

## Chapter Four

### Rules of Origin and Origin Procedures

#### Section A: Rules of Origin

##### Article 4.1: Originating Goods

Except as otherwise provided in this Chapter, each Party shall provide that a good is originating where:

- (a) it is a good wholly obtained or produced entirely in the territory of one or more of the Parties;
- (b) it is produced entirely in the territory of one or more of the Parties and
  - (i) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4.1 or Annex 3-A (Textile and Apparel Specific Rules of Origin), or
  - (ii) the good otherwise satisfies any applicable regional value content or other requirements specified in Annex 4.1 or Annex 3-A (Textile and Apparel Specific Rules of Origin),

and the good satisfies all other applicable requirements of this Chapter; or

- (c) it is produced entirely in the territory of one or more of the Parties exclusively from originating materials.

##### Article 4.2: Regional Value Content

1. Where Annex 4.1 specifies a regional value content test to determine whether a good is originating, each Party shall provide that the importer, exporter, or producer may, for purposes of making a claim for preferential tariff treatment in accordance with Article 4.15, calculate regional value content based on one or the other of the following methods:

- (a) Method Based on Value of Non-Originating Materials (“Build-down Method”)

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

- (b) Method Based on Value of Originating Materials (“Build-up Method”)

$$RVC = \frac{VOM}{AV} \times 100$$

AV

where,

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

AV is the adjusted value of the good;

VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good; VNM does not include the value of a material that is self-produced; and

VOM is the value of originating materials acquired or self-produced, and used by the producer in the production of the good.

2. Each Party shall provide that all costs considered for the calculation of regional value content shall be recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of the Party where the good is produced.

3. Where Annex 4.1 specifies a regional value content test to determine if an automotive good<sup>1</sup> is originating, each Party shall provide that the importer, exporter, or producer shall, for purposes of making a claim for preferential tariff treatment in accordance with Article 4.15, calculate the regional value content of that good based solely on the following method:

Method for Automotive Products (“Net Cost Method”)

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

where,

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

NC is the net cost of the good; and

VNM is the value of non-originating materials acquired and used by the producer in the production of the good; VNM does not include the value of a material that is self-produced.

4. Each Party shall provide that, for purposes of the regional value content method in paragraph 3, the importer, exporter, or producer may use a calculation averaged over the producer’s fiscal year, using any one of the following categories, on the basis of all motor

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<sup>1</sup> Paragraph 3 applies solely to goods classified under the following Harmonized System headings and subheadings: 8407.31 through 8407.34 (engines), 8408.20 (diesel engines for vehicles), 84.09 (parts of engines) 87.01 through 87.05 (motor vehicles), 87.06 (chassis), 87.07 (bodies), and 87.08 (motor vehicle parts).

vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the Parties:

- (a) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a Party;
- (b) the same class of motor vehicles produced in the same plant in the territory of a Party; or
- (c) the same model line of motor vehicles produced in the territory of a Party.

5. Each Party shall provide that, for purposes of calculating regional value content under paragraph 3 for automotive materials<sup>2</sup> produced in the same plant, an importer, exporter, or producer may use a calculation:

- (a) averaged:
  - (i) over the fiscal year of the motor vehicle producer to whom the good is sold;
  - (ii) over any quarter or month; or
  - (iii) over the automotive materials producer's fiscal year,provided that the good was produced during the fiscal year, quarter, or month forming the basis for the calculation;
- (b) in which the average in subparagraph (a) is calculated separately for such goods sold to one or more motor vehicle producers; or
- (c) in which the average in subparagraph (a) or (b) is calculated separately for those goods that are exported to the territory of one or more of the Parties.

#### **Article 4.3: Value of Materials**

Each Party shall provide that, for purposes of Articles 4.2 and 4.6, the value of a material shall be:

- (a) for a material imported by the producer of the good, the adjusted value of the material;

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<sup>2</sup> Paragraph 5 applies solely to automotive materials classified in the following Harmonized System headings and subheadings: 8407.31 through 8407.34 (engines), 8408.20 (diesel engines for vehicles), 84.09 (parts of engines), 87.06 (chassis), 87.07 (bodies), and 87.08 (motor vehicle parts).

