

CHAPTER FOUR RULES OF ORIGIN

ARTICLE 4.1: ORIGINATING GOODS

Except as otherwise provided in this Chapter or Chapter Three (Textiles and Apparel), each Party shall provide that a good is an originating good where it is imported directly from the territory of one Party into the territory of other Party, and,

- (a) it is a good wholly the growth, product, or manufacture of one or both of the Parties; or
- (b) for goods other than those covered by the rules in Annex 3-A or Annex 4-A, the good is a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties; and the sum of (i) the value of materials produced in the territory of one or both of the Parties, plus (ii) the direct costs of processing operations performed in the territory of one or both of the Parties is not less than 35 percent of the appraised value of the good at the time it is imported into the territory of a Party; or
- (c) for goods covered by the rules in Annex 3-A or Annex 4-A, the good has satisfied the requirements specified in that Annex.

ARTICLE 4.2: NEW OR DIFFERENT ARTICLE OF COMMERCE

For purposes of this Chapter, **new or different article of commerce** means a good that has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one of both of the Parties and that has a new name, character, or use distinct from the good or material from which it was transformed.

ARTICLE 4.3: NON-QUALIFYING OPERATIONS

Each Party shall provide that, for purposes of Article 4.1, no good shall be considered a new or different article of commerce by virtue of having merely undergone (a) simple combining or packaging operations or (b) mere dilution with water or with another substance that does not materially alter the characteristics of the good.

ARTICLE 4.4: CUMULATION

- 1 Each Party shall provide that direct costs of processing operations performed in the territory of one or both of the Parties as well as the value of materials produced in the territory of one or both of the Parties may be counted without limitation toward satisfying the 35 percent value-content requirement specified in Article 4.1(b).
- 2 Each Party shall provide that an originating good or a material produced in the territory of one or both of the Parties, incorporated into a good in the territory of the other Party, shall be considered to originate in the territory of the other Party.
- 3 Each Party shall provide that a good shall originate where the good is grown, produced, or manufactured in the territory of one or both of the Parties by one or more producers, provided that the good satisfies the requirements of Article 4.1 and all other applicable requirements in this Chapter or Chapter Three (Textiles and Apparel).

ARTICLE 4.5: VALUE OF MATERIALS

1. For purposes of this Chapter, each Party shall provide that the value of a material produced in the territory of one or both of the Parties includes:
 - (a) the price actually paid or payable by the producer of the good for the material;
 - (b) when not included in the price actually paid or payable by the producer of the good for the material, the freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant;
 - (c) the cost of waste or spoilage, less the value of recoverable scrap; and
 - (d) taxes or customs duties imposed on the material by one or both of the Parties, provided the taxes or customs duties are not remitted upon exportation.

2. Each Party shall provide that where the relationship between the producer of the good and the seller of the material influenced the price actually paid or payable for the material, or where paragraph 1 is otherwise not applicable, the value of the material produced in the territory of one or both of the Parties includes:
 - (a) all expenses incurred in the growth, production, or manufacture of the material, including general expenses;
 - (b) a reasonable amount for profit; and
 - (c) freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

ARTICLE 4.6: DIRECT COSTS OF PROCESSING OPERATIONS

1. For purposes of this Chapter, **direct costs of processing operations** means those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good. Such costs include the following, to the extent that they are includable in the appraised value of goods imported into the territory of a Party:
 - (a) all actual labor costs involved in the growth, production, or manufacture of the specific good, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;
 - (b) tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the specific good;
 - (c) research, development, design, engineering, and blueprint costs to the extent that they are allocable to the specific good;
 - (d) costs of inspecting and testing the specific good; and
 - (e) costs of packaging the specific good for export to the territory of the other Party.

2. For greater certainty, those items that are not included as direct costs of processing operations are those that are not directly attributable to the good or are not costs of growth, production, or manufacture of the good. These include:

- (a) profit; and
- (b) general expenses of doing business that are either not allocable to the specific good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

ARTICLE 4.7: PACKAGING AND PACKING MATERIALS AND CONTAINERS FOR RETAIL SALE AND FOR SHIPMENT

Each Party shall provide that packaging and packing materials and containers in which a good is packaged for retail sale and for shipment, if classified with the good, shall be disregarded in determining whether the good qualifies as an originating good, except that the value of originating packaging and packing materials and containers may be counted toward satisfying, where applicable, the 35 percent value-content requirement specified in Article 4.1(b).

