

## Chapter IV: Rules of Origin

### Article IV.1 Originating Goods

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, as defined in Article IV.15;
- (b) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification as set forth in Annex IV.1 (Specific Rules of Origin) 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 for a good of Chapter 39 or Chapter 50 through 63 or except as provided in Annex IV.1 (Specific Rules of Origin), the good is produced entirely in the territory of one or both of the Parties but one or more of the non-originating materials used in the production of the good cannot undergo a change in tariff classification 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 the regional value-content of the good, determined in accordance with Article IV.2, is not lower than 35 per cent when the transaction value method is used, or 25 per cent when the net cost method is used, and the good meets the other applicable requirements of this Chapter.

### Article IV.2 Regional Value-content

1. Except as provided in paragraph 5, each Party shall provide that the regional value content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of either the transaction value method set out in paragraph 2 or, for an automotive good of subheading 8407.31 through 8407.34 or heading 87.01 through 87.08, the net cost method set out in paragraph 3.

2. Each Party shall provide that an exporter or producer may calculate the regional value content of a good on the basis of the following transaction value method:

$$RVC = \frac{TV - VNM}{TV} \times 100$$

where:

RVC is the regional value content, expressed as a percentage;

TV is the transaction value of the good, adjusted to an F.O.B. basis; and

VNM is the value of non-originating materials used by the producer in the production of the good, in accordance with paragraph 6 of this Article.

3. Each Party shall provide that an exporter or a producer may calculate the regional value content of an automotive good of subheading 8407.31 through 8407.34 or heading 87.01 through 87.08 on the basis of the following net cost method:

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

where:

RVC is the regional value content, expressed as a percentage;

NC is the net cost of the good; and

VNM is the value of non-originating materials used by the producer in the production of the good, in accordance with paragraph 6 of this Article.

4. The value of non-originating materials used by the producer in the production of a good shall not, for purposes of calculating the regional value content of the good under paragraph 2 or 3, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.<sup>1</sup>
5. For purposes of calculating the net cost of a good under paragraph 3, 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.<sup>2</sup>
6. Except as provided in paragraph 7, the value of a material used in the production of a good shall:

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<sup>1</sup> Article IV.2.4 applies to intermediate materials, and VNM in paragraphs 2 and 3 does not include:

- (i) the value of any non-originating materials used by another producer to produce an originating material that is subsequently acquired and used in the production of the good by the producer of the good, and
- (ii) the value of non-originating materials used by the producer to produce an originating intermediate material.

With respect to paragraph 4, where an originating intermediate material is subsequently used by a producer with non-originating materials (whether or not produced by the producer) to produce the good, the value of such non-originating materials shall be included in the VNM of the good.

<sup>2</sup> With respect to paragraph 5, sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs included in the value of materials used in the production of the good are not subtracted out of the net cost in the calculation under Article IV.2.3.

- (a) be the transaction value of the material determined in accordance with Article 1 of the Customs Valuation Agreement;
- (b) in the event that there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Customs Valuation Agreement, be determined in accordance with Articles 2 through 7 of the Customs Valuation Agreement;
- (c) where not covered under subparagraph (a) or (b), include freight, insurance, packing and all other costs incurred in transporting the material to the place of importation; or
- (d) in the case of a domestic transaction, be determined in accordance with the principles of the Customs Valuation Agreement in the same manner as an international transaction, with such modifications as may be required by the circumstances.

7. 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.

8. The value of an indirect material shall be based on the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

#### **Article IV.3 Accumulation**

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 undergo an applicable tariff classification change set forth in Annex IV.1 (Specific Rules of Origin), and the good satisfies any applicable regional value content requirement, entirely in the territory of one or both of the Parties; and
- (b) the good satisfies all other applicable requirements of this Chapter.

#### **Article IV.4 De Minimis**

1. Except as provided in paragraphs 2 and 3, a good shall be considered to be an originating good 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 IV.1 (Specific Rules of Origin) is not more than 10 per cent of the transaction value of the good, adjusted to an F.O.B. basis, provided that:

- (a) if the good is subject to a regional value-content requirement, the value of such non-originating materials shall be taken into account in calculating the regional value content of the good; and
- (b) the good satisfies all other applicable requirements of this Chapter.

2. Except as specified in a product-specific rule of origin of Annex IV.1 (Specific Rules of Origin) applicable to a good, paragraph 1 does not apply to a non-originating material used in the production of a good of Chapter 1 through 24 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 Chapter 50 through 63 of the Harmonized System that is not originating because certain fibres or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex IV.1 (Specific Rules of Origin), shall nonetheless be considered as originating if the total weight of all such fibres or yarns in that component is not more than 10 per cent of the total weight of that component.<sup>3</sup>

#### **Article IV.5 Fungible Goods and Materials**

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 need not be made through the identification of any specific fungible material, but may be determined on the basis of any of the inventory management methods set out in Annex IV.5 (Inventory Management Methods); and
- (b) where originating and non-originating fungible goods are physically combined or mixed in inventory and, prior to their exportation, do not undergo any production or any other operation in the territory of the Party in which they were physically combined or mixed in inventory, other than unloading, reloading, or any other operation necessary to preserve the goods in good condition or to transport the goods for exportation to the other Party's territory, the determination may be made on the basis of any of the inventory management methods set out in Annex IV.5 (Inventory Management Methods).

