

CHAPTER FIVE
RULES OF ORIGIN

Section A : Origin Determination

ARTICLE 5.1 : ORIGINATING GOODS

For the purposes of this Agreement, **originating good** means:

- (a) a good wholly obtained or produced entirely in the territory of one or both of the Parties;
- (b) a good covered by the rules in Annex 5-A, for which 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 5-A (Product-Specific Rules of Origin) as a result of production occurring entirely in the territory of one or both of the Parties, and which satisfies all other applicable requirements;
- (c) a good covered by the rules in Annex 4-A (Textile and Apparel Specific Rules of Origin), for which each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification set out in Annex 4-A as a result of production occurring entirely in the territory of one or both of the Parties, and has satisfied all other applicable requirements of this Chapter, Chapter 4 (Textiles and Apparel) and Annex 4-A;
- (d) a good that has been produced entirely in the territory of one or both of the Parties exclusively from originating materials; or
- (e) a good otherwise provided as an originating good under this Chapter.

ARTICLE 5.2 : DE MINIMIS

1. Each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex 5-A is nonetheless an originating good if:
 - (a) the value of all non-originating materials used in the production of the good that do not undergo the required change in tariff classification does not exceed 10 percent of the adjusted value of the good; and
 - (b) the good meets all other applicable criteria set forth in this Chapter for qualifying as an originating good.

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

The value of such non-originating materials shall, however, be included in the value of non-originating materials for any applicable regional value content requirement for the good.

2. Paragraph 1 does not apply to:
 - (a) a non-originating material provided for in chapter 4 of the Harmonized System or in subheading 1901.90 that is used in the production of a good provided for in chapter 4 of the Harmonized System;
 - (b) a non-originating material provided for in chapter 4 of the Harmonized System or in subheading 1901.90 that is used in the production of a good provided for in the following provisions: subheadings 1901.10, 1901.20 or 1901.90; heading 2105; or subheadings 2106.90, 2202.90, or 2309.90;
 - (c) a non-originating material provided for in heading 0805 or subheadings 2009.11 through 2009.30 that is used in the production of a good provided for in subheadings 2009.11 through 2009.30, or subheadings 2106.90 or 2202.90;
 - (d) a non-originating material provided for in chapter 15 of the Harmonized System that is used in the production of a good provided for in headings 1501 through 1508, 1512, 1514 or 1515;
 - (e) a non-originating material provided for in heading 1701 that is used in the production of a good provided for in headings 1701 through 1703;
 - (f) a non-originating material provided for in chapter 17 of the Harmonized System or heading 1805 that is used in the production of a good provided for in subheading 1806.10;
 - (g) a non-originating material provided for in headings 2203 through 2208 that is used in the production of a good provided for in headings 2207 or 2208; and
 - (h) a non-originating material used in the production of a good provided for in Chapters 1 through 21 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this Article.

For purposes of this paragraph, **heading** and **subheading** mean, respectively, a heading and subheading of the Harmonized System.

3. With respect to a textile or apparel good to which Article 4.2.6 (Rules of Origin and Related Matters: *De Minimis*) applies, paragraph 1 does not apply.

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

ARTICLE 5.3 : ACCUMULATION

1. Originating materials from the territory of a Party, used in the production of a good in the territory of the other Party, shall be considered to originate in the territory of the other Party.
2. A good is an originating good when it is produced in the territory of one or both Parties by one or more producers, provided that the good satisfies the requirements in Article 5.1 and all other applicable requirements of this Chapter.

ARTICLE 5.4 : REGIONAL VALUE CONTENT

1. Except for goods covered by paragraph 2, where Annex 5-A (Product-Specific Rules of Origin) refers to a regional value content, each Party shall provide that the regional value content of a good shall be calculated on the basis of one of the following methods:

- (a) Build-down Method

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

where

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

AV is the adjusted value, and

VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good. VNM does not include the value of a material that is self-produced.

- (b) Build-up Method

$$RVC = \frac{VOM}{AV} \times 100$$

where

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

AV is the adjusted value; and

VOM is the value of originating materials that are acquired or self-produced, and used by the producer in the production of the good.

