

## **CHAPTER FOUR RULES OF ORIGIN**

### **Article 4.1: Definitions**

For purposes of this Chapter:

**Cost, Insurance, and Freight (CIF)** means the value of the good imported and includes the cost of freight and insurance up to the port or place of entry into the country of importation, in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement;

**Free on Board (FOB)** means the free on board value of a good, inclusive of the cost of transport, from the producer to the port or site of final shipment abroad, in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement;

**fungible materials** means materials that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination;

**materials** means ingredients, raw materials, components, parts, or accessories used in the production of goods;

**packing materials and containers for transportation** means the goods used to protect goods during their transportation, different from those materials or containers used for their retail sale;

**preferential tariff treatment** means tariff concessions granted to originating goods as reflected by the tariff rates applicable under this Agreement;

**Product Specific Rules (PSR)** means the rules that specify that the materials have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a regional value content or a combination of any of these criteria; and

**production** means methods of obtaining goods including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing, or assembling goods.

#### **Article 4.2: Origin Criteria**

For purposes of this Agreement, goods shall be considered as originating in a Party if they have been:

- (a) wholly obtained or produced entirely in the territory of a Party, in accordance with Article 4.3;
- (b) produced entirely in the territory of a Party using non-originating materials provided the goods satisfy the requirements set out in Annex 4-B; or
- (c) produced entirely in the territory of a Party exclusively from materials originating in the Parties

and meet all other applicable requirements of this Chapter.

#### **Article 4.3: Wholly Obtained or Produced Goods**

For purposes of Article 4.2(a), the following goods shall be considered as wholly obtained or produced entirely in the territory of a Party:

- (a) plants and plant products grown and harvested, picked, or gathered in that Party;
- (b) live animals born and raised in that Party;
- (c) goods obtained from live animals referred to in subparagraph (b);
- (d) goods obtained by hunting, trapping, fishing, aquaculture, gathering, or capturing conducted in that Party;
- (e) minerals and other naturally occurring substances not included in subparagraphs (a) through (d), extracted or taken from its soil, waters, seabed, or beneath the seabed;
- (f) goods of sea-fishing and other marine products extracted or taken by vessels registered with the Party and entitled to fly the flag of that Party, and other products extracted or taken by the Party or a person of that Party from the waters, seabed, or beneath the seabed outside the territorial waters of the Party, provided that

the Party or a person of that Party has the rights to exploit<sup>1</sup> such waters, seabed, and beneath the seabed in accordance with international law<sup>2</sup>;

- (g) goods of sea-fishing and other marine products extracted or taken from the high seas by vessels registered with the Party and entitled to fly the flag of that Party;
- (h) goods produced or made on board factory ships registered with a Party and entitled to fly the flag of that Party, exclusively from goods referred to in subparagraph (f) or (g);
- (i) articles collected from that Party which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for the recovery of parts of raw materials or recycling purposes;
- (j) waste and scrap derived from:
  - (i) manufacturing or processing operations conducted in that Party; or
  - (ii) used goods collected in that Party, provided that such goods are fit only for the recovery of raw materials; and
- (k) goods obtained or produced in the territory of the Party solely from goods referred to in subparagraphs (a) through (j).

#### **Article 4.4: Not Wholly Obtained or Produced Goods**

1. For purposes of Article 4.2(b), goods shall be considered originating if the regional value content (hereinafter referred to as the “RVC”) is not less than 40 percent of the FOB value or the goods have undergone a change in tariff classification at four digit-level (change in tariff heading) of the HS as a general rule except those covered in Annex 4-B.

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<sup>1</sup> The Parties understand that for purposes of determining the origin of goods of sea-fishing and other goods, the “rights to exploit” include those rights of access to the fisheries resources of a coastal State, as accruing from agreements or other arrangements concluded between a Party and the coastal State at the level of governments or duly authorized private entities.

<sup>2</sup> International law refers to generally accepted international law such as the *United Nations Convention on the Law of the Sea*.

2. For purposes of Article 4.2(b), the RVC shall be calculated in accordance with any of the following methods:

(a) Build-Up Method

$$\text{RVC} = \frac{\text{VOM}}{\text{FOB}} \times 100\%$$

VOM means value of originating materials, which includes the value of originating materials, direct labor cost, direct overhead cost, transportation cost, and profit.

(b) Build-Down Method

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

VNM means value of non-originating materials, which shall be:

- (i) the CIF value at the time of importation of the materials, parts, or goods; or
- (ii) the earliest ascertained price paid for the materials, parts, or goods of undetermined origin in the territory of the Party where the working or processing has taken place.

#### **Article 4.5: *De Minimis***

1. Goods that do not undergo a change in tariff classification shall be considered as originating if:

- (a) for goods, other than those provided in Chapters 50 through 63 of the HS, the value of all non-originating materials used in its production that do not undergo the required change in tariff classification does not exceed 10 percent of the FOB value of the goods;
- (b) for goods provided in Chapters 50 through 63 of the HS, the weight of all non-originating materials used in its production that do not undergo the required change in tariff classification does

not exceed 10 percent of the total weight of the goods;

and the goods specified in subparagraphs (a) and (b) meet all other applicable criteria set forth in this Chapter for qualifying as originating goods.

