

CHAPTER 3

RULES OF ORIGIN

Section A: Origin Determination

Article 3.1: Originating Goods

For the purposes of this Agreement, goods shall be deemed originating and eligible for preferential treatment if they conform to the origin requirement under any of the following conditions:

- (a) goods wholly produced or obtained in the territory of the exporting Party; or
- (b) goods not wholly produced or obtained in the territory of the exporting Party, provided that the said goods are eligible under Article 3.3; or
- (c) as otherwise provided for under this Chapter.

Article 3.2: Wholly Obtained or Produced Goods

Goods wholly obtained or produced entirely in the territory of one or both of the Parties means goods that are:

- (a) mineral goods extracted or taken from that Party's soil, waters, seabed or beneath the seabed;
- (b) plants and plant products harvested in the territory of that Party;
- (c) live animals born and raised in the territory of that Party;
- (d) goods obtained from animals referred to in sub-paragraph (c);
- (e) goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of that Party;
- (f) goods (fish, shellfish, and other marine life) taken from outside its Economic Exclusive Zone as defined in the *United Nations Convention on the Law of the Sea* by vessels registered, licensed or recorded with a Party, and entitled to fly its flag;
- (g) goods produced and/or made on board a factory ship exclusively from products referred to in sub-paragraph (f), provided such factory ship is registered, licensed or recorded with a Party, and entitled to fly its flag;

- (h) goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed outside its Economic Exclusive Zone, provided that the Party has rights as defined in the *United Nations Convention on the Law of the Sea* to exploit such seabed;
- (i) waste and scrap derived from:
 - (i) production in the territory of that Party; or
 - (i) used goods, collected in the territory of that Party, provided such goods are fit only for the recovery of raw materials;
- (j) recovered goods derived in the territory of a Party from used goods; or
- (k) a good produced in the territory of that Party exclusively from goods referred to in sub-paragraphs (a) through (j) above, or from their derivatives, at any stage of production.

Article 3.3: Not Wholly Obtained or Produced Goods

1. For the purposes of this Agreement, a good, which has undergone sufficient production in the territory of a Party, as provided under this Article, shall be treated as an originating good of that Party.
2. A good is considered to have undergone sufficient production in the territory of a Party if:
 - (a) it satisfies the product-specific rule as set out in Annex 3A (*Product-Specific Rules*); or
 - (b) where there is no product-specific rule set out in Annex 3A (*Product-Specific Rules*), fulfils a qualifying value content of not less than 35% determined in accordance with Article 3.4.

Article 3.4: Qualifying Value Content

1. For the purpose of Article 3.3, the following formula for qualifying value content shall be applied:

$$\frac{\text{F.O.B.} - \text{N.Q.M.}}{\text{F.O.B.}} \times 100\% \geq 35\%$$

where:

- (a) F.O.B. is the Free-On-Board value, which refers to the value of a good payable by the buyer to the seller, regardless of the mode of shipment, not including any internal excise taxes, reduced, exempted, or repaid when the good is exported; and
- (b) N.Q.M. is the non-qualifying value of materials used by the producer in the production of the good, calculated in accordance with paragraph 2.

2. For the purpose of calculating the non-qualifying value of materials pursuant to paragraph 2(b), the following formula shall be applied:

$$N.Q.M. = T.V.M. - Q.V.M.$$

where:

- (a) T.V.M. is the total value of materials; and
- (b) Q.V.M. is the qualifying value of materials, which is the value of the materials that can be attributed to one or both the Parties.

3. For the purpose of paragraph 2:

- (a) The qualifying value of materials shall be:
 - (i) the total value of the material if the material satisfies the requirements of paragraph 3(b); or
 - (i) the value of the material that can be attributed to one or both of the Parties if the material does not satisfy the requirements of paragraph 3(b); and
- (b) For the purposes of paragraph 3(a), a material shall be considered to have satisfied the requirements of this paragraph if:
 - (i) the content of the value of the material that can be attributed to one or both of the Parties is not less than 35% of the total value of the material; and
 - (i) the material has undergone its last production or operation in the territory of either Party.

4. The value of a material used in the production of a good in the territory of a Party shall be the C.I.F. value and shall be determined in accordance with the Agreement on Customs Valuation, or if this is not known and cannot be ascertained, the first ascertainable price paid for the material in the Party.

