

Article 21
Measures to Safeguard the Balance of Payments

Nothing in this Chapter shall be construed to prevent a Party from taking any measure for balance-of-payments purposes. A Party taking such measure shall do so in accordance with the conditions established under Article XII of GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement.

Article 22
Customs Procedures

1. Each Party shall endeavour to apply its customs procedures in a predictable, consistent and transparent manner.

2. Recognising the importance of improving transparency in the area of customs procedures, each Party, subject to its laws and regulations, and available resources, shall endeavour to provide information relating to specific matters raised by interested persons of the Parties pertaining to its customs laws. Each Party shall endeavour to supply not only such information but also other pertinent information which it considers the interested persons should be made aware of.

3. For prompt customs clearance of goods traded among the Parties, each Party, recognising the significant role of customs authorities and the importance of customs procedures in promoting trade facilitation, shall endeavour to:

- (a) simplify its customs procedures; and
- (b) harmonise its customs procedures, to the extent possible, with relevant international standards and recommended practices such as those made under the auspices of the Customs Co-operation Council.

Chapter 3
Rules of Origin

Article 23
Definitions

For the purposes of this Chapter, the term:

- (a) "exporter" means a natural or juridical person located in an exporting Party who exports a good from the exporting Party;

- (b) "factory ships of the Party" or "vessels of the Party" respectively means factory ships or vessels:
 - (i) which are registered in the Party;
 - (ii) which sail under the flag of the Party;
 - (iii) which are owned to an extent of at least fifty (50) per cent by nationals of one or more of the Parties, or by a juridical person with its head office in a Party, of which the representatives, chairman of the board of directors, and the majority of the members of such board are nationals of one or more of the Parties, and of which at least fifty (50) per cent of the equity interest is owned by nationals or juridical persons of one or more of the Parties; and
 - (iv) of which at least seventy-five (75) per cent of the total of the master, officers and crew are nationals of one or more of the Parties;
- (c) "generally accepted accounting principles" means the recognised consensus or substantial authoritative support in 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;
- (d) "good" means any merchandise, product, article or material;
- (e) "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 good cannot be distinguished from one another for origin purposes by virtue of any markings;
- (f) "importer" means a natural or juridical person who imports a good into the importing Party;

- (g) "materials" means any matter or substance used or consumed in the production of a good, physically incorporated into a good, or used in the production of another good;
- (h) "originating good" or "originating material" means a good or material that qualifies as originating in accordance with the provisions of this Chapter;
- (i) "packing materials and containers for transportation and shipment" means the goods used to protect a good during its transportation and shipment, different from those containers or materials used for its retail sale;
- (j) "preferential tariff treatment" means the rate of customs duties applicable to an originating good of the exporting Party in accordance with paragraph 1 of Article 16; and
- (k) "production" means methods of obtaining a good including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, processing or assembling.

Article 24 Originating Goods

For the purposes of this Agreement, a good shall qualify as an originating good of a Party if it:

- (a) is wholly obtained or produced entirely in the Party as provided for in Article 25;
- (b) satisfies the requirements of Article 26 when using non-originating materials; or
- (c) is produced entirely in the Party exclusively from originating materials of one or more of the Parties,

and meets all other applicable requirements of this Chapter.

Article 25 Goods Wholly Obtained or Produced

For the purposes of paragraph (a) of Article 24, the following shall be considered as wholly obtained or produced entirely in a Party:

- (a) plant and plant products grown and harvested, picked or gathered in the Party;

Note: For the purposes of this paragraph, the term "plant" refers to all plant life, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants.

- (b) live animals born and raised in the Party;

Note: For the purposes of paragraphs (b) and (c), the term "animals" covers all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, bacteria and viruses.

- (c) goods obtained from live animals in the Party;

- (d) goods obtained from hunting, trapping, fishing, gathering or capturing conducted in the Party;

- (e) minerals and other naturally occurring substances, not included in paragraphs (a) through (d), extracted or taken from soil, waters, seabed or beneath the seabed of the Party;

- (f) goods taken from the waters, seabed or beneath the seabed outside the territorial waters of the Party, provided that the Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with its laws and regulations and international law;

Note: Nothing in this Agreement shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea.

- (g) goods of sea-fishing and other marine products taken by vessels of the Party from outside the territorial sea of any Party;

- (h) goods processed and/or made on board factory ships of the Party exclusively from products referred to in paragraph (g);

- (i) articles collected in the Party which can no longer perform their original purpose or be restored or repaired, and are fit only for disposal, for the recovery of parts or raw materials, or for recycling purposes;

- (j) scrap and waste derived from manufacturing or processing operations, including mining, agriculture, construction, refining, incineration and sewage treatment operations, or from consumption, in the Party, and fit only for disposal or for the recovery of raw materials; and
- (k) goods obtained or produced in the Party exclusively from goods referred to in paragraphs (a) through (j).

