
Readings

Reading 1

World Trade Organisation 1994, Agreement on Rules of Origin, Geneva
(https://www.wto.org/english/docs_e/legal_e/22-roo_e.htm)

Reading 2

Pryles, Waincymer and Davies 2004, International Trade Law, Lawbook Co, Sydney, pp 942/3

Reading 3

World Customs Organisation 1999, Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures, Specific Annex K
(http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new.aspx)

Reading 4

Australia-United States Free Trade Agreement
(<https://www.dfat.gov.au/trade/agreements/in-force/ausfta/Pages/australia-united-states-fta>)

Reading 1

World Trade Organisation 1994, Agreement on Rules of Origin, Geneva

AGREEMENT ON RULES OF ORIGIN

Members,

Noting that Ministers on 20 September 1986 agreed that the Uruguay Round of Multilateral Trade Negotiations shall aim to "bring about further liberalization and expansion of world trade", "strengthen the role of GATT" and "increase the responsiveness of the GATT system to the evolving international economic environment";

Desiring to further the objectives of GATT 1994;

Recognizing that clear and predictable rules of origin and their application facilitate the flow of international trade;

Desiring to ensure that rules of origin themselves do not create unnecessary obstacles to trade;

Desiring to ensure that rules of origin do not nullify or impair the rights of Members under GATT 1994;

Recognizing that it is desirable to provide transparency of laws, regulations, and practices regarding rules of origin;

Desiring to ensure that rules of origin are prepared and applied in an impartial, transparent, predictable, consistent and neutral manner;

Recognizing the availability of a consultation mechanism and procedures for the speedy, effective and equitable resolution of disputes arising under this Agreement;

Desiring to harmonize and clarify rules of origin;

Hereby *agree* as follows:

PART I

DEFINITIONS AND COVERAGE

Article 1

Rules of Origin

1. For the purposes of Parts I to IV of this Agreement, rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods provided such rules of origin are not related to contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I of GATT 1994.

2. Rules of origin referred to in paragraph 1 shall include all rules of origin used in non-preferential commercial policy instruments, such as in the application of: most-favoured-nation treatment under Articles I, II, III, XI and XIII of GATT 1994; anti-dumping and countervailing duties under Article VI of GATT 1994; safeguard measures under Article XIX of GATT 1994; origin marking requirements under Article IX of GATT 1994; and any discriminatory quantitative restrictions or tariff quotas. They shall also include rules of origin used for government procurement and trade statistics.¹

¹ It is understood that this provision is without prejudice to those determinations made for purposes of defining "domestic industry" or "like products of domestic industry" or similar terms wherever they apply.

PART II

DISCIPLINES TO GOVERN THE APPLICATION OF RULES OF ORIGIN

Article 2

Disciplines During the Transition Period

Until the work programme for the harmonization of rules of origin set out in Part IV is completed, Members shall ensure that:

- (a) when they issue administrative determinations of general application, the requirements to be fulfilled are clearly defined. In particular:
 - (i) in cases where the criterion of change of tariff classification is applied, such a rule of origin, and any exceptions to the rule, must clearly specify the subheadings or headings within the tariff nomenclature that are addressed by the rule;
 - (ii) in cases where the ad valorem percentage criterion is applied, the method for calculating this percentage shall also be indicated in the rules of origin;
 - (iii) in cases where the criterion of manufacturing or processing operation is prescribed, the operation that confers origin on the good concerned shall be precisely specified;
- (b) notwithstanding the measure or instrument of commercial policy to which they are linked, their rules of origin are not used as instruments to pursue trade objectives directly or indirectly;
- (c) rules of origin shall not themselves create restrictive, distorting, or disruptive effects on international trade. They shall not pose unduly strict requirements or require the fulfilment of a certain condition not related to manufacturing or processing, as a prerequisite for the determination of the country of origin. However, costs not directly related to manufacturing or processing may be included for the purposes of the application of an ad valorem percentage criterion consistent with subparagraph (a);
- (d) the rules of origin that they apply to imports and exports are not more stringent than the rules of origin they apply to determine whether or not a good is domestic and shall not discriminate between other Members, irrespective of the affiliation of the manufacturers of the good concerned²;
- (e) their rules of origin are administered in a consistent, uniform, impartial and reasonable manner;
- (f) their rules of origin are based on a positive standard. Rules of origin that state what does not confer origin (negative standard) are permissible as part of a clarification of a positive standard or in individual cases where a positive determination of origin is not necessary;
- (g) their laws, regulations, judicial decisions and administrative rulings of general application relating to rules of origin are published as if they were subject to, and in accordance with, the provisions of paragraph 1 of Article X of GATT 1994;
- (h) upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin they would accord to a good are issued as soon as possible but no later than 150 days³ after a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such

² With respect to rules of origin applied for the purposes of government procurement, this provision shall not create obligations additional to those already assumed by Members under GATT 1994.

