

CHAPTER THREE RULES OF ORIGIN

ARTICLE 3.1: DEFINITIONS

For the purposes of this Chapter:

carrier means any vehicle for air, sea, and land transport;

CIF value means the price actually paid or payable to the exporter for a good when the good is loaded out of the carrier, at the port of importation, including the cost of the good, insurance, and freight necessary to deliver the good to the named port of destination. The valuation shall be made in accordance with the Customs Valuation Agreement;

FOB value means the price actually paid or payable to the exporter for a good when the good is loaded onto the carrier at the named port of exportation, including the cost of the good and all costs necessary to bring the good onto the carrier. The valuation shall be made in accordance with the Customs Valuation Agreement;

fungible materials means materials being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which once they are incorporated into the finished product cannot be distinguished from one another for origin purposes by virtue of any markings, etc;

Generally Accepted Accounting Principles means recognised consensus or substantial authoritative support given in the territory of a Party 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;

Good means any merchandise, product, article or material;

indirect materials means goods used in the production, testing or inspection of a good but not physically incorporated into the good, or goods 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) parts including 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 good;
- (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;

materials means ingredients, raw materials, parts, components, subassemblies and goods that are used in the production of another good and physically incorporated into another good;

non-originating materials used in production means any materials whose country of origin is other than the Parties (imported non-originating) and any materials whose origin cannot be determined (undetermined origin);

originating materials means materials that qualify as originating under this Chapter;

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

producer means a person who grows, mines, raises, harvests, fishes, reproduces and breeds, traps, hunts, manufactures, processes, assembles or disassembles a good;

production means method of obtaining goods including growing, raising, mining, extracting, harvesting, fishing, producing, reproducing and breeding, trapping, gathering, collecting, hunting and capturing, manufacturing, processing, assembling or disassembling a good; and

used means utilised or consumed in the production of goods.

ARTICLE 3.2: ORIGINATING GOODS

For the purposes of this Agreement, goods shall be deemed originating and eligible for preferential tariff treatment if they are consigned according to Article 3.15 and conform to the origin requirements under any of the following conditions:

- (a) goods wholly obtained or produced in the territory of the exporting Party, in accordance with Article 3.3; or
- (b) goods not wholly obtained or produced in the territory of the exporting Party, provided that the said products are eligible under Article 3.4.

ARTICLE 3.3: WHOLLY OBTAINED OR PRODUCED

Within the meaning of Article 3.2(a), the following goods shall be considered as being wholly obtained or produced in the territory of a Party:

- (a) raw or mineral goods extracted from its territory;
- (b) plants and plant products harvested, picked or gathered after being grown there;
- (c) live animals born and raised there;
- (d) goods obtained from animals referred to in subparagraph (c);
- (e) goods obtained by hunting or trapping within the land territory, or fishing or aquaculture conducted within the internal waters or within the territorial sea of the Party;

- (f) goods of sea-fishing and other goods taken from the sea outside the territorial sea of a Party by vessels registered or recorded with a Party and flying its flag;
- (g) goods produced on board factory ships from the goods referred to in subparagraph (f), provided that such factory ships are registered or recorded with a Party and fly its flag;
- (h) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial sea of a Party, provided that the Party has rights to exploit such seabed or beneath the seabed in accordance with the *1982 United Nations Convention on the Law of the Sea*;
- (i) articles collected there, including waste and scrap derived from production there, which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts or raw materials, or for recycling purposes; and
- (j) goods produced there exclusively from goods referred to in subparagraphs (a) through (i) or from their derivatives, at any stage of production.

ARTICLE 3.4: NOT WHOLLY OBTAINED OR PRODUCED

1. Except as under Article 3.14 and provided that the final process of manufacturing is performed within the territory of the exporting Party, goods would be considered as originating within the meaning of Article 3.2(b),

- (a) which satisfy the Product Specific Rules provided in Annex 3-A;
- (b) except for goods covered under subparagraph (a) as provided for in Annex 3-A, if;
 - (i) the regional value content is not less than 35 percent of the FOB value; and
 - (ii) the goods have undergone a change in tariff classification in a subheading, at the six digit level, of the HS from tariff classification in which all the non-originating materials used in their manufacture are classified;

2. When a regional value content is required to determine an originating good, the regional value content of a good shall be calculated on the basis of the following method:

$$RVC = \frac{\text{FOB value} - \text{VNM}}{\text{FOB value}} \times 100$$

where,

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

FOB value is the value of the good as defined in Article 3.1;

VNM means the value of non-originating materials specified in paragraph 4.

