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**March 31, 2004**

**CHAPTER FIVE**  
**RULES OF ORIGIN**

**ARTICLE 5.1: ORIGINATING GOODS**

A good is originating where it is imported directly from one Party into the other Party, and,

- (a) for goods other than those covered by the rules in Annex 4-A (Textile and Apparel Specific Rules of Origin) or Annex 5-A (Certain Product-Specific Rules of Origin)
  - (i) the good is wholly the growth, product or manufacture of one or both of the Parties; or
  - (ii) the good is a new or different article of commerce that has been grown, produced, or manufactured in one or both of the Parties; and the sum of (i) the value of the materials produced in one or both of the Parties, plus (ii) the direct costs of processing operations performed in one or both of the Parties is not less than 35 percent of the appraised value of the good at the time it is entered into a Party; or
- (b) for goods covered by the rules in Annex 4-A (Textile and Apparel Specific Rules of Origin) or Annex 5-A (Certain Product-Specific Rules of Origin)
  - (i) the good is wholly the growth, product, or manufacture of one or both of the Parties; or
  - (ii) the good has satisfied the requirements specified in Annex 4-A or Annex 5-A.

**ARTICLE 5.2: NEW OR DIFFERENT ARTICLE OF COMMERCE**

For purposes of this Chapter, the expression “new or different article of commerce” refers to a good or material, not wholly the growth, product, or manufacture of one or both of the Parties, that is substantially transformed into a new or different article of commerce, having a new name, character, or use distinct from the good or material from which it was so transformed.

**ARTICLE 5.3: NON-QUALIFYING OPERATIONS**

No good shall be considered a new or different article of commerce under this Agreement by

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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 5.4: ACCUMULATION

1. Direct costs of processing operations performed in one or both of the Parties as well as the value of materials produced in one or both of the Parties may be counted without limitation toward satisfying the 35 percent value-content requirement specified in Article 5.1(a)(ii).
2. Originating goods or materials produced in one or both of the Parties, incorporated into a good in the other Party, shall be considered to originate in the other Party.
3. A good shall originate where the good is produced in the territory of one or both of the Parties by one or more producers, provided that the good satisfies the requirements of Article 5.1 and all other applicable requirements in this Chapter.

ARTICLE 5.5: VALUE OF MATERIALS

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

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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 5.6: DIRECT COSTS OF PROCESSING OPERATIONS**

1. For purposes of this Chapter, direct costs of processing operations performed in one or both of the Parties mean those costs either directly incurred in, or that can be reasonably allocated to, the growth, production or manufacture of the specific good under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of goods imported into 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 costs of engineering, supervisory, quality control, and similar personnel;
- (b) dies, molds, tooling, indirect materials and depreciation on machinery and equipment that are allocable to the specific good;
- (c) research, development, design, engineering, and blueprint costs, insofar as 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 other Party.

2. Costs that are not included as direct costs of processing operations are those that are not directly attributable to the goods or are not costs of growth, production, or manufacture of the product. These include, but are not limited to:

- (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 5.7: PACKAGING AND PACKING MATERIALS AND CONTAINERS FOR RETAIL SALE AND**

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FOR SHIPMENT

Packaging and packing materials and containers for retail sale and for shipment shall be disregarded in determining whether the good qualifies as an originating good, except to the extent that the value of such packaging and packing materials and containers may be counted toward satisfying the 35% value content requirement for goods subject to that requirement.

ARTICLE 5.8: INDIRECT MATERIALS

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% value content requirement for goods subject to that requirement.

ARTICLE 5.9: TRANSIT AND TRANSSHIPMENT

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

ARTICLE 5.10: IMPORTER REQUIREMENTS

Whenever an importer makes a claim for preferential tariff treatment for a good:

- (a) the importer shall be deemed to certify that such good qualifies for the preferential treatment provided by this Agreement; and
- (b) the importer shall be prepared to submit to the customs authorities of the importing Party, upon request, a declaration setting forth all pertinent information concerning the production of the good. The information on the declaration should contain at least the following pertinent details:
  - (i) a description of the good, quantity, numbers, and marks of packages, invoice numbers, and bills of lading;
  - (ii) a description of the operations performed in the production of the good in one or both of the Parties and identification of the direct costs of processing operations;
  - (iii) a description of any materials used in production of the good that are wholly the growth, product, or manufacture of one or both of the Parties,

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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 one or both of the Parties so as to be materials produced in one or both of the Parties, or are claimed to have undergone an applicable change in tariff classification specified in Annex 5-A; and
- (v) a description of the origin and value of any foreign materials used in the good that have not been substantially transformed in one or both of the Parties, or are not claimed to have undergone an applicable change in tariff classification specified in Annex 5-A.

Upon request by the importing Party, this declaration shall be prepared, signed, and submitted by the importer. The importing Party should request a declaration only when that Party has reason to question the accuracy of the deemed certification of subparagraph (a), or when that Party's procedures for assessing the risk of improper or incorrect entry of an imported good indicate that verification of an entry is appropriate, or when a random verification is conducted. The importer shall retain the information necessary for the preparation of the declaration for a period of five years.

**ARTICLE 5.11: PROCEDURES FOR VERIFICATION OF ORIGIN**

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.
2. To determine whether a good imported into its territory qualifies for preferential treatment under this Chapter, the importing Party may, through its customs authority, verify the origin in accordance with its customs laws and regulations;
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.

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ARTICLE 5.12: 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 spirit and objectives of this Agreement, and to this end may establish ad hoc committees or working groups to consider any issues arising between them.

2. The functions of any ad hoc committees or working groups established under paragraph 1 may include reviewing this Chapter and Annex 5-A in light of any issue related to the implementation and application of this Chapter, including developments in technology and production processes. To this end, these committees or working groups shall develop recommendations for amendments to this Chapter.

ARTICLE 5.13: REGIONAL ACCUMULATION

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 5.14: DEFINITIONS

For purposes of this Chapter:

**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

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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 (v) 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 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 products; 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;

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- (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 production of another good that is a new or different article of commerce that has been grown, produced or manufactured in one or both of the Parties;

**materials produced** means goods that are either wholly the growth, product, or manufacture of one or both of the Parties, or new or different articles of commerce that have been grown, produced, or manufactured in 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 by means of 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 product;

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

**simple combining or packaging operations** means operations such as, but not limited to, the addition of batteries to devices, fitting together a small number of components by bolting, gluing, or soldering, or repacking or packaging components together;

**substantial transformation** means the result of a manufacturing or processing operation undergone by a good or material if: (1) such good or material with multiple uses is converted

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into a good or material with limited uses; (2) the physical properties of such good or material are changed to a significant extent; or (3) the operation undergone by such 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; and such good or material loses its separate identity in the new and resulting good.