

## CHAPTER 3 RULES OF ORIGIN

### Article 3.1 Definitions

For the purposes of this Chapter:

- (a) **carrier** means any vehicle for transportation by air, sea and land;
- (b) **CIF value** means the price actually paid or payable to the exporter for a good including the cost of the good, insurance, and freight necessary to deliver the good to the named port of destination. The valuation shall be made in accordance with the WTO Agreement on Implementation of Article VII of GATT 1994;
- (c) **FOB value** means the price actually paid or payable to the exporter for a good when the good is loaded onto the carrier at the named port of exportation, including the cost of the good and all costs necessary to bring the good onto the carrier. The valuation shall be made in accordance with the WTO Agreement on Implementation of Article VII of GATT 1994;
- (d) **identical and interchangeable materials** 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 purposes by virtue of any markings, *et cetera*;
- (e) **materials** means ingredients, raw materials, parts, components, sub-assemblies or goods that are used in the production of another good or are physically incorporated into another good;
- (f) **originating goods** means goods that qualify as originating in accordance with the provisions of Article 3.2 (Origin Criteria);
- (g) **Product Specific Rules** are rules which specify that the materials have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy qualifying value content criterion, or a combination of any of these criteria, as provided in Annex 3-1 (Product Specific Rules); and
- (h) **production** means methods of obtaining goods including growing, planting, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing, assembling or disassembling a good.

## **Article 3.2 Origin Criteria**

For the purposes of this Chapter, goods imported by a Party which are consigned directly within the meaning of Article 3.8 (Direct Consignment), shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:

- (a) goods which are wholly obtained or produced in the territory of the exporting Party as set out and defined in Article 3.3 (Wholly Obtained or Produced Goods); or
- (b) goods not wholly obtained or produced in the territory of the exporting Party provided the said goods are eligible under Articles 3.4 (Not Wholly Obtained or Produced Goods) or 3.5 (Cumulative Rule of Origin).

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

Within the meaning of paragraph (a) of Article 3.2 (Origin Criteria), the following good shall be deemed as being wholly obtained or produced in the territory of a Party:

- (a) plant<sup>1</sup> and plant products grown, planted and harvested there;
- (b) live animals<sup>2</sup> born and raised there;
- (c) products<sup>3</sup> obtained from live animals referred to in paragraph (b);
- (d) goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted there;
- (e) minerals and other naturally occurring substances, not included in paragraphs (a) to (d), extracted or taken from its soil, waters, seabed or beneath their seabed;
- (f) goods taken from the waters, seabed or beneath the seabed outside the territorial waters of that Party, provided that, the Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with the United Nations Convention on the Law of the Sea, 1982;

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<sup>1</sup> "Plant" refers to all plant life, including forestry goods, fruit, flowers, vegetables, trees, seaweed, fungi and live plants.

<sup>2</sup> "Animals" referred to in paragraphs (b) and (c) of this Article covers all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, and living organisms.

<sup>3</sup> "Products" refer to those obtained from live animals without further processing, including milk, eggs, natural honey, hair, wool, semen and dung.

- (g) goods of sea-fishing and other marine goods taken from the high seas by vessels registered with a Party and entitled to fly the flag of that Party;
- (h) goods processed or made on board factory ships registered with a Party and entitled to fly the flag of that Party, exclusively from goods referred to in paragraph (g) above;
- (i) articles collected there which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts of raw materials, or for recycling purposes<sup>4</sup>; and
- (j) goods obtained or produced in the territory of a Party solely from goods referred to in paragraphs (a) to (i).

**Article 3.4**  
**Not Wholly Obtained or Produced Goods**

1. For the purposes of paragraph (b) of Article 3.2 (Origin Criteria), a good shall be deemed to be originating:

- (a) when such goods satisfy the criteria under the Product Specific Rules provided in Annex 3-1; or
- (b) when:
  - (i) all non-originating materials used in the production of the goods have undergone a change in tariff classification in a sub-heading at the six digit level of the HS; and
  - (ii) qualifying value content of the goods is not less than thirty five per cent of the FOB value,

provided that the final process of manufacturing is performed within the territory of the exporting Party.

