

## CHAPTER 4: RULES OF ORIGIN

### ARTICLE 4.1

#### *Definitions*

For the purposes of this Chapter:

- (a) “CIF“ means the value of the good imported, and includes the cost of freight and insurance up to the port or place of entry into the country of importation. The valuation shall be made in accordance with the WTO Agreement on Customs Valuation;
- (b) “FOB” means the free on board value of the good, inclusive of the cost of transport to the port or site of final shipment abroad. The valuation shall be made in accordance with the WTO Agreement on Customs Valuation;
- (c) “fungible goods or materials” means goods or materials which are interchangeable for commercial purposes, whose properties are essentially identical, and between which it is impractical to differentiate by a mere visual examination;
- (d) “generally accepted accounting principles” means the recognised 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;
- (e) “indirect material” means a good used in the production, testing or inspection of another 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, energy, catalysts and solvents;
  - (ii) equipment, devices and supplies used for testing or inspection of the goods;
  - (iii) gloves, glasses, footwear, clothing, safety equipment and supplies;
  - (iv) tools, dies and moulds;
  - (v) spare parts and materials used in the maintenance of equipment and buildings;
  - (vi) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; and

- (vii) any other goods which 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;
- (f) “material” means any matter or substance used or consumed in the production of goods, and physically incorporated into or classified with those goods;
- (g) “minimal operations or processes” are operations or processes which contribute minimally to the essential characteristics or properties of goods, including:
  - (i) operations or processes to ensure that the goods are preserved in good condition for purposes of transport or storage;
  - (ii) operations designed to facilitate shipment; and
  - (iii) operations or processes related to packaging or presentation of the goods for sale;

By way of example, the following would be such operations or processes:

- (A) aeration, ventilation, drying, refrigeration, freezing, chilling;
  - (B) cleaning, washing, sieving, sifting or shaking, selection, classification or grading, extraction;
  - (C) cutting or slitting;
  - (D) division of bulk shipments, grouping in packets, the attaching of markings, distinctive labels or logos on the products and their packing;
  - (E) packing, unpacking or repacking;
  - (F) mixing of goods of different origin, provided that the characteristics of the resulting product are not essentially different from those of the goods which have been mixed;
  - (G) dilution in water or in any other aqueous solution; and
  - (H) the simple assembly or configuring of parts of products making up a complete good;
- (h) “non-originating goods” or “non-originating materials” means goods or materials which do not qualify as originating under this Chapter;
  - (i) “originating material” means a material which qualifies as originating in accordance with the provisions of this Chapter;
  - (j) “packing materials and containers for shipment” means items used to protect a good during its transport, other than containers or packaging used for retail sale;

- (k) “preferential tariff treatment” means the customs duty rate that is applicable to an originating good pursuant to Article 2.3 of Chapter 2 of this Agreement;
- (l) “producer” means a person who grows, raises, mines, harvests, farms, fishes, traps, hunts, manufactures, processes, captures, gathers, collects, breeds, extracts or assembles a good;
- (m) “production” means methods of obtaining goods, including but not limited to, growing, raising, mining, harvesting, farming, fishing, trapping, hunting, manufacturing, processing, capturing, gathering, collecting, breeding, extracting or assembling a good;
- (n) “wholly obtained goods” means:
- (i) mineral goods extracted in the territory of a Party;
  - (ii) agricultural goods harvested, picked or gathered in the territory of a Party;
  - (iii) live animals born and raised in the territory of a Party;
  - (iv) goods obtained from live animals in the territory of a Party;
  - (v) goods obtained directly from hunting, trapping, fishing, farming, gathering, or capturing in territory of a Party;
  - (vi) goods (fish, shellfish, plant and other marine life) taken within the territorial sea or the relevant maritime zone of a Party seaward of the territorial sea under that Party’s applicable laws in accordance with the provisions of the *United Nations Convention on the Law of the Sea* 1982, or taken from the high seas by a vessel flying or entitled to fly the flag of that Party;
  - (vii) goods obtained or produced on board factory ships flying or entitled to fly the flag of a Party from the goods referred to in Sub-paragraph (vi) above;
  - (viii) goods taken by a Party, or a person of a Party, from the seabed or subsoil beneath the seabed of the territorial sea or the continental shelf of that Party, in accordance with the provisions of the *United Nations Convention on the Law of the Sea* 1982;
  - (ix) waste and scrap derived from production in the territory of a Party, or used goods collected in the territory of a Party, provided that such goods are fit only for the recovery of raw materials; and
  - (x) goods produced entirely in the territory of a Party exclusively from the goods referred to in Sub-paragraphs (i) to (ix) above.
- (o) “WTO Agreement on Customs Valuation” means the *Agreement on the Implementation of Article VII of the General Agreement on Tariff and Trade*, 1994.