³ In respect of requests made during the first year from the date of entry into force of the WTO Agreement, Members shall only be required to issue these assessments as soon as possible.

assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in subparagraph (j). Such assessments shall be made publicly available subject to the provisions of subparagraph (k);

- (i) when introducing changes to their rules of origin or new rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations;
- (j) any administrative action which they take in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can affect the modification or reversal of the determination;
- (k) all information that is by nature confidential or that is provided on a confidential basis for the purpose of the application of rules of origin is treated as strictly confidential by the authorities concerned, which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 3

Disciplines after the Transition Period

Taking into account the aim of all Members to achieve, as a result of the harmonization work programme set out in Part IV, the establishment of harmonized rules of origin, Members shall ensure, upon the implementation of the results of the harmonization work programme, that:

- (a) they apply rules of origin equally for all purposes as set out in Article 1;
- (b) under their rules of origin, the country to be determined as the origin of a particular good is either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out;
- (c) the rules of origin that they apply to imports and exports are not more stringent than the rules of origin they apply to determine whether or not a good is domestic and shall not discriminate between other Members, irrespective of the affiliation of the manufacturers of the good concerned;
- (d) the rules of origin are administered in a consistent, uniform, impartial and reasonable manner;
- (e) their laws, regulations, judicial decisions and administrative rulings of general application relating to rules of origin are published as if they were subject to, and in accordance with, the provisions of paragraph 1 of Article X of GATT 1994;
- (f) upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin they would accord to a good are issued as soon as possible but no later than 150 days after a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in subparagraph (h). Such assessments shall be made publicly available subject to the provisions of subparagraph (i);

- (g) when introducing changes to their rules of origin or new rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations;
- (h) any administrative action which they take in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can affect the modification or reversal of the determination;
- (i) all information which is by nature confidential or which is provided on a confidential basis for the purpose of the application of rules of origin is treated as strictly confidential by the authorities concerned, which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

PART III

PROCEDURAL ARRANGEMENTS ON NOTIFICATION, REVIEW, CONSULTATION AND DISPUTE SETTLEMENT

Article 4

Institutions

1. There is hereby established a Committee on Rules of Origin (referred to in this Agreement as "the Committee") composed of the representatives from each of the Members. The Committee shall elect its own Chairman and shall meet as necessary, but not less than once a year, for the purpose of affording Members the opportunity to consult on matters relating to the operation of Parts I, II, III and IV or the furtherance of the objectives set out in these Parts and to carry out such other responsibilities assigned to it under this Agreement or by the Council for Trade in Goods. Where appropriate, the Committee shall request information and advice from the Technical Committee referred to in paragraph 2 on matters related to this Agreement. The Committee may also request such other work from the Technical Committee as it considers appropriate for the furtherance of the above-mentioned objectives of this Agreement. The WTO Secretariat shall act as the secretariat to the Committee.

2. There shall be established a Technical Committee on Rules of Origin (referred to in this Agreement as "the Technical Committee") under the auspices of the Customs Co-operation Council (CCC) as set out in Annex I. The Technical Committee shall carry out the technical work called for in Part IV and prescribed in Annex I. Where appropriate, the Technical Committee shall request information and advice from the Committee on matters related to this Agreement. The Technical Committee may also request such other work from the Committee as it considers appropriate for the furtherance of the above-mentioned objectives of the Agreement. The CCC Secretariat shall act as the secretariat to the Technical Committee.

Article 5

Information and Procedures for Modification and Introduction of New Rules of Origin

1. Each Member shall provide to the Secretariat, within 90 days after the date of entry into force of the WTO Agreement for it, its rules of origin, judicial decisions, and administrative rulings of general application relating to rules of origin in effect on that date. If by inadvertence a rule of origin has not been provided, the Member concerned shall provide it immediately after this fact becomes known. Lists of information received and available with the Secretariat shall be circulated to the Members by the Secretariat.

2. During the period referred to in Article 2, Members introducing modifications, other than *de minimis* modifications, to their rules of origin or introducing new rules of origin, which, for the purpose of this Article, shall include any rule of origin referred to in paragraph 1 and not provided to the Secretariat,

shall publish a notice to that effect at least 60 days before the entry into force of the modified or new rule in such a manner as to enable interested parties to become acquainted with the intention to modify a rule of origin or to introduce a new rule of origin, unless exceptional circumstances arise or threaten to arise for a Member. In these exceptional cases, the Member shall publish the modified or new rule as soon as possible.

Article 6

Review

1. The Committee shall review annually the implementation and operation of Parts II and III of this Agreement having regard to its objectives. The Committee shall annually inform the Council for Trade in Goods of developments during the period covered by such reviews.
2. The Committee shall review the provisions of Parts I, II and III and propose amendments as necessary to reflect the results of the harmonization work programme.
3. The Committee, in cooperation with the Technical Committee, shall set up a mechanism to consider and propose amendments to the results of the harmonization work programme, taking into account the objectives and principles set out in Article 9. This may include instances where the rules need to be made more operational or need to be updated to take into account new production processes as affected by any technological change.

Article 7

Consultation

The provisions of Article XXII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, are applicable to this Agreement.

Article 8

Dispute Settlement

The provisions of Article XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, are applicable to this Agreement.

PART IV

HARMONIZATION OF RULES OF ORIGIN

Article 9

Objectives and Principles

1. With the objectives of harmonizing rules of origin and, *inter alia*, providing more certainty in the conduct of world trade, the Ministerial Conference shall undertake the work programme set out below in conjunction with the CCC, on the basis of the following principles:
 - (a) rules of origin should be applied equally for all purposes as set out in Article 1;
 - (b) rules of origin should provide for the country to be determined as the origin of a particular good to be either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out;
 - (c) rules of origin should be objective, understandable and predictable;
 - (d) notwithstanding the measure or instrument to which they may be linked, rules of origin should not be used as instruments to pursue trade objectives directly or indirectly. They should not themselves create restrictive, distorting or disruptive effects on international

trade. They should not pose unduly strict requirements or require the fulfilment of a certain condition not relating to manufacturing or processing as a prerequisite for the determination of the country of origin. However, costs not directly related to manufacturing or processing may be included for purposes of the application of an ad valorem percentage criterion;

- (e) rules of origin should be administrable in a consistent, uniform, impartial and reasonable manner;
- (f) rules of origin should be coherent;
- (g) rules of origin should be based on a positive standard. Negative standards may be used to clarify a positive standard.