2. For the purposes of this Article, the formulae for calculating the qualifying value content are as follows<sup>5</sup>:

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<sup>4</sup> This would cover all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and all products that can no longer perform the purpose for which they were produced and are fit only for disposal for the recovery of raw materials. Such manufacturing or processing operations shall include all types of processing, not only industrial or chemical but also mining, agriculture, construction, refining, incineration and sewage treatment operations.

<sup>5</sup> The Parties shall be given the flexibility to adopt the method of calculating the qualifying value content, whether it is the direct or indirect method. In order to promote transparency, consistency and certainty, each Party shall adhere to one method. Any change in the method of calculation shall be notified to all the other Parties at least six months prior to the adoption of the new method. It is understood that any verification of the content by the importing Party shall be done on the basis of the method used by the exporting Party.

(a) Direct Method:

$$\frac{\text{Originating Material Cost} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Other Cost} + \text{Profit}}{\text{FOB Price}} \times 100 \% \geq 35\%$$

(b) Indirect Method:

$$\frac{\text{Value of imported non-originating materials} + \text{Value of materials of undetermined origin}}{\text{FOB Price}} \times 100 \% \leq 65\%$$

3. The value of the non-originating materials shall be:

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

4. The method of calculating the FOB value is as set out in Annex 3-2 (Method of Calculation of FOB Value).

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

Unless otherwise provided for, goods which comply with the origin requirements provided for in Article 3.2 (Origin Criteria) and which are used in the territory of a Party as materials for a finished good eligible for preferential tariff treatment under this Agreement shall be considered to be originating in the territory of the latter Party where working or processing of the finished goods has taken place.

### **Article 3.6 De Minimis**

1. A good that does not undergo a change in tariff classification pursuant to Article 3.4 (Not Wholly Obtained or Produced Goods) and Annex 3-1 (Product Specific Rules) in the final process of production shall be deemed as originating if:

- (a) for goods except for those falling within Chapters 1 through 14 and Chapters 50 through 63 of the HS, the value of all non-originating materials used in its production, which do not undergo the required change in tariff classification, does not exceed ten percent of the FOB value of the good;

- (b) for goods falling within Chapters 50 through 63 of the HS, the total weight of non-originating basic textile materials used in its production, which do not undergo the required change in tariff classification, does not exceed eight percent of the total weight of all the basic textile materials used; and
- (c) the good meets all other applicable criteria set forth in this Chapter for qualifying as an originating good.

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

### **Article 3.7 Minimal Operations and Processes**

1. Notwithstanding any provisions in this Chapter, a good shall not be considered originating in the territory of a Party if the following operations are undertaken exclusively by itself or in combination in the territory of that Party:

- (a) operations to ensure the preservation of goods in good condition during transport and storage including, but not limited to, drying, freezing, keeping in brine, ventilation, spreading out, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations;
- (b) simple<sup>6</sup> operations consisting of removal of dust, sifting or screening, sorting, classifying, matching including the making-up of sets of articles, washing, painting, cutting;
- (c) changes of packing and breaking up and assembly of consignments;
- (d) simple<sup>7</sup> cutting, slicing and repacking or placing in bottles, flasks, bags, boxes, fixing on cards or boards, and all other simple packing operations;
- (e) affixing of marks, labels or other like distinguishing signs on goods or their packaging;
- (f) simple<sup>8</sup> mixing of goods whether or not of different kinds, where one or more components of the mixture do not meet the conditions laid down in this Chapter to enable them to be considered as originating goods;
- (g) simple<sup>9</sup> assembly of parts of goods to constitute a complete good;

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<sup>6</sup> "Simple" generally describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity.

<sup>7</sup> Refer to footnote 6 of this Chapter.

<sup>8</sup> Refer to footnote 6 of this Chapter.

<sup>9</sup> Refer to footnote 6 of this Chapter.

- (h) disassembly;
- (i) slaughter which means the mere killing of animals; and
- (j) mere dilution with water or another substance that does not materially alter the characteristics of the goods.

