

FTAA – Free Trade Area of the Americas

Draft Agreement

Chapter X Origin Regime

CHAPTER X Origin Regime

Section A General Aspects

[Article 1. Definitions]

[1.1. For the purpose of this Chapter:

aquaculture means the farming of aquatic organisms including fish, mollusks, crustaceans [, other aquatic invertebrates] and aquatic plants, [throughout their rearing or growth period, by effecting change in the rearing or growth process] [from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes] to enhance production, such as regular stocking, feeding, protection from predators, etc.;

customs authority means as defined in the Chapter on Customs Procedures;

customs value means the value as determined in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (WTO Agreement on Customs Valuation);

direct production costs and expenditures means the costs and expenditures incurred during a period in which they are directly to the good, other than the cost or value of direct materials and the cost of direct labor;

f.o.b. means free on board;

fungible goods means goods that are interchangeable for commercial purposes, whose properties are essentially identical and for which it is impractical to differentiate one from another by a mere visual examination;

fungible materials means materials that are interchangeable for commercial purposes and whose properties are essentially identical;

generally accepted accounting principles means the principles, rules, and procedures, including both broad and specific guidelines, that define the accounting practices accepted in the territory of a Party;

good means any merchandise, product, article or material;

identical or similar goods means "identical goods" and "similar goods", respectively, as defined in the WTO Agreement on Customs Valuation;

indirect material means a good used in the production, testing or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

- a) fuel and energy;
- b) tools, dies and molds;
- c) spare parts and materials used in the maintenance of equipment and buildings;

- d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;
- e) gloves, glasses, footwear, clothing, safety equipment and supplies;
- f) equipment, devices, and supplies used for testing or inspecting the goods;
- g) catalysts and solvents; and
- h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

indirect production costs and expenditures means the costs and expenditures incurred during a period, other than the direct production costs and expenditures, direct cost of labor, and the cost or value of direct materials;

intermediate material means a material that is self-produced and used in the production of a good, and designated pursuant to Article 4.8.a);

material means a good that is used in the production of another good [and includes a part or ingredient];

net cost means total cost minus sales promotion, marketing and aftersales service costs, royalties, shipping and repacking costs, and nonallowable interest costs, in accordance with the provisions in the annex to this article;

non-allowable interest costs means interest costs incurred by a producer on its financial obligations that exceed ten (10) percentage points above the highest interest rate of the debt obligations issued by the central or federal government of the party in which the producer is located, in accordance with the provisions of the annex to this article;

non-originating good or non-originating material means good or material that does not qualify as originating under this “Chapter”;

packing containers and materials for shipment means goods used to protect another good during transportation, other than the containers and materials for retail sale;

person of a Party

producer means a person who produces a good;

producer’s location means with respect to a good, the production plant of that good;

production means growing, mining, removing, harvesting, raising, fishing, [trapping,] hunting, manufacturing, processing disassembling, or assembling a good;

recovered goods means materials in the form of individual parts that are the result of: 1) the disassembly of used goods into individual parts; and 2) the cleaning, inspecting, testing or other processing of those parts necessary for improvement to sound working condition;

related person means a person related to another person on the basis that:

- a) they are officers or directors of one another's businesses;
- b) they are legally recognized partners in business;

- c) they are employer and employee;
- d) any person directly or indirectly owns, controls or holds twenty-five percent (25%) or more of the outstanding voting stock or shares of each of them;
- e) one of them directly or indirectly controls the other;
- f) both of them are directly or indirectly controlled by a third person;
- g) together they directly or indirectly control a third person; or
- h) they are members of the same family (children, brothers, sisters, parents, grandparents, or spouses);

remanufactured goods means industrial goods assembled in the territory of a Party that: 1) are entirely or partially comprised of recovered goods; and 2) have the same life expectancy and meet the same performance standards as new products;

sales promotion, marketing and after-sales service costs means the following costs related to sales promotion, marketing and aftersales service:

- a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials, exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;
- b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;
- c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), travelling and living expenses, membership and professional fees, for sales promotion, marketing and aftersales service personnel;
- d) recruiting and training of sales promotion, marketing and aftersales service personnel, and aftersales training of customers' employees;
- e) product liability insurance;
- f) office supplies for sales promotion, marketing and aftersales service of goods;
- g) telephone, mail and other communications for purposes of sales promotion, marketing and aftersales service;
- h) rent and depreciation of sales promotion, marketing and aftersales service offices and distribution centers;
- i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of offices and distribution centers; and
- j) payments by the producer to other persons for warranty repairs;

self-produced material means a material that is produced by the producer of a good and used in the production of that good;

shipping and repacking costs means the costs incurred in repacking a good and shipping the good outside the territory where the producer or exporter of the good is located;

total cost means the sum of the following elements, in accordance with the provisions in the annex to this Article:

