

Chapter 4
Rules of Origin

Article 22
Originating Goods

1. Except as otherwise provided for in this Chapter, a good shall be an originating good where:

- (a) the good is wholly obtained or produced entirely in the Area of one or both Parties, as defined in Article 38;
- (b) the good is produced entirely in the Area of one or both Parties exclusively from originating materials;
- (c) the good satisfies the requirements set out in Annex 4, as well as all other applicable requirements of this Chapter, when the good is produced entirely in the Area of one or both Parties using non-originating materials; or
- (d) except for a good provided for in Chapters 61 through 63 of the Harmonized System, the good is produced entirely in the Area of one or both Parties, but one or more of the non-originating materials that are used in the production of the good does not undergo an applicable change in tariff classification because:
 - (i) the good was imported into 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 Harmonized 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 23, is not less than 50 percent, unless otherwise provided for in Annex 4, and that the good satisfies all other applicable requirements of this Chapter.

2. For the purposes of this Chapter, the production of a good using non-originating materials that undergo an applicable change in tariff classification and satisfying other requirements, as set out in Annex 4, shall occur entirely in the Area of one or both Parties and every regional value content of a good shall be entirely satisfied in the Area of one or both Parties.

Article 23 Regional Value Content

1. Except as provided for in paragraph 4 below and Article 26, the regional value content of a good shall be calculated on the basis of the transaction value method set out in paragraph 2 below.

2. For the purposes of calculating the regional value content of a good on the basis of the transaction value method, the following formula shall be applied:

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

where:

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

TV: transaction value of the good adjusted to a F.O.B. basis, except as provided for in paragraph 3 below; and

VNM: value of non-originating materials used by the producer in the production of the good determined pursuant to Article 24.

3. For the purposes of paragraph 2 above, when the producer of the good does not export it directly, the transaction value of the good shall be adjusted to the point where the buyer receives the good from the producer in the Area of a Party where the producer is located.

4. In the event that there is no transaction value or the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of the good shall be determined in accordance with Articles 2 through 7 of the Customs Valuation Code.

5. A producer may average the regional value content for one or more goods classified in the same subheading under the Harmonized System that he produces in the same plant or in more than one plant in the Area of one Party, on the basis of either all the goods produced by the producer or only those goods exported to the other Party:

- (a) in its fiscal year or period; or
- (b) in any period of 1, 2, 3, 4 or 6 months.

Article 24
Value of Materials

1. The value of a material:

- (a) shall be the transaction value of the material;
or
- (b) in the event that there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Customs Valuation Code, shall be determined in accordance with Articles 2 through 7 of the Customs Valuation Code.

2. Where not included under subparagraph 1(a) or 1(b) above, the value of a material:

- (a) shall include freight, insurance, 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, except as provided for in paragraph 3 below; and
- (b) may include the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

3. The value of a non-originating material shall not include, where the producer acquires the material in the Area of the Party where the producer is located, freight, insurance, packing and all other costs incurred in transporting the material from the warehouse of the supplier of the material to the place where the producer is located; as well as any other known and ascertainable cost incurred in the Area of the producer of the good.

4. The value of non-originating materials used by the producer in the production of the good shall not include the value of the non-originating materials used by:

- (a) another producer in the production of an originating material which is acquired and used by the producer of the good in the production of such good; or
- (b) the producer of the good in the production of a self-produced originating material, which is designated by the producer as an intermediate material under Article 26.

Article 25
De Minimis

1. A good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo an applicable change in tariff classification set out in Annex 4 is not more than 10 percent of the transaction value of the good, adjusted to the basis set out in paragraph 2 or 3, as the case may be, of Article 23, and the good satisfies all other applicable requirements of this Chapter.

2. Where the good referred to in paragraph 1 above is also subject to a regional value content, the value of such non-originating materials shall be taken into account in determining the regional value of the good and the good shall be required to satisfy all other applicable requirements of this Chapter.