ARTICLE 4.8: INDIRECT MATERIALS

Each Party shall provide that indirect materials shall be disregarded in determining whether the good qualifies as an originating good, except that the cost of such indirect materials may be counted toward satisfying the 35 percent value-content requirement where applicable.

ARTICLE 4.9: TRANSIT AND TRANSSHIPMENT

For purposes of this Chapter, a good shall not be considered to be imported directly from the territory of the other Party if the good undergoes subsequent production, manufacturing, 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 the other Party.

ARTICLE 4.10: IMPORTER REQUIREMENTS

Each Party shall provide that whenever an importer makes a claim for preferential tariff treatment, the importer:

- (a) shall be deemed to have certified that such good qualifies for preferential tariff treatment; and
- (b) shall submit to the customs authorities of the importing Party, upon request, a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. Each Party may require that the information on the declaration should contain at least the following pertinent details:
 - (i) a description of the good, quantity, invoice numbers, and bills of lading;
 - (ii) a description of the operations performed in the growth, production, or manufacture of the good in the territory of one or both of the Parties and, where applicable, identification of the direct costs of processing operations;

- (iii) a description of any materials used in the growth, production, or manufacture of the good that are wholly the growth, product, or manufacture of one or both of the Parties, and a statement as to the value of such materials;
- (iv) a description of the operations performed on, and a statement as to the origin and value of, any foreign materials used in the good that are claimed to have been sufficiently processed in the territory of one or both of the Parties so as to be materials produced in the territory of one or both of the Parties, or are claimed to have undergone an applicable change in tariff classification specified in Annex 3-A or Annex 4-A; and
- (v) a description of the origin and value of any foreign materials used in the good that are not claimed to have been substantially transformed in the territory of one or both of the Parties, or are not claimed to have undergone an applicable change in tariff classification specified in Annex 3-A or Annex 4-A.

The importing Party should request a declaration only when that Party has reason to question the accuracy of a deemed certification referred to in subparagraph (a), when that Party's risk assessment procedures indicate that verification of a claim is appropriate, or when the Party conducts a random verification. The importer shall retain the information necessary for the preparation of the declaration for five years from the date of importation of the good.

ARTICLE 4.11: OBLIGATIONS RELATING TO IMPORTATION

1. Each Party shall grant any claim for preferential tariff treatment made in accordance with this Chapter, unless the Party possesses information indicating that the importer's claim fails to comply with any requirement under this Chapter or Chapter Three (Textiles and Apparel).
2. To determine whether a good imported into its territory qualifies for preferential tariff treatment, the importing Party may, through its customs authority, verify the origin.
3. Where a Party denies a claim for preferential tariff treatment, it shall issue a written determination containing findings of fact and the legal basis for its determination. The Party shall issue the determination within a period established under its law.
4. Nothing in this Article shall prevent a Party from taking action under Article 3.3 (Customs Cooperation).

ARTICLE 4.12: CONSULTATIONS AND MODIFICATIONS

1. The Parties shall consult and cooperate to ensure that this Chapter is applied in an effective and uniform manner, in accordance with the objectives of this Agreement.
2. The Parties may establish *ad hoc* working groups, or a subcommittee of the Joint Committee established pursuant to Article 18.2 (Joint Committee), to consider any matter related to this Chapter (including Annex 4-A). On request of a Party, the

Parties may direct a working group or subcommittee to review operation of this Chapter (including Annex 4-A) and develop recommendations for amendments in the light of any pertinent developments, including changes in technology and production processes, and other relevant factors.

ARTICLE 4.13: REGIONAL CUMULATION

At a time to be determined by the Parties, and in the light of their desire to promote regional integration, the Parties shall enter into discussions with a view to deciding the extent to which materials that are products of countries in the region may be counted for purposes of satisfying the origin requirement under this Agreement as a step toward achieving regional integration.

