

CHAPTER THREE

RULES OF ORIGIN

Article 301: 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 318;
- (b) the good fulfils the requirements set out for that good in Annex 301 as a result of production occurring entirely in the territory of one or both of the Parties;
- (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 301 or except for a good of Chapter 1 through 24, heading 39.01 through 39.14 or Chapter 50 through 63 of the Harmonized System,
 - (i) the good is produced entirely in the territory of one or both of the Parties,
 - (ii) one or more of the non-originating materials used in the production of the good cannot satisfy the requirements set out in Annex 301 because both the good and the non-originating materials are classified in the same subheading, or heading that is not further subdivided into subheadings, and
 - (iii) the value of the non-originating materials classified as or with the good does not exceed 55 per cent of the transaction value of the good,

and the good satisfies all the other applicable requirements of this Chapter.

Article 302: Minimal Operations

Except for sets or assortments of goods referred to in Annex 301 or in Article 310, a good shall not be considered to be an originating good merely by reason of undergoing one or more of the following operations in the territory of a Party:

- (a) packaging, re-packaging or breaking up for retail sale of the good;
- (b) oiling or applying anti-rust paint or protective coatings to the good; or
- (c) disassembly of a new good into its parts.

Article 303: Value Test

1. Except as provided in paragraph 2, where the applicable rule of origin in Annex 301 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 the percentage of the transaction value of the good set out in the rule of origin applicable to that good.

2. For purposes of a good of heading 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 the percentage of either the transaction value or the net cost of the good set out in the rule of origin applicable to that good.

3. The value of non-originating materials used by the producer in the production of a good shall not, for purposes of satisfying the value test under either paragraph 1 or 2, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.

4. For purposes of paragraph 3, “the value of non-originating materials” in paragraphs 1 and 2 does not include:

- (a) 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; or
- (b) the value of non-originating materials used by the producer to produce an originating intermediate material.

5. 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.

6. For purposes of calculating the net cost of a good under paragraph 2, the producer may average its calculation over its fiscal year using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of the other Party:

- (a) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a Party;
- (b) the same model line of motor vehicles produced in the same plant in the territory of a Party;
- (c) the same model line of motor vehicles produced in the territory of a Party;
- (d) the same class of motor vehicles produced in the same plant in the territory of a Party; or
- (e) any other category as the Parties may agree.

7. For purposes of calculating the net cost under paragraph 2 with respect to a good of headings 87.06 through 87.08 produced in the same plant, the producer may:

- (a) average its calculation,
 - (i) over the fiscal year of the motor vehicle producer to whom the good is sold,
 - (ii) over any quarter or month, or
 - (iii) over the automotive materials producer's fiscal year,

provided the good was produced during the fiscal year, quarter or month forming the basis for the calculation;

- (b) calculate the average referred to in subparagraph (a) separately for any or all goods sold to one or more motor vehicle producers; or
- (c) calculate the average in subparagraph (a) or (b) separately for those goods that are exported to the territory of the other Party.

Article 304: Value of Materials

1. For purposes of Article 303 and Article 307, the value of non-originating materials, including non-originating component goods referred to in Article 310, shall be:

- (a) 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
- (b) 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.

2. Notwithstanding paragraph 1, 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 305: Intermediate Materials Used In Production

1. For greater certainty, if a non-originating material satisfies the requirements set out in Article 301 in the territory of one or both of the Parties, the resulting good shall be considered as originating and no account shall be taken of the non-originating material contained therein when that good is used in the subsequent production of another good.
2. For purposes of determining the origin of a good, a producer of a good may designate any intermediate material as a material to be taken into account as an originating or non-originating material, as the case may be, in determining whether the good satisfies the applicable requirements of the rules of origin.

Article 306: Accumulation

1. For purposes of determining whether a good is an originating good, a good originating in the territory of one or both of the Parties shall be considered as originating in the territory of either of the Parties.
2. 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 301 entirely in the territory of one or both of the Parties; and
 - (b) the good satisfies all other applicable requirements of this Chapter.
3. Subject to paragraph 4, 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.

4. A Party shall apply paragraph 3 only once provisions with effect equivalent to those of paragraph 3 are in force between each Party and the non-Party with which each Party has separately concluded a free trade agreement. 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 3 to those goods and under those conditions and as otherwise set out in this Agreement.

Article 307: *De Minimis*

1. Except as provided in paragraphs 2 through 4, 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 301 does not exceed 10 per cent of the transaction value of the good, provided that:

- (a) if the rule of origin of Annex 301 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. Paragraph 1 does not apply to a non-originating material used in the production of a good of Chapters 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 any of Chapters 50 through 60 of the Harmonized System that does not originate because certain non-originating yarns used in the production of the good do not fulfil the requirements set out in Annex 301, shall nonetheless be considered to originate if the total weight of all such yarns does not exceed 15 per cent of the total weight of that good.

4. A good of any of Chapters 61 through 63 of the Harmonized System, that does not originate because certain non-originating yarns used in the production of the component of the good that determines the tariff classification of that good do not fulfil the requirements set out for that good in Annex 301, shall nonetheless be considered to originate if the total weight of all such yarns in that component does not exceed 15 per cent of the total weight of that component.

Article 308: Fungible Goods and Materials

1. 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.
2. A Party shall ensure that the person that selected an inventory management method pursuant to paragraph 1 for a particular fungible good or material continues to use such inventory management method for that fungible good or material throughout the fiscal year of that person.

