

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 insurance and freight up to the port or place of entry in the country of importation;
- (b) **Competent Authority** means bodies or private entities authorised by the Governmental Authority for issuance of the Certificate of Origin;
- (c) **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;
- (d) **fungible goods or materials** mean goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;
- (e) **goods** means any materials and products which can be wholly obtained or produced, or manufactured, even if they are intended for later use in another manufacturing operation;
- (f) **Governmental Authority** means the authority of each respective Party responsible for the certification of origin. In the case of Chile, such authority is the General Directorate of International Economic Affairs, Ministry of Foreign Affairs; and in the case of Malaysia, the Ministry of International Trade and Industry;
- (g) **indirect materials** 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 materials 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.
- (h) **material** means a good or any matter or substance such as raw materials, ingredients, parts, components, sub-components or sub-assemblies that are used or consumed in the production of goods or transformation of another good;
- (i) **packing materials and containers for shipment** means goods used to protect a good during its transportation, other than containers and packaging materials used for retail sale;
- (j) **preferential treatment** means the rate of customs duties applicable to an originating good of the exporting Party; and
- (k) **production** means methods of obtaining goods including, but not limited to growing, raising, mining, harvesting, fishing, farming, trapping, hunting, capturing, aquaculture, gathering, collecting, breeding, extracting, manufacturing, processing or assembling a good.

Article 4.2: Origin Criteria

Except as otherwise provided in this Chapter, a good shall be considered as originating in a Party when:

- (a) the good is wholly obtained or produced entirely in the territory of a Party as defined in Article 4.3;
- (b) the good is produced in the territory of a Party, using non-originating materials that conform to a qualifying value content or a change in tariff heading as defined in Articles 4.4 and 4.5 respectively; or
- (c) the good satisfies the product specific rules as specified in Annex 4-B (Product Specific Rules).

Article 4.3: Wholly Obtained or Produced Goods

The following goods shall be considered as wholly obtained or produced entirely in the territory of a Party:

- (a) plants, plant goods and vegetable goods harvested, picked or gathered in the territory of the Party;
- (b) live animals born and raised in the territory of the Party;
- (c) goods obtained from live animals referred to in subparagraph (b);
- (d) goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing and farming conducted in the territory of the Party;
- (e) minerals and other naturally occurring substances, not included in subparagraphs (a) to (d), extracted or taken from its soil, water, seabed or beneath the seabed of the Party;
- (f) goods taken from the waters, seabed or beneath the seabed outside the territorial waters of that Party, provided that Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with international law;
- (g) goods such as fish, shellfish and other marine life or marine goods taken from the high seas by vessels registered or entitled to fly the flag of that Party;
- (h) goods obtained, processed or produced on board a factory ship registered or recorded with that Party or entitled to fly the flag of that Party, exclusively from products referred to in subparagraph (f);
- (i) waste, scrap or used goods collected in the territory of the Party which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for the recovery of raw materials; and
- (j) goods obtained or produced in the territory of a Party solely from goods referred to in subparagraphs (a) to (i) or from their derivatives, at any stage of production.

Article 4.4: Qualifying Value Content

1. The qualifying value content of a good shall be calculated as follows:

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

where:

QVC - is the qualifying value of a good content expressed as a percentage;

V - is the FOB value of the final good; and

VNM - is the CIF value of the non-originating materials.

2. The percentage of qualifying value content shall not be less than 40%, except for the goods listed in Annex 4-B (Product Specific Rules) as provided under subparagraph (c) of Article 4.2.

Article 4.5: Change in Tariff Heading

Change in tariff heading refers to the final good that is classified under a heading of the Harmonised System (HS) which must be different from the headings under which the non-originating materials used in the production process of the said good as provided under subparagraph (b) of Article 4.2.

Article 4.6: Indirect Materials

1. Any indirect material used in the production of a good shall be treated as originating materials, irrespective of whether such indirect material originates from a non-Party.

Article 4.7: Minimal Operations and Processes that do not Confer Origin

The following minimal operations or processes, undertaken exclusively by itself or in combination, do not confer origin:

- (a) operations to ensure the preservation of products in good condition during transport and storage such as drying, freezing, ventilation, chilling and like operations;
- (b) sifting, classifying, washing, cutting, slitting, bending, coiling or uncoiling, sharpening, simple grinding, slicing ;
- (c) cleaning, including removal of oxide, oil, paint or other coverings;

- (d) painting and polishing operations;
- (e) testing or calibration;
- (f) placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (g) simple mixing⁴ of goods, whether or not of different kinds;
- (h) simple assembly⁵ of parts of products to constitute a complete good;
- (i) changes of packing, unpacking or repacking operations, and breaking up and assembly of consignments;
- (j) affixing or printing marks, labels, logos and other like distinguishing signs on goods or their packaging;
- (k) mere dilution with water or another substance that does not materially alter the characteristics of the goods; and
- (l) husking, partial or total bleaching, polishing and glazing of cereals and rice.