Work Programme

2.
 - (a) The work programme shall be initiated as soon after the entry into force of the WTO Agreement as possible and will be completed within three years of initiation.
 - (b) The Committee and the Technical Committee provided for in Article 4 shall be the appropriate bodies to conduct this work.
 - (c) To provide for detailed input by the CCC, the Committee shall request the Technical Committee to provide its interpretations and opinions resulting from the work described below on the basis of the principles listed in paragraph 1. To ensure timely completion of the work programme for harmonization, such work shall be conducted on a product sector basis, as represented by various chapters or sections of the Harmonized System (HS) nomenclature.

(i) Wholly Obtained and Minimal Operations or Processes

The Technical Committee shall develop harmonized definitions of:

- the goods that are to be considered as being wholly obtained in one country. This work shall be as detailed as possible;
- minimal operations or processes that do not by themselves confer origin to a good.

The results of this work shall be submitted to the Committee within three months of receipt of the request from the Committee.

(ii) Substantial Transformation - Change in Tariff Classification

- The Technical Committee shall consider and elaborate upon, on the basis of the criterion of substantial transformation, the use of change in tariff subheading or heading when developing rules of origin for particular products or a product sector and, if appropriate, the minimum change within the nomenclature that meets this criterion.
- The Technical Committee shall divide the above work on a product basis taking into account the chapters or sections of the HS nomenclature, so as to submit results of its work to the Committee at least on a quarterly basis. The Technical Committee shall complete the above work within one year and three months from receipt of the request of the Committee.

(iii) Substantial Transformation - Supplementary Criteria

Upon completion of the work under subparagraph (ii) for each product sector or individual product category where the exclusive use of the HS nomenclature does not allow for the expression of substantial transformation, the Technical Committee:

- shall consider and elaborate upon, on the basis of the criterion of substantial transformation, the use, in a supplementary or exclusive manner, of other

requirements, including ad valorem percentages⁴ and/or manufacturing or processing operations⁵, when developing rules of origin for particular products or a product sector;

- may provide explanations for its proposals;
- shall divide the above work on a product basis taking into account the chapters or sections of the HS nomenclature, so as to submit results of its work to the Committee at least on a quarterly basis. The Technical Committee shall complete the above work within two years and three months of receipt of the request from the Committee.

Role of the Committee

3. On the basis of the principles listed in paragraph 1:
 - (a) the Committee shall consider the interpretations and opinions of the Technical Committee periodically in accordance with the time-frames provided in subparagraphs (i), (ii) and (iii) of paragraph 2(c) with a view to endorsing such interpretations and opinions. The Committee may request the Technical Committee to refine or elaborate its work and/or to develop new approaches. To assist the Technical Committee, the Committee should provide its reasons for requests for additional work and, as appropriate, suggest alternative approaches;
 - (b) upon completion of all the work identified in subparagraphs (i), (ii) and (iii) of paragraph 2(c), the Committee shall consider the results in terms of their overall coherence.

Results of the Harmonization Work Programme and Subsequent Work

4. The Ministerial Conference shall establish the results of the harmonization work programme in an annex as an integral part of this Agreement.⁶ The Ministerial Conference shall establish a time-frame for the entry into force of this annex.

ANNEX I

TECHNICAL COMMITTEE ON RULES OF ORIGIN

Responsibilities

1. The ongoing responsibilities of the Technical Committee shall include the following:
 - (a) at the request of any member of the Technical Committee, to examine specific technical problems arising in the day-to-day administration of the rules of origin of Members and to give advisory opinions on appropriate solutions based upon the facts presented;
 - (b) to furnish information and advice on any matters concerning the origin determination of goods as may be requested by any Member or the Committee;
 - (c) to prepare and circulate periodic reports on the technical aspects of the operation and status of this Agreement; and
 - (d) to review annually the technical aspects of the implementation and operation of Parts II and III.

⁴ If the ad valorem criterion is prescribed, the method for calculating this percentage shall also be indicated in the rules of origin.

⁵ If the criterion of manufacturing or processing operation is prescribed, the operation that confers origin on the product concerned shall be precisely specified.

⁶ At the same time, consideration shall be given to arrangements concerning the settlement of disputes relating to customs classification.

2. The Technical Committee shall exercise such other responsibilities as the Committee may request of it.
3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by Members or the Committee, in a reasonably short period of time.

Representation

4. Each Member shall have the right to be represented on the Technical Committee. Each Member may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a Member so represented on the Technical Committee is hereinafter referred to as a "member" of the Technical Committee. Representatives of members of the Technical Committee may be assisted by advisers at meetings of the Technical Committee. The WTO Secretariat may also attend such meetings with observer status.
5. Members of the CCC which are not Members of the WTO may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.
6. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the CCC (referred to in this Annex as "the Secretary-General") may invite representatives of governments which are neither Members of the WTO nor members of the CCC and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.
7. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

