

## CHAPTER 3 : RULES OF ORIGIN

### SECTION A : ORIGIN DETERMINATION

#### ARTICLE 3.1 : ORIGINATING GOODS

For purposes of this Agreement, an **originating good** means a good:

- (a) wholly obtained or produced entirely in the territory of one or both of the Parties;  
or
- (b) that has satisfied the requirements specified in Annex 3A; or
- (c) otherwise provided as an originating good under this Chapter.

#### ARTICLE 3.2 : TREATMENT OF CERTAIN PRODUCTS

1. Each Party shall provide that a good listed in Annex 3B is an originating good when imported into its territory from the territory of the other Party.
2. Within six months after entry into force of this Agreement, the Parties shall meet to explore the expansion of the product coverage of Annex 3B. The Parties shall consult regularly to review the operation of this Article and consider the addition of goods to Annex 3B.<sup>3-1</sup>

#### ARTICLE 3.3 : DE MINIMIS

1. Each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex 3A 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.

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.

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<sup>3-1</sup> Such consultations may include meetings of the Joint Committee pursuant to Article 20.1 (Joint Committee).



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. A textile or apparel good provided for in Chapters 50 through 63 of the Harmonized System that is not an originating good, because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 3A, shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than seven percent of the total weight of that component. Notwithstanding the preceding sentence, a textile or apparel good containing elastomeric yarns in the component of the good



that determines the tariff classification of the good shall be an originating good only if such yarns are wholly formed in the territory of a Party.

#### ARTICLE 3.4 : 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 3.1 and all other applicable requirements of this Chapter.

#### ARTICLE 3.5 : REGIONAL VALUE CONTENT

Where Annex 3A 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.

- (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.



## ARTICLE 3.6 : VALUE OF MATERIALS

1. Each Party shall provide that for purposes of calculating the regional value content of a good and for purposes 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, except for materials within the meaning of subparagraph (c), the adjusted value of the material; or
  - (c) for a material that is self-produced, or where the relationship between the producer of the good and the seller of the material influenced the price actually paid or payable for the material, including a material obtained without charge, the sum of:
    - (i) all expenses incurred in the production of the material, including general expenses; and
    - (ii) an amount for profit.
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 to the location of the producer;
    - (ii) duties, taxes and customs brokerage fees on the material paid in the territory of one or more 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-product; 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 to the location of the producer;



- (ii) duties, taxes, and customs brokerage fees on the material paid in the territory of one or more 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 3.7 : 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
- (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 3.8 : 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 3.9 : 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 3A 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 3.10 : 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 an applicable change in tariff classification set out in Annex 3A; and
- (b) the good satisfies a regional value content requirement.

### ARTICLE 3.11 : 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 3.12 : 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 3.13 : 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 3.14 : OBLIGATIONS RELATING TO IMPORTATIONS

1. Each Party shall grant any claim for preferential treatment under this Agreement made in accordance with this Section, unless the Party possesses information that the claim is invalid.
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.
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.
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 submission of the invalid claim.

#### ARTICLE 3.15 : 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 that an importer provide, upon request, records which are necessary to demonstrate that a good qualifies as an originating good, as stipulated in Article 3.13.2, including records concerning:

- (a) the purchase of, cost of, value of, and payment for, the good;
- (b) the purchase of, cost of, 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 is exported.

#### ARTICLE 3.16 : 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 exporter or a producer as a result of a process described in Article 3.13.2;
- (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.

#### ARTICLE 3.17: CERTAIN APPAREL GOODS

Notwithstanding any other provision of this Agreement, the United States shall consider an apparel good listed in Chapter 61 or 62 of Annex 3A to be an originating good if it is both cut (or knit to shape) and sewn or otherwise assembled in one or both Parties from fabric or yarn, regardless of origin, designated by the appropriate U.S. government authority as fabric or yarn not available in commercial quantities in a timely manner in the United States. Such designation must have been made in a notice published in the Federal Register of the United States identifying apparel goods made from such fabric or yarn as eligible for entry into the United States under subheading 9819.11.24 or 9820.11.27 of the Harmonized Tariff Schedule of the United States as of November 15, 2002. For purposes of this Article, reference in such a notice to yarn or fabric formed in the United States shall be deemed to include yarn or fabric formed in either Party.

