

## CHAPTER FOUR

### RULES OF ORIGIN

#### Article 4.1: Definitions

For the 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, or protection from predators;

**ex-factory price** means the total value of materials, parts, factory overhead, labour, any other reasonable costs incurred during the normal manufacturing process, and a reasonable profit. Any costs incurred subsequent to the goods leaving the factory, such as freight, loading, and temporary storage, are not included in the ex-factory price calculation;

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

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

**Generally Accepted Accounting Principles** means accounting principles accepted and commonly used in the territory of each Party 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 usually employed in accounting;

**good** includes a product, article, or material;

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

- (a) a mineral or other non-living natural resource extracted in or taken from the territory of one or both of the Parties;
- (b) a plant or plant product harvested or gathered in the territory of one or both of the Parties;
- (c) a live animal born and raised entirely in the territory of one or both of the Parties;
- (d) a good obtained from a live animal in the territory of one or both of the Parties;
- (e) a good obtained from hunting, trapping, fishing, or aquaculture in the territory of one or both of the Parties;
- (f) fish, shellfish, or other marine life taken from the sea, seabed, or the subsoil outside the territory of one or both of the Parties by:
  - (i) a vessel registered or listed with a Party and entitled to fly its flag,
  - (ii) a vessel leased by a company established in the territory of a Party and entitled to fly its flag, or
  - (iii) a vessel not exceeding 15 tons gross tonnage that is licensed by a Party,

except any fish, shellfish, and other marine life subject to unilateral Canadian restrictions pursuant to Canada's *Special Economic Measures Act*, S.C. 1992, c. 17, as amended;

- (g) a good produced on board a factory vessel from a good referred to in subparagraph (f), provided that the factory vessel is registered or listed with a Party, or leased by a company established in the territory of a Party, and entitled to fly its flag;
- (h) a good, other than fish, shellfish, or other marine life, taken or extracted from the seabed or the subsoil of the continental shelf or the exclusive economic zone of a Party;
- (i) a good, other than fish, shellfish or other marine life, taken or extracted from the seabed or the subsoil, in the area outside both the continental shelf and the exclusive economic zone of a Party or of any other State, by a vessel registered or listed with a Party and entitled to fly its flag, or by a Party or person of a Party provided that the Party or person of the Party has rights to exploit that seabed or subsoil;
- (j) waste and scrap derived from:
  - (i) production in the territory of one or both of the Parties, or
  - (ii) a used good collected in the territory of one or both of the Parties, provided that the good is fit only for the recovery of raw materials;
- (k) a recovered good collected in the territory of one or both of the Parties and used in the territory of one or both of the Parties in the production of a remanufactured good; and
- (l) a good produced in the territory of one or both of the Parties exclusively from a good or goods referred to in subparagraphs (a) through (k), or from their derivatives, at any stage of production;

**identical goods** means “identical goods” as defined in Article 15.2(a) of the Customs Valuation Agreement;

**indirect material** means a good used in the production, testing, or inspection of a good but which is 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 part or material used in the maintenance of equipment or buildings;
- (d) lubricant, grease, compounding material, or other material used in the production of a good or in the operation of equipment or a building;
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (f) equipment, devices, and supplies used for testing or inspecting the good;
- (g) catalyst or solvent; or
- (h) any other good that is 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 of a good;

**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 4.3(6);

**non-allowable interest cost** means interest cost incurred by a producer that exceed, by 700 basis points or more, the applicable national government interest rate identified for comparable maturities;

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

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

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

**production** means growing, mining, raising, harvesting, fishing, trapping, hunting, manufacturing, processing, assembling, or disassembling 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 recovery into individual parts;  
and
- (b) cleaning, inspecting, testing, or other processes as necessary for improvement to working condition;

**remanufactured good** means a good classified under Chapter 84, 85, 87, or 90 of the Harmonized System, except goods classified under heading 84.18, 84.24, or 85.16, subheading 8414.51 or 8414.59, or parts of fans classified under subheading 8414.90, that:

- (a) is entirely or partially composed of recovered goods;

- (b) has a life expectancy and factory warranty similar to a like new good; and
- (c) is identified as a remanufactured good if required under the domestic law of the importing Party;

**royalty** means a payment, including a payment under a technical assistance or similar agreement, made as consideration for the use or right to use a copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula, or process; but does not include a payment under a technical assistance or similar agreement that is related to specific services, such as:

- (a) personnel training, without regard to where performed; or
- (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 cost** means a cost related to:

- (a) sales or marketing promotion; media advertising; advertising or market research; promotional or demonstration materials; exhibits; sales conferences, trade shows, or conventions; banners; marketing displays; free samples; sales, marketing, or after-sales service literature (product brochures, catalogues, technical literature, price lists, service manuals, sales aid information); establishment or protection of logos or trademarks; sponsorships; wholesale or retail restocking charges; entertainment;
- (b) salesor marketing incentives; consumer, retailer, or wholesaler rebates; merchandise incentives;
- (c) salaries or wages; sales commissions; bonuses; benefits (for example, medical, insurance, or pension benefits); traveling or living expenses; membership or professional fees for sales promotion, marketing, or after-sales service personnel;

- (d) recruiting or training of sales promotion, marketing, or after-sales service personnel, or after-sales training of customers' employees, if those costs are identified separately for sales promotion, marketing, or after-sales service of a good on the financial statements or cost accounts of the producer;
- (e) product liability insurance;
- (f) office supplies for sales promotion, marketing, or after-sales service of a good if those costs are identified separately for sales promotion, marketing, or after-sales service of a good on the financial statements or cost accounts of the producer;
- (g) telephone, mail, or other communications, if those costs are identified separately for sales promotion, marketing, or after-sales service of a good on the financial statements or cost accounts of the producer;
- (h) rent or depreciation of sales promotion, marketing, or after-sales service offices or distribution centres;
- (i) property insurance premiums, taxes, utilities, or repair or maintenance of sales promotion, marketing, or after-sales service offices or distribution centres, if those costs are identified separately for sales promotion, marketing, or after-sales service of a good on the financial statements or cost accounts of the producer; and
- (j) payment by the producer to other persons for warranty repairs;

**shipping and packing cost** means a cost incurred for packing a good for shipment and for shipping the good from the point of direct shipment to the buyer, but does not include the cost of preparing or packaging the good for retail sale;

**similar goods** means "similar goods" as defined in Article 15.2(b) of the Customs Valuation Agreement;

**total cost** means a product cost, period cost, or other cost 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 in a transaction with the producer of the good or material in accordance with the principles of Article 1 of the Customs Valuation Agreement, adjusted according to 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) if 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;

**used** means used or consumed in the production of a good.

#### **Article 4.2: Originating Goods**

Except as otherwise provided in this Chapter, a good originates in the territory of a Party if:

- (a) the good is wholly obtained or produced entirely in the territory of one or both of the Parties;

- (b) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification as set out in Annex 4.1, as a result of production occurring entirely in the territory of one or both of the Parties; or otherwise satisfies the applicable requirements of that Annex if a change in tariff classification is not 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 material; or
- (d) except for a good of Chapter 39 or Chapters 50 through 63 of the Harmonized System or except as provided in Annex 4.1:
  - (i) the good is produced entirely in the territory of one or both of the Parties,
  - (ii) a non-originating material used in the production of the good cannot undergo a change in tariff classification because both the good and the non-originating material are classified in the same subheading or heading that is not further subdivided into subheadings,
  - (iii) the regional value content of the good, determined in accordance with Article 4.3, is not lower than 35% when the transaction value method is used, or 25% when the net cost method is used, and
  - (iv) the good satisfies the other applicable requirements of this Chapter.

#### **Article 4.3: Regional Value Content**

1. For the purposes of this Article:

**RVC** means the regional value content, expressed as a percentage;

**NC** means the net cost of the good;

**TV** means the transaction value of the good adjusted on an ex-factory price basis as defined in Article 4.1; and

**VNM** means the value of non-originating materials used by the producer in the production of the good calculated in accordance with paragraph 8.

2. Except as provided in paragraphs 3 and 4, each Party shall provide that an exporter or a producer calculates the regional value content of a good on the basis of the following transaction value method:

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

3. Each Party shall provide that an exporter or a producer of an automotive good of heading 87.01, subheading 8703.21 through 8703.90, or heading 87.04 through 87.08 may calculate the regional value content on the basis of the following net cost method:

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

4. Each Party shall provide that an exporter or a producer of an automotive good of subheading 8407.31 through 8407.34, heading 87.02, or subheading 8703.10 may calculate the regional value content of the good on the basis of either the transaction value method set out in paragraph 2 or the net cost method set out in paragraph 3.

5. For the purposes of calculating the regional value content of a good under paragraph 2 or 3, the value of non-originating materials used by the producer in the production of a good does not include the value of:

- (a) Non-originating material or non-originating intermediate material used to produce originating material that is subsequently used in the production of a good; or
- (b) Non-originating material used by another producer to produce an originating material that is subsequently acquired and used in the production of a good.

6. For the 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 cost, royalty, shipping and packing cost, and non-allowable interest cost that is included in the total cost of all those 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, or after-sales service cost, royalty, shipping and packing cost, and non-allowable interest cost that is 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 cost, royalty, shipping and packing cost, or non-allowable interest cost.

7. If a producer calculates the net cost in accordance with paragraph 6, any sales promotion, marketing and after-sales service cost, royalty, shipping and packing cost, and non-allowable interest cost that are included in the value of a material used in the production of the good are not subtracted from the net cost in the calculation under paragraph 3.

8. Except as provided in paragraph 9, the value of a material used in the production of a good:

- (a) is the transaction value of the material determined in accordance with Article 1 of the Customs Valuation Agreement;

- (b) if there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Customs Valuation Agreement, is determined in accordance with Articles 2 through 7 of the Customs Valuation Agreement;
- (c) if not covered under subparagraph (a) or (b), includes 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, is determined in accordance with the principles of the Customs Valuation Agreement in the same manner as an international transaction, with any modifications required by the circumstances.

9. The value of an intermediate material is:

- (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.

10. The value of an indirect material is based on the Generally Accepted Accounting Principles applicable in the territory of the Party in which the indirect material is used in the production, testing, or inspection of a good, or in the maintenance of buildings or the operation of equipment associated with the production of a good.

#### **Article 4.4: Accumulation**

1. For the purposes of determining whether a good is originating, the production of the good in the territory of one or both of the Parties by one or more producers is, at the choice of the exporter or producer of the good, considered to have been performed in the territory of either of the Parties by that exporter or producer, if:

- (a) all non-originating material used in the production of the good undergoes an applicable tariff classification change set out in Annex 4.1 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.

2. Subject to paragraph 3, if each Party has a trade agreement that establishes or that leads to the establishment of a free trade area or customs union with the same non-Party, as permitted by the WTO Agreement, the territory of that non-Party is deemed to form part of the territory of the free trade area established by this Agreement for the purposes of determining whether a good is originating under this Agreement.

3. A Party shall give effect to paragraph 2 only once provisions with an effect equivalent to paragraph 2 are in force between each Party and the non-Party, and upon agreement by the Parties on whether to limit those provisions to specified goods or under specified conditions.

#### **Article 4.5: *De Minimis***

1. Except as provided in paragraphs 2 through 4, a good is originating if the value of all non-originating material used in the production of the good that does not undergo an applicable change in tariff classification, set out in Annex 4.1, does not exceed 10% of the transaction value of the good, calculated in accordance with Article 4.3, provided that:

- (a) if the good is subject to a regional value-content requirement, the value of the non-originating material is 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 provided in Annex 4.1, 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 Chapters 50 through 60 of the Harmonized System that does not originate because certain non-originating yarn used in the production of the good does not fulfil the requirements set out for that good in Annex 4.1 is nonetheless originating if the total weight of all such yarn does not exceed 10% of the total weight of that good.

4. A good of Chapters 61 through 63 or subheading 9404.90 of the Harmonized System that does not originate because certain non-originating yarn used in the production of the component of the good that determines the tariff classification of that good does not fulfil the requirements set out for that good in Annex 4.1 is nonetheless originating if the total weight of all such yarn in that component does not exceed 10% of the total weight of that component.

#### **Article 4.6: Fungible Goods and Materials**

For the purposes of determining whether a good is originating:

- (a) if originating and non-originating fungible materials are used in the production of a good, the determination of whether the fungible material is originating need not be made through the identification of any specific fungible material, but may be made in accordance with the Generally Accepted Accounting Principles of the Party in which the production takes place, applied as set out in Annex 4.5; and
- (b) if 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 of whether the good is originating may be made in accordance with the Generally Accepted Accounting Principles of the Party from which the good is exported, applied as set out in Annex 4.5.

#### **Article 4.7: Sets or Assortments of Goods**

Except as provided in Annex 4.1, a set as referred to in Rule 3 of the *General Rules for the Interpretation of the Harmonized System*, or an assortment of goods is originating if:

- (a) all of the component goods in the set or assortment are originating; or
- (b) when the set or assortment contains non-originating component goods:
  - (i) at least one of the component goods is originating, and

- (ii) the regional value content of the set or assortment is not less than 50% of the set or assortment's transaction value.

#### **Article 4.8: Accessories, Spare Parts and Tools**

1. An accessory, spare part, or tool delivered with a good that forms part of the good's standard accessories, spare parts, or tools, is originating if the good is originating.
2. The accessory, spare part, or tool is disregarded in determining whether all non-originating material used in the production of the good undergoes the applicable change in tariff classification set out in Annex 4.1, provided that:
  - (a) the accessory, spare part, or tool is not invoiced separately from the good, whether or not each is listed or detailed on the invoice; and
  - (b) the quantity and value of the accessory, spare part, or tool are customary for the good.

#### **Article 4.9: Indirect Materials**

An indirect material is originating regardless of where it is produced.

#### **Article 4.10: Packaging Materials and Containers for Retail Sale**

If classified with a good, a packaging material or container in which a good is packaged for retail sale is disregarded in determining whether the non-originating material used in the production of the good undergoes the applicable change in tariff classification set out in Annex 4.1.

#### **Article 4.11: Packing Materials and Containers for Shipment**

A packing material or container in which a good is packed for shipment is disregarded in determining:

- (a) whether the non-originating material used in the production of the good undergoes an applicable change in tariff classification set out in Annex 4.1; and
- (b) whether the good satisfies any applicable regional value content requirement.

#### **Article 4.12: Transshipment**

An originating good that is exported from a Party maintains 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 4.13: Interpretation and Application**

For the purposes of this Chapter:

- (a) the basis for tariff classification in this Chapter is the Harmonized System;

- (b) if applying Article 4.2(d)(ii), 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 apply to domestic transactions, with any modifications required by the circumstances, as they would apply to international transactions,
  - (ii) the provisions of this Chapter take precedence over the Customs Valuation Agreement to the extent of any difference, and
  - (iii) the definitions in Article 4.1 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 must 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 4.14: Discussions and Modifications**

1. The Parties shall discuss regularly to ensure that this Chapter is administered effectively, uniformly, and consistently with the spirit and objectives of this Agreement, and cooperate in the administration of this Chapter in accordance with Chapter Five (Customs Procedures).

2. If problems arise between the Parties concerning the interpretation of this Chapter, the Parties shall discuss establishing and implementing, through their respective laws or regulations, 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 Article 3.19 (National Treatment and Market Access of Goods – Committee on Trade in Goods and Rules of Origin).