Article 3.5: 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 that good that do not satisfy the requirement of change in tariff classification set out in Annex 3A (*Product-Specific Rules*) is not more than ten percent (10%) of the F.O.B. value of the good.
2. For a good provided for in Chapters 50 through 63 of the Harmonised System, the percentage indicated in the paragraph 1 refers to the weight of fibres or yarns with respect to the weight of the good being produced.
3. Paragraph 1 does not apply to a non-originating material used in the production of goods provided for in the Harmonised System headings of 04.01, 04.02, 04.06, 09.01, 16.01, 16.02, 17.02, 20.09, 22.02, 23.01 and in the Harmonised System subheadings of 2101.11, 2101.12, and 2103.20 unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this Article.

Article 3.6: Accumulation

1. Each Party shall provide that originating goods or materials of a Party, incorporated into a good in the territory of the other Party, shall be considered to originate in the territory of the other Party.
2. Each Party shall provide that a good is originating where the good is produced in the territory of one or both Parties at different stages undertaken by one or more producers, provided that the good satisfies the requirements in Article 3.2 and all other applicable requirements in this Chapter.

Article 3.7: Accessories, Spare Parts, Tools

Each Party shall provide that 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 customary for the good; and
- (c) if the good is subject to a qualifying value content, 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 qualifying value content of the good.

Article 3.8: Packaging Materials and Containers for Retail Sale

Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, 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 3A (*Product-Specific Rules*) and, 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 originating or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Article 3.9: Packing Materials and Containers for Shipment

Each Party shall provide that packing materials and containers in which a good is packed for shipment shall be disregarded in determining whether a good is originating.

Article 3.10: Fungible Goods and Materials

3. Each Party shall provide that the determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each good or material or through the use of any inventory management method, such as averaging, last-in, first-out, or first-in, first out, recognized in the generally accepted accounting principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

4. Each Party shall provide that an inventory management method selected under paragraph 1 for particular fungible goods or materials shall continue to be used for those fungible goods or materials throughout the fiscal year of the person that selected the inventory management method.

Article 3.11: Indirect Materials

1. Each Party shall provide that an indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in the accounting records of the producer of the good.

2. For the purposes of this article, 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:

- (a) fuel and energy;
- (b) tools, dies, and molds;
- (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 supplies;
- (f) equipment, devices, and supplies used for testing or inspecting the goods;
- (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.

Section B: Consignment Criteria

Article 3.12: Third Country Transportation

A good shall not be considered to be an originating good if the good undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party.

Section C: Consultation and Modifications

Article 3.13: Committee on Trade in Goods and Rules of Origin

1. The Administrative Commission may establish an *ad hoc* Committee on Trade in Goods and Rules of Origin to perform the following functions:
 - (a) to oversee and review the implementation of this Chapter and Chapter 2 (*Trade in Goods*), and to ensure that the benefits of trade arising from these Chapters accrue to both parties equitably;

- (b) to provide advice to the Parties on matters relating to Trade in Goods and Rules of Origin, which may include identification and recommendation of measures to promote and facilitate improved market access and to accelerate the tariff elimination and reduction process; and
- (c) review the rules set out in this Chapter as and when necessary upon the request of either Party and make such modifications as may be agreed upon.

Section D: Definitions

Article 3.14: Definitions

For purposes of this Chapter:

1. **aquaculture** means the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding, protection from predators, etc.;
2. **fungible goods or materials** means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;
3. **generally accepted accounting principles** means the recognized consensus or substantial authoritative support 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. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;
4. **material** means a good that is used in the production of another good;
5. **non-originating material** means a material that has not satisfied the requirements of this Chapter;
6. **producer** means a person who grows, raises, mines, harvests, fishes, traps, hunts, manufactures, processes, assembles or dis-assembles a good;
7. **production** means growing, raising, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, assembling or dis-assembling a good;
8. **recovered goods** means materials in the form of individual parts that result from:

- (a) the complete disassembly of used goods into individual parts; and
 - (b) the cleaning, inspecting, or testing, and as necessary for improvement to sound working condition one or more of the following processes: welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding in order for such parts to be assembled with other parts, including other recovered parts in the production of a remanufactured good;
9. **remanufactured good** means an industrial good of Harmonised System Chapters 84, 85, 87, 90 and Harmonised System heading 94.02 that, assembled in the territory of a Party:
- (a) is entirely or partially comprised of recovered goods;
 - (b) has the same life expectancy and meets the same performance standards as a new good; and
 - (c) enjoys the same factory warranty as such a new good; and
10. **used** means used or consumed in the production of goods.

Section E: Application and Interpretation

Article 3.15: Application and Interpretation

For purposes of this Chapter:

- (a) the basis for tariff classification is the Harmonised Commodity Description and Coding System;
- (b) any cost and value 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.