- (b) for a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15 and the corresponding interpretative notes of the Customs Valuation Agreement, *i.e.*, in the same manner as for imported goods, with such reasonable modifications as may be required due to the absence of an importation by the producer; or
- (c) for a material that is self-produced,
  - (i) all the expenses incurred in the production of the material, including general expenses, and
  - (ii) an amount for profit equivalent to the profit added in the normal course of trade.

#### **Article 4.4: Further Adjustments to the Value of Materials**

1. Each Party shall provide that, for originating materials, the following expenses, where not included under Article 4.3, may be added to the value of the material:

- (a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the territories of two or more of the Parties to the location of the producer;
- (b) duties, taxes, and customs brokerage fees on the material paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and
- (c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.

2. Each Party shall provide that, for non-originating materials, the following expenses, where included under Article 4.3, may be deducted from the value of the material:

- (a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the territories of two or more of the Parties to the location of the producer;
- (b) duties, taxes, and customs brokerage fees on the material paid in the territory of two or more of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

- (c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product; and
- (d) the cost of originating materials used in the production of the non-originating material in the territory of a Party.

#### **Article 4.5: Accumulation**

1. Each Party shall provide that originating goods or materials of one or more of the Parties, incorporated into a good in the territory of another 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 more of the Parties by one or more producers, provided that the good satisfies the requirements in Article 4.1 and all other applicable requirements in this Chapter.

#### **Article 4.6: De Minimis**

Except as provided in Annex 4.6, each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex 4.1 is nonetheless originating if the value of all non-originating materials used in the production of the good and that do not undergo the applicable change in tariff classification does not exceed ten percent of the adjusted value of the good, provided that the value of such non-originating materials shall be included in the value of non-originating materials for any applicable regional value content requirement and that the good meets all other applicable requirements in this Chapter.

#### **Article 4.7: Fungible Goods and Materials**

1. Each Party shall provide that an importer may claim that a fungible good or material is originating where the importer, exporter, or producer has:

- (a) physically segregated each fungible good or material; or
- (b) used any inventory management method, such as averaging, last-in-first-out (LIFO) or first-in-first-out (FIFO), 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.

2. Each Party shall provide that the inventory management method selected under paragraph 1 for a particular fungible good or material shall continue to be used for that good or material throughout the fiscal year of the person that selected the inventory management method.

#### **Article 4.8: Accessories, Spare Parts, and Tools**

1. Each Party shall provide that a good's standard accessories, spare parts, or tools delivered with the good 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 classified with and not invoiced separately from the good, regardless of whether they appear specified or separately identified in the invoice itself; and
- (b) the quantities and value of the accessories, spare parts, or tools are customary for the good.

2. If a good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools described in paragraph 1 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 4.9: Sets of Goods**

1. Each Party shall provide that if goods are classified as a set as a result of the application of rule 3 of the General Rules of Interpretation of the Harmonized System, the set is originating only if each good in the set is originating and both the set and the goods meet all other applicable requirements in this Chapter.

2. Notwithstanding paragraph 1, a set of goods is originating if the value of all the non-originating goods in the set does not exceed 15 percent of the adjusted value of the set.

#### **Article 4.10: Packaging Materials and Containers for Retail Sale**

1. Each Party shall provide that 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 set out in Annex 4.1 or Annex 3-A (Textile and Apparel Specific Rules of Origin).

2. If a good is subject to a regional value content requirement, the value of packaging materials and containers described in paragraph 1 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 4.11: Packing Materials and Containers for Shipment**

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

#### **Article 4.12: Indirect Materials Used in Production**

Each Party shall provide that an indirect material shall be considered to be an originating material without regard to where it is produced.

#### **Article 4.13: Transit and Transshipment**

Each Party shall provide that a good shall not be considered to be an originating good if the good:

- (a) undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or
- (b) does not remain under the control of customs authorities in the territory of a non-Party.