## ARTICLE 4.2

### *Originating Goods*

1. Particular goods shall originate in the territory of a Party if they:
  - (a) are the wholly obtained goods of the Party; or
  - (b) satisfy the requirements of Annex 2 to this Agreement as a result of processes performed entirely in the territory of one or both of the Parties and the goods did not enter the commerce of a non-party after export from the first Party and before import into the other Party.
2. Originating materials from the territory of a Party, used in the production of particular goods in the territory of the other Party, shall be considered to originate in the territory of the Party in which the production is performed.
3. Particular goods which do not satisfy a change in tariff classification required pursuant to Annex 2 are nonetheless originating goods if:
  - (a) the value of non-originating materials used in the production of the goods that do not undergo the required change in tariff classification does not exceed 10 percent of the FOB value of the goods; and
  - (b) the goods meet all other applicable criteria of this Article.
4. Except where goods are subject to a regional value content requirement pursuant to Annex 2, goods produced by minimal operations or processes shall not be treated as originating goods even where those minimal processes or operations meet the change in tariff classification requirements of Annex 2.
5. Accessories, spare parts, or tools delivered with originating goods that form part of the standard accessories, spare parts, or tools for those goods, shall be treated as originating goods and shall be disregarded in determining whether or not all the non-originating materials used in the production of the originating goods undergo the applicable change in tariff classification, provided that:
  - (a) the accessories, spare parts, or tools are not invoiced separately from the originating goods;
  - (b) the quantities and value of the accessories, spare parts, or tools are customary for the originating goods; and
  - (c) if the goods are subject to a regional value content requirement, 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 regional value content of the goods.

6. Paragraph 5 does not apply where the accessories, spare parts, or tools have been added solely for the purpose of artificially raising the regional value content of the goods.

7. The determination of whether fungible goods or materials are originating goods shall be made either by physical separation of each of the goods or materials or through the use of any inventory management method, such as averaging, last-in, first-out, or first-in, first-out, recognised 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.

8. An inventory management method selected under Paragraph 7 for a particular fungible good or materials shall continue to be used for those fungible goods or materials throughout the fiscal year of the producer that selected the inventory management method.

9. Packaging materials and containers in which goods are packaged for retail sale, if classified with those goods, shall be disregarded in determining whether all the non-originating materials used in the production of those goods have undergone the applicable change in tariff classification set out in Annex 2. However if the goods are subject to a regional value content requirement, the value of the packaging used for retail sale will be counted as originating or non originating, as the case may be, in calculating a regional value content.

10. Packaging materials and containers in which the goods are packaged for shipment shall be disregarded in determining the origin of the good.

11. 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.

### **ARTICLE 4.3**

#### ***Regional Value Content***

1. Subject to Paragraphs 2 and 3 of this Article, where Annex 2 requires goods to have a regional value content, the regional value content of particular goods shall be calculated as follows:

$$\text{RVC} = \frac{\text{FOB-VNM}}{\text{FOB}} \times 100$$

Where:

- (a) "RVC" is the regional value content, expressed as a percentage;
  - (b) "FOB" is the FOB value of the goods; and
  - (c) "VNM" is the CIF value of non-originating materials, in the form in which they were first acquired or supplied to the producer of the goods.
2. If the FOB or CIF values do not exist or cannot be determined pursuant to the provisions of Article 1 of the WTO Agreement on Customs Valuation, the values shall be calculated pursuant to the provisions of Articles 2 to 8, Article 15 and the interpretative notes of that Agreement.
3. Each Party shall provide that, for the purposes of calculating regional value content, the importer may use a calculation averaged over the producer's fiscal year.

#### **ARTICLE 4.4**

##### ***Recording of Costs***

For the purposes of this Chapter all costs shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Party in which the goods are produced or manufactured.

#### **ARTICLE 4.5**

##### ***Treatment Of Goods For Which Preference Is Claimed***

1. Each Party may require a declaration as to the origin of a good from the exporter, or producer, or other competent person, public or private body for a good for which preferential tariff treatment is claimed. The declaration shall specify on the face of the invoice or any other document issued in respect of the good that the goods enumerated thereon are the origin of the exporting Party and meet the terms of this Chapter.
2. Nothing in Paragraph 1 of this Article shall be construed to require a producer who is not the exporter of the good to make a declaration as to the origin of the good.