3. A good that is subject to a regional value content requirement pursuant to Annex 4 shall not be required to satisfy such requirement if the value of all non-originating materials is not more than 10 percent of the transaction value of the good, adjusted to the basis set out in paragraph 2 or 3, as the case may be, of Article 23.

4. Paragraph 1 above shall not apply to:

- (a) a good provided for in Chapters 50 through 63 of the Harmonized System; or
- (b) a good provided for in Chapters 1 through 27 of the Harmonized System, except where the non-originating material used in the production of the good is provided for in a different subheading to the good classified in Chapter 1, 4 through 15, or 17 through 27 of the Harmonized System for which the origin is being determined under this Article.

5. A good provided for in Chapters 50 through 63 of the Harmonized System that does not originate because certain fibers or yarns used in the production of the material that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4, shall nonetheless be considered to originate if the total weight of all such fibers or yarns in that material is not more than 7 percent of the total weight of such material.

Article 26 Intermediate Materials

1. For the purposes of determining the regional value content of a good under Article 23, the producer of the good may designate as an intermediate material, any self-produced material used in the production of the good.

2. Where an intermediate material is subject to a regional value content requirement under subparagraph 1(d) of Article 22 or Annex 4, the value of the intermediate material shall be:

- (a) the total cost incurred with respect to all goods produced by the producer of the good which may be reasonably allocated to such intermediate material, in accordance with the Uniform Regulations referred to in Article 10; or
- (b) the sum of each cost which are part of the total cost incurred with respect to such intermediate material, in accordance with the Uniform Regulations referred to in Article 10.

In this case, the regional value content of such material shall be not less than the percentage set out in Annex 4 minus 5 percent.

Article 27 Accumulation

For the purposes of determining whether a good is an originating good, a producer of the good may accumulate his production with the production of one or more producers in the Area of one or both Parties, of materials incorporated in the good, in a manner that the production of the materials is considered to have been performed by that producer, provided that the provisions of Article 22 are satisfied.

Article 28
Fungible Goods and Materials

1. For the purposes of determining whether a good is an originating good, where originating and non-originating fungible materials that are commingled in an inventory, are used in the production of a good, the origin of the materials may be determined pursuant to an inventory management method set out in paragraph 3 below.

2. Where originating and non-originating fungible goods are commingled in an inventory and, prior to exportation do not undergo any production process or any operation in the Area of the Party where they were commingled other than unloading, loading or any other operation necessary to preserve it in good condition or to transport the good to the other Party, the origin of the good may be determined pursuant to an inventory management method set out in paragraph 3 below.

3. The inventory management methods for fungible goods or materials shall be the following:

- (a) "FIFO method" (first in-first out) is the inventory management method by which the origin of the number of fungible goods or materials first received in the inventory is considered to be the origin of the same number of fungible goods or materials first withdrawn from the inventory;
- (b) "LIFO method" (last in-first out) is the inventory management method by which the origin of the number of fungible goods or materials last received in the inventory is considered to be the origin of the same number of fungible goods or materials first withdrawn from the inventory; or
- (c) "average method" is the inventory management method by which, except as provided for in paragraph 4 below, the origin of fungible goods or materials withdrawn from an inventory is based on the ratio, calculated under the following formula:

$$\text{ROM} = \frac{\text{TOM}}{\text{TONM}} \times 100$$

where:

ROM: ratio of originating fungible goods or materials;

TOM: total units of originating fungible goods or materials in the inventory prior to the shipment; and

TONM: total sum of units of originating and non-originating fungible goods or materials in the inventory prior to the shipment.

4. Where a good is subject to a regional value content requirement, the determination of value of non-originating fungible materials shall be made through the following formula:

$$\text{RNM} = \frac{\text{TNM}}{\text{TONM}} \times 100$$

where:

RNM: ratio of value of non-originating fungible materials;

TNM: total value of fungible non-originating materials in the inventory prior to the shipment; and

TONM: total value of originating and non-originating fungible materials in the inventory prior to the shipment.