Article 4.8: Accumulation

An originating good of a Party which is used in the processing or production in the territory of the other Party as material for finished good, shall be deemed as a material originating in the territory of the latter Party where the working or processing of the finished goods has taken place.

Article 4.9: *De Minimis*

A good that does not undergo a change in tariff classification shall be considered as originating if:

⁴ “Simple mixing” generally describes an activity which does not need special skills, machine, apparatus or equipment especially produce or install for carrying out the activity. However, simple mixing does not include chemical reaction. Chemical reaction means a process (including a bio chemical process) which results in a molecule with a new structure by breaking intra molecular bonds and by forming new intra molecular bonds, or by altering the spatial arrangement of atoms in a molecule.

⁵ “Simple assembly” generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity.

- (a) the value of all non-originating materials used in its production that do not undergo the required change in tariff classification do not exceed 10% of the FOB value of the good; and
- (b) the good meets all other applicable criteria set forth in this Chapter for qualifying as an originating good.

Article 4.10: Fungible Goods and Materials

1. The determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each of the materials, or through the use of an inventory management method recognised in the generally accepted accounting principles of the Party in which the production is performed or otherwise accepted by that Party.

2. The method of inventory management chosen by the exporter must be maintained for at least one year.

Article 4.11: Accessories, Spare Parts, Tools and Instructional or Information Materials

1. Accessories, spare parts, tools, instructional or other information materials delivered with a good that form part of the good's standard accessories, spare parts, or tools, shall be regarded as a part of the good, 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, tools, instructional or other information materials are classified with and not invoiced separately from the good; and
- (b) the quantities and value of the accessories, spare parts, tools, instructional or other information materials are customary for the good.

2. If the goods are subject to qualifying value content requirement, the value of the accessories, spare part, 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 goods.

Article 4.12: Treatment of Packages, Packing Materials and Containers

1. If a good is subject to the qualifying value content provided in Article 4.4, the value of the packages and packing materials for retail sale, shall be taken into account

in determining the origin of that good as originating or non-originating, as the case may be, provided that the packages and packing materials are considered to be forming a whole with the good.

2. If a good is subject to the change in tariff classification criterion provided in Article 4.5, packages and packing materials classified together with the packaged good, shall not be taken into account in determining origin.

3. Packing materials and containers used exclusively for the transportation of a good shall not be taken into account in determining the origin of such goods.

Article 4.13: Direct Consignment

1. A good shall be deemed as directly consigned from the exporting Party to the importing Party:

- (a) if the goods are transported without passing through the territory of any non-Party; or
- (b) if the goods are transported for the purpose of transit through a non-Party with or without transshipment or temporary storage in such non-Party, provided that:
 - (i) the transit is justified for geographical reasons or transport requirements;
 - (ii) the goods have not entered into trade or consumption in the territory of the non-Party; and
 - (iii) the goods have not undergone any operation in the territory of the non-Party other than unloading, reloading and splitting-up/bulk breaking or any operation required to keep the goods in good condition.

2. A directly consigned good shall retain its originating status.

3. In the case where an originating good of the exporting Party is imported through one or more non-Parties or after an exhibition in a non-Party, the Customs Authority of the importing Party may require importers, who claim the preferential tariff treatment for the good, to submit supporting documentation such as transport, customs documents or other documents.

Article 4.14: Certificate of Origin

A claim that goods are eligible for preferential treatment under this Agreement shall be supported by a Certificate of Origin in the form as prescribed in Annex 4-C (Form of Certificate of Origin), issued by the Competent Authority of the exporting Party.

Article 4.15: Committee on Rules of Origin and Customs Administration

1. For the purposes of the effective implementation and operation of this Chapter and Chapter 5 (Customs Administration), the Parties hereby establish a Committee on Rules of Origin and Customs Administration, comprising of representatives of each Party.

2. The functions of the Committee on Rules of Origin and Customs Administration shall be to:

- (a) review the implementation and operation of this Chapter and Chapter 5 (Customs Administration);
- (b) report its findings to the Joint Committee;
- (c) identify areas, relating to this Chapter and Chapter 5 (Customs Administration), to be improved for facilitating trade in goods between the Parties; and
- (d) carry out other functions as may be delegated by the Joint Committee in accordance with subparagraph 4(e) of Article 11.1.

3. The Committee on Rules of Origin and Customs Administration shall meet at such venues and times as may be agreed by the Parties.