#### **Article 4.14: Consultation and Modifications**

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly, and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter.
2. A Party that considers that a specific rule of origin set forth in Annex 4.1 requires modification to take into account developments in production processes, lack of supply of originating materials, or other relevant factors may submit a proposed modification along with supporting rationale and any studies to the other Parties for consideration.
3. On submission by a Party of a proposed modification under paragraph 2, the Commission may refer the matter to an *ad hoc* working group within 60 days or on such other date as the Commission may decide. The working group shall meet to consider the proposed modification within 60 days of the date of referral or on such other date as the Commission may decide.
4. Within such period as the Commission may direct, the working group shall provide a report to the Commission, setting out its conclusions and recommendations, if any.
5. On receipt of the report, the Commission may take appropriate action under Article 20.1.3(b).
6. With respect to a textile or apparel good, paragraphs 2 through 4 of Article 3.3 (Rules of Origin, Origin Procedures, and Related Matters) apply in place of paragraphs 2 through 5.

## Section B: Origin Procedures

### Article 4.15: Claims for Preferential Treatment

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment based on either:
    - (a) a written or electronic certification by the importer, exporter, or producer; or
    - (b) the importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.
  
  2. Each Party shall provide that a certification need not be made in a prescribed format, provided that the certification is in written or electronic form, including but not limited to the following elements:
    - (a) the name of the certifying person, including as necessary contact or other identifying information;
    - (b) tariff classification under the Harmonized System and a description of the good;
    - (c) information demonstrating that the good is originating;
    - (d) date of the certification; and
    - (e) in the case of a blanket certification issued as set out in paragraph 4(b), the period that the certification covers.
  
  3. Each Party shall provide that a certification by the producer or exporter of the good may be completed on the basis of:
    - (a) the producer's or exporter's knowledge that the good is originating; or
    - (b) in the case of an exporter, reasonable reliance on the producer's written or electronic certification that the good is originating.
- No Party may require an exporter or producer to provide a written or electronic certification to another person.
4. Each Party shall provide that a certification may apply to:
    - (a) a single shipment of a good into the territory of a Party; or



- (b) multiple shipments of identical goods within any period specified in the written or electronic certification, not exceeding 12 months from the date of the certification.

5. Each Party shall provide that a certification shall be valid for four years after the date it was issued.

6. Each Party shall allow an importer to submit a certification in the language of the importing Party or the exporting Party. In the latter case, the importing Party may require the importer to submit a translation of the certification in the language of the importing Party.

#### **Article 4.16: Exceptions**

No Party may require a certification or information demonstrating that a good is originating where:

- (a) the customs value of the importation does not exceed US\$1,500 or the equivalent amount in the currency of the importing Party, or such higher amount as may be established by the importing Party, unless the importing Party considers the importation to be part of a series of importations carried out or planned for the purpose of evading compliance with the Party's laws governing claims for preferential treatment under this Agreement; or
- (b) it is a good for which the importing Party does not require the importer to present a certification or information demonstrating origin.

#### **Article 4.17: Record Keeping Requirements**

1. Each Party shall provide that an exporter or a producer in its territory that provides a certification in accordance with Article 4.15 shall maintain, for a minimum of five years from the date the certification was issued, all records necessary to demonstrate that a good for which the producer or exporter provided a certification was an originating good, including records concerning:

- (a) the purchase of, cost of, value of, and payment for, the exported good;
- (b) the purchase of, cost of, value of, and payment for all materials, including indirect materials, used in the production of the exported good; and
- (c) the production of the good in the form in which it was exported.

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain, for a minimum of five years from the date of importation of the good, all records necessary to demonstrate the good qualified for the preferential tariff treatment.