2. The value of non-originating materials referred to in paragraph 1 shall, however, be included in the value of non-originating materials for any applicable RVC requirement for the goods.

#### **Article 4.6: Minimal Operations**

1. Notwithstanding any provision in this Chapter, goods shall not be considered as originating in a Party if they have undergone only one or a combination of any of the following operations or processes in the territory of that Party:

- (a) preserving operations to ensure that goods remain in good condition during transport and storage;
- (b) packaging and re-packaging, breaking-up, and assembly of packages;
- (c) simple washing, cleaning, removal of dust, oxide, oil, paint, or other coverings;
- (d) ironing or pressing of textiles or textile products;
- (e) simple painting and polishing;
- (f) husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- (g) coloring sugar or forming sugar lumps;
- (h) simple peeling, stoning, or un-shelling;
- (i) sharpening, simple grinding, or simple cutting;
- (j) sifting, screening, sorting, classifying, grading, or matching;
- (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards, and all other similar simple packaging operations;

- (l) affixing or printing marks, labels, logos, and other like distinguishing signs on goods or their packaging;
- (m) simple mixing<sup>3</sup> of goods, whether or not of different kinds;
- (n) simple assembly of parts of articles to constitute a complete article;
- (o) disassembly of products into parts;
- (p) simple testing or calibrations; or
- (q) slaughter of animals<sup>4</sup>.

2. For purposes of paragraph 1, simple describes operations or processes which do not need special skills, or machines, apparatus, or equipment especially produced or installed to carry out the operation or process.

3. Goods originating in the territory of a Party shall retain their initial originating status when exported from the other Party, where operations undertaken have not gone beyond those referred to in paragraph 1.

#### **Article 4.7: Accumulation of Origin**

Unless otherwise provided for in this Chapter, goods originating in the territory of a Party, which are used in the territory of the other Party as materials for finished goods eligible for preferential tariff treatment, shall be considered to be originating in the territory of the latter Party where working or processing of the finished goods has taken place.

#### **Article 4.8: Treatment for Certain Goods**

Notwithstanding Article 4.2, certain goods shall be considered to be originating even if they have undergone working or processing outside the Parties, on materials exported from a Party and subsequently re-imported there, provided

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<sup>3</sup> Simple mixing generally describes an activity which does not need special skills, or 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 intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

<sup>4</sup> Slaughtering means the mere killing of animals and subsequent processes such as cutting, chilling, or freezing for the purpose of preservation for storage and transport.

that the working or processing is done in the areas designated by the Parties pursuant to Annex 4-C.

#### **Article 4.9: Intermediate Goods**

When originating goods are used in the subsequent production of other goods, no account shall be taken of the non-originating materials contained in the originating goods for purposes of determining the originating status of the subsequently produced goods.

#### **Article 4.10: Treatment of Packaging and Packing Materials**

1. (a) If the goods are subject to the RVC criterion as set out in Article 4.4, the value of the packaging and packing materials for retail sale shall be taken into account in the determination of origin, where the packaging and packing materials are considered to be taken as a whole with the goods.
- (b) Where subparagraph (a) is not applicable, the packaging and packing materials for retail sale, when classified together with the packaged goods, shall not be taken into account in considering whether all non-originating materials used in the manufacture of the goods fulfil the criterion corresponding to a change in tariff classification or a specific manufacturing or processing operation of the said goods.
2. Packing materials and containers for transportation of goods shall not be taken into account in determining the origin of the goods.

#### **Article 4.11: Sets**

1. Sets, as defined in Rule 3 of the *General Rules for the Interpretation of the Harmonized System*, shall be considered as originating when all the components of the sets are originating.
2. Nevertheless, when a set is composed of originating and non-originating goods, the set as a whole shall be considered as originating, provided that the value of the non-originating goods determined in accordance with Article 4.4 does not exceed 10 percent of the FOB value of the set.

#### **Article 4.12: Accessories, Spare Parts, and Tools**

1. For purposes of determining the originating status of goods, accessories, spare parts, tools, and instructional or other information materials presented with the good shall be considered as part of those goods and shall be disregarded in determining whether all the non-originating materials used in the production of the goods have undergone the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 4-B, provided that:

- (a) the accessories, spare parts, tools, and instructional or other information materials presented with the goods are not invoiced separately from the goods; and
- (b) the quantities and value of the accessories, spare parts, tools, and instructional or other information materials presented with the goods are customary for those goods.

2. Notwithstanding paragraph 1, if the goods are subject to the RVC criterion, the value of the accessories, spare parts, tools, and instructional or other information materials presented with the goods shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the RVC of the goods provided that:

- (a) the accessories, spare parts, tools, and instructional or other information materials presented with the goods are not invoiced separately from the goods; and
- (b) the quantities and value of the accessories, spare parts, tools, and instructional or other information materials presented with the goods are customary for those goods.