Meetings

8. The Technical Committee shall meet as necessary, but not less than once a year.

Procedures

9. The Technical Committee shall elect its own Chairman and shall establish its own procedures.

ANNEX II

COMMON DECLARATION WITH REGARD TO PREFERENTIAL RULES OF ORIGIN

1. Recognizing that some Members apply preferential rules of origin, distinct from non-preferential rules of origin, the Members hereby *agree* as follows.
2. For the purposes of this Common Declaration, preferential rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any Member to determine whether goods qualify for preferential treatment under contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I of GATT 1994.
3. The Members *agree* to ensure that:
 - (a) when they issue administrative determinations of general application, the requirements to be fulfilled are clearly defined. In particular:
 - (i) in cases where the criterion of change of tariff classification is applied, such a preferential rule of origin, and any exceptions to the rule, must clearly specify the subheadings or headings within the tariff nomenclature that are addressed by the rule;
 - (ii) in cases where the ad valorem percentage criterion is applied, the method for calculating this percentage shall also be indicated in the preferential rules of origin;

- (iii) in cases where the criterion of manufacturing or processing operation is prescribed, the operation that confers preferential origin shall be precisely specified;
 - (b) their preferential rules of origin are based on a positive standard. Preferential rules of origin that state what does not confer preferential origin (negative standard) are permissible as part of a clarification of a positive standard or in individual cases where a positive determination of preferential origin is not necessary;
 - (c) their laws, regulations, judicial decisions and administrative rulings of general application relating to preferential rules of origin are published as if they were subject to, and in accordance with, the provisions of paragraph 1 of Article X of GATT 1994;
 - (d) upon request of an exporter, importer or any person with a justifiable cause, assessments of the preferential origin they would accord to a good are issued as soon as possible but no later than 150 days⁷ after a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the preferential rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in subparagraph (f). Such assessments shall be made publicly available subject to the provisions of subparagraph (g);
 - (e) when introducing changes to their preferential rules of origin or new preferential rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations;
 - (f) any administrative action which they take in relation to the determination of preferential origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;
 - (g) all information that is by nature confidential or that is provided on a confidential basis for the purpose of the application of preferential rules of origin is treated as strictly confidential by the authorities concerned, which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.
4. Members *agree* to provide to the Secretariat promptly their preferential rules of origin, including a listing of the preferential arrangements to which they apply, judicial decisions, and administrative rulings of general application relating to their preferential rules of origin in effect on the date of entry into force of the WTO Agreement for the Member concerned. Furthermore, Members agree to provide any modifications to their preferential rules of origin or new preferential rules of origin as soon as possible to the Secretariat. Lists of information received and available with the Secretariat shall be circulated to the Members by the Secretariat.

⁷ In respect of requests made during the first year from entry into force of the WTO Agreement, Members shall only be required to issue these assessments as soon as possible.

Reading 2

Pryles, Waincymer and Davies 2004, *International Trade Law*, Lawbook Co, Sydney, pp 942/3

RULES OF ORIGIN

[19.70] While the basic requirement of the world tariff system is to impose duties on a most favoured nation basis, exemptions are allowed in certain circumstances. The most common exemption is for developing country preferences allowed for through the waiver granted under the GATT system. In addition, customs unions and free trade areas allow for duty free entry from other countries within the same free trading group. The latter were dealt with in Chapter 17. Rules of origin in domestic customs law are then needed to determine whether a lower duty rate may apply in each of these circumstances.

Prior to the Uruguay Round of GATT negotiations, little had been done to investigate and harmonise domestic rules of origin as found around the world. The rules were often complex and ambiguous and added to the transaction costs of doing business. In some countries these operated as discriminatory barriers to trade.

It is particularly difficult to design and negotiate efficient harmonised rules for determining the origin of goods. While historical methods of production saw products being made largely within one country with few foreign inputs other than raw materials, modern manufacturing techniques have seen the growth of multinational corporations operating on a global basis with aspects of production occurring in many parts of the world. Because production occurs in more than one country, there need to be criteria developed to decide which country will be identified as the primary producer of the relevant goods for customs purposes.

A number of possibilities are evident and are described and allowed for under the International Convention on the Simplification and Harmonisation of Customs Procedures (the Kyoto Convention). These alternatives were considered during the Uruguay Round negotiations, but the negotiators were not able to achieve agreement on a common determinant of origin.

The negotiations sought to propose that the site of the last substantial transformation be the common test. Another approach is to tie origin to tariff classification. Under this approach, the country of origin could be the country that did the work on the goods that converted them to the relevant final tariff classification heading.

A further approach, followed by Australia, is to look at value added to determine origin. The legislation looks at the percentage of value attributed to particular countries to determine origin. Most determinations are based on a 50 per cent content rule. A number of difficulties arise: with a value-added approach. Should value be based on amortisation of fixed costs as well -as variable costs? How should variable costs be determined? How should general overheads and capital expenses be apportioned and amortised if that is to be allowed? How should inflation and exchange rates be factored into the calculations?

One of the particular problems in the Australian context was the lack of legislative guidance on these accounting questions. In *Re Eveready Australia Pty Ltd and the Collector of Customs* (unreported, AAT, 1991), the Tribunal was forced to develop its own tests to give meaning to the legislative rules. New rules of origin are now contained in ss 153A-153T. Factory and works cost is now specifically defined.

Reading 3

World Customs Organisation 1999, Revised Kyoto Convention on the simplification and harmonisation of Customs procedures, Specific Annex K- Origin, Brussels.

Specific Annex K

Chapter 1

Rules of origin

Definitions

For the purposes of this Chapter:

E1./ F2.

"country of origin of goods" means the country in which the goods have been produced or manufactured, according to the criteria laid down for the purposes of application of the Customs tariff, of quantitative restrictions or of any other measure related to trade;

E2./ F3.

"rules of origin" means the specific provisions, developed from principles established by national legislation or international agreements ("origin criteria"), applied by a country to determine the origin of goods;

E3./ F1.

"substantial transformation criterion" means the criterion according to which origin is determined by regarding as the country of origin the country in which the last substantial manufacturing or processing, deemed sufficient to give the commodity its essential character, has been carried out.

Principle

1. Standard

The rules of origin necessary for the implementation of the measures which the Customs are responsible for applying both at importation and at exportation shall be laid down in accordance with the provisions of this Chapter and, insofar as applicable, by the provisions in the General Annex.

Rules of origin

2. Standard

Goods produced wholly in a given country shall be taken as originating in that country. The following only shall be taken to be produced wholly in a given country :

- a. mineral products extracted from its soil, from its territorial waters or from its sea-bed;
- b. vegetable products harvested or gathered in that country;
- c. live animals born and raised in that country;
- d. products obtained from live animals in that country;
- e. products obtained from hunting or fishing conducted in that country;
- f. products obtained by maritime fishing and other products taken from the sea by a vessel of that country;
- g. products obtained aboard a factory ship of that country solely from products of the kind covered by paragraph (f) above;

- h. products extracted from marine soil or subsoil outside that country's territorial waters, provided that the country has sole rights to work that soil or subsoil;
- i. scrap and waste from manufacturing and processing operations, and used articles, collected in that country and fit only for the recovery of raw materials;
- j. goods produced in that country solely from the products referred to in paragraphs (a) to (ij) above.

3. Recommended Practice

Where two or more countries have taken part in the production of the goods, the origin of the goods should be determined according to the substantial transformation criterion.

4. Recommended Practice

In applying the substantial transformation criterion, use should be made of the International Convention on the Harmonized Commodity Description and Coding System.

5. Recommended Practice

Where the substantial transformation criterion is expressed in terms of the ad valorem percentage rule, the values to be taken into consideration should be:

- for the materials imported, the dutiable value at importation or, in the case of materials of undetermined origin, the first ascertainable price paid for them in the territory of the country in which manufacture took place; and
- for the goods produced, either the ex-works price or the price at exportation, according to the provisions of national legislation.

6. Recommended Practice

Operations which do not contribute or which contribute to only a small extent to the essential characteristics or properties of the goods, and in particular operations confined to one or more of those listed below, should not be regarded as constituting substantial manufacturing or processing:

- a. operations necessary for the preservation of goods during transportation or storage;
- b. operations to improve the packaging or the marketable quality of the goods or to prepare them for shipment, such as breaking bulk, grouping of packages, sorting and grading, repacking;
- c. simple assembly operations;
- d. mixing of goods of different origin, provided that the characteristics of the resulting product are not essentially different from the characteristics of the goods which have been mixed.

Special cases of qualification for origin

7. Recommended Practice

Accessories, spare parts and tools for use with a machine, appliance, apparatus or vehicle should be deemed to have the same origin as the machine, appliance, apparatus or vehicle, provided that they are imported and normally sold therewith and correspond, in kind and number, to the normal equipment thereof.

8. Recommended Practice

An unassembled or disassembled article which is imported in more than one consignment because it is not feasible, for transport or production reasons, to import it in a single consignment should, if the importer so requests, be treated as one article for the purpose of determining origin.

9. Recommended Practice

For the purpose of determining origin, packings should be deemed to have the same origin as the goods they contain unless the national legislation of the country of importation requires them to be declared separately for tariff purposes, in which case their origin should be determined separately from that of the goods.

10. Recommended Practice

For the purpose of determining the origin of goods, where packings are deemed to have the same origin as the goods, account should be taken, in particular where a percentage method is applied, only of packings in which the goods are ordinarily sold by retail.

11. Standard

For the purpose of determining the origin of goods, no account shall be taken of the origin of the energy, plant, machinery and tools used in the manufacturing or processing of the goods.

Direct transport rule**12. Recommended Practice**

Where provisions requiring the direct transport of goods from the country of origin are laid down, derogations there from should be allowed, in particular for geographical reasons (for example, in the case of landlocked countries) and in the case of goods which remain under Customs control in third countries (for example, in the case of goods displayed at fairs or exhibitions or placed in Customs warehouses).

Information concerning rules of origin**13. Standard**

Changes in the rules of origin or in the procedures for their application shall enter into force only after sufficient notice has been given to enable the interested persons, both in export markets and in supplying countries, to take account of the new provisions.

Chapter 2**Documentary evidence of origin****Definitions**

For the purposes of this Chapter:

E1./ F2.

“**certificate of origin**” means a specific form identifying the goods, in which the authority or body empowered to issue it certifies expressly that the goods to which the certificate relates originate in a specific country. This certificate may also include a declaration by the manufacturer, producer, supplier, exporter or other competent person;

E2./ F3.

“**certified declaration of origin**” means a “declaration of origin” certified by an authority or body empowered to do so;

E3./ F4.

“**declaration of origin**” means an appropriate statement as to the origin of the goods made, in connection with their exportation, by the manufacturer, producer, supplier, exporter or other competent person on the commercial invoice or any other document relating to the goods;

E4./ F5.

“**documentary evidence of origin**” means a certificate of origin, a certified declaration of origin or a declaration of origin;

E5./ F1.

“**regional appellation certificate**” means a certificate drawn up in accordance with the rules laid down by an authority or approved body, certifying that the goods described therein qualify for a designation specific to the given region (e.g. Champagne, Port wine, Parmesan cheese).

Principle

1. Standard

The requirement, establishment and issue of documentary evidence relating to the origin of goods shall be governed by the provisions of this Chapter and, insofar as applicable, by the provisions of the General Annex.

Requirement of documentary evidence of origin

2. Recommended Practice

Documentary evidence of origin should be required only when it is necessary for the application of preferential Customs duties, of economic or trade measures adopted unilaterally or under bilateral or multilateral agreements or of measures adopted for reasons of health or public order.

3. Recommended Practice

Documentary evidence of origin should not be required in the following cases:

- a. goods sent in small consignments addressed to private individuals or carried in travellers' baggage, provided that such importations are of a non-commercial nature and the aggregate value of the importation does not exceed an amount which shall not be less than US\$100;
- b. commercial consignments the aggregate value of which does not exceed an amount which shall not be less than US\$60;
- c. goods granted temporary admission;
- d. goods carried in Customs transit;
- e. goods accompanied by a regional appellation certificate as well as certain specific goods, where the conditions to be met by the supplying countries under bilateral or multilateral agreements relating to those goods are such that documentary evidence need not be required.

Where several consignments of the kind referred to in (a) or (b) are sent at the same time, by the same means, to the same consignee, by the same consignor, the aggregate value shall be taken to be the total value of those consignments.

4. Recommended Practice

When rules relating to the requirement of documentary evidence of origin have been laid down unilaterally, they should be reviewed at least every three years to ascertain whether they are still appropriate in the light of changes in the economic and commercial conditions under which they were imposed.

5. Recommended Practice

Documentary evidence from the competent authorities of the country of origin should be required only in cases where the Customs of the country of importation have reason to suspect fraud.

Applications and form of the various types of documentary evidence of origin

(a) *Certificate of origin*

Form and content

6. Recommended Practice

When revising present forms or preparing new forms of certificates of origin, Contracting Parties should use the model form in Appendix I to this Chapter, in accordance with the Notes in Appendix II, and having regard to the Rules in Appendix III.

Contracting Parties which have aligned their forms of certificate of origin on the model form in Appendix I to this Chapter should notify the Secretary General of the Council accordingly.

Languages to be used

7. Recommended Practice

Certificate of origin forms should be printed in the language(s) selected by the country of exportation and, if these languages are neither English nor French, also in English or French.

8. Recommended Practice

Where the certificate of origin is made out in a language that is not a language of the country of importation, the Customs of that country should not require, as a matter of course, a translation of the particulars given in the certificate of origin.

Authorities and other bodies empowered to issue certificates of origin

9. Standard

Contracting Parties accepting this Chapter shall indicate, either in their notification of acceptance or subsequently, the authorities or bodies empowered to issue certificates of origin.

10. Recommended Practice

Where goods are not imported directly from the country of origin but are forwarded through the territory of a third country, certificates of origin should be allowed to be drawn up by the authorities or bodies empowered to issue such certificates in that third country, on the basis of a certificate of origin previously issued in the country of origin of the goods.

11. Recommended Practice

Authorities or bodies empowered to issue certificates of origin should retain for not less than two years the applications for, or control copies of, the certificates of origin issued by them.

(b) Documentary evidence other than certificates of origin

12. Recommended Practice

Where documentary evidence of origin is required, a declaration of origin should be accepted in the following cases:

- a. goods sent in small consignments addressed to private individuals or carried in travellers' baggage, provided that such importations are of a non-commercial nature and the aggregate value of the importation does not exceed an amount which shall not be less than US\$500;
- b. commercial consignments the aggregate value of which does not exceed an amount which shall not be less than US\$300.

Where several consignments of the kind referred to in (a) or (b) are sent at the same time, by the same means, to the same consignee, by the same consignor, the aggregate value shall be taken to be the total value of those consignments.

Sanctions

13. Standard

Provision shall be made for sanctions against any person who prepares, or causes to be prepared, a document containing false information with a view to obtaining documentary evidence of origin.

APPENDIX II

Notes

1. The size of the certificate should be the international ISO size A4 (210 x 297 mm, 8.27 x 11.69 inches). The form should be provided with a 10 mm top margin and a 20 mm left-hand filing margin. Line spacing should be based on multiples of 4.24 mm (1/6 inch) and width-spacing on multiples of 2.54 mm (1/10 inch). The layout should be in conformity with the ECE layout key, as illustrated in Appendix I. Minor deviations in the exact size of boxes, etc., should be permissible if required for particular reasons in the issuing country, such as the existence of systems other than metric measurement, features of national aligned systems of documents, etc.

2. Where it is necessary to provide for applications for certificates of origin, the form of application and the form of certificate should be compatible to permit completion in one run.

3. Countries may determine standards concerning the weight per m² of the paper, and the use of a machine-turned background to prevent falsification.

4. For the guidance of users, rules for the establishment of the certificate of origin may be printed on the back of the certificate.

5. Where requests for post-facto control may be submitted under a mutual administrative assistance agreement, a space may be provided for that purpose on the back of the certificate.

6. The following comments refer to the boxes in the model form :

Box No. 1:

"Consignor", "producer", "supplier", etc. may be substituted for "exporter".

Box No. 2:

There should be only one original certificate of origin, identified by the word "Original" adjacent to the document title. If a certificate of origin is issued in replacement of an original certificate that has been lost, the replacement certificate shall be identified by the word "Duplicate" adjacent to the document title. Copies of an original or of a duplicate certificate shall bear the word "copy" adjacent to the title. This box is also intended for the name (logotype, emblem, etc.) of the issuing authority and should leave space for other official purposes.

Box No. 3:

The particulars provided for in this box may be replaced by "to order" and, possibly, the country of destination.

Box No. 4:

This box can be used for additional information on means of transport, route, etc., which can be inserted if so desired by, for example, the issuing authority.

Box No. 5:

If an indication of "Item No." is required this can be inserted, preferably in the margin to this box or at the beginning of each line in the box. "Marks and Nos." can be separated from "Number and kind of packages" and "Description of the goods" by a vertical line. If a line is not used, these particulars should be distinguished by adequate spacing. The description of the goods can be supported by adding the number of the applicable Harmonized System heading, preferably in the right-hand part of the column. Particulars of the origin criteria, if required, should be given in this box and should be separated from the other information by a vertical line.

Box No. 6:

Normally, gross weight should suffice for the identification of the goods.

Box No. 7:

This column is left blank for any additional details that might be required, such as measurements, or for reference to other documents (e.g., commercial invoices).

Boxes Nos. 6 and 7:

Other quantities which the exporter may state in order to facilitate identification can be entered in either box 6 or box 7, as appropriate.

Box No. 8:

This area is reserved for the details of the certification by the competent body (certification legend, stamps, signatures, date and place of issue, etc.). The precise wording of texts, etc., is left to the discretion of the issuing authority, the wording used in the model form serving only as an example. This box may also be used for a signed declaration by the exporter (or the supplier or manufacturer).

APPENDIX III

Rules for the establishment of certificates of origin

The rules for the establishment of certificates of origin (and where applicable, of applications for such certificates) are left to the discretion of national authorities, due account being taken of the Notes set out above. However, it may be necessary to ensure compliance with, inter alia, the following provisions:

1. The forms may be completed by any process, provided that the entries are indelible and legible.
2. Neither erasures nor superimpositions should be allowed on the certificates (or applications). Any alterations should be made by striking out the erroneous material and making any additions required. Such alterations should be approved by the person who made them and certificated by the appropriate authority or body.
3. Any unused spaces should be crossed out to prevent any subsequent addition.
4. If warranted by export trade requirements, one or more copies may be drawn up in addition to the original.

Chapter 3

Control of documentary evidence of origin

Definitions

For the purposes of this Chapter:

E1./ F1.

"certificate of origin" means a specific form identifying the goods, in which the authority or body empowered to issue it certifies expressly that the goods to which the certificate relates originate in a specific country. This certificate may also include a declaration by the manufacturer, producer, supplier, exporter or other competent person;

E2./ F2.

"certified declaration of origin" means a "declaration of origin" certified by an authority or body empowered to do so;

E3./ F3.

"declaration of origin" means an appropriate statement as to the origin of the goods made, in connection with their exportation, by the manufacturer, producer, supplier, exporter or other competent person on the commercial invoice or any other document relating to the goods;

E4./ F4.

"documentary evidence of origin" means a certificate of origin, a certified declaration of origin or a declaration of origin.

Principle

1. Standard

Administrative assistance for the control of documentary evidence of origin shall be governed by the provisions of this Chapter and, insofar as applicable, by the provisions of the General Annex.

Reciprocity

2. Standard

The competent authority of the Contracting Party which has received a request for control need not comply with it if the competent authority of the requesting Contracting Party would be unable to furnish that assistance if the positions were reversed.

Requests for control

3. Recommended Practice

The Customs administration of a Contracting Party which has accepted this Chapter may request the competent authority of a Contracting Party which has accepted this Chapter and in whose territory documentary evidence of origin has been established to carry out control of such evidence :

- a. where there are reasonable grounds to doubt the authenticity of the document;
- b. where there are reasonable grounds to doubt the accuracy of the particulars given therein;
- c. on a random basis.

4. Standard

Requests for control on a random basis, as provided for in Recommended Practice 3 (c) above, shall be identified as such and be kept to the minimum necessary to ensure adequate control.

5. Standard

Requests for control shall :

- a. specify the reasons for the requesting Customs administration's doubts about the authenticity of the document produced or the accuracy of the particulars given therein, unless the control is requested on a random basis;
- b. specify, where appropriate, the rules of origin applicable to the goods in the country of importation and any additional information requested by that country;
- c. be accompanied by the documentary evidence of origin to be checked, or a photocopy thereof, and where appropriate any other documents such as invoices, correspondence, etc. that might facilitate control.

6. Standard

Any competent authority receiving a request for control from a Contracting Party having accepted this Chapter shall reply to the request after having carried out the necessary controls itself or having had the necessary investigations made by other administrative authorities or by bodies authorized for the purpose.

7. Standard

An authority receiving a request for control shall answer the questions put by the requesting Customs administration and furnish any other information it may consider relevant.

8. Standard

Replies to requests for control shall be furnished within a prescribed period not exceeding six months. If the authority receiving the request cannot reply within six months, it shall so inform the requesting Customs administration.

9. Standard

Requests for control shall be made within a prescribed period which, except in special circumstances, should not exceed one year, commencing with the date on which the document was produced to the Customs office of the Contracting Party making the request.

Release of the goods**10. Standard**

A request for control shall not prevent the release of the goods, provided that they are not held to be subject to import prohibitions or restrictions and there is no suspicion of fraud.

Miscellaneous provisions**11. Standard**

Any information communicated in accordance with the provisions of this Chapter shall be treated as confidential and used for Customs purposes only.

12. Standard

The documents needed for control of documentary evidence of origin issued by the competent authorities or authorized bodies shall be retained by them for an adequate period which should not be less than two years following the date on which the documentary evidence was issued.

13. Standard

The Contracting Parties that accept this Chapter shall specify the authorities which are competent to receive requests for control and communicate their address to the Secretary General of the Council who will transmit such information to the other Contracting Parties having accepted this Chapter.

Reading 4

Australia-United States Free Trade Agreement

Guide to Navigating the AUSFTA Tariff Schedules and Rules of Origin Annexes

Guide to the Agreement

Chapter Five - Rules of Origin

Section A : Rules of Origin

Article 5.1 : Originating Goods

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

- (a) a good wholly obtained or produced entirely in the territory of one or both of the Parties;
- (b) a good produced entirely in the territory of one or both of the Parties where
 - (i) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4-A (Textile and Apparel Specific Rules of Origin) or Annex 5-A (Product-Specific Rules of Origin); or
 - (ii) the good otherwise satisfies any applicable regional value content; or
 - (iii) the good meets any other requirements specified in Annex 4-A or Annex 5-A; and
 the good satisfies all other applicable requirements of this Chapter or Chapter 4;
- (c) a good produced entirely in the territory of one or both of the Parties exclusively from originating materials; or
- (d) a good that otherwise qualifies as an originating good under this Chapter or Chapter 4.

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.

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) 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) 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) 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) 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) 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) 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) 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.

3. With respect to a textile or apparel good, Article 4.2.6 (Rules of Origin and Related Matters: *De Minimis*) applies in place of paragraph 1.

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 or Chapter 4.

Article 5.4 : Regional Value Content

1. Except for goods covered by paragraph 2, where Annex 5-A refers to a regional value content, each Party shall provide that for purposes of claims for preferential treatment in accordance with Article 5.12, an importer, exporter, or producer may calculate regional value content based on 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.

2. When regional value content is required for certain automotive goods^{5-[2]} 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 the purpose of regional value content under paragraph 2 for motor vehicles,^{5-[3]} the importer, exporter, or producer may use a calculation averaged over the producer's fiscal year using any one of the following categories:

(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. Each Party shall provide that, for the purpose of calculating regional value content under paragraph 2 for automotive materials^{5-[4]} produced in the same plant, the importer, exporter, or producer may use a calculation:

(a) averaged:

- (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,

provided that the good was produced during the fiscal year, quarter, or month forming the basis for the calculation;

(b) in which the average referred to in subparagraph (a) is calculated separately for such goods sold to one or more motor vehicle producers; or

(c) in which the average in subparagraph (a) or (b) is calculated separately for 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 Articles 5.2 and 5.4, 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, *i.e.*, in the same manner as for imported goods, 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' territories 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; 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' territories 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

(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 or Annex 4-A, 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 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.

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, on 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 a claim for preferential treatment under this Agreement, made in accordance with this Chapter 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) on 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.

5. Nothing in this Article shall prevent a Party from taking action under Article 4.3.8 (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 set out in Article 5.12.2, that an importer provide, on request, records 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

1. For the purpose 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 one or more of the following:

(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 request described in Article 5.12.2;

(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;

(f) for textile and apparel goods, procedures set forth in Article 4.3 (Customs Cooperation); or

(g) such other procedures as the Parties may agree.

2. A Party may deny preferential tariff treatment to a good where the importer, exporter, or producer fails to provide information that the Party requests in a verification conducted in accordance with paragraph 1 demonstrating that the good is an originating good.

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 pursuant to Article 21.5 (Consultations) to discuss necessary amendments to this Chapter and its Annexes, taking into account developments in technology, production processes, and other related matters.

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:
 - (a) motor vehicles provided for in subheading 8701.20, motor vehicles for the transport of 16 or more persons provided for in 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 subheadings 8701.10 or 8701.30 through 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 subheadings 8703.21 through 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. **good wholly obtained or produced entirely in the territory of one or both of the Parties** means a good that is:
 - (a) a mineral good extracted there;
 - (b) a vegetable good, as such good is 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 any 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 subparagraph (e) on board factory ships registered or recorded with a Party and flying its flag;

(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 it is 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 that 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 subparagraphs (a) through (i), 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;

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 the good means the net cost that can be reasonably allocated to the 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 interest 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 interest 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 interest 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;

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 appropriate under generally accepted accounting principles;

18. **recovered goods** means materials in the form of individual parts that result from:

(a) the complete disassembly of goods which have passed their life expectancy, or are no longer useable due to defects, into individual parts; and

(b) cleaning, inspecting, or testing, or other processes as necessary for improvement to sound working condition of such individual parts;

19. **remanufactured good** means an industrial good assembled in the territory of a Party, falling within Chapter 84, 85, or 87 or heading 90.26, 90.31, or 90.32, except a good under heading 84.18, 85.16, or 87.01 through 87.06 that:

(a) is entirely or partially comprised of recovered goods;

(b) has a similar life expectancy to, 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.

^{5-[2]}HS 8407.31 through 34 (engines), 8408.20 (diesel engines for vehicles), 84.09 (parts of engines) 87.01 through 87.05 (motor vehicles), 87.06 (chassis), 87.07 (bodies), and 87.08 (motor vehicle parts).

^{5-[3]} Motor Vehicles: HS 87.01 through 87.05 (motor vehicles).

^{5-[4]} Automotive Components or Materials: HS 8407.31 through 34 (engines), 8407.20 (diesel engines for vehicles), 84.09 (parts of engines), 87.06 (chassis), 87.07 (bodies), 87.08 (motor vehicle parts).

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