5. Once an inventory management method set out in paragraph 3 above has been chosen, it shall be used through all the fiscal year or period.

Article 29 Sets, Kits or Composite Goods

1. Sets, kits and composite goods classified pursuant to Rule 3 of the General Rules for the Interpretation of the Harmonized System, and the goods specifically described as sets, kits or composite goods in the nomenclature of the Harmonized System, shall qualify as originating, where every good contained in the sets, kits or composite goods satisfies the applicable rule of origin for each of them under this Chapter.

2. Notwithstanding paragraph 1 above, a set, kit or composite good shall be considered as originating, if the value of all non-originating goods used in the collection of the set, kit or composite good does not exceed 10 percent of the transaction value of the set, kit or composite good, adjusted to the basis set out in paragraph 2 or 3, as the case may be, of Article 23, and such set, kit or composite good satisfies all other applicable requirements of this Chapter.

3. The provisions of this Article shall prevail over the specific rules of origin set out in Annex 4.

Article 30 Indirect Materials

Indirect materials shall be considered to be originating without regard to where they are produced and the value of such materials shall be their cost as reported in the accounting records of the producer of the good.

Article 31 Accessories, Spare Parts and Tools

1. Accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts or tools, 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, without regard of whether they are separately detached in the commercial invoice; 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 the value of originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 32
Packaging Materials and Containers for Retail Sale

1. Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good pursuant to Rule 5 of the General Rules for the Interpretation of the Harmonized System, 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.

2. If the good is subject to a regional value content requirement, the value of such packaging materials and containers for retail sale shall be taken into account as the value of originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 33
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) all non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 4; and
- (b) the good satisfies a regional value content requirement.

Article 34
Non-Qualifying Operations

1. A good shall not be considered to be an originating good merely by reason of:

- (a) dilution with water or another substance that does not materially alter the characteristics of the good;
- (b) simple operations for the maintenance of the good during transportation or storing, such as ventilation, refrigeration, removal of damaged parts, drying or addition of substances;
- (c) sieving, classification, selection;
- (d) packing, repacking or packaging for retail sale;

- (e) collection of goods to form sets, kits or composite goods;
- (f) application of stamps, labels or similar distinctive signs;
- (g) washing, including removal of dust, oxide, oil, paint or other coverings;
- (h) mere collection of parts and components classified as a good, according to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System. Mere collection does not include the collection of parts and components of disassembled originating goods that were previously disassembled for consideration of packaging, handling or transportation; or
- (i) mere disassembly of the good into parts or components. Disassembling originating goods that were previously assembled, for consideration of packaging, handling or transportation, shall not be considered as mere disassembly.

2. The provisions of this Article shall prevail over the specific rules of origin set out in Annex 4.

Article 35 Transshipment

1. An originating good shall be considered as non-originating, even if it has undergone production that satisfies the requirements of Article 22 if, subsequent to that production, outside the Areas of the Parties, the good:

- (a) undergoes further production, or operations other than unloading, reloading or any other operation necessary to preserve it in good condition or to transport it to the other Party; or
- (b) does not remain under surveillance of the customs authorities in one or more non-Parties where it undergoes transshipment or temporary storage in those non-Parties.

2. Evidence that an originating good has not lost its originating condition by means of paragraph 1 above shall be provided to the customs authority of the importing Party.

Article 36
Application and Interpretation

1. For the purposes of this Chapter:
 - (a) the basis for tariff classification is the Harmonized System;
 - (b) the determination of transaction value of a good or of a material shall be made in accordance with the Customs Valuation Code; 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 Party in which the good is produced.
2. For the purposes of this Chapter, in applying the Customs Valuation Code to determine the transaction value of a good or a material:
 - (a) the principles of the Customs Valuation Code shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions; and
 - (b) the provisions of this Chapter shall prevail over the Customs Valuation Code to the extent of any difference.

