

CHAPTER 4 : RULES OF ORIGIN

ARTICLE 4.1 : DEFINITIONS

For the purposes of this Chapter:

1. **aquaculture** means the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding, protection from predators, etc.;
2. **Chapters, Headings and Subheadings** refers to the two first digits in the case of chapters, four digits in the case of headings and six digits in the case of subheadings, used in the classification of the Harmonized System;
3. **exporter** means a natural or juridical person located in the territory of a Party from which the good is exported;
4. **fungible goods or materials** means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;
5. **generally accepted accounting principles** means the recognized consensus or substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information and the preparation of financial statements, and may encompass broad guidelines for general application, as well as detailed standards, practices, and procedures;
6. **good** means any merchandise, product, article, or material;
7. **importer** means a natural or juridical person located in the territory of a Party into which the good is imported;
8. **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;

9. **material** means a material used in the production of another good, including any parts or ingredients;

10. **non-originating good or non-originating material** means a good or material that does not qualify as originating under the provisions of this Chapter;

11. **packing material and container for shipment** means goods used to transport a good or to protect a good during its transportation, save for the packaging materials and containers in which a good is packaged for retail sale;

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

13. **production** means growing, harvesting, extracting, mining, raising, capturing, fishing, trapping, hunting, manufacturing, remanufacturing of goods listed in Annex 4B(Remanufactured Goods), processing or assembling a good;

14. **recovered goods** means materials in the form of individual parts that result from:

- (a) the complete disassembly of used goods into individual parts; and
- (b) the cleaning, inspecting, or testing, and as necessary for improvement to sound working condition one or more of the following processes: welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding in order for such parts to be assembled with other parts, including other recovered parts in the production of a remanufactured good;

15. **remanufactured good** means an industrial good listed within Annex 4B (Remanufactured Goods) that, assembled in the territory of a Party:

- (a) is entirely or partially comprised of recovered goods;
- (b) has the same life expectancy and meets the same performance standards as a new good; and
- (c) enjoys the same factory warranty as such a new good;

16. **simple mixing** means, generally, an activity, including the dilution in water or another substance that does not substantially alter the characteristics of the product, that does not require abilities or special machines, apparatuses or equipment specially produced or installed to implement such activity⁴⁻¹;

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

18. **WTO Customs Valuation Agreement** means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade*.

ARTICLE 4.2 : ORIGINATING GOODS

1. Except as otherwise provided in this Chapter, for the purposes of this Agreement, a good shall be deemed originating and eligible for preferential treatment if it conforms to the origin requirement under any of the following conditions:

- (a) the good is wholly obtained or produced entirely in the territory of one or both Parties; or
- (b) the good is produced entirely in the territory of one or both parties, exclusively from materials whose origin conforms to the provisions of this Chapter; or
- (c) the good is produced entirely in the territory of one or both Parties, using non-originating materials that conform to a change in tariff classification, a qualifying value content, or other requirements specified in Annex 4A (Product Specific Rules).

2. In addition to a paragraph 1, the good shall meet the other applicable requirement under this Chapter.

⁴⁻¹ The Parties understand that a simple mixture does not include chemical reactions, and that the processing of juices from concentrates allowed under Annex 4A (Product Specific Rules) does not constitute simple mixing.

ARTICLE 4.3 : MINIMAL OPERATIONS

1. Notwithstanding any provision in this Chapter, a good shall not be considered to have satisfied the requirements for an originating good under merely by reason of going through any or all of the following operations:

- (a) operations to ensure the conservation or preservation of goods in good condition during transport and storage, such as ventilation, cooling, freezing, extraction of damaged parts, drying or addition of substances;
- (b) sifting, peeling, classifying, selecting, washing, filtering, cutting, shelling, marinating drying;
- (c) cleaning, including the removal of dust, oxide, oil, paint or other coverings;
- (d) packaging, re-packaging, breaking up and putting the good for retail sale;
- (e) affixing of marks, labels, trade marks or other distinguishing signs on goods;
- (f) simple mixing, dilution in water or in another watery substance, ionized or saline;
- (g) application of oil, salt, sugar or any sweetener;
- (h) disassembly of goods into their constituent parts;
- (i) slaughtering of animals;
- (j) operations of painting and polishing;
- (k) placing in bottles, cases, boxes and other packaging operations;
- (l) simple assembly of parts or products to constitute a complete product unless it is for the production of a remanufactured good as listed in Annex 4B (Remanufactured Goods); or
- (m) the combination of two or more of the operations listed at sub-paragraphs (a) to (l) above.