3. Where a declaration is required in accordance with Paragraph 1, a Party shall provide that where an exporter is not the producer of the good, the exporter, or other competent person, public or private body may complete and sign a declaration as to the origin of a good on the basis of:

- (a) specific knowledge that the good qualifies as an originating good; or
- (b) a reasonable reliance on the producer's written representation that the good qualifies as an originating good.

4. The importing Party shall grant preferential tariff treatment to goods imported into its territory from the other Party only in cases where an importer claiming preferential tariff treatment:

- (a) provides a declaration as to the origin of the good pursuant to Paragraph 1 of this Article; or
- (b) provides sufficient documentary or other evidence to substantiate the origin of the goods.

5. When the customs administration of the importing Party has reasonable doubt as to the authenticity or accuracy of the declaration or other evidence as to the origin of goods, the importing Party may, in accordance with its national legislation, request additional evidence to verify the preference claimed. Such evidence may include accounting data in verification of Articles 4.2 and 4.3 of this Chapter, or such other evidence as may be required to establish the bona fides of the import declaration. In the absence of such evidence the customs administration of the importing Party may require payment of duties at non-preferential tariff rates or the deposit of a security or cash deposit equivalent to the amount of duties, taxes and charges that would be payable on the goods if preferential tariff treatment did not apply.

6. Each Party shall provide that, where a good would have qualified as an originating good when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer may, in accordance with the national legislation of the importing Party, apply for a refund of any duties paid on presentation of:

- (a) a declaration as to the origin of the good in accordance with this Article; and
- (b) such other evidence in support of the declaration as may be required.

7. In accordance with its laws, regulations and policies, the importing Party may not require a declaration for:

- (a) commercial and non-commercial importations which do not exceed a specified value as determined by the importing Party; or

- (b) any good for which a Party has waived the requirement for a declaration.

## **ARTICLE 4.6**

### ***Records***

Each Party shall require that:

- (a) a producer or an exporter shall maintain in the territory of that Party for such period as the Party may specify in its laws, regulations or policies, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of the other Party;
- (b) an importer claiming preferential tariff treatment for a good shall, in accordance with national legislation, maintain in the importing Party's territory all documents relating to the importation of that good, including a copy of the declaration as to origin made in accordance with Article 4.5 of this Chapter.

## **ARTICLE 4.7**

### ***Verification of Origin***

1. For the purposes of determining whether a good imported into its territory from the territory of the other Party qualifies as an originating good, the importing Party may, through its customs administration, conduct a verification of eligibility for preferential tariff treatment by means of:

- (a) requests for information addressed to the importer;
- (b) written questions and requests for information addressed to an exporter or producer in the territory of the other Party;
- (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 4.6 and to observe the facilities used in the production of the good;
- (d) requests to the exporting Party to verify the origin of the good; or
- (e) such other procedures as the Parties may agree.

2. Where a request is made by the importing Party to the exporting Party to verify the origin of the good:

- (a) such request shall only be made if the customs value for duty is sufficiently material to warrant the request;

- (b) the request shall be accompanied by sufficient information to identify the good about which the request was made;
  - (c) the exporting Party shall, within 90 days of receiving the request, advise the importing Party as to the origin of the good about which the request was made; and
  - (d) any costs incurred by the exporting Party in meeting the request to verify the origin of the good shall be mutually determined by the Parties.
3. Prior to conducting a verification visit pursuant to Sub-paragraph 1(c) of this Article the importing Party shall:
- (a) deliver a written notification of its intention to conduct the visit to:
    - (i) the exporter or producer whose premises are to be visited; and
    - (ii) the customs administration of the exporting Party; and
  - (b) obtain the written consent of the exporter or producer whose premises are to be visited.

## **ARTICLE 4.8**

### ***Suspension and Denial of Preferential Tariff Treatment***

1. Notwithstanding Paragraph 4 of Article 4.5 of this Chapter, the importing Party may suspend the application of preferential tariff treatment to goods that are the subject of origin verification action under Article 4.7 for the duration of that action, or any part thereof.
2. The importing Party may deny preferential tariff treatment to an imported good or recover unpaid duties where:
- (a) the goods do not or did not meet the requirements of this Chapter;
  - (b) the producer, exporter or importer of the goods fails to comply with any of the relevant requirements of this Chapter for obtaining preferential tariff treatment; or
  - (c) action taken under Article 4.7 failed to verify the eligibility of the goods for preferential tariff treatment.