Article 37
Sub-Committee, Consultation and Modifications

1. For the purposes of the effective implementation and operation of this Chapter and Chapter 5, a Sub-Committee on Rules of Origin, Certificate of Origin and Customs Procedures (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 165.
2. The Sub-Committee shall meet at such venue and times as may be agreed by the Parties.
3. The functions of the Sub-Committee shall be:
 - (a) reviewing and making appropriate recommendations, as needed, to the Joint Committee on the implementation and operation of this Chapter and Chapter 5;

- (b) reviewing and making appropriate recommendations, as needed, to the Joint Committee on the:
 - (i) tariff classification and customs valuation matters relating to determinations of origin;
 - (ii) certificate of origin referred to in Article 39;
- (c) reviewing and making appropriate recommendations, as needed, to the Joint Committee on any modification to Annex 4, proposed by either Party, duly based on issues related with the determination of origin;
- (d) reviewing and making appropriate recommendations, as needed, to the Joint Committee on the Uniform Regulations referred to in Article 10;
- (e) considering any other matter as the Parties may agree related to this Chapter and Chapter 5;
- (f) reporting the findings of the Sub-Committee to the Joint Committee; and
- (g) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 165.

4. The recommendation of the Sub-Committee shall be sent to the Joint Committee for necessary action under Article 165.

5. The Parties shall consult and cooperate to ensure that this Chapter and Chapter 5 are applied in an effective and uniform manner in accordance with the provisions, the spirit and the objectives of this Agreement.

6. Modifications to Annex 4 recommended by the Sub-Committee pursuant to subparagraph 3(c) above and proposed by both Parties may be adopted by the Joint Committee pursuant to subparagraph 2(e)(i) of Article 165. The adopted modifications shall be confirmed by an exchange of diplomatic notes and shall enter into force on the date specified in the said notes. The modified part of Annex 4 shall supersede the corresponding part provided for in Annex 4.

Article 38
Definitions

For the purposes of this Chapter:

- (a) the term "Customs Valuation Code" means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, as may be amended, including its interpretative notes;
- (b) the term "direct overhead" means overhead incurred during a period, directly related to the good, other than direct material costs and direct labor costs;
- (c) the term "factory ships of a Party" and "vessels of a Party" respectively means factory ships and vessels:
 - (i) which are registered in the Party;
 - (ii) which sail under the flag of that Party;
 - (iii) which are owned to an extent of at least 50 percent by nationals of that Party, or by an enterprise with its head office in that Party, of which the managers or representatives, chairman of the board of directors or the supervisory board, and the majority of the members of such boards are nationals of that Party, and of which, in addition, in the case of partnerships or limited companies, at least half the capital belongs to that Party or to public bodies or nationals or enterprises of that Party;
 - (iv) of which the master and officers are all nationals of that Party; and
 - (v) of which at least 75 percent of the crew are nationals of that Party;
- (d) the term "F.O.B." means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer;
- (e) the term "fungible goods" means goods that are interchangeable for commercial purposes, whose properties are essentially identical, not practical to distinguish by the naked eye;

- (f) the term "fungible materials" means materials that are interchangeable for commercial purposes and whose properties are essentially identical, not practical to distinguish by the naked eye;
- (g) the term "Generally Accepted Accounting Principles" means the recognized consensus or substantial authoritative support in a Party with respect to the recording of revenues, expenses, costs, assets and liabilities, the disclosure of information and the preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures;
- (h) the term "goods wholly obtained or produced entirely in the Area of one or both Parties" means:
 - (i) mineral goods extracted in the Area of one or both Parties;
 - (ii) vegetable goods harvested in the Area of one or both Parties;
 - (iii) live animals born and raised in the Area of one or both Parties;
 - (iv) goods obtained from hunting or fishing in the Area of one or both Parties;
 - (v) fish, shellfish and other marine species taken by vessels of a Party from the sea outside the territorial seas of the Party;
 - (vi) goods produced on board factory ships of a Party from the goods referred to in subparagraph (v);
 - (vii) goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial seas of the Party, provided that the Party has rights to exploit such seabed;
 - (viii) waste and scrap derived from:
 - (AA) production in the Area of one or both Parties; or