- a) the cost or value of direct materials of production used in producing the good;

- b) the cost of direct labor used in producing the good; and
- c) an amount for direct and indirect production costs and expenses of the good reasonably allocated to same;

transaction value means the price actually paid or payable for a good or material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the WTO Agreement on Customs Valuation to include, inter alia, such costs as commissions, production assists, royalties or license fees;

transaction value of a good means the price actually paid or payable for a good with respect to a transaction of the producer of the good, in accordance with the principles of Article 1 of the WTO Agreement on Customs Valuation, adjusted in accordance with the principles of Articles 8.1, 8.3 and 8.4 of said Code, regardless of whether the good is sold for export. For the purpose of this definition, the seller referred to in the WTO Agreement on Customs Valuation shall be the producer of the good;

transaction value of the good including for purposes of this definition, sets or assortments of Article 7. (Qualification of Specific Types of Goods and Materials) and of Annex XX, means

- a) the transaction value of a good when sold by the producer at the place of production, or
- b) the customs value of that good,

adjusted, if necessary, to exclude any costs incurred subsequent to the good leaving the place of production, such as freight or insurance;

transaction value of a material means the price actually paid or payable for a material with respect to a transaction of the producer of the good, in accordance with the principles of Article 1 of the WTO Agreement on Customs Valuation, adjusted in accordance with the principles of Articles 8.1, 8.3 and 8.4 of said code, regardless of whether the material is sold for export. For the purpose of this definition, the seller referred to in the WTO Agreement on Customs Valuation shall be the supplier of the material and the buyer to which the customs valuation code refers to shall be the producer of the good;

used means used or consumed in the production of goods;

value of non-originating materials, including for purposes of this definition non-originating component goods as referred to in the provisions on sets or assortments in Article 7. (Qualification of Specific Types of Goods and Materials) and in Annex XX, non-originating accessories, spare parts and tools as referred to in the provisions in Article 7. (Qualification of Specific Types of Goods and Materials) and non-originating packaging materials and containers as referred to in the provisions in Article 7. (Qualification of Specific Types of Goods and Materials), means:

- a) the transaction value or the custom value of the materials at the time of their importation into a Party, adjusted, if necessary, to include freight, insurance, packing and all other costs incurred in transporting the materials to the place of importation; or
- b) in the case of domestic transactions, the value of the materials determined in accordance with the principles of the WTO Agreement on Customs Valuation in the same manner as international transactions, with such modifications as may be required by the circumstances.]

Article 2. [Basic Principles]

2.1. [The purpose of the FTAA origin regime is to define the criteria by which goods qualify as originating.]

2.2. [The rules of origin shall not be restrictive in nature, nor constitute unnecessary obstacles to tapping the advantages stemming from the application of the Tariff Elimination Program of this Agreement.]

Section B Substantive Provisions

Article 3. Originating Goods

3.1. Unless otherwise specified, for the purposes of the Agreement the following goods will be considered as originating in the territory of one [or more] of the Part[y][ies]:

- a) Goods wholly obtained or produced entirely in the territory of one or more¹ of the Parties
 - i) plants and plant products harvested or gathered in the territory of one or more of the Parties;
 - ii) live animals born and raised in the territory of one or more of the Parties;
 - iii) goods obtained from live animals in the territory of one or more of the Parties;
 - iv) goods obtained from hunting, trapping, fishing or aquaculture² conducted in the territory [or in the territorial waters and exclusive economic zone]³ of one or more of the Parties;
 - v) minerals and other natural resources not included in subparagraphs i)-iv) extracted or taken from the territory of one or more of the Parties;
 - vi) fish, shellfish and other marine life taken from the sea [outside territorial waters and exclusive economic zones [in which the Parties have jurisdiction in accordance with the United Nations Convention on the Law of the Sea]] whether [seabed or subsoil outside the territory of one or more of the Parties] by vessels registered or recorded [or listed] in a Party and [flying] [entitled to fly] the flag of that Party [or by vessels leased or chartered by, or affiliated to enterprises established in the territory of a Party;];
 - [vii) goods produced aboard factory ships from the goods referred to in subparagraph [iv)] will be considered as originating in the country in whose territory [or territorial waters and exclusive economic zones] the fishing or capture took place;]

¹ The progress made in the concept of accumulation is given in Article 5 - Accumulation of this Chapter.