3. For the purpose of paragraph 2, if the material does not satisfy the requirements of paragraph 1, the non-qualifying value of the materials shall be that proportion which cannot be attributed to one or both of the Parties, provided that the requirements of Article 3.6 at each stage of value accumulation are satisfied.

4. The value of the non-originating materials used in the production of a good shall be:

- (a) for imported materials, the CIF value as defined in Article 3.1; or
- (b) for materials of undetermined origin, the earliest price as ascertained to have been paid for in the territory of the Party where the working or processing takes place, in accordance with the Customs Valuation Agreement.

5. For the value of non-originating materials, the following expenses, where included under paragraph 4, may be deducted from the value of the non-originating materials:

- (a) inland transportation costs incurred to transport the materials to the location of the producer; and
- (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 duties or taxes paid or payable.

ARTICLE 3.5: INDIRECT MATERIALS

In order to determine whether a good originates in a Party, the origin of the indirect materials shall not be taken into account.

ARTICLE 3.6: NON-QUALIFYING OPERATIONS

1. Notwithstanding any provision in this Chapter, a good shall not be considered to have satisfied the requirements for an originating good in Article 3.4 merely by reason of going through the following operations or processes:

- (a) preserving operations¹ to ensure that the products remain in good condition during transport;
- (b) changes of packaging or packing, and breaking-up and assembly of packages;
- (c) washing, cleaning or removal of dust, oxide, oil, paint or other coverings;
- (d) simple² painting and polishing operations;
- (e) sifting, screening, sorting, classifying, grading or matching, including the

¹ Preserving operations include drying, freezing, keeping in brine, ventilation, spreading out, chilling, placing in salt or sulfur dioxide, removal of damaged parts, and like operations.

² “simple” generally describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity.

making-up of sets of articles;

- (f) simple combining operations, labelling, pressing, cleaning or dry cleaning, packaging operations, or any combination thereof;
- (g) cutting to length or width and hemming, or stitching or overlocking of fabrics which are readily identifiable as being intended for a particular commercial use;
- (h) trimming and/or joining together by sewing, looping, linking or attaching accessory articles such as straps, bands, beads, cords, rings and eyelets;
- (i) one or more finishing operations on yarns, fabrics or other textile articles, such as bleaching, waterproofing, decatizing, shrinking, mercerizing, or similar operations;
- (j) husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- (k) operations to colour sugar or form sugar lumps;
- (l) peeling, stoning and unshelling;
- (m) unflaking, crushing, squeezing, slicing, macerating and removal of bones;
- (n) sharpening, simple grinding or simple cutting and repackaging;
- (o) simple³ placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (p) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (q) simple mixing⁴ of products, whether or not of different kinds;
- (r) simple⁵ assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (s) simple⁶ testing or calibrations;
- (t) mere dilution with water or another substance that does not materially alter the characteristics of the goods;
- (u) slaughtering of animals; or

³ See footnote 2.

⁴ “simple mixing” generally describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity. However, simple mixing does not include chemical reaction. **Chemical reaction** means a process, including a biochemical process, which results in a molecule with a new structure by breaking intra-molecular bonds and by forming new intra-molecular bonds, or by altering the spatial arrangement of atoms in a molecule.

⁵ See footnote 2.

⁶ See footnote 2.

- (v) a combination of two or more operations referred to in subparagraphs (a) through (u).

2. All operations carried out in a Party on a given product shall be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of paragraph 1.

ARTICLE 3.7: ACCUMULATION

Originating materials from the territory of a Party, incorporated in the production of a good in the territory of the other Party shall be considered to originate in the territory, of the other Party.

ARTICLE 3.8: DE MINIMIS

1. A good that does not undergo a change in tariff classification pursuant to Article 3.4 and Annex 3-A in the final process of production shall be considered as originating if:

- (a) for goods except for those falling within Chapters 1 through 14 and Chapters 50 through 63 of the HS, the value of all non-originating materials used in its production, which do not undergo the required change in tariff classification, does not exceed ten percent of the FOB value of the good;
- (b) for goods falling within Chapters 50 through 63 of the HS, the total weight of non-originating basic textile materials used in its production, which do not undergo the required change in tariff classification, does not exceed seven percent of the total weight of all the basic textile materials used; and
- (c) the good meets all other applicable criteria set forth in this Chapter for qualifying as an originating good.