- (BB) used goods collected in the Area of one or both Parties, provided such goods are fit only for the recovery of raw materials; or
- (ix) goods produced in the Area of one or both Parties exclusively from goods referred to in subparagraphs (i) through (viii), or from their derivatives, at any stage of production;
- (i) the term "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:
 - (i) fuel and energy;
 - (ii) tools, dies and molds;
 - (iii) spare parts and materials used in the maintenance of equipment and buildings;
 - (iv) lubricants, greases, compounding materials and other materials 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 inspecting the goods;
 - (vii) catalysts and solvents; and
 - (viii) 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;
- (j) the term "indirect overhead" means overhead incurred during a period, other than direct overhead, direct labor costs and direct material costs;
- (k) the term "intermediate material" means a material that is self-produced and used in the production of a good, and designated pursuant to Article 26;

- (l) the term "material" means a good that is used in the production of another good;
- (m) the term "packing materials and containers for shipment" means goods that are used to protect a good during transportation, other than packaging materials and containers for retail sale;
- (n) the term "place where the producer is located" means in relation to a good, the production plant of that good;
- (o) the term "producer" means a person who conducts a production of a good or material;
- (p) the term "production" means methods of obtaining goods including manufacturing, assembling, processing, growing, mining, harvesting, fishing, and hunting;
- (q) the term "self-produced material" means a material that is produced by the producer of a good and used in the production of that good;
- (r) the term "total cost" means the sum of the following elements, calculated in accordance with the Generally Accepted Accounting Principles of the Party and the Uniform Regulations referred to in Article 10:
 - (i) the direct materials cost used in the production of the good;
 - (ii) the direct labor cost used in the production of the good; and
 - (iii) the amount of direct and indirect overhead of the good, reasonably allocated to the good, except for those not to be included in the cost of the good;
- (s) the term "transaction value of a good" means the price actually paid or payable for a good with respect to a transaction of the producer of the good, pursuant to the principles of Article 1 of the Customs Valuation Code, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Code, regardless of whether the good is sold for export. For the purposes of this definition, the seller referred to in the Customs Valuation Code shall be the producer of the good;

- (t) the term "transaction value of a material" means the price actually paid or payable for a material with respect to a transaction of the producer of the good, pursuant to the principles of Article 1 of the Customs Valuation Code, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Code, regardless of whether the material is sold for export. For the purposes of this definition, the seller referred to in the Customs Valuation Code shall be the supplier of the material, and the buyer referred to in the Customs Valuation Code shall be the producer of the good; and
- (u) the term "used" means used or consumed in the production of goods.

Chapter 5
Certificate of Origin and Customs Procedures

Section 1
Certification of Origin

Article 39
Certificate of Origin

1. For the purposes of this Section and Section 2, upon the date of entry into force of this Agreement, the Parties shall establish a format for the certificate of origin in the Uniform Regulations referred to in Article 10.

2. The certificate of origin referred to in paragraph 1 above will have the purpose of certifying that a good being exported from one Party into the other Party qualifies as an originating good.

3. The certificate of origin referred to in paragraph 1 above shall be issued by the competent governmental authority of the exporting Party on request having been made in writing by the exporter or, under the exporter's responsibility, by his authorized representative, in accordance with paragraph 4 below. The certificate of origin must be stamped and signed by the competent governmental authority of the exporting Party or its designees at the time of issue.

For the purposes of this Article, the competent governmental authority of the exporting Party may designate other entities or bodies to be responsible for the issuance of the certificate of origin, prior authorization given under its applicable laws and regulations.