## **Article 4.18: Verification**

1. For purposes of determining whether a good imported into its territory from the territory of another Party is an originating good, the importing Party may conduct a verification by means of:
  - (a) written requests for information from the importer, exporter, or producer;
  - (b) written questionnaires to the importer, exporter, or producer;
  - (c) visits to the premises of an exporter or producer in the territory of the other Party, to review the records referred to in Article 4.17 or observe the facilities used in the production of the good, in accordance with any guidelines that the Parties develop pursuant to Article 4.21.2; or
  - (d) such other procedures to which the importing and exporting Parties may agree.
2. A Party may deny preferential tariff treatment to an imported good where:
  - (a) the exporter, producer, or importer fails to respond to a written request for information or questionnaire within a reasonable period, as established in the importing Party's law;
  - (b) after receipt of a written notification for a verification visit to which the importing and exporting Parties have agreed, the exporter or producer does not provide its written consent within a reasonable period, as established by the importing Party's law; or
  - (c) the Party finds a pattern of conduct indicating that an importer, exporter, or producer has provided false or unsupported declarations or certifications that a good imported into its territory is an originating good.
3. A Party conducting a verification shall provide the importer a determination, in writing, of whether the good is originating. The Party's determination shall include factual findings and the legal basis for the determination.
4. If an importing Party makes a determination under paragraph 3 that a good is not originating, the Party shall not apply that determination to an importation made before the date of the determination where:
  - (a) the exporting Party issued an advance ruling regarding the tariff classification or valuation of one or more materials used in the good under Article 5.10 (Advance Rulings);

- (b) the importing Party's determination is based on a tariff classification or valuation for such materials that is different than that provided for in the advance ruling referred to in subparagraph (a); and
- (c) the exporting Party issued the advance ruling before the importing Party's determination.

5. Where an importing Party determines through verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported statements, declarations, or certifications that a good imported into its territory is originating, the Party may suspend preferential tariff treatment to identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until the importing Party determines that the importer, exporter, or producer is in compliance with this Chapter.

#### **Article 4.19: Obligations Relating to Importations**

1. Each Party shall grant any claim for preferential tariff treatment made in accordance with this Chapter, unless the Party issues a written determination that the claim is invalid as a matter of law or fact.

2. A Party may deny preferential tariff treatment to a good if the importer fails to comply with any requirement in this Chapter.

3. No Party may subject an importer to any penalty for making an invalid claim for preferential tariff treatment, if the importer:

- (a) did not engage in negligence, gross negligence, or fraud in making the claim and pays any customs duty owing; or
- (b) on becoming aware that such a claim is not valid, promptly and voluntarily corrects the claim and pays any customs duty owing.

4. Each Party may require that an importer who claims preferential tariff treatment for a good imported into its territory:

- (a) declare in the importation document that the good is originating;
- (b) have in its possession at the time the declaration referred to in subparagraph (a) is made a written or electronic certification as described in Article 4.15, if the certification forms the basis for the claim;
- (c) provide a copy of the certification, on request, to the importing Party, if the certification forms the basis for the claim;

- (d) when the importer has reason to believe that the declaration in subparagraph (a) is based on inaccurate information, correct the importation document and pay any customs duty owing;
- (e) when a certification by a producer or exporter forms the basis for the claim, either provide or have in place, at the importer's option, an arrangement to have the producer or exporter provide, on request of the importing Party, all information relied on by such producer or exporter in making such certification; and
- (f) demonstrate, on request of the importing Party, that the good is originating under Article 4.1, including that the good satisfies the requirements of Article 4.13.

5. Each Party shall provide that, where a good was originating when it was imported into its territory, but the importer of the good did not make a claim for preferential tariff treatment at the time of importation, that importer may, no later than one year after the date of importation, make a claim for preferential tariff treatment and apply for a refund of any excess duties paid as a result of the good not having been accorded preferential tariff treatment, on presentation to the Party of:

- (a) a written declaration, stating that the good was originating at the time of importation;
- (b) a copy of a written or electronic certification if a certification forms the basis for the claim, or other information demonstrating that the good was originating; and
- (c) such other documentation relating to the importation of the good as the importing Party may require.

6. Each Party may provide that the importer is responsible for complying with the requirements of paragraph 4, notwithstanding that the importer may have based its claim for preferential tariff treatment on a certification or information that an exporter or producer provided.

