapter requires modification to take into account developments in production processes or other matters may submit a proposed modification along with supporting rationale and any studies to the other Party for consideration and any appropriate action pursuant to Article 4.14 (Rules of Origin and Customs Committee).

Article 3.19: Common Guidelines

The Parties shall discuss whether to develop common guidelines for the interpretation and application of this Chapter by the date of entry into force of this Agreement.

Article 3.20: Definitions

For the purposes of this Chapter:

Chapter, unless otherwise specified, means a chapter of the Harmonized System;

classified means the classification of a good under a particular heading or subheading of the Harmonized System;

customs value means the value as determined in accordance with the Customs Valuation Agreement;

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

Generally Accepted Accounting Principles means accounting principles accepted and commonly used in the territory of a Party with regard to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and preparation of financial statements. These principles may encompass guidelines for general application, as well as detailed standards, practices, and procedures;

good means merchandise, product, article, or material;

listed with a Party means a foreign registered vessel bare-boat chartered in accordance with the domestic law of a Party and whose registration in the foreign country is suspended for the duration of the charter;

material means an ingredient, component, part, or other good used in the production of another good;

net cost means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

net cost of a good means the net cost that can be reasonably allocated to a good using one of the methods set out in Article 3.4.4;

non-allowable interest costs means interest costs incurred by a producer that exceed 700 basis points above the applicable national government rate identified for comparable maturities;

non-originating good or **non-originating material** means a good or material, respectively, that does not qualify as originating;

originating good or **originating material** means a good or material, respectively, that qualifies as originating;

other costs means all costs recorded on the books of the producer that are not product costs or period costs, such as interest;

period costs means those costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses;

producer means a person who engages in the production of a good in the territory of a Party;

product costs means those costs associated with the production of a good and includes the value of materials, direct labour costs, and direct overhead;

production means a method of obtaining goods, including growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

reasonably allocate means to apportion in a manner appropriate to the circumstances;

royalties means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, or secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:

- (a) personnel training, without regard to where it is performed; and
- (b) if performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services, or other services;

sales promotion, marketing, and after-sales service costs means costs related to:

- (a) sales or marketing promotion; media advertising; advertising or market research; promotional or demonstration materials; exhibits; sales conferences, trade shows, or conventions; banners; marketing displays; free samples; sales, marketing, or after-sales service literature (product brochures, catalogues, technical literature, price lists, service manuals, or sales aid information); establishment or protection of logos and trademarks; sponsorships; wholesale or retail restocking charges; entertainment;
- (b) sales or marketing incentives; consumer, retailer, or wholesaler rebates; merchandise incentives;
- (c) salaries or wages; sales commissions; bonuses; benefits (for example, medical, insurance, or pension benefits); travelling or living expenses; membership or professional fees; for sales promotion, marketing or after-sales service personnel;
- (d) recruiting or training of sales promotion, marketing or after-sales service personnel, or after-sales training of customers' employees, if those costs are identified separately for sales promotion, marketing, or after-sales service of goods on the financial statements or cost accounts of the producer;
- (e) product liability insurance;
- (f) office supplies for sales promotion, marketing, or after-sales service of goods, if those costs are identified separately for sales promotion, marketing, or after-sales service of goods on the financial statements or cost accounts of the producer;
- (g) telephone, mail, or other communications, if those costs are identified separately for sales promotion, marketing, or after-sales service of goods on the financial statements or cost accounts of the producer;
- (h) rent or depreciation of sales promotion, marketing, or after-sales service offices and distribution centres;

- (i) property insurance premiums, taxes, utilities, or repair or maintenance of sales promotion, marketing or after-sales service offices or distribution centres, if those costs are identified separately for sales promotion, marketing or after-sales service of goods on the financial statements or cost accounts of the producer; and
- (j) payments by the producer to other persons for warranty repairs;

self-produced material means a material produced by a producer of a good and used in the production of that good;

shipping and packing costs means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding costs of preparing and packaging the good for retail sale;

tariff provision means a Chapter, heading, or subheading of the Harmonized System;

territorial sea means an area of the sea extending up to a limit of 12 nautical miles from baselines determined in accordance with Part II of UNCLOS;

total cost means product costs, period costs, and other costs incurred in the territory of one or both of the Parties. Total cost does not include profits earned by the producer, regardless of whether they are retained by the producer, or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

transaction value means the price actually paid or payable for a good or material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Agreement to include, *inter alia*, such costs as commissions, production assists, royalties, or license fees; and

transaction value or ex-works price of the good, including, for the purposes of this definition, sets or assortments of goods of Article 3.10 and of Annex 3-A, means:

- (a) the transaction value of a good when sold by the producer at the place of production; or
- (b) the customs value of that good

adjusted, if necessary, to exclude any costs incurred subsequent to the good leaving the place of production, such as freight and insurance.