

Chapter 3
Rules of Origin

Article 26
Definitions

For the purposes of this Chapter:

- (a) the term "exporter" means a natural or juridical person located in an exporting Party who exports a good from the exporting Party;
- (b) the term "factory ships of the Party" or "vessels of the Party" respectively means factory ships or vessels:
 - (i) which are registered in the Party;
 - (ii) which sail under the flag of the Party;
 - (iii) which are owned to an extent of at least 50 percent by nationals of the Parties, or by a juridical person with its head office in either Party, of which the representatives, chairman of the board of directors, and the majority of the members of such board are nationals of the Parties, and of which at least 50 percent of the equity interest is owned by nationals or juridical persons of the Parties;
 - (iv) of which at least 50 percent of the total of the master and officers are nationals of the Parties; and
 - (v) of which at least 25 percent of the crew are nationals of the Parties;
- (c) the term "fungible originating goods of a Party" or "fungible originating materials of a Party" respectively means originating goods or materials of a Party that are interchangeable for commercial purposes, whose properties are essentially identical;

- (d) the term "Generally Accepted Accounting Principles" means the recognised consensus or substantial authoritative support within a Party at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures;
- (e) the term "good" means any merchandise, product, article or material;
- (f) the term "importer" means a natural or juridical person who imports a good into the importing Party;
- (g) the term "indirect materials" means goods used in the production, testing or inspection of another 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 another good, including:
 - (i) fuel and energy;
 - (ii) tools, dies and moulds;
 - (iii) spare parts and goods used in the maintenance of equipment and buildings;
 - (iv) lubricants, greases, compounding materials and other goods used in production or used to operate equipment and buildings;
 - (v) gloves, glasses, footwear, clothing, safety equipment and supplies;
 - (vi) equipment, devices and supplies used for testing or inspection;

- (vii) catalysts and solvents; and
- (viii) any other goods that are not incorporated into another good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;
- (h) the term "materials" means any matter or substance consumed in the production of a good, physically incorporated into a good, or used in the production of another good;
- (i) the term "non-originating material" means any materials whose country of origin is other than the Parties (imported non-originating) and any material whose origin cannot be determined (undetermined origin) under this Chapter;
- (j) the term "originating material" means any material that qualifies as originating under this Chapter; and
- (k) the term "production" means a method of obtaining goods including manufacturing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing.

Article 27 Originating Goods

Except as otherwise provided for in this Agreement, a good shall qualify as an originating good of a Party where:

- (a) the good is wholly obtained or produced entirely in the Party, as provided for in Article 28; or
- (b) the good is not wholly obtained or produced in the Party, provided that the good satisfies the requirements of Article 29.

Article 28
Wholly Obtained or Produced Goods

For the purposes of subparagraph (a) of Article 27, the following goods shall be considered as being wholly obtained or produced in a Party:

- (a) live animals born and raised in the Party;
- (b) animals obtained by hunting, trapping, fishing, gathering or capturing in the Party;
- (c) goods obtained from live animals in the Party;
- (d) plants and plant products harvested, picked or gathered in the Party;

Note: For the purposes of this subparagraph, the term "plant" refers to all plant life, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants.

- (e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d), extracted or taken in the Party;
- (f) goods of sea-fishing and other goods taken by vessels of the Party from the sea outside the territorial seas of the Parties;
- (g) goods produced on board factory ships of the Party, outside the territorial seas of the Parties from the goods referred to in subparagraph (f);
- (h) goods taken from the sea-bed or subsoil beneath the sea-bed outside the territorial sea of the Party, provided that the Party has rights to exploit such sea-bed or subsoil in accordance with the provisions of the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982;

- (i) articles collected in the Party which can no longer perform their original purpose in the Party nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials;
- (j) scrap and waste derived from manufacturing or processing operations or from consumption in the Party and fit only for disposal or for the recovery of raw materials;
- (k) parts or raw materials recovered in the Party from articles which can no longer perform their original purpose nor are capable of being restored or repaired; and
- (l) goods obtained or produced in the Party exclusively from the goods referred to in subparagraphs (a) through (k).

Article 29

Goods Produced Using Non-Originating Materials

1. For the purposes of subparagraph (b) of Article 27, a good shall qualify as an originating good of a Party if:

- (a) the good has a qualifying value content, calculated using the formula set out in Article 30, of not less than 35 percent; and
- (b) all non-originating materials used in the production of the good have undergone in the Party a change in tariff classification at the six-digit level (i.e. a change in tariff subheading) of the Harmonized System.

Note: For the purposes of this subparagraph, "Harmonized System" is that on which the product specific rules set out in Annex 2 are based.