² The definition of the concept of aquaculture is given in Article 1 - Definitions of this Chapter.

³ [This text in brackets is linked to the definition of territory which, by being cross cutting, will have to be coordinated with other FTAA entities.]

- [viii) goods produced aboard factory ships from the goods referred to in subparagraph [vi)], provided that such factory ships are registered, recorded [or listed] in one of the Parties and [flying] [are entitled to fly] the flag of that Party , [or by factory ships leased or chartered by or affiliated to enterprises established in the territory of a Party];]
 - [ix) goods [other than fish, shellfish and other marine life,] taken [by a Party or a person of a Party] [or extracted] from the seabed [or beneath the seabed] or subsoil [outside [the] [its] territorial [and patrimonial] waters [and exclusive economic zones], provided that [one of] [the] [that] Party[ies] [or a person of one of the Parties has] [have] rights to exploit such seabed or subsoil][of the continental shelf or the exclusive economic zone of any of the Parties];]
 - [ix) goods, other than fish, shellfish and other marine life, taken or extracted from the seabed or the subsoil, [in the area][within or] outside the continental shelf and the exclusive economic zone of any of the Parties or of any other State, as defined in the United Nations Convention on the Law of the Sea, by a vessel registered, recorded or listed with a Party and entitled to fly its flag, or by a Party or person of a Party;]
 - [x) goods taken from outer space, provided that they are obtained by a Party or person of a Party;]
 - [xi) scrap and waste resulting from production in [one] [or more] Part[y][ies];] [Scrap and waste products resulting from consumption or from manufacturing or transformation operations carried out in one or more Parties, that are only suitable for recovering materials;]
 - xi) recovered goods derived in the territory of one or more of the Parties from used goods, and utilized in the territory of one or more of the Parties in the production of remanufactured products;
 - [xii) components or raw materials recovered from used goods collected in the territory of one or more of the Parties, provided the used goods are fit only for such recovery;] and
 - [xii) used goods collected in the territory of one [or more] Part[y][ies], provided such goods are fit only for the recovery of raw materials;]
 - [xiii) Goods produced in the territory of one or more of the Parties exclusively from goods referred to in the preceding sub-paragraphs [or from their derivatives, at any stage of production].]
- b) Goods produced in the territory of one or more Parties exclusively from materials originating in the territory of one [or more] of the Parties.
- i) A good shall originate in the territory of a Party when the good is produced entirely in the territory of one [or more] of the Parties exclusively from materials originating in accordance with this Chapter [provided that such originating materials have not obtained said condition through the criteria of [regional value content] [value test]].

c) [Goods produced in the territory of one or more Parties from originating and non-originating materials or exclusively from non-originating materials.]

i) A good shall qualify as originating from the territory of a Party when as a result of production occurring entirely in the territory of one or more Parties, each of the non-originating materials undergoes a change in tariff classification specified in Annex [XX] (Specific Rules of Origin) or the good satisfies the applicable requirements of that Annex where no change in tariff classification is required, and where the good satisfies all other applicable requirements of this Chapter.

[ii) Except as provided in Annex XX [or except for a good of Chapter XX of the Harmonised System], where a good and one or more of the non-originating materials used in the production of that good cannot satisfy the conditions in Annex XX because both the good and the non-originating materials are classified in the same subheading, or under a heading that is not further subdivided into subheadings, the good shall be considered as having undergone [sufficient production][substantial transformation], provided that the value of the non-originating materials classified as or with the good does not exceed (...) percent of the transaction value of the good.]