2. The value of such non-originating materials shall be included in the value of non-originating materials for any applicable regional value content requirement for the good.

ARTICLE 3.9: ACCESSORIES, SPARE PARTS AND TOOLS

Accessories, spare parts or tools delivered with a good that form part of the good's standard accessories, spare parts or tools, shall be treated as originating goods if the good is an originating good, 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, provided that:

- (a) the accessories, spare parts or tools are not invoiced separately from the good;
- (b) the quantities and value of the accessories, spare parts or tools are standard trade practice for the good in the domestic market of the exporting Party; and
- (c) 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 3.10: 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, 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 3.11: 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 an applicable change in tariff classification; and
- (b) the good satisfies a regional value content requirement.

ARTICLE 3.12: FUNGIBLE MATERIALS

1. Where identical and interchangeable originating and non-originating materials are used in the manufacture of a product, those materials shall be physically segregated, according to their origin, during storage.

2. A producer facing considerable costs or material difficulties in keeping separate stocks of identical and interchangeable originating and non-originating materials used in the manufacture of a product, may use the so-called “accounting segregation” method for managing stocks.

3. The accounting method shall be recorded, applied and maintained in accordance with Generally Accepted Accounting Principles applicable in the Party in which the product is manufactured. The method chosen shall:

- (a) permit a clear distinction to be made between originating and non-originating materials acquired and/or kept in stock; and
- (b) guarantee that no more products receive originating status than would be the case if the materials had been physically segregated.

ARTICLE 3.13: PRINCIPLE OF TERRITORIALITY

1. Except as provided for in Articles 3.7 and 3.14, the conditions for acquiring originating status set out in Articles 3.2 through 3.12 shall be fulfilled without interruption in a Party.

2. Except as provided for in Article 3.7, an originating product exported from a Party to a non-Party shall, when returned, be considered to be non-originating unless it can be demonstrated to the satisfaction of the customs authority in accordance with laws and regulations of the importing Party concerned that:

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

- (b) the returning product has not undergone any operation beyond that necessary to preserve it in good condition while being exported.

ARTICLE 3.14: EXEMPTION FROM THE PRINCIPLE OF TERRITORIALITY

Notwithstanding the provisions of Article 3.13, the acquisition of originating status in accordance with the conditions set out in Articles 3.2 through 3.12 shall not be affected by working or processing carried out in the area agreed by both Parties in the Exchange of Notes on materials exported from the Party concerned and subsequently re-imported there, provided that the conditions set out in Annex 3-B are fulfilled.

ARTICLE 3.15: DIRECT CONSIGNMENT

1. Preferential tariff treatment shall be applied to a good satisfying the requirements of this Chapter and which is transported directly between the territories of the exporting Party and the importing Party.
2. Notwithstanding paragraph 1, a good of which transport involves transit through one or more intermediate third countries, other than the territories of the exporting Party and the importing Party, shall be considered to be consigned directly, provided that:
 - (a) the goods have not entered into trade or consumption there;
 - (b) the goods have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition; and
 - (c) the goods have remained under the customs control in the country of transit.

ARTICLE 3.16: INTERPRETATION AND APPLICATION

For the purposes of this Chapter:

- (a) the basis for tariff classification in this Chapter is the HS;
- (b) 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 3.1 shall take precedence over the definitions in the Customs Valuation Agreement to the extent of any difference; and
- (c) 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 3.17: CONSULTATIONS AND MODIFICATIONS

1. The Parties shall consult and cooperate to ensure that this Chapter is applied in an effective and uniform manner.

2. Pursuant to Article 15.2.2(c) (Joint Committee and Review), the Parties shall consult to review, no later than three years after the date of entry into force of this Agreement, the rules of origin and discuss necessary amendments or modifications to this Chapter and its Annexes, including Article 3.4.1 and Product Specific Rules provided in Annex 3-A, taking into account developments in technology, production processes, and other related matters including the recommended amendments to the HS.