2. Notwithstanding paragraph 1, a good subject to product specific rules shall qualify as an originating good of a Party if it satisfies the applicable product specific rules set out in Annex 2.

3. For the purposes of subparagraph 1(b) and the relevant product specific rules set out in Annex 2, the rule requiring that the materials used have undergone a change in tariff classification or a specific manufacturing or processing operation, shall apply only to non-originating materials.

Article 30
Calculation of Qualifying Value Content

1. For the purposes of calculating the qualifying value content of a good, one or the other of the following formulas shall be applied:

(a)

$$Q.V.C. = \frac{F.O.B. - V.N.M.}{F.O.B.} \times 100$$

Where:

Q.V.C. is the qualifying value content of a good, expressed as a percentage;

F.O.B. is, except as provided for in paragraph 2, the free-on-board value of a good payable by the buyer of the good to the seller of the good, regardless of the mode of shipment, not including any internal excise taxes reduced, exempted, or repaid when the good is exported; and

V.N.M. is the value of non-originating materials used in the production of a good;

(b)

$$Q.V.C. = \frac{V.O.M. + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Profit}}{F.O.B.} \times 100$$

Where:

V.O.M. is the value of originating material used in the production of the good.

Note: For the purpose of calculating the qualifying value content of a good, the Generally Accepted Accounting Principles in the exporting Party shall be applied.

2. F.O.B. referred to in paragraph 1 shall be the value:

- (a) adjusted to the first ascertainable price paid for a good from the buyer to the producer of the good, if there is free-on-board value of the good, but it is unknown and cannot be ascertained; or
- (b) determined in accordance with Articles 1 through 8 of the Agreement on Customs Valuation, if there is no free-on-board value of a good.

3. For the purposes of paragraph 1, the value of a material used in a production of a good in a Party:

- (a) shall be the CIF value; or
- (b) shall be the first ascertainable price paid for the material in the Party, but may exclude all the costs incurred in the Party in transporting the material from the warehouse of the supplier of the material to the place where the producer is located such as freight, insurance and packing as well as any other known and ascertainable cost incurred in the Party.

Note: For the purposes of this paragraph, the term "CIF value" means the customs value of the imported good in accordance with the Agreement on Customs Valuation and includes freight and insurance where appropriate, packing and all other costs incurred in transporting the material to the importation port in the Party where the producer of the good is located.

4. For the purposes of subparagraph 2(b) or 3(a), in applying the Agreement on Customs Valuation to determine the value of a good or non-originating material, the Agreement on Customs Valuation shall apply *mutatis mutandis* to domestic transactions or to the cases where there is no domestic transaction of the good or non-originating material.

Article 31
Accumulation

For the purposes of determining whether a good qualifies as an originating good of a Party, an originating good of the other Party which is used as a material in the production of the good in the former Party may be considered as an originating material of the former Party, provided that such good has undergone its last production process in the former Party which goes beyond the operations provided for in Article 33.

Article 32
De Minimis

Non-originating materials used in the production of a good that do not satisfy an applicable rule for the good shall be disregarded, provided that the totality of such materials does not exceed specific percentages in value or weight of the good. Such percentages shall be:

- (a) in the case of a good classified under Chapters 15 through 24 (except 1604.20, 1605.20, 1605.90, 2101.11, 2101.20, 2106.10, 2106.90, 2207.10 and 2207.20), 2501.00, 2906.11, 2918.14, 2918.15, 2940.00, 3505.10, 3505.20, 3809.10 and 3824.60 of the Harmonized System, 7 percent in value of the good;
- (b) in the case of a good classified under Chapters 28 through 49 (except 2905.44, 2906.11, 2918.14, 2918.15, 2940.00, 3502.11, 3502.19, 3505.10, 3505.20, 3809.10, 3824.60, 4601.29, 4601.94 and 4602.19) and 64 through 97 of the Harmonized System, 10 percent in value of the good; and
- (c) in the case of a good classified under Chapters 50 through 63 (except 5001.00, 5003.00, heading 51.02, 51.03, 52.01 through 52.03, 53.01 and 53.02) of the Harmonized System, 7 percent in weight of the good.

Note 1: For the purposes of this Article, the term "value of the good" means the free-on-board value of the good referred to in paragraph 1 of Article 30 or the value set out in paragraph 2 of that Article.

Note 2: For the purposes of this Article, "Harmonized System" is that on which the product specific rules set out in Annex 2 are based.

Note 3: This Article shall not be applied in calculating the qualifying value content set out in Article 30.