#### **Article 4.13: Neutral Elements**

In order to determine whether goods are originating, it shall not be necessary to determine the origin of the following which might be used in its production and not incorporated into the goods:

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

#### **Article 4.14: Fungible Materials**

1. For purposes of establishing the origin of goods, when the goods are manufactured utilizing originating and non-originating materials, mixed or physically combined, the origin of such materials can be determined by generally accepted accounting principles of inventory management practiced in the territory of the exporting Party.

2. Once an inventory management method has been chosen, it must be used throughout the fiscal year.

#### **Article 4.15: Direct Consignment**

1. Preferential tariff treatment shall be applied to goods satisfying the requirements of this Chapter and which are transported directly between the territories of the exporting Party and the importing Party.

2. Notwithstanding paragraph 1, goods which involve transit through one or more non-Parties, other than the territories of the Parties, shall be considered to be consigned directly, provided that:

- (a) the transit is justified for geographical reason or by consideration related exclusively to transport requirement;
- (b) the goods have not entered into trade or consumption there; and
- (c) the goods have not undergone any operation other than unloading and reloading or any operation required to keep them in good condition.

3. For purposes of implementing paragraph 2, where transportation is effected through the territory of one or more intermediate countries, other than that of the exporting Party and the importing Party, the following shall be produced to the relevant government authorities of the importing Party:

- (a) a through Bill of Lading issued in the territory of the exporting Party, which include a combination of any transport document covering the entire transport route of the goods from the exporting Party to the importing Party; or
- (b) other relevant supporting documents, if any, as evidence that the requirements of paragraph 2 are being complied with.

#### **Article 4.16: Proof of Origin**

A claim that goods shall be accepted as eligible for preferential tariff treatment shall be supported by a Proof of Origin, in accordance with the Operational Certification Procedures, as set out in Annex 4-A.

#### **Article 4.17: Denial of Preferential Treatment**

The importing Party may deny preferential tariff treatment or recover unpaid customs duties in accordance with its laws and regulations, where goods do not meet the requirements of this Chapter or where the importer or exporter fails to demonstrate compliance with the relevant requirements.

#### **Article 4.18: Confidentiality**

1. The Parties shall maintain, in accordance with their respective laws and regulations, the confidentiality of classified business information collected in the process of verification pursuant to Rule 15 of Annex 4-A and shall protect that information from disclosure that could prejudice the competitive position of the person who provided the information.

2. Subject to the laws and regulations and agreement of the Parties, classified information may only be disclosed by the authorities of a Party to the other Party, for the administration and enforcement of origin determination.

#### **Article 4.19: Penalties**

Each Party shall ensure, in accordance with its laws and regulations, that appropriate penalties, sanctions, or other measures are imposed for violations of the laws and regulations related to this Chapter.

#### **Article 4.20: Transitional Provisions for Goods in Transit or Storage**

The provisions of this Agreement may be applied to goods which, on the date of entry into force of this Agreement, are either in transit or in temporary storage in a customs warehouse or free zone under customs control. For such goods, a Proof of Origin may be completed retrospectively up to three months after the entry into force of this Agreement, provided that the provisions of this Chapter have been fulfilled.

#### **Article 4.21: Product Specific Rules Transposition**

For purposes of the transposition of the Product Specific Rules (PSR) set out in Annex 4-B as a result of the amendments to the HS, the following subparagraphs shall apply:

- (a) Prior to the entry into force of an amended version of the HS, the Parties shall undertake consultation to prepare updates to Annex 4-B that are necessary to reflect changes to the HS;
- (b) The Parties shall ensure that the transposition of Annex 4-B is carried out without impairing the PSR set out therein and is completed within a reasonable period of time;
- (c) The Joint Committee, upon recommendation of the Committee on Rules of Origin and Customs Procedures, shall adopt the transposition of the PSR in accordance with the nomenclature of the revised HS; and
- (d) The Parties shall promptly publish the adopted transposition document of Annex 4-B in accordance with the nomenclature of the revised HS.

#### **Article 4.22: Consultations**

The Parties shall consult regularly to ensure that provisions in this Chapter are administered effectively, uniformly, and consistently in order to achieve the spirit and objectives of this Chapter.

#### **Article 4.23: Committee on Rules of Origin and Customs Procedures**

The Parties hereby establish a Committee on Rules of Origin and Customs Procedures pursuant to Article 5.21 (Committee on Rules of Origin and Customs Procedures).

#### **Article 4.24: Review and Modification**

1. This Chapter may be reviewed and modified as and when necessary upon request of a Party and may be open to such reviews and modifications as may be agreed upon in the Joint Committee established under Article 11.1 (Joint Committee).

2. Annexes and Appendices of this Chapter may be modified through amendments endorsed by the Joint Committee. The amendments shall enter into force 60 days after the date on which the Parties have notified in writing the completion of their applicable legal procedures or on such date as the Parties may agree.