2. For textiles and textile goods, an article or material shall not be considered to be originating in the territory of a Party by virtue of merely having undergone any of the following:

- (a) simple<sup>10</sup> combining operations, labelling, pressing, cleaning or dry cleaning or packaging operations, or any combination thereof;
- (b) cutting to length or width and hemming, stitching or overlocking fabrics which are readily identifiable as being intended for a particular commercial use;
- (c) trimming and/or joining together by sewing, looping, linking, attaching of accessory articles such as straps, bands, beads, cords, rings and eyelets;
- (d) one or more finishing operations on yarns, fabrics or other textile articles, such as bleaching, waterproofing, decanting, shrinking, mercerizing, or similar operations; or
- (e) dyeing or printing of fabrics or yarns.

### **Article 3.8 Direct Consignment**

An originating good shall be deemed as directly consigned from the territory of the exporting Party to the territory of the importing Party:

- (a) if the goods are transported without passing through the territory of any non-Party; or
- (b) if the goods are transported through the territory of any non-Party provided that:
  - (i) the transit entry is justified for geographical reasons or transport requirements;
  - (ii) the goods have not entered into trade or consumption in the territory of such non-Party;

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<sup>10</sup> Refer to footnote 6 of this Chapter.

- (iii) the goods have not undergone any operation in the territory of such non-Party other than unloading and reloading or any operation required to keep the goods in good condition; and
- (iv) the goods have remained under the control of the customs authority of such non-Party.

**Article 3.9**  
**Treatment of Packing Materials and Containers**

1. If a good is subject to the change in tariff classification criterion as provided in paragraph 1(b)(i) of Article 3.4 (Not Wholly Obtained or Produced Goods), packing materials and containers classified together with the packaged good, shall not be taken into account in determining origin.

2. If a good is subject to qualifying value content requirement as provided in paragraph 1(b)(ii) of Article 3.4 (Not Wholly Obtained or Produced Goods), the value of the packing materials and containers, shall be taken into account in determining the origin of that good, provided that the packing materials and containers are considered as forming a whole with the good and the good is packaged in such packaging materials and containers for the purposes of retail sale. Packing materials and containers in which a good is packed for the purposes of shipment and used exclusively for the transportation of a good shall not be taken into account in determining the origin of such good.

**Article 3.10**  
**Accessories, Spare Parts, Tools and Instructional or Other Information Material**

1. Any accessories, spare parts, tools, instructional or other information material delivered with a good that form part of the standard accessories, spare parts, tools or instructional or other information material of the good, shall be treated as originating goods if the good is an originating good, and shall not be taken into account 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, tools or the instructional and other information material are not invoiced separately from the good; and
- (b) the quantities and value of the accessories, spare parts, tools or the instructional and other information material are standard trade practice for the good in the domestic market of the exporting Party.

2. If the good is subject to a qualifying value content requirement, the value of the accessories, spare parts, tools or the instructional and other information material shall be taken into account as originating or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

**Article 3.11**  
**Indirect Materials**

In order to determine whether a good originates in the territory of a Party, any indirect material, including power, fuel, plant and equipment, machines, tools or consumables used to obtain such good shall be treated as originating irrespective of the origin of the material and its value shall be the cost registered in the accounting records of the producer of such good.

**Article 3.12**  
**Identical and Interchangeable Materials**

For the purposes of establishing if a good is originating when it is manufactured utilising both originating and non-originating materials, mixed or physically combined, the origin of such materials can be determined on the basis of generally accepted accounting principles of stock control applicable or in accordance with the methods of inventory management practised in the exporting Party.

Explanation: For the purposes of this Article, “generally accepted accounting principles” means recognised consensus or substantial authoritative support given 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 and may encompass broad guidelines for general application, as well as detailed standards, practices, and procedures.

**Article 3.13**  
**Certificate of Origin**

A claim that an imported good shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin issued by an authority or authorities designated by the Government of the exporting Party and notified to the other Party in accordance with Annex 3-3 (Operational Certification Procedures).

**Article 3.14**  
**Implementation**

The Sub-Committee on Trade in Goods established under Article 15.2 (Sub-Committees) shall consider matters relating to the implementation of this Chapter.