Article 26
Goods Not Wholly Obtained or Produced

1. For the purposes of paragraph (b) of Article 24, a good shall qualify as an originating good of a Party if:

- (a) the good has a regional value content (hereinafter referred to as "RVC"), calculated using the formula set out in Article 27, of not less than forty (40) per cent, and the final process of production has been performed in the Party; or
- (b) all non-originating materials used in the production of the good have undergone in the Party a change in tariff classification (hereinafter referred to as "CTC") at the 4-digit level (i.e. a change in tariff heading) of Harmonized System.

Note: For the purposes of this subparagraph, "Harmonized System" is that on which the product specific rules set out in Annex 2 are based.

Each Party shall permit the exporter of the good to decide whether to use subparagraph (a) or (b) when determining whether the good qualifies as an originating good of the Party.

2. Notwithstanding paragraph 1, a good subject to product specific rules shall qualify as an originating good if it satisfies the applicable product specific rules set out in Annex 2. Where a product specific rule provides a choice of rules from a RVC-based rule of origin, a CTC-based rule of origin, a specific manufacturing or processing operation, or a combination of any of these, each Party shall permit the exporter of the good to decide which rule to use in determining whether the good qualifies as an originating good of the Party.

3. For the purposes of subparagraph 1(a) and the relevant product specific rules set out in Annex 2 which specify a certain RVC, it is required that the RVC of a good, calculated using the formula set out in Article 27, is not less than the percentage specified by the rule for the good.

4. For the purposes of subparagraph 1(b) and the relevant product specific rules set out in Annex 2, the rules requiring that the materials used have undergone CTC, or a specific manufacturing or processing operation, shall apply only to non-originating materials.

5. For the purposes of this Chapter, Annex 3 shall apply.

Article 27
Calculation of Regional Value Content

1. For the purposes of calculating the RVC of a good, the following formula shall be used:

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

2. For the purposes of this Article:

- (a) "FOB" is, except as provided for in paragraph 3, the free-on-board value of a good, inclusive of the cost of transport from the producer to the port or site of final shipment abroad;
- (b) "RVC" is the RVC of a good, expressed as a percentage; and
- (c) "VNM" is the value of non-originating materials used in the production of a good.

3. FOB referred to in subparagraph 2(a) shall be the value:

- (a) adjusted to the first ascertainable price paid for a good from the buyer to the producer of the good, if there is free-on-board value of the good, but it is unknown and cannot be ascertained; or
- (b) determined in accordance with Articles 1 through 8 of the Agreement on Customs Valuation, if there is no free-on-board value of a good.

4. For the purposes of paragraph 1, the value of non-originating materials used in the production of a good in a Party:

- (a) shall be determined in accordance with the Agreement on Customs Valuation and shall include freight, insurance, and where appropriate, packing and all other costs incurred in transporting the material to the importation port in the Party where the producer of the good is located; or
- (b) if such value is unknown and cannot be ascertained, shall be the first ascertainable price paid for the material in the Party, but may exclude all the costs incurred in the Party in transporting the material from the warehouse of the supplier of the material to the place where the producer is located such as freight, insurance and packing as well as any other known and ascertainable cost incurred in the Party.

5. For the purposes of paragraph 1, the VNM of a good shall not include the value of non-originating materials used in the production of originating materials of the Party which are used in the production of the good.

6. For the purposes of subparagraph 3(b) or 4(a), in applying the Agreement on Customs Valuation to determine the value of a good or non-originating material, the Agreement on Customs Valuation shall apply, *mutatis mutandis*, to domestic transactions or to the cases where there is no domestic transaction of the good or non-originating material.

Article 28
De Minimis

1. A good that does not satisfy the requirements of subparagraph 1(b) of Article 26 or an applicable CTC-based rule of origin set out in Annex 2 shall be considered as an originating good of a Party if:

- (a) in the case of a good classified under Chapters 16, 19, 20, 22, 23, 28 through 49, and 64 through 97 of the Harmonized System, the total value of non-originating materials used in the production of the good that have not undergone the required CTC does not exceed ten (10) per cent of the FOB;

- (b) in the case of a particular good classified under Chapters 18 and 21 of the Harmonized System, the total value of non-originating materials used in the production of the good that have not undergone the required CTC does not exceed ten (10) per cent or seven (7) per cent of the FOB, as specified in Annex 2; or
- (c) in the case of a good classified under Chapters 50 through 63 of the Harmonized System, the weight of all non-originating materials used in the production of the good that have not undergone the required CTC does not exceed ten (10) per cent of the total weight of the good,

provided that it meets all other applicable criteria set out in this Chapter for qualifying as an originating good.