7. Nothing in this Article shall prevent a Party from taking action under Article 3.2.7.

#### **Article 4.20: Obligations Relating to Exportations**

1. Each Party shall provide that:

- (a) an exporter or a producer in its territory that has provided a written or electronic certification in accordance with Article 4.15 shall, on request, provide a copy to the exporting Party;
- (b) a false certification by an exporter or a producer in its territory that a good to be exported to the territory of another Party is originating shall be subject to

penalties equivalent to those that would apply to an importer in its territory that makes a false statement or representation in connection with an importation, with appropriate modifications; and

- (c) when an exporter or a producer in its territory has provided a certification and has reason to believe that the certification contains or is based on incorrect information, the exporter or producer shall promptly notify in writing every person to whom the exporter or producer provided the certification of any change that could affect the accuracy or validity of the certification.

2. No Party may impose penalties on an exporter or a producer for providing an incorrect certification if the exporter or producer voluntarily notifies in writing all persons to whom it has provided the certification that it was incorrect.

#### **Article 4.21: Common Guidelines**

1. The Parties shall agree on and publish common guidelines for the interpretation, application, and administration of this Chapter and the relevant provisions of Chapter Two (National Treatment and Market Access for Goods) and shall endeavor to do so by the date of entry into force of this Agreement. The Parties may agree to modify the common guidelines.

2. The Parties shall endeavor to develop guidelines for conducting verifications pursuant to Article 4.18.1(c).

#### **Article 4.22: Implementation**

Colombia shall:

- (a) implement Article 4.15.1(a), with respect to electronic certifications, no later than three years after the date of entry into force of this Agreement; and
- (b) implement Article 4.15.1(b) no later than three years after the date of entry into force of the Agreement.

#### **Article 4.23: Definitions**

For purposes of this Chapter:

**adjusted value** means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation;

**class of motor vehicles** means any one of the following categories of motor vehicles:

- (a) motor vehicles classified under subheading 8701.20, motor vehicles for the transport of 16 or more persons classified under subheading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 87.05 or 87.06;
- (b) motor vehicles classified under subheading 8701.10 or 8701.30 through 8701.90;
- (c) motor vehicles for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, and motor vehicles of subheading 8704.21 or 8704.31; or
- (d) motor vehicles classified under subheading 8703.21 through 8703.90;

**fungible goods or materials** means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

**Generally Accepted Accounting Principles** means recognized 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;

**goods wholly obtained or produced entirely in the territory of one or more of the Parties** means:

- (a) plants and plant products harvested or gathered in the territory of one or more of the Parties;
- (b) live animals born and raised in the territory of one or more of the Parties;
- (c) goods obtained in the territory of one or more of the Parties from live animals;
- (d) goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or more of the Parties;
- (e) minerals and other natural resources not included in subparagraphs (a) through (d) extracted or taken from the territory of one or more of the Parties;
- (f) fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of one or more of the Parties 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 such factory ships are registered or recorded with that Party and fly its flag;
- (h) goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, provided that a Party has rights to exploit such seabed or subsoil;
- (i) goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;
- (j) waste and scrap derived from:
  - (i) manufacturing or processing operations in the territory of one or more of the Parties, or
  - (ii) used goods collected in the territory of one or more of the Parties, provided such goods are fit only for the recovery of raw materials;
- (k) recovered goods derived in the territory of one or more of the Parties from used goods and utilized in the territory of one or more of the Parties in the production of remanufactured goods; and
- (l) goods produced in the territory of one or more of the Parties exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives, at any stage of production;

**identical goods** means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating;

**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 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;

**material** means a good that is used in the production of another good, including a part or an ingredient;

**material that is self-produced** means an originating material that is produced by a producer of a good and used in the production of that good;

**model line** means a group of motor vehicles having the same platform or model name;

**net cost** means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

**net cost of the good** means the net cost that can be reasonably allocated to the good under one of the following methods:

- (a) by calculating the total cost incurred with respect to all goods produced by that producer, subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the good;
- (b) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the good, and then subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the good; or
- (c) reasonably allocating each cost that forms part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs,

provided that the allocation of all such costs is consistent with the provisions regarding the reasonable allocation of costs set out in Generally Accepted Accounting Principles;



**non-allowable interest costs** means interest costs incurred by a producer that exceed 700 basis points above the yield on debt obligations of comparable maturities issued by the central level of government of the Party in which the producer is located;

**non-originating good** or **non-originating material** means a good or material that does not qualify as originating under this Chapter;