Article 33 Non-Qualifying Operations

A good shall not be considered to be an originating good of the exporting Party merely by reason of having undergone the following:

- (a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine, removal of damaged parts) and other similar operations;
- (b) changes of packaging and breaking up and assembly of packages;
- (c) disassembly;
- (d) placing in bottles, cases, boxes and other simple packaging operations;
- (e) collection of parts and components classified as a good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;
- (f) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting;
- (g) simple cutting, slicing and repacking or placing in bottles, flasks, bags or boxes, fixing on cards or boards, and all other simple packing operations;
- (h) affixing or printing marks, labels and other like distinguishing signs on products or their packaging;

- (i) simple mixing of products whether or not of different kinds;
- (j) simple assembly of parts of goods to constitute a complete product;
- (k) slaughter of animals;
- (l) mere dilution with water or another substance that does not materially alter the characteristics of the goods; or
- (m) any combination of operations referred to in subparagraphs (a) through (l).

Note: For the purposes of this Article, an operation is described as "simple" if neither special skills nor machines, apparatus or equipment especially produced or installed for carrying it out are needed.

Article 34 Consignment Criteria

1. An originating good of the other Party shall be deemed to meet the consignment criteria when it is:

- (a) transported directly from the other Party; or
- (b) transported through one or more non-Parties for the purpose of transit or temporary storage in warehouses in such non-Parties, provided that it does not undergo operations other than unloading, reloading and any other operation to preserve it in good condition.

2. If an originating good of the other Party does not meet the consignment criteria referred to in paragraph 1, the good shall not be considered as an originating good of the other Party.

Article 35
Unassembled or Disassembled Goods

Where a good satisfies the requirements of the relevant provisions of Articles 27 through 33 and is imported into a Party from the other Party in an unassembled or disassembled form but is classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, such a good shall be considered as an originating good of the other Party.

Article 36
Fungible Goods and Materials

1. For the purposes of determining whether a good qualifies as an originating good of a Party, where fungible originating materials of the Party and fungible non-originating materials that are mixed in an inventory are used in the production of the good, the origin of the materials may be determined pursuant to an inventory management method under the Generally Accepted Accounting Principles in the Party.

2. Where fungible originating goods of a Party and fungible non-originating goods are mixed in an inventory and, prior to exportation do not undergo any production process or any operation in the Party where they were mixed other than unloading, reloading or any other operation to preserve them in good condition, the origin of the good may be determined pursuant to an inventory management method under the Generally Accepted Accounting Principles in the Party.

Article 37
Indirect Materials

Indirect materials shall be, without regard to where they are produced, considered to be originating materials of a Party where the good is produced.

Article 38
Accessories, Spare Parts, Tools and Instructional
or Other Information Materials

1. In determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation, accessories, spare parts, tools and instructional or other information materials delivered with the good that form part of the good's standard accessories, spare parts, tools and instructional or other information materials, shall be disregarded, provided that:

- (a) the accessories, spare parts, tools and instructional or other information materials are not invoiced separately from the good, without regard to whether they are separately described in the invoice; and
- (b) the quantities and value of the accessories, spare parts, tools and instructional or other information materials are customary for the good.

2. If a good is subject to a qualifying value content requirement, the value of the accessories, spare parts, tools and instructional or other information materials shall be taken into account as the value of originating or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Article 39
Packing and Packaging Materials and Containers

1. Packing materials and containers for shipment that are used to protect a good during transportation shall not be taken into account in determining whether the good qualifies as an originating good of a Party.

2. With respect to packaging materials and containers that are used for retail sale of a good:

- (a) such packaging materials and containers shall be disregarded in determining whether the good qualifies as an originating good of a Party, if they are classified with the good pursuant to Rule 5 of the General Rules for the Interpretation of the Harmonized System; and
- (b) if the good is subject to a qualifying value content requirement, the value of such packaging materials and containers shall be taken into account as the value of originating materials of a Party where the good is produced or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Article 40 Operational Certification Procedures

The operational certification procedures set out in Annex 3 shall apply with respect to procedures regarding certificate of origin and related matters.

Article 41 Sub-Committee on Rules of Origin

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Rules of Origin (hereinafter referred to in this Article as "the Sub-Committee") shall be established on the date of entry into force of this Agreement.
2. The functions of the Sub-Committee shall be:
 - (a) reviewing and making appropriate recommendations, as necessary, to the Joint Committee on:
 - (i) the implementation and operation of this Chapter;
 - (ii) any amendments to Annex 2 proposed by either Party; and
 - (iii) the Implementing Procedures referred to in Section 11 of Annex 3;

- (b) considering any other matter, including development of an electronic system for facilitating the issuance and verification of certificate of origin, as the Parties may agree related to this Chapter;
- (c) reporting the findings of the Sub-Committee to the Joint Committee; and
- (d) carrying out other functions as may be delegated by the Joint Committee pursuant to Article 14.