ARTICLE 4.4 : WHOLLY-OBTAINED OR PRODUCED GOODS

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

- (a) plants and plant products harvested or gathered in the territory of one or both Parties;
- (b) live animals born and raised in the territory of one or both Party;
- (c) goods obtained in the territory of one or both Parties from live animals;
- (d) goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both Parties;
- (e) minerals and other non-living natural resources, not included in sub-paragraphs (a) to (d), extracted or taken from the territory of one or both Parties;
- (f) goods obtained from sea fishing and other marine goods taken from outside the territory of a Party by a vessel registered, recorded or licensed with a Party, and entitled to fly its flag;
- (g) goods produced and/or made on board a factory ship from products referred to in sub-paragraph (f), provided that such factory ship is registered, recorded or licensed with that Party, and entitled to fly its flag;
- (h) goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed outside its territory, provided that the Party has rights to exploit such seabed;
- (i) waste and scrap derived from:
 - (i) production in the territory of that Party, which is only fit for the recovery of raw materials; or
 - (ii) used goods collected in the territory of that Party, provided such goods are fit only for the recovery of raw materials;
- (j) recovered goods derived in the territory of a Party from used goods and utilized in the territory of that Party in the production of remanufactured goods; and
- (k) goods produced in the territory of one or both Parties

exclusively from goods referred to in sub-paragraphs (a) to (j), or from their derivatives, at any stage of production.

ARTICLE 4.5 : QUALIFYING VALUE CONTENT

1. Where Annex 4A (Product Specific Rules) specifies a qualifying value content requirement, the following formula shall be applied:

$$QVC = \frac{FOB - VNM}{FOB} \times 100$$

where

- (a) **QVC** is the qualifying value content of the good, expressed as a percentage;
- (b) **FOB** is the Free On Board value of the particular good determined in accordance with the WTO Customs Valuation Agreement; and
- (c) **VNM** is the value of non-originating materials used by the producer in the production of the good, calculated in accordance with paragraph 2.

2. For the purpose of calculating the value of non-originating materials pursuant to sub-paragraph (c) above, the following formula shall be applied:

$$VNM = TVM - QVM$$

where

- (a) **TVM** is the total value of materials; and
- (b) **QVM** is the qualifying value of materials, which shall be calculated as:
 - (i) the total value of the material if the material satisfies the product-specific rule established in Annex 4A (Product Specific Rules), and the material has undergone its last production or operation in the territory of either Party; or
 - (ii) the value of the material that can be attributed to one or both of the Parties if the material does not satisfy the product-specific rule established in Annex 4A (Product Specific Rules).

3. All costs considered for the calculation of qualifying 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.

ARTICLE 4.6 : VALUE OF MATERIALS

For the purposes of Article 4.5 (Qualifying Value Content), the value of a material shall be:

- (a) for a material imported directly by the producer of the good, the CIF value of the material, in accordance with the WTO Customs Valuation Agreement;
- (b) for a material acquired by the producer in the territory where the good is produced, the transaction value, or if this is not known and cannot be ascertained, the first ascertainable price paid for the material in the Party; or
- (c) for a material that is self-produced, or where the relationship between the producer of the good and the seller of the material influences the price actually paid or payable for the material, including a material obtained without charge, the sum of:
 - (i) all 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 4.7 : DE MINIMIS

1. Notwithstanding Article 4.2 (Originating Goods), a non-textile or apparel good shall be considered to be an originating good, where the value of all non-originating materials used in the production of the good, which do not undergo the applicable change in tariff classification set out in Annex 4A (Product Specific Rules), does not exceed ten percent (10%) of the F.O.B. value of the good.