ARTICLE 4.14: DEFINITIONS

For purposes of this Chapter:

foreign material means a material other than a material produced in the territory of one or both of the Parties;

good means any merchandise, product, article, or material;

goods wholly the growth, product, or manufacture of one or both of the Parties means goods consisting entirely of one or more of the following:

- (a) mineral goods extracted in the territory of one or both of the Parties;
- (b) vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;
- (c) live animals born and raised in the territory of one or both of the Parties;
- (d) goods obtained from live animals raised in the territory of one or both of the Parties;
- (e) goods obtained from hunting, trapping, or fishing in the territory of one or both of the Parties;
- (f) goods (fish, shellfish, and other marine life) taken from the sea 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 beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;
- (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) production or manufacture in the territory of one or both of the Parties, or

- (ii) used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;
- (k) recovered goods derived in the territory of a Party from used goods, and utilized in the Party's territory in the production of remanufactured goods; and
- (l) goods produced in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives, at any stage of production;

indirect material means a good used in the growth, production, manufacture, 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 growth, production, or manufacture 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 the growth, production, or manufacture of a good 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 growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture;

material means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

material produced in the territory of one or both of the Parties means a good that is either wholly the growth, product, or manufacture of one or both of the Parties or a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

recovered goods means materials in the form of individual parts that are the result of: (1) the complete disassembly of used goods into individual parts; and (2) the cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition;

remanufactured goods means industrial goods assembled in the territory of a Party that: (1) are entirely or partially comprised of recovered goods; (2) have similar life expectancies and meet similar performance standards as new goods; and (3) enjoy similar factory warranties as such new goods;

simple combining or packaging operations means operations such as adding batteries to devices, fitting together a small number of components by bolting, gluing, or soldering, and repacking or packaging components together; and

substantially transformed means, with respect to a good or material, changed as the result of a manufacturing or processing operation where: (1) the good or material has multiple uses and is converted into a good or material with limited uses; (2) the physical properties of the good or material are changed to a significant extent; or (3) the operation undergone by the good or material is complex in terms of the number of different processes and materials involved, as well as the time and level of skill required to perform these processes; and the good or material loses its separate identity in the resulting, new good or material.

ANNEX 4-A
CERTAIN PRODUCT-SPECIFIC RULES OF ORIGIN

Section A: Interpretative Notes

1. For goods covered in this Annex, a good is an originating good if:
 - (a) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in this Annex as a result of production occurring entirely in the territory of one or both of the Parties, or the good otherwise satisfies the applicable requirements of this Annex where a change in tariff classification for each non-originating material is not specified; and
 - (b) the good satisfies any other applicable requirements of this Chapter.
2. For purposes of interpreting the rules of origin set out in this Annex:
 - (a) the specific rule, or specific set of rules, that applies to a particular heading or subheading is set out immediately adjacent to the heading or subheading;
 - (b) a rule applicable to a subheading shall take precedence over a rule applicable to the heading which is parent to that subheading;
 - (c) a requirement of a change in tariff classification applies only to non-originating materials; and
 - (d) the following definitions apply:

chapter means a chapter of the Harmonized System;

heading means the first four digits in the tariff classification number under the Harmonized System; and

subheading means the first six digits in the tariff classification number under the Harmonized System.

Section B: Specific Rules

Annex Note:

A good containing over 10 percent by weight of milk solids classified under chapter 4 or heading 1901, 2105, 2106 or 2202 must be made from originating milk.

Section IV Prepared Foodstuffs; Beverages, Spirits and Vinegar; Tobacco and Manufactured Tobacco Substitutes.

Chapter 17 - Sugars and Sugar Confectionary

17.01-17.03 A change to heading 17.01 through 17.03 from any other chapter.

Chapter 18 - Cocoa and Cocoa Preparations

1806.10 A change to sweetened cocoa powder of subheading 1806.10 from any other heading, provided that such sweetened cocoa powder does not contain non-originating sugar of chapter 17.

Chapter 20 - Preparations of Vegetables, Fruit, Nuts, or Other Parts of Plants

2009.11-2009.39 A change to subheading 2009.11 through 2009.39 from any other chapter, except from heading 0805.

Chapter 21 - Miscellaneous Edible Preparations

2106.90 A change to concentrated juice of any single fruit or vegetable fortified with vitamins or minerals of subheading 2106.90 from any other chapter, except from heading 0805, from subheading 2009.11 through 2009.39, or from subheading 2202.90.