#### **Article IV.6 Sets or Assortments of Goods**

1. Except as provided in Annex IV.1 (Specific Rules of Origin), a set or assortment as defined in Rule 3 of the General Rules for the Interpretation of the Harmonized System, shall be considered as originating, provided that:

- (a) all the component products, including packaging materials and containers, are originating; or
- (b) where the set or assortment contains non-originating component products, including packaging materials and containers:
  - (i) at least one of the component products, or all the packaging materials and containers for the set, is originating; and

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<sup>3</sup> For purposes of applying paragraph 3, the identification of the component that determines the tariff classification of the good shall be based on the General Rules for the Interpretation of the Harmonized System. When the component that determines the tariff classification is a blend of 2 or more yarns or fibres, all yarns and, where applicable, fibres, in that component are to be taken into account.



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;

- (b) does not remain under customs control while outside the territories of the Parties; or
- (c) enters into trade or consumption in the territory of a non-Party.

#### **Article IV.12 Non-Qualifying Operations**

Except for sets of Article IV.6 or of Annex IV.1 (Specific Rules of Origin) or except as specified in a product-specific rule of origin of Annex IV.1 (Specific Rules of Origin) applicable to the good, a good shall not be considered to be an originating good merely by reason of :

- (a) disassembly of the good into its parts;
- (b) a change in the end use of the good;
- (c) the mere separation of one or more individual materials or components from an artificial mixture;
- (d) mere dilution with water or another substance that does not materially alter the characteristics of the good;
- (e) removal of dust or damaged parts from, oiling, or applying anti-rust paint or protective coatings to, the good;
- (f) testing or calibration, division of loose shipments, grouping into packages, or attaching identifying labels, markings or signs to the good or its packaging; or
- (g) packaging or repackaging of the good.

#### **Article IV.13 Interpretation and Application**

For purposes of this Chapter:

- (a) the basis for tariff classification in this Chapter is the Harmonized System<sup>4</sup>;
- (b) where applying Article IV.1(d), 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

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<sup>4</sup> The rules of origin under Chapter IV are based on the 1996 Harmonized System.

- (iii) the definitions in Article IV.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 IV.14 Consultation and Modifications**

1. 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 V (Customs Procedures).
2. Should problems arise between the Parties concerning the interpretation of the provisions of this Chapter, the Parties agree to consult with each other on the establishment and implementation, through their respective laws or regulations, of Uniform Regulations regarding the interpretation, application and administration of this Chapter.
3. A Party that considers that this Chapter requires modification to take into account developments in production processes or other matters may submit a proposed modification along with supporting rationale and any studies to the other Party for consideration and any appropriate action under Chapter III (National Treatment and Market Access of Goods).

#### **Article IV.15 Definitions**

For purposes of this Chapter:

**F.O.B.** means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer;

**fungible goods or fungible materials** means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

**Generally Accepted Accounting Principles** means the principles used in the territory of each Party, which 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 indicators may be broad guidelines of general application, as well as those standards, practices and procedures usually employed in accounting;

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

- (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 or fishing in the territory of one or both of the Parties;
- (f) goods (fish, shellfish and other marine life) taken from the sea, seabed or subsoil outside the territory of one or both of the Parties by a vessel registered, recorded or listed with a Party, or leased by a company established in the territory of a Party, and entitled to fly its flag or by a vessel not exceeding 15 tons gross tonnage that is licensed by a Party;
- (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 a company 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 seabed or the subsoil of the continental shelf or the exclusive economic zone of either of the Parties;
- (i) goods, other than fish, shellfish and other marine life, taken or extracted from the seabed or the subsoil, in the area outside the continental shelf and the exclusive economic zone of either of the Parties or of any other State as defined in the United Nations Convention on the Law of the Sea, by a vessel registered, recorded or listed with a Party and entitled to fly its flag, or by a Party or person from a Party;
- (j) 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;
- (k) 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; 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;

**identical or similar goods** means "identical goods" and "similar goods", respectively, as defined in the Customs Valuation Agreement;

**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 moulds;
- (c) spare parts and materials used in the maintenance of equipment and buildings;
- (d) lubricants, greases, compounding materials and other materials used in the 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 goods;



- (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;

**intermediate material** means a material that is produced by a producer of a good and used in the production of that good;

**material** means a good that is used in the production of another good, and includes a part or an ingredient;

**net cost** means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

**net cost of a good** means the net cost that can be reasonably allocated to a good using one of the methods set out in Article IV.2.5;

**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;

**non-originating good** or **non-originating material** means a good or material that does not qualify as originating under this Chapter;

**producer** means a person who grows, mines, harvests, fishes, hunts, manufactures, processes or assembles a good;

**production** means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good;

**reasonably allocate** means to apportion in a manner appropriate to the circumstances;

**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:

- (a) personnel training, without regard to where performed; and
- (b) 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;

**sales promotion, marketing and after-sales service costs** means the following costs related to sales promotion, marketing and after-sales service:

- (a) 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;

- (b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;
- (c) salaries and wages; sales commissions; bonuses; benefits (for example, medical, insurance, pension); traveling and living expenses; membership and professional fees; for sales promotion, marketing and after-sales service personnel;
- (d) 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;
- (e) product liability insurance;
- (f) 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;
- (g) 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;
- (h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centres;
- (i) 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
- (j) payments by the producer to other persons for warranty repairs;

**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;

**total cost** means all product costs, period costs and other costs incurred in the territory of one or both of the Parties;

**transaction value** means:

- (a) 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, regardless of whether the good or material is sold for export; or
- (b) where there is no transaction value or the transaction value is unacceptable under Article 1 of the Customs Valuation Agreement, the value determined in accordance with Articles 2 through 7 of the Customs Valuation Agreement;  
and

**used** means used or consumed in the production of goods.