Note: For the purposes of this paragraph, subparagraph 2(a) of Article 27 shall apply.

2. The value of non-originating materials referred to in paragraph 1 shall, however, be included in the value of non-originating materials for any applicable RVC-based rule of origin for the good.

Article 29 Accumulation

Originating materials of a Party used in the production of a good in another Party shall be considered as originating materials of that Party where the working or processing of the good has taken place.

Article 30 Non-qualifying Operations

A good shall not be considered to satisfy the requirements of CTC or specific manufacturing or processing operation merely by reason of:

- (a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine) and other similar operations;
- (b) changes of packaging and breaking up and assembly of packages;
- (c) disassembly;
- (d) placing in bottles, cases, boxes and other simple packaging operations;

- (e) collection of parts and components classified as a good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;
- (f) mere making-up of sets of articles; or
- (g) any combination of operations referred to in subparagraphs (a) through (f).

Article 31
Direct Consignment

1. Preferential tariff treatment shall be accorded to an originating good satisfying the requirements of this Chapter and which is consigned directly from the exporting Party to the importing Party.

2. The following shall be considered as consigned directly from the exporting Party to the importing Party:

- (a) a good transported directly from the exporting Party to the importing Party; or
- (b) a good transported through one or more Parties, other than the exporting Party and the importing Party, or through a non-Party, provided that the good does not undergo operations other than transit or temporary storage in warehouses, unloading, reloading, and any other operation to preserve it in good condition.

Article 32
Packing Materials and Containers

1. Packing materials and containers for transportation and shipment of a good shall not be taken into account in determining the origin of any good.

2. Packing materials and containers in which a good is packaged for retail sale, when classified together with the good, shall not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable CTC-based rule of origin for the good.

3. If a good is subject to a RVC-based rule of origin, the value of the packing materials and containers in which the good is packaged for retail sale shall be taken into account as originating or non-originating materials, as the case may be, in calculating the RVC of the good.

Article 33
Accessories, Spare Parts, Tools and
Instructional or Other Information Materials

1. If a good is subject to the requirements of CTC or specific manufacturing or processing operation, the origin of accessories, spare parts, tools and instructional or other information materials presented with the good shall not be taken into account in determining whether the good qualifies as an originating good, provided that:

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

2. If a good is subject to a RVC-based rule of origin, the value of the accessories, spare parts, tools and instructional or other information materials shall be taken into account as the value of the originating or non-originating materials, as the case may be, in calculating the RVC of the originating goods.

Article 34
Indirect Materials

1. Indirect materials shall be treated as originating materials regardless of where they are produced.

2. For the purposes of this Article, the term "indirect materials" means goods used in the production, testing, or inspection of a good but not physically incorporated into the good, or goods used in the maintenance of buildings or the operation of equipment associated with the production of a good, 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 good;
- (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.

Article 35
Identical and Interchangeable Materials

The determination of whether identical and interchangeable materials are originating materials shall be made by the use of generally accepted accounting principles of stock control applicable, or those of inventory management practised, in the exporting Party.

Article 36
Operational Certification Procedures

The operational certification procedures, as set out in Annex 4, shall apply with respect to procedures regarding certificate of origin and related matters.

Article 37
Sub-Committee on Rules of Origin

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Rules of Origin (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 11.
2. The functions of the Sub-Committee shall be to:
 - (a) review and make appropriate recommendations, as needed, to the Joint Committee on:
 - (i) the implementation and operation of this Chapter;
 - (ii) any amendments to Annexes 2 and 3, and Attachment to Annex 4, proposed by any Party; and
 - (iii) the Implementing Regulations referred to in Rule 11 of Annex 4;
 - (b) consider any other matter as the Parties may agree related to this Chapter;

- (c) report the findings of the Sub-Committee to the Joint Committee; and
- (d) carry out other functions as may be delegated by the Joint Committee pursuant to Article 11.

3. The Sub-Committee shall be composed of representatives of the Governments of the Parties, and may invite representatives of relevant entities other than the Governments of the Parties with necessary expertise relevant to the issues to be discussed, upon agreement of all the Parties.

4. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

Chapter 4 Sanitary and Phytosanitary Measures

Article 38 Scope

This Chapter shall apply to all sanitary and phytosanitary (hereinafter referred to as "SPS") measures of the Parties as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement (hereinafter referred to as "SPS Agreement") that may, directly or indirectly, affect trade between the Parties.

Article 39 Reaffirmation of Rights and Obligations

The Parties reaffirm the rights and obligations relating to SPS measures under the SPS Agreement among those Parties that are parties to the said Agreement.

Article 40 Sub-Committee on Sanitary and Phytosanitary Measures

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Sanitary and Phytosanitary Measures (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 11.

2. The functions of the Sub-Committee shall be to: