

## CHAPTER 4

### Rules of Origin

#### Article 4-1: Originating Goods

1. Except as otherwise provided in this Chapter, a good shall originate in the territory of a Party where:
  - (a) the good is wholly obtained or produced entirely in the territory of one or both of the Parties;
  - (b) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification as set out in Annex 4-1 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 that Annex where no change in tariff classification is required, and the good satisfies all other applicable requirements of this Chapter;
  - (c) the good is produced entirely in the territory of one or both of the Parties, exclusively from originating materials; or
  - (d) except as provided in Annex 4-1 or except for a good of Chapter 39 or Chapters 50 through 63 of the Harmonized System, one or more of the non-originating materials used in the production of the good cannot satisfy the requirements set out in Annex 4-1 because both the good and the non-originating materials are classified in the same subheading or heading that is not further subdivided into subheadings, provided that,
    - (i) the good is produced entirely in the territory of one or both of the Parties,

- (ii) the value of the non-originating materials classified as or with the good does not exceed 65 per cent of the transaction value of the good, and
- (iii) the good satisfies all other applicable requirements of this Chapter.

2. For purposes of this Article, the following goods shall be considered wholly obtained or produced entirely in the territory of one or both of the Parties:

- (a) minerals and other non-living natural resources extracted in or taken from the territory of one or both of the Parties;
- (b) vegetable goods harvested in the territory of one or both of the Parties;
- (c) live animals born and raised entirely in the territory of one or both of the Parties;
- (d) goods obtained from live animals in the territory of one or both of the Parties;
- (e) goods obtained from hunting, trapping, fishing or aquaculture in the territory of one or both of the Parties;
- (f) fish, shellfish and other marine life taken from the sea, seabed, ocean floor or the subsoil outside the territory of the Parties by a vessel registered, recorded or listed with a Party, or leased by an enterprise established in the territory of a Party, and entitled to fly its flag;
- (g) goods produced on board a factory ship from the goods referred to in subparagraph (f), provided such factory ship is registered, recorded or listed with a Party, or leased by an enterprise established in the territory of a Party, and entitled to fly its flag;

- (h) goods, other than fish, shellfish and other marine life, taken or extracted from the Area by a vessel registered, recorded or listed with a Party and entitled to fly its flag, or by a Party or a person of a Party, in accordance with the United Nations Convention on the Law of the Sea;
- (i) goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in a non-Party;
- (j) waste and scrap derived from production in the territory of one or both of the Parties;
- (k) components and raw materials recovered from used goods collected in the territory of one or both of the Parties, provided the goods are fit only for such recovery; and
- (l) goods produced in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (k), or from their derivatives, at any stage of production.

#### **Article 4-2: Value Test**

1. Except as provided in paragraph 2, where the applicable rule of origin in Annex 4-1 for the tariff provision under which a good is classified specifies a value test, the value test shall be satisfied provided the value of non-originating materials used in the production of the good does not exceed a given percentage of the transaction value of the good.
2. For purposes of a good of headings 87.01 through 87.08, at the choice of an exporter or a producer of such good, the value test shall be satisfied provided the value of non-originating materials used in the production of the good does not exceed a given percentage of either the transaction value or the net cost of the good.

3. For purposes of calculating the net cost of a good under paragraph 2, the producer of the good may:

- (a) calculate the total cost incurred with respect to all goods produced by that producer, subtract any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, as well as non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocate the resulting net cost of those goods to the good;
- (b) calculate the total cost incurred with respect to all goods produced by that producer, reasonably allocate the total cost to the good, and then subtract 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 allocate 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, or non-allowable interest costs.

4. The value of an intermediate material shall be:

- (a) the total cost incurred with respect to all goods produced by the producer of the good that can be reasonably allocated to that intermediate material; or
- (b) the sum of all costs that comprise the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material.

### **Article 4-3: Accumulation**

1. For purposes of determining whether a good is an originating good, the production of the good in the territory of one or both of the Parties by one or more producers shall, at the choice of the exporter or producer of the good for which preferential tariff treatment is claimed, be considered to have been performed in the territory of either of the Parties by that exporter or producer, provided that:

- (a) all non-originating materials used in the production of the good satisfy the requirements set out in Annex 4-1 entirely in the territory of one or both of the Parties; and
- (b) the good satisfies all other applicable requirements of this Chapter.

2. Subject to paragraph 3, where each Party has a trade agreement that, as contemplated by the WTO Agreement, concerns the establishment of a free trade area with the same non-Party, the territory of that non-Party shall be deemed to form part of the territory of the free trade area established by this Agreement, for purposes of determining whether a good is an originating good under this Agreement.

3. A Party shall give effect to paragraph 2 only once provisions with effect equivalent to paragraph 2 are in force between each Party and the non-Party. Where such provisions in force between a Party and the non-Party apply to only certain goods or under certain conditions, the other Party may limit the application of paragraph 2 to those goods and under those conditions and as otherwise set out in this Agreement.

#### **Article 4-4: *De Minimis***

1. Except as provided in paragraphs 2 through 4, a good shall be considered to be originating if the value of all non-originating materials used in the production of the good that do not undergo an applicable change in tariff classification set out in Annex 4-1 does not exceed 10 per cent of the transaction value of the good, provided that:

- (a) if the rule of origin of Annex 4-1 applicable to the good contains a percentage for the maximum value of non-originating materials, the value of such non-originating materials shall be included in calculating the value of non-originating materials; and
- (b) the good satisfies all other applicable requirements of this Chapter.

2. Except as provided in Annex 4-1, paragraph 1 does not apply to a non-originating material used in the production of a good of Chapters 1 through 21 of the Harmonized System unless the non-originating material is provided for in a different subheading from the good for which origin is being determined under this Article.

3. A good of any of Chapters 50 through 60, headings 63.01 through 63.05, subheading 6307.10 or 6307.90, heading 63.08 or a new rag of heading 63.10 of the Harmonized System, that does not originate because certain non-originating yarns or fabrics used in the production of the good do not fulfil the requirements set out in Annex 4-1, shall nonetheless be considered to be originating if the total weight of all such yarns or fabrics does not exceed 10 per cent of the total weight of that good.

4. For purposes of a good of Chapters 61 through 62, heading 63.06 or subheading 6307.20 of the Harmonized System, the Chapter Note of Chapter 61, 62 or 63 of Annex 4-1, whichever is applicable, shall apply.

#### **Article 4-5: Fungible Materials and Goods**

For purposes of determining whether a good is an originating good:

- (a) where originating and non-originating fungible materials are used in the production of a good, the determination of whether the materials are originating materials may be made in accordance with any of the inventory management methods recognized in, or otherwise accepted by, the Generally Accepted Accounting Principles of the Party in which the production is performed; and
- (b) where originating and non-originating fungible goods are physically combined or mixed in inventory in a Party and exported in the same form to another Party, the determination of whether the good is an originating good may be made in accordance with any of the inventory management methods recognized in, or otherwise accepted by, the Generally Accepted Accounting Principles of the Party from which the good is exported.

#### **Article 4-6: Sets or Assortments of Goods**

Except as provided in Annex 4-1, a set, as referred to in General Rule 3 of the Harmonized System, or assortment of goods shall be considered to be originating, provided that:

- (a) all the component goods in the set or assortment, packaging materials and containers, are originating; or
- (b) where the set or assortment contains non-originating component goods, packaging materials and containers, the value of the non-originating goods, packaging materials and containers for the set or assortment, does not exceed 35 per cent of the transaction value of the set or assortment.

#### **Article 4-7: Accessories, Spare Parts and Tools**

Accessories, spare parts and tools delivered with a good that form part of the good's standard accessories, spare parts or tools, shall be considered to be originating if the good originates and shall be disregarded in determining whether all the non-originating materials used in the production of the good satisfy the requirements set out in Annex 4-1, provided that:

- (a) the accessories, spare parts and tools are not invoiced separately from the good; and
- (b) the quantities and value of such accessories, spare parts or tools are customary for the good.

#### **Article 4-8: Indirect Materials**

An indirect material shall be considered to be originating without regard to where it is produced.

#### **Article 4-9: Intermediate Materials Used in Production**

If an intermediate material is considered to be originating, then no account shall be taken of the non-originating materials contained therein when that intermediate material is subsequently used in the production of another good.

#### **Article 4-10: Packaging Materials and Containers for Retail Sale**

Except as provided for in Article 4-6 and in Annex 4-1, packaging materials and containers in which a good is packaged for retail sale shall be disregarded in determining:

- (a) whether all the non-originating materials undergo the applicable requirements set out in Annex 4-1; or
- (b) whether the good meets the requirements established in subparagraph (a) or (c) of Article 4-1.

#### **Article 4-11: Packing Materials and Containers for Shipment**

Packing materials, containers, pallets or similar articles in which a good is packed for shipment shall be disregarded in determining whether that good is originating.

#### **Article 4-12: Transshipment**

A good shall not be considered to be originating by reason of having undergone production that satisfies the requirements of Article 4-1 if, subsequent to that production, the good:

- (a) undergoes further 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; or
- (b) does not remain under customs control while outside the territories of the Parties.

#### **Article 4-13: Interpretation and Application**

For purposes of this Chapter:

- (a) the basis for tariff classification in this Chapter is the Harmonized System;
- (b) where applying subparagraph (d) of Article 4-1, the determination of whether a heading or subheading under the Harmonized System provides for both a good and the materials that are used in the production of the good shall be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonized System;

- (c) in applying the Customs Valuation Agreement under this Chapter,
  - (i) the principles of the Customs Valuation Agreement shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions,
  - (ii) the provisions of this Chapter shall take precedence over the Customs Valuation Agreement to the extent of any difference, and
  - (iii) the definitions in Article 4-15 shall take precedence over the definitions in the Customs Valuation Agreement to the extent of any difference; and
- (d) all costs 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.

**Article 4-14: Consultation and Modifications**

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 in accordance with Chapter 5 (Customs Procedures).

#### Article 4-15: Definitions

For purposes of this Chapter:

- (a) **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 or protection from predators;
- (b) **fungible materials** or **fungible goods** means materials or goods that are interchangeable for commercial purposes and whose properties are essentially identical;
- (c) **Generally Accepted Accounting Principles** means the principles used in the territory of each Party that provide substantial authorized support with regard to the recording of income, costs, expenses, assets and liabilities involved in the disclosure of information and preparation of financial statements. These principles may be broad guidelines of general application, as well as those standards, practices and procedures normally employed in accounting;
- (d) **listed with a Party** means a foreign registered ship bare-boat chartered exclusively to a Canadian citizen, permanent resident of Canada or a Canadian corporation, which is listed in the Canadian Register of Vessels for the duration of the charter and whose registration in the foreign country is suspended for the duration of the charter;
- (e) **non-allowable interest costs** means interest costs incurred by a producer that exceed 700 basis points above the applicable national government interest rate identified for comparable maturities;

- (f) **non-originating good** or **non-originating material** means a good or material that does not qualify as originating under this Chapter;
- (g) **production** means growing, mining, raising, harvesting, fishing, trapping, hunting, manufacturing, processing, assembling or disassembling a good;
- (h) **royalties** means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:
  - (i) personnel training, without regard to where performed, and
  - (ii) if performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services, or other services;

- (i) **sales promotion, marketing and after-sales service costs** means the following costs related to sales promotion, marketing and after-sales service:
- (i) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogues, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment,
  - (ii) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives,
  - (iii) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), travelling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel,
  - (iv) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer,

- (v) product liability insurance,
- (vi) office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer,
- (vii) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer,
- (viii) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centres,
- (ix) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centres, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer, and
- (x) payments by the producer to other persons for warranty repairs;
- (j) **shipping and packing costs** means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding costs of preparing and packaging the good for retail sale;

- (k) **tariff provision** means a chapter, heading or subheading of the Harmonized System;
- (l) **total cost** means all product costs, period costs and other costs incurred in the territory of one or both of the Parties;
- (m) **transaction value** means the price actually paid or payable for a good or material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Agreement to include, *inter alia*, such costs as commissions, production assists, royalties or license fees;
- (n) **transaction value of the good or transaction value of the set or assortment** means:
- (i) the transaction value of a good when sold by the producer at the place of production, or
  - (ii) the customs value of that good.

and adjusted, if necessary, to exclude any costs incurred subsequent to the good leaving the place of production, such as freight and insurance;

- (o) **value of non-originating materials and value of non-originating component goods** means:
- (i) the transaction value or the customs value of the materials at the time of their importation into a Party, adjusted, if necessary, to include freight, insurance, packing and all other costs incurred in transporting the materials to the place of importation, or
  - (ii) in the case of domestic transactions, the value of the materials determined in accordance with the principles of the Customs Valuation Agreement in the same manner as international transactions, with such modifications as may be required by the circumstances.