2. Notwithstanding Article 4.2 (Originating Goods), a textile or apparel that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo the applicable change in tariff classification set out in Annex 4A (Product Specific Rules), shall nonetheless be considered to be an originating good if the total weight of

all such fibers or yarns in that component is not more than seven percent (7%) of the total weight of that component.

ARTICLE 4.8 : ACCUMULATION

1. Originating materials from the territory of a Party, used in the production of a good in the territory of the other Party, shall be considered to originate in the territory of the other Party.

2 A good is an originating good where it is produced in the territory of one or both Parties by one or more producers, provided that the good satisfies the requirements in Article 4.2 (Originating Goods).

ARTICLE 4.9 : ACCESSORIES, SPARE PARTS AND TOOLS

Each Party shall provide that accessories, spare parts, or tools delivered with a good that form part of the good's standard accessories, spare parts, or tools shall be treated as originating goods if the good is an originating good, and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification, provided that:

- (a) the accessories, spare parts, or tools are classified with and not invoiced separately from the good, regardless of whether they appear specified or separately identified in the invoice itself;
- (b) the quantities and value of the accessories, spare parts, or tools are customary for the good; and
- (c) if the good is subject to a qualifying value content 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 qualifying value content of the good.

ARTICLE 4.10 : SETS AND ASSORTMENTS OF GOODS

1. Each Party shall provide that if goods are classified as a set pursuant to rule 3 of the General Rules of Interpretation of the Harmonized System, the set is originating only if:

- (a) each good in the set is originating; and
- (b) both the set and the goods satisfy 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 fifteen per cent (15%) of the adjusted value of the set.

ARTICLE 4.11 : 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, if classified with the good, shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4A (Product Specific Rules).

2. If the good is subject to a qualifying value content requirement under Annex 4A (Product Specific Rules), the value of such packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

3. Such packaging materials and containers shall be disregarded in determining whether a good meets the requirements established in paragraphs 1(a) and (b) of Article 4.2 (Originating Goods).

ARTICLE 4.12 : PACKING MATERIALS AND CONTAINERS FOR SHIPMENT

Packing materials and containers for shipment shall be disregarded in determining whether a good is originating.

ARTICLE 4.13 : FUNGIBLE GOODS AND MATERIALS

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

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

ARTICLE 4.14 : INDIRECT MATERIALS USED IN PRODUCTION

Each Party shall provide that an indirect material shall be treated as originating 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 4.15 : TRANSIT THROUGH NON-PARTIES

1. Preferential tariff treatment provided for in this Agreement shall be applied to goods that satisfy the requirements of this Chapter and which are directly transported among the Parties.

2. Notwithstanding paragraph 1, goods shall be authorized to transit through non-Party countries, with or without transshipment or temporary storage, and shall be eligible for preferential treatment in accordance with this Agreement, provided that such goods:

- (a) did not undergo operations other than unloading, reloading, or any other operation necessary to preserve them in good condition; and
- (b) did not enter the commerce of such non-Parties after the shipment from the Party and before the importation into another Party.

3. Compliance with the provisions set out in paragraph 2 shall be proved by means of supplying to the customs authorities of the importing Party:

- (a) in the case of transit or transshipment without temporary storage, the commercial shipping or freight documents.
- (b) in the case of temporary storage, either customs documents of the third country or documents of the competent authorities or authorized operators.

ARTICLE 4.16 : CONSULTATIONS AND MODIFICATIONS

1. A Party that considers that a specific rule of origin set out in Annex 4A (Product Specific Rules) 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 Commission for consideration.

2. Upon receipt of a submission by a Party under paragraph 1, the Commission may refer the matter to an *ad hoc* working group within

thirty (30) days or on such other date as the Commission may decide. The working group shall meet to consider the proposed modification within ninety (90) days of the date of referral or on such other date as the Commission may decide.

3. Unless the Commission agrees otherwise, the working group shall, within such period, provide a report to the Commission, setting out its conclusions and recommendations, if any, on the proposed modification.

4. On receipt of the report, the Commission may take any action as it deems appropriate.

5. The Parties shall make their best efforts to conclude the modification process within one hundred and eighty (180) days of the date of submission of the proposal.