**packing materials and containers for shipment** means the goods used to protect a good during its transportation and does not include the packaging materials and containers in which a good is packaged for retail sale;

**producer** means a person who engages in the production of a good in the territory of a Party;

**production** means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

**reasonably allocate** means to apportion in a manner appropriate under Generally Accepted Accounting Principles;

**recovered goods** means materials in the form of individual parts that are the result of: (a) the disassembly of used goods into individual parts; and (b) cleaning, inspecting, testing, or other processes as necessary for improvement to sound working condition;

**remanufactured goods** means industrial goods assembled in the territory of a Party classified under Harmonized System Chapter 84, 85, 87, or 90 or heading 94.02, except goods classified under Harmonized System heading 84.18 or 85.16, that:

- (a) are entirely or partially comprised of recovered goods; and
- (b) have a similar life expectancy and enjoy a factory warranty similar to such new goods;

**total cost** means all product costs, period costs, and other costs for a good incurred in the territory of one or more of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

**used** means utilized or consumed in the production of goods; and

**value** means the value of a good or material for purposes of calculating customs duties or for purposes of applying this Chapter.

## Annex 4.6

### Exceptions to Article 4.6

1. Article 4.6 shall not apply to:
  - (a) a non-originating material classified under Chapter 4 of the Harmonized System, or a non-originating dairy preparation containing over ten percent by weight of milk solids classified under subheading 1901.90 or 2106.90, that is used in the production of a good classified under Chapter 4 of the Harmonized System;
  - (b) a non-originating material classified under Chapter 4 of the Harmonized System, or a non-originating dairy preparation containing over ten percent by weight of milk solids classified under subheading 1901.90, that is used in the production of the following goods: infant preparations containing over ten percent in weight of milk solids classified under subheading 1901.10; mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, classified under subheading 1901.20; dairy preparations containing over ten percent by weight of milk solids, classified under subheading 1901.90 or 2106.90; heading 2105; beverages containing milk classified under subheading 2202.90; or animal feeds containing over ten percent by weight of milk solids classified under subheading 2309.90;
  - (c) a non-originating material classified under heading 08.05 or subheading 2009.11 through 2009.39 that is used in the production of a good classified under subheading 2009.11 through 2009.39 or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, classified under subheading 2106.90 or 2202.90;
  - (d) a non-originating material classified under heading 09.01 or 21.01, that is used in the production of a good classified under heading 09.01 or 21.01;
  - (e) a non-originating material classified under Chapter 15 of the Harmonized System that is used in the production of a good classified under heading 15.01 through 15.08, and heading 15.11 through 15.15;
  - (f) a non-originating material classified under heading 17.01 that is used in the production of a good classified under heading 17.01 through 17.03;
  - (g) a non-originating material classified under Chapter 17 of the Harmonized System that is used in the production of a good classified under subheading 1806.10;
  - (h) except as provided under subparagraphs (a) through (g) and in the specific rules of origin under Annex 4.1, a non-originating material used in the production of a good provided for in Chapters 1 through 24 of the Harmonized System unless the

non-originating material is provided for in a different subheading than the good for which origin is being determined;

- (i) a non-originating textile or apparel good, as defined in the Annex to the WTO Agreement on Textiles and Clothing, other than a textile or apparel good listed in Annex 3-C (Textile or Apparel Goods Not Covered by Chapter Three).

2. Each Party shall provide that, for years one through four:

- (a) a good of subheading 2402.20 through 2402.90 and heading 24.03 that does not undergo a change in tariff classification pursuant to Annex 4.1 but otherwise meets all applicable requirements in this Chapter is nonetheless originating if the value of non-originating tobacco of heading 24.01 other than wrapper tobacco not threshed or similarly processed does not exceed the percentage of the adjusted value of the good set out below:

Year one	15 percent of the adjusted value of the good
Year two	14 percent of the adjusted value of the good
Year three	13 percent of the adjusted value of the good
Year four	12 percent of the adjusted value of the good.

- (b) for purposes of making a claim for preferential tariff treatment an importer, exporter, or producer may use the rule set forth in paragraph (a) or Article 4.6, but not both.