

## CHAPTER THREE

### RULES OF ORIGIN

#### Article 3.1 Definitions

For the purposes of this Chapter:

- (a) **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;
- (b) **CIF** means the value of the good imported, and includes the cost of freight and insurance up to the port or place of entry into the country of importation;
- (c) **FOB** means the free-on-board valuation of the good, inclusive of the cost of transport to the port or site of final shipment abroad;
- (d) **Generally Accepted Accounting Principles** means the recognised accounting standards 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;
- (e) **Good(s)** means any merchandise, product, article or material;
- (f) **Identical and interchangeable material** means materials being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which once they are incorporated into the finished good cannot be distinguished from one another for origin by virtue of mere visual examination;
- (g) **Indirect material(s)** means goods used in the production, testing, or inspection of another good but not physically incorporated into the good, or goods used in the maintenance of buildings or the operation of equipment associated with the production of a good, such as:
  - (i) fuel, energy, catalysts and solvents;

- (ii) equipment, devices, and supplies used for testing or inspection of the goods;
  - (iii) gloves, glasses, footwear, clothing, safety equipment and supplies;
  - (iv) tools, dies and moulds;
  - (v) spare parts and materials used for maintenance of equipment and buildings;
  - (vi) lubricant, greases, compounding materials and other materials used in production or used to operate equipment and buildings; and
  - (vii) any other goods which are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;
- (h) **Material(s)** means any matter or substance including raw materials, ingredients, parts, and components used or consumed in the production of goods or physically incorporated into a good subjected to a process in the production of another good;
- (i) **Minimal operations or processes** mean operations or processes which contribute minimally to the essential characteristics of the goods and which, by themselves or in combination, do not confer origin;
- (j) **Non-originating good(s) or non-originating material(s)** means goods or materials which does not qualify as originating under this Chapter;
- (k) **Originating good(s) or originating material(s)** means goods or materials that qualify as originating under this Chapter;
- (l) **Packing materials and containers for shipment** means goods used to protect a good during its transportation other than containers and packaging materials used for retail sale;
- (m) **Producer** means a person who engages in the production of a good; and
- (n) **Production** means methods of obtaining goods, including growing, cultivating, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, farming, trapping, hunting, manufacturing, aquaculture, producing, processing or assembling a

good.

### **Article 3.2 Origin Criteria**

For the purposes of this Chapter, goods imported by a Party shall be deemed to be originating goods if they conform to the origin requirements under any one of the following:

- (a) goods which are wholly obtained or produced as defined in Article 3.3 (Wholly Obtained or Produced Goods);
- (b) goods produced entirely in the territory of one or both of the Parties exclusively from originating materials from one or both of the Parties; or
- (c) goods produced in the Parties from non-originating materials provided such goods meet the requirements specified in Annex 2 (Product Specific Rules);

and meet all other applicable requirements of this Chapter.

### **Article 3.3 Wholly Obtained or Produced Goods**

For the purposes of Article 3.2(1)(a) (Origin Criteria), the following goods shall be considered as wholly produced or obtained:

- (a) plant and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, cultivated, harvested, picked, or gathered in the territory of a Party;
- (b) live animals born and raised in the territory of a Party;
- (c) goods obtained from live animals in the territory of a Party;
- (d) goods obtained from hunting, trapping, fishing, farming, cultivating, aquaculture, gathering, or capturing in the territory of a Party;
- (e) minerals and other naturally occurring substances extracted or taken from the soil, waters or seabed and subsoil, in the territory of a Party;
- (f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with the *United Nations Convention on the Law of the Sea 1982* ("UNCLOS"), by any vessel registered or

recorded and entitled to fly the flag of that Party;

- (g) goods produced on board any factory ship registered or recorded and entitled to fly the flag of a Party from the goods referred to in subparagraph (f);
- (h) goods taken by a Party, or a person of a Party, from the seabed and subsoil beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which third parties exercise jurisdiction under exploitation rights granted in accordance with the UNCLOS;
- (i) goods which are:
  - (i) waste and scrap derived from production and consumption in the territory of a Party provided that such goods are fit only for the recovery of raw materials; or
  - (ii) used goods collected in the territory of a Party provided that such goods are fit only for the recovery of raw materials; and
- (j) goods produced or obtained in the territory of a Party solely from products referred to in subparagraphs (a) to (i) or from their derivatives.

#### **Article 3.4 Qualifying Value Content**

1. For the purposes of Annex 2 (Product Specific Rules), Qualifying Value Content ("QVC") of a good shall be calculated as follows:

$$\text{QVC} = \frac{\text{FOB} - \text{VNM}}{\text{FOB}} \times 100$$

where:

QVC is the qualifying value content of a good, expressed as a percentage.

VNM is the value of the non-originating materials.

The VNM shall be:

- (a) the CIF value at the time of importation of the materials; or
- (b) the earliest ascertained price paid or payable for non-originating materials, including materials of undetermined origin in the territory of the Party where the working or processing takes place. When, in

the territory of a Party, the producer of a good acquires non-originating materials within that Party, the value of such materials shall not include freight, insurance, packing costs and any other costs incidental to the transport of those materials from the location of the supplier to the location of production.