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

2. When regional value content is required for certain automotive goods¹ under Annex 5-A to determine if a good is originating, each Party shall provide that the regional value content of a good shall be calculated solely on the basis of the following method:

Method for Automotive Products (“Net Cost Method”)

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

where

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

NC is the net cost of the good;

VNM is the value of non-originating materials acquired and used by the producer in the production of the good. VNM does not include the value of a material that is self-produced.

3. Each Party shall provide that, for purposes of the regional value content under the Net Cost method in paragraph 2 of this Article, the calculation may be averaged over the producer’s fiscal year using:

- (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 class of motor vehicles produced in the same plant in the territory of a Party; or
- (c) the same model line of motor vehicles produced in the territory of a Party,

on the basis of all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of the other Party.

4. For purposes of calculating regional value content under the Net Cost method in paragraph 2 for automotive components or materials² produced in the same plant, the producer of the good may:

⁵⁻¹ HS 8407.31-34 (engines), 8407.20 (diesel engines for vehicles), 84.09 (parts of engines) 87.01 - 87.05 (motor vehicles), 87.06 (chassis), 87.07 (bodies), and 87.08 (motor vehicle parts).

⁵⁻² Automotive Components or Materials: HS 8407.31-34 (engines), 8407.20 (diesel engines for vehicles), 84.09 (parts of engines), 87.06 (chassis), 87.07 (bodies), 87.08 (motor vehicle parts).

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

- (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 its fiscal year;
- (b) calculate the average referred to in subparagraph (a) separately for such goods sold to one or more motor vehicle producers; or
- (c) with respect to any calculation under this paragraph, calculate separately those goods that are exported to the territory of the other Party.

ARTICLE 5.5 : VALUE OF MATERIALS

1. Each Party shall provide that for the purpose of calculating the regional value content of a good and for the purpose of applying the de minimis rule, the value of a material is:

- (a) for a material imported by the producer of the good, the adjusted value of the material;
- (b) for a material acquired in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15 and the corresponding interpretative notes of the Customs Valuation Agreement in the same manner as with imports, with such reasonable modifications as may be required due to the absence of an importation; or
- (c) for a material that is self-produced, the sum of all expenses incurred in the production of the material, including general expenses, and an amount for profit equivalent to the profit added in the normal course of trade.

2. Each Party shall provide that the value of materials may be adjusted as follows:

- (a) for originating materials, the following expenses may be added to the value of the material if not included under paragraph 1:
 - (i) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the Parties to the location of the producer;

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

- (ii) duties, taxes and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and
 - (iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and
- (b) for non-originating materials, where included under paragraph 1, the following expenses may be deducted from the value of the material:
- (i) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the Parties to the location of the producer;
 - (ii) duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;
 - (iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products;
 - (iv) the cost of processing incurred in the territory of a Party in the production of the non-originating material; and
 - (v) the cost of originating materials used in the production of the non-originating material in the territory of a Party.

ARTICLE 5.6 : ACCESSORIES, SPARE PARTS, AND TOOLS

Each Party shall provide that accessories, spare parts, or tools delivered with a good that form part of the good's standard accessories, spare parts, or tools, shall be treated as originating goods 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 change in tariff classification, provided that:

- (a) the accessories, spare parts, or tools are not invoiced separately from the good;
- (b) the quantities and value of the accessories, spare parts, or tools are customary for the good; and

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

- (c) if the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

ARTICLE 5.7 : FUNGIBLE GOODS AND MATERIALS

1. Each Party shall provide that the determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each good or material or through the use of any inventory management method, such as averaging, last-in first-out, or first-in first-out, recognized in the generally accepted accounting principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.
2. Each Party shall provide that that an inventory management method selected under paragraph 1 for particular fungible goods or materials shall continue to be used for those fungible goods or materials throughout the fiscal year of the person that selected the inventory management method.

ARTICLE 5.8 : PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE

Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 5-A (Product-Specific Rules of Origin) or Annex 4-A (Textiles and Apparel Specific Rules of Origin), and, if the good is subject to a regional value content requirement, the value of such packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

ARTICLE 5.9 : PACKING MATERIALS AND CONTAINERS FOR SHIPMENT

Each Party shall provide that packing materials and containers in which a good is packed for shipment shall be disregarded in determining whether:

- (a) the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 5-A or Annex 4-A; and
- (b) the good satisfies a regional value content requirement.

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

ARTICLE 5.10 : INDIRECT MATERIALS

Each Party shall provide that an indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in the accounting records of the producer of the good.

ARTICLE 5.11 : THIRD COUNTRY TRANSPORTATION

A good shall not be considered to be an originating good if the good undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party.

Section B : Supporting Information and Verification

ARTICLE 5.12 : CLAIMS FOR PREFERENTIAL TREATMENT

1. Each Party shall provide that an importer may make a claim for preferential treatment under this Agreement based on the importer's knowledge or on information in the importer's possession that the good qualifies as an originating good.
2. Each Party may require that an importer be prepared to submit, upon request, a statement setting forth the reasons that the good qualifies as an originating good, including pertinent cost and manufacturing information. The statement need not be in a prescribed format, and may be submitted electronically, where feasible.

ARTICLE 5.13 : OBLIGATIONS RELATING TO IMPORTATIONS

1. Each Party shall grant any claim for preferential treatment under this Agreement made in accordance with this Chapter unless the Party possesses information that the claim is invalid, or unless a Party has taken action under Article 4.3 (Customs Cooperation).
2. A Party may deny preferential treatment under this Agreement to an imported good if the importer fails to comply with any requirement of this Chapter or, for a textile or apparel good, if the importer is not able to demonstrate that the goods are originating or if a Party has taken action under Article 4.3 (Customs Cooperation).
3. If a Party denies a claim for preferential treatment under this Agreement, it shall issue a written determination containing findings of fact and the legal basis for the determination, unless a Party has taken action under Article 4.3 (Customs Cooperation).

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

4. The importing Party shall not subject an importer to any penalty for making an invalid claim for preferential treatment if the importer:
- (a) upon becoming aware that such claim is not valid, promptly and voluntarily corrects the claim and pays any duty owing; and
 - (b) in any event, corrects the claim and pays any duty owing within a period determined by the Party, which shall be at least one year from the submission of the invalid claim.

This paragraph shall not prevent a Party from taking action under Article 4.3 (Customs Cooperation).

ARTICLE 5.14 : RECORD KEEPING REQUIREMENT

Each Party may require that importers maintain, for up to five years after the date of importation, records relating to the importation of the good, and may require, as stipulated in Article 5.12.2, that an importer provide, upon request, records which are necessary to demonstrate that a good qualifies as an originating good, including records concerning:

- (a) the purchase, cost and value of, and payment for, the good;
- (b) the purchase, cost and value of, and payment for, all materials, including indirect materials, used in the production of the good; and
- (c) the production of the good in the form in which the good was exported.

ARTICLE 5.15 : VERIFICATION

For purposes of determining whether a good imported into its territory from the territory of the other Party qualifies as an originating good, a Party may conduct a verification by means of:

- (a) requests for information from the importer;
- (b) written requests for information to an exporter or a producer in the territory of the other Party;
- (c) requests for the importer to arrange for the producer or exporter to provide information directly to the Party conducting the verification;
- (d) information received directly by the importing Party from an importer as a result of a process described in Article 5.12.2;

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

- (e) visits to the premises of an exporter or a producer in the territory of the other Party, in accordance with any procedures that the Parties jointly adopt pertaining to the verification; or
- (f) such other procedures as the Parties may agree.

Section C : Consultation And Modifications

ARTICLE 5.16 : CONSULTATION AND MODIFICATIONS

1. The Parties shall consult and cooperate to ensure that this Chapter is applied in an effective and uniform manner. Unless the Parties otherwise agree, the Parties shall consult within six months of the date of entry into force of this Agreement regarding the implementation and application of this Chapter.
2. The Parties shall consult regularly to discuss necessary amendments to this Chapter and its Annexes, taking into account developments in technology, production processes, and other related matters, pursuant to Article 21.5 (Consultations).

Section D : Application and Interpretation

ARTICLE 5.17 : APPLICATION AND INTERPRETATION

For the purposes of this Chapter:

- (a) the basis for tariff classification is the Harmonized System;
- (b) any cost and value 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.

SECTION E : DEFINITIONS

ARTICLE 5.18 : DEFINITIONS

For the purposes of this Chapter:

1. **adjusted value** means the value determined under Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, as adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incidental to the international shipment of the good from the country of exportation to the place of importation;
2. **class of motor vehicles** means any one of the following categories of motor vehicles:

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

- (a) motor vehicles provided for in subheading 8701.20, motor vehicles for the transport of 16 or more persons of subheadings 8702.10 or 8702.90, and motor vehicles of subheadings 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or headings 87.05 and 87.06;
 - (b) motor vehicles provided for in subheading 8701.10 or 8701.30-8701.90;
 - (c) motor vehicles for the transport of 15 or fewer persons provided for in subheadings 8702.10 or 8702.90, and motor vehicles of subheadings 8704.21 and 8704.31; or
 - (d) motor vehicles provided for in subheading 8703.21-8703.90);
3. **fungible goods or materials** means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;
4. **generally accepted accounting principles** means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;
5. **a good wholly obtained or produced entirely in the territory of one or both of the Parties** means a good that is:
- (a) a mineral goods extracted there;
 - (b) a vegetable good, as such goods are defined in the Harmonized System, harvested there;
 - (c) a live animal born and raised there;
 - (d) a good obtained from hunting, trapping, fishing, or aquaculture conducted there;
 - (e) a good (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;
 - (f) a good produced exclusively from products referred to in paragraph (e) on board factory ships registered or recorded with a Party and flying its flag;

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

- (g) a good taken by a Party, or a person of a Party, from the seabed or beneath the seabed outside territorial waters, provided that the Party has rights to exploit such seabed;
- (h) a good taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;
- (i) waste and scrap derived from
 - (i) production there; or
 - (ii) used goods collected there, provided such goods are fit only for the recovery of raw materials;
- (j) a recovered good derived there, from goods which have passed their life expectancy, or are no longer useable due to defects, and utilized there in the production of remanufactured goods; or
- (k) a good produced there exclusively from goods referred to in (a) through (i) above, or from their derivatives, at any stage of production.

6. **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 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;

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

7. **material** means a good that is used in the production of another good;
8. **material that is self-produced** means an originating material that is produced by a producer of a good and used in the production of that good;
9. **model line** means a group of motor vehicles having the same platform or model name;
10. **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;
11. **net cost of a good** means the net cost that can be reasonably allocated to a good under one of the following methods:

- (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 and non-allowable interests 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 interests 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, and non-allowable interests costs,

provided that the allocation of all such costs is consistent with the provisions regarding the reasonable allocation of costs set out in generally accepted accounting principles;

12. **non-allowable interest costs** means interest costs incurred by a producer that exceed 700 basis points above the Party's applicable official interest rate for comparable maturities;

13. **non-originating material** means a material that has not satisfied the requirements of this Chapter;

DRAFT
SUBJECT TO LEGAL REVIEW FOR ACCURACY, CLARITY, AND CONSISTENCY
MARCH 1, 2004

14. **preferential treatment** means the customs duty rate and treatment under Article 2.12 (Merchandise Processing Fee) that is applicable to an originating good pursuant to this Agreement;
15. **producer** means a person who grows, raises, mines, harvests, fishes, traps, hunts, manufactures, processes, assembles or disassembles a good;
16. **production** means growing, raising, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, assembling or disassembling a good;
17. **reasonably allocate** means to apportion in a manner as would be appropriate under generally accepted accounting principles;
18. **recovered goods** means materials in the form of individual parts that result from:
- (a) the disassembly of used goods into individual parts; and
 - (b) the cleaning, inspecting, or testing, and as necessary for improvement to sound working condition;
19. **remanufactured good** means an industrial good assembled in the territory of a Party, falling within US: Chapters 84, 85, 87 or heading 90.26, 90.31 and 90.32, except goods under heading 84.18, 85.16 or 87.01 through 87.06, of the Harmonized System, inclusive, that:
- (a) is entirely or partially comprised of recovered goods;
 - (b) has a similar life expectancy and meets the same performance standards as a new good; and
 - (c) enjoys a factory warranty similar to such a new good;
20. **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; and
21. **used** means used or consumed in the production of goods