Article 309: Indirect Materials

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

Article 310: Sets or Assortments of Goods

Except as provided in Annex 301, a set or assortment of goods, as referred to in General Rule 3 of the Harmonized System, shall be considered as originating, provided that:

- (a) all the component goods, including packaging materials and containers, are originating; or
- (b) where the set or assortment contains non-originating component goods, including packaging materials and containers, the value of the non-originating goods, including any non-originating packaging materials and containers for the set or assortment, does not exceed 15 percent of the transaction value of the set or assortment.

Article 311: 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 as originating 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 requirements set out in Annex 301 provided that:

- (a) the accessories, spare parts and tools are not invoiced separately from the good, whether or not each is listed or detailed on the invoice; and
- (b) the quantities and value of such accessories, spare parts or tools are customary for the good.

Article 312: Packaging Materials and Containers for Retail Sale

Except as provided for in Article 310, 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 301; or
- (b) whether the good meets the requirements established in subparagraph (a) or (c) of Article 301.

Article 313: 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 314: Transit and Transshipment

A good that qualifies as an originating good under this Chapter that is exported from a Party shall maintain its originating status only if the good:

- (a) does not undergo 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; and
- (b) remains under customs control while outside the territories of the Parties.

Article 315: 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 301, 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; and
- (c) 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 316: Consultation and Modifications

1. The Parties shall consult regularly to ensure that this Chapter is interpreted and 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 Four (Origin Procedures and Trade Facilitation).
2. A Party that considers that this Chapter requires modification to take into account developments in production processes, lack of supply of originating materials or other matters may submit a modification proposal along with supporting rationale and any studies to the other Party for consideration and appropriate action under Chapter Two (National Treatment and Market Access for Goods).

Article 317: Short Supply

1. For purposes of determining the origin of a good of Chapter 50 through 63 of the Harmonized System, at the request of an interested entity of a Party, a Party shall, to the extent possible within 45 days of receiving the request, temporarily allow yarn or fabric from a non-Party to be considered originating, if the Party determines, based on information it considers necessary, that the yarn or fabric is not available in commercial quantities in a timely manner in the territory of any Party. Each Party shall implement such short-supply allowances in accordance with its applicable legal procedures.

2. The Party receiving a request for a short supply allowance pursuant to paragraph 1 shall notify the other Party of the request to the extent possible with 10 days of receiving the request. A Party may decline to grant a short-supply allowance if the other Party does not also grant such an allowance.

3. The Committee on Trade in Goods shall establish procedures to guide the administration of the short-supply allowances referred to in paragraphs 1 and 2.

Article 318: Definitions

For purposes of this Chapter:

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.

chapter means a chapter of the Harmonized System;

class of motor vehicles means any one of the following categories of motor vehicles:

- (a) motor vehicles of subheading 8701.20, motor vehicles for the transport of 16 or more persons of subheading 8702.10 or 8702.90, and motor vehicles of subheading 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90 or heading 87.05 or 87.06;

- (b) motor vehicles of subheading 8701.10 or 8701.30 through 8701.90;
- (c) motor vehicles for the transport of 15 or fewer persons of subheading 8702.10 or 8702.90, and motor vehicles of subheading 8704.21 or 8704.31; or
- (d) motor vehicles of subheading 8703.21 through 8703.90;

customs value means the value as determined in accordance with the Customs Valuation Agreement;

fungible goods or 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 principles may be broad guidelines of general application, as well as those standards, practices and procedures normally employed in accounting;

good means any merchandise, product, article or material;

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 or taken from the territory of one or both of the Parties;
- (b) plants and plant products harvested or gathered 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 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) 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 or chartered to 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 or chartered to 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 seabed, ocean floor or subsoil, outside the territories of the Parties by a Party or a person of a Party, provided that such Party or person of such Party has rights to exploit such seabed, ocean floor or subsoil;
- (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:
 - (i) production in the territory of one or both of the Parties, or
 - (ii) used goods collected in the territory in one or both of the Parties, provided that such goods are fit only for the recovery of raw materials;
- (k) recovered goods collected in the territory of one or both of the Parties and used in the territory of one or both Parties in the production of remanufactured goods; 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;

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 the operation of equipment and buildings;
- (e) gloves, glasses, footwear, clothing, safety equipment and safety 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;

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

listed with a Party means a foreign registered vessel bare-boat chartered in accordance with the domestic law of a Party and whose registration in the foreign country is suspended for the duration of the charter;

material means any ingredient, component, part or other good that is used in the production of another good

model line means a group of motor vehicles having the same platform or model name;

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;

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;

other costs means all costs recorded on the books of the producer that are not product costs or period costs;

period costs means those costs other than product costs that are expensed in the period in which they are incurred, including selling expenses and general and administrative expenses;

product costs means those costs that are associated with the production of a good and include the value of materials, direct labour costs and direct overhead;

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

producer means a person who grows, mines, extracts, harvests, raises, fishes, hunts, traps, manufactures, processes, assembles or disassembles a good;

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

recovered good means a material in the form of an individual part that is the result of:

- (a) the disassembly of a used good fit only for such recovery into individual parts, and
- (b) cleaning, inspecting, testing or other processes as necessary for improvement to working condition;

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;

section means a section of the Harmonized System; and

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;

tariff provision means a chapter, heading or subheading of the Harmonized System;

total cost means all product costs, period costs and other costs for a good incurred in the territory of one or both of the Parties. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

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;

transaction value of the good, transaction value of the set or transaction value of the set or assortment means:

- (a) the transaction value of a good when sold by the producer at the place of production; or
- (b) 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.