2. The value of the goods under this Chapter shall be determined in accordance with the Customs Valuation Agreement.

### **Article 3.5 Cumulative Rule of Origin**

For the purposes of Article 3.2 (Origin Criteria), a good which complies with the origin requirements provided therein and which is used in the other Party as a material in the production of another good shall be considered to originate in the Party where working or processing of the finished good has taken place.

### **Article 3.6 Minimal Operations and Processes**

Operations or processes undertaken by themselves or in combination with each other for the purpose, such as those listed below, are considered to be minimal and shall not confer origin:

- (a) ensuring preservation of goods in good condition for the purposes of transport or storage;
- (b) facilitating shipment or transportation;
- (c) packaging<sup>1</sup> or presenting goods for sale;
- (d) affixing of marks, labels or other like distinguishing signs on products or their packaging;
- (e) simple processes consisting of sifting, classifying, washing, cutting, slitting, bending, coiling and uncoiling and other similar operations; and
- (f) mere dilution with water or another substance that does not materially alter the characteristics of the goods.

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<sup>1</sup> This excludes encapsulation which is termed "packaging" by the electronics industry.

**Article 3.7**  
***De Minimis***

1. A good which does not satisfy a change in tariff classification required pursuant to Annex 2 (Product Specific Rules) is nonetheless an originating good if the value of non-originating materials used in the production of the good that do not undergo the required change in tariff classification do not exceed ten percent of the FOB value of the good.

2. Notwithstanding paragraph 1, a good classified in Chapters 50 through 63 of the HS Code which does not satisfy a change in tariff classification required pursuant to Annex 2 (Product Specific Rules) may nonetheless be an originating good if the weight of all non-originating materials used in the production of the good that do not undergo the required change in tariff classification do not exceed ten percent of the total weight of the good.

3. The goods under paragraphs 1 and 2 shall meet all other applicable requirements of this Chapter.

**Article 3.8**  
**Direct Consignment**

A good shall retain its originating status as determined under Article 3.2 (Origin Criteria) if either of the following conditions have been met:

- (a) the good has been transported to the importing Party without passing through any non-Party; or
- (b) the good has transited through a non-Party, provided that:
  - (i) the good has not entered the commerce of a non-Party;
  - (ii) the good has not undergone subsequent production or any other operation outside the territories of the Parties other than unloading, reloading, storing, or any other operations necessary to preserve it in good condition or to transport it to the other Party; and
  - (iii) the transit entry is justified for geographical, economic or logistical reasons.

**Article 3.9**  
**Packaging Materials and Containers for Retail Sale**

Packaging materials and containers in which goods are packaged for retail sale, if classified with the goods, shall be disregarded in determining

whether those goods have undergone the appropriate change in tariff classification set out in Annex 2 (Product Specific Rules). However, if the goods are subject to a QVC requirement, the value of the packaging and containers used for retail sale shall be considered as originating or non-originating, as the case may be, in calculating the value of the goods.

**Article 3.10**  
**Packing Materials and Containers for Shipment**

The containers and packing materials exclusively used for the shipment of goods shall not be taken into account in determining the origin of any good.

**Article 3.11**  
**Accessories, Spare Parts, Tools or Instructional and Information Materials**

1. Accessories, spare parts, tools or instructional and information materials normally presented with the goods shall be regarded as originating goods and shall be disregarded in determining whether or not all the non-originating materials used in the production of the originating goods have undergone the applicable change in tariff classification, provided that:

- (a) the accessories, spare parts, tools or instructional and information materials are classified with and not invoiced separately from the goods; and
- (b) the quantities of those accessories, spare parts, tools or instructional and information materials are customary for the good.

2. If the goods are subject to a QVC requirement, the value of the accessories, spare parts, tools or instructional and information materials shall be taken into account as originating materials or non-originating materials, as the case may be.

3. This Article does not apply where the accessories, spare parts, tools or instructional and information materials have been added solely for the purpose of artificially raising the QVC of the goods.

**Article 3.12**  
**Indirect Materials**

Indirect materials shall be considered to be originating materials, without regard to where they were produced, and their value shall be the cost registered in the accounting records of the producer of the goods.

**Article 3.13**  
**Identical and Interchangeable Goods and Materials**

For the purpose of establishing if a good is originating, when its manufacture utilises originating and non-originating materials, mixed or physically combined, the origin of such materials shall be determined by Generally Accepted Accounting Principles of stock control or inventory management applicable in the exporting Party.

**Article 3.14**  
**Declaration of Origin/Certificate of Origin**

A claim that goods are eligible for preferential tariff treatment shall be supported by a Declaration of Origin or Certificate of Origin as set out in Annex 3 (Procedures and Verification).

**Article 3.15**  
**Denial of Preferential Tariff Treatment**

The Customs Administration of the importing Party may deny a claim for preferential tariff treatment when:

- (a) the good does not qualify as an originating good; or
- (b) the importer, exporter or producer fails to comply with any of the relevant requirements of this Chapter.

**Article 3.16**  
**Review and Appeal**

The importing Party shall grant the right of appeal in matters relating to the eligibility for preferential tariff treatment to producers, exporters or importers of goods traded or to be traded between the Parties, in accordance with its domestic laws, regulations and administrative practices.