### SECTION C : CONSULTATION AND MODIFICATIONS

#### ARTICLE 3.18 : CONSULTATION AND MODIFICATIONS

1. The Parties shall consult and cooperate to ensure that this Chapter is applied in an effective and uniform manner.
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 20.3 (Consultations).
3. Within six months after entry into force of this Agreement, the Parties shall meet:
  - (a) to consider possible modifications to Annex 3A, including an assessment of the operation and use of the RVC;
  - (b) the addition of products to Annex 3B; and
  - (c) to review and consider possible modifications to Annex 3C.



4. (a) On the request of either Party, the Parties shall consult:
  - (i) to consider whether the rules of origin applicable to particular textile or apparel goods under this Chapter should be revised to address availability of supply of fibers, yarns or fabrics in the territories of the Parties; or
  - (ii) to review the rules of origin applicable to particular textile or apparel goods in light of
    - (A) the effects of increasing global competition,
    - (B) the termination of the WTO Agreement on Textiles and Clothing and the full integration of the textile and apparel sector into GATT 1994, and
    - (C) eventual harmonization of rules of origin pursuant to Part IV of the WTO Agreement on Rules of Origin.
- (b) In the consultations referred to in subparagraph (a)(i), each Party shall consider all data presented by the other Party showing substantial production in its territory of a particular fiber, yarn or fabric. The Parties shall consider that substantial production has been shown if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the fiber, yarn or fabric in a timely manner.
- (c) The Parties shall endeavor to conclude consultations under subparagraph (a)(i) within 60 days of receipt of a request by one Party from the other Party. An amended rule of origin agreed to by the Parties shall supersede any prior rule of origin under this Agreement for the textile or apparel goods at issue, on approval by the Parties in accordance with Article 21.8 (Amendments).
- (d) In consultations under subparagraph (a)(ii), the Parties shall give particular consideration to operative rules in other economic association or integration agreements and developments relating to textile and apparel production and trade.

#### SECTION D : DEFINITIONS

##### ARTICLE 3.19 : DEFINITIONS

For 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 incident to the international shipment of the merchandise from the country of exportation to the place of importation;

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

3. **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;

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

- (a) mineral goods extracted there;
- (b) vegetable goods, as such goods are defined in the Harmonized System, harvested there;
- (c) live animals born and raised there;
- (d) goods obtained from hunting, trapping, fishing, or aquaculture conducted there;
- (e) goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;
- (f) goods produced exclusively from products referred to in paragraph (e) on board factory ships registered or recorded with a Party and flying its flag;
- (g) goods 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) goods 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) recovered goods derived there from used goods; or



- (k) goods produced there exclusively from goods referred to in (a) through (i) above, or from their derivatives, at any stage of production.

5. **Harmonized System** means the Harmonized Commodity Description and Coding System;

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 molds;
- (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;

7. **material** means a good that is used in the production of another good;

8. **material that is self-produced** means a good, such as a part or ingredient, produced by the producer and used by the producer in the production of another good

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

10. **preferential treatment** means the customs duty rate and treatment under Article 2.8 (Merchandise Processing Fee) that is applicable to an originating good pursuant to this Agreement;

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

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



13. **recovered goods** means materials in the form of individual parts that result from:
- (a) the complete disassembly of used goods into individual parts; and
  - (b) the cleaning, inspecting, or testing, and as necessary for improvement to sound working condition one or more of the following processes: welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding in order for such parts to be assembled with other parts, including other recovered parts in the production of a remanufactured good of Annex 3C;
14. **remanufactured good** means an industrial good assembled in the territory of a Party, designated under Annex 3C, that:
- (a) is entirely or partially comprised of recovered goods;
  - (b) has the same life expectancy and meets the same performance standards as a new good; and
  - (c) enjoys the same factory warranty as such a new good; and
15. **used** means used or consumed in the production of goods.

#### SECTION E : APPLICATION AND INTERPRETATION

##### ARTICLE 3.20 : APPLICATION AND INTERPRETATION

For 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.



**ANNEX 3A**

**PRODUCT-SPECIFIC RULES**

Annex 3A is attached as a separate volume.



**ANNEX 3B**

**INTEGRATED SOURCING INITIATIVE**

Annex 3B is attached as a separate volume.



**ANNEX 3C**

**REMANUFACTURED PRODUCTS**

Annex 3C is attached as a separate volume.