[iii) Where the good is produced wholly in the territory of one or more of the Parties, but one or more of the non-originating materials used in producing the good does not undergo a change in tariff classification because:

- 1) the good has been imported into the territory of a Party without assembly or disassembled, but has been classified as an assembled good in compliance with rule 2 (a) of the General Rules for Interpretation of the Harmonized System, or
- 2) the heading for the good is the same both for the good and for its parts and specifically describes them, and this heading is not divided into subheadings, or the subheading is the same both for the good and for its parts and describes them specifically,

shall be considered as originating provide that the regional content value of the good, determined in compliance with Article XX, is not less than (...) percent and the good meets the other applicable requirements in this Chapter, unless the applicable rule of Annex XX under which the good is classified specifies a different regional content value requirement, in which case this requirement should be applied.]

iv) [For the purposes of determining the origin of a good referred to in paragraphs i), ii) and iii), if in the production of said good, the originating materials that were used acquired said condition through a value test, the non-originating inputs in said materials must satisfy the requirements of origin applicable to the good.]

v) [Fish, shellfish or other marine life that has been taken from the sea, seabed or subsoil by a vessel of a non-Party to this Agreement and [has been processed] [has satisfied the conditions in Annex XX] on board a factory ship outside the territory of one or more of the Parties shall be considered as originating, provided that such

factory ship is registered, recorded or listed with a Party and [flying][entitled to fly] its flag.] [Likewise, these goods shall fulfil the rules of origin in Annex [XX].]

Article 4. [Regional Value Content] [Value Test]

[4.1. When [regional value content] [a value test] is required under Annex I (Product-Specific Rules of Origin) to determine if a good is originating, each Party shall provide that the person requesting preferential tariff treatment for a good may calculate the [regional value content][value test] on the basis of either of the following methods, except when Annex I states otherwise:

- a) Method Based on Value of Non-Originating materials

$$RVC = \frac{AV - VNM}{AV} \times 100$$

- b) Method Based on Value of Originating Materials

$$RVC = \frac{VOM}{AV} \times 100$$

where,

RVC is the regional value content, expressed as a percentage;

AV is the adjusted value of a good;

VNM is the value of non-originating materials acquired by the producer in the production of the good;

VOM is the value of originating materials acquired by the producer for the production of the good.

Adjusted value of a good:

4.2. For purposes of the regional value content formulas and the application of de minimis, adjusted value means the customs value of the good as determined under Articles 1 through 8, Article 15, and the corresponding interpretative notes of the World Trade Organization Agreement on the Implementation of Article VII of the General Agreement on Tariff and Trade 1994 (WTO Agreement on Customs Valuation), adjusted to exclude the following costs, charges, and expenses, when these are not already excluded pursuant to a Party's national legislation: any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation.

Value of Materials:

4.3. For purposes of calculating the regional value content of a good and for purposes of applying the "de minimis", the value of a material shall be:

- a) for a material imported by the producer of the good, the adjusted value of the material; or
- b) for a material acquired in the territory where the good is produced,

- i) except for materials within the meaning of subparagraph b) in point ii), the price actually paid or payable by the producer of the good; or
- ii) for a material where the relationship between the producer of the good and the seller of the material influenced the price actually paid or payable for the material, including a material obtained without charge, the sum of:
 - 1) all expenses incurred in the growth, production, or manufacture of the material, including general expenses; and
 - 2) an amount for profit.

Adjustments to the Value of Materials

4.4. Each Party will provide that a person who requests preferential tariff treatment for a good may adjust the value of the materials, as here indicated

- a) For originating materials, where not included under paragraph 3 above, the following expenses may be added to 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 to the location of the producer,
 - ii) duties, taxes and customs brokerage fees on the material paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable, and
 - iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.
- b) For non-originating materials, where included under paragraph 3 above, 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 to the location of the producer,
 - ii) duties, taxes and customs brokerage fees on the material paid in the territory of one or more of the parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,
 - iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product, and
 - iv) the cost of originating materials used in the production of the non-originating material in the territory of a Party.]

[4.1. [Except for the provisions of paragraph 4 for purposes of determining whether a good is originating, the regional value content of a good shall be calculated [at the choice of the exporter or producer of the good] on the basis of the transaction value method or with the net cost method.]

[4.2. For calculating the regional value content of a good, based on the transaction value method, the following formula will be used:

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

where:

RVC is the regional value content, expressed as a percentage;

TV is the transaction value of the good adjusted on an FOB basis. [save for the provisions of paragraph 3][If such value does not exist or cannot be determined according to the principles set forth in Article 1 of the Customs Valuation Agreement, it shall be calculated according to the principles set forth in Articles 2 through 7 of said Agreement]; and

VNM [is the transaction value of non-originating materials adjusted on a CIF basis. If such value does not exist or cannot be determined according to the principles set forth in Article 1 of the Customs Valuation Agreement, it shall be calculated according to the principles set forth in Articles 2 through 7 of said Agreement]. [value of the non-originating materials used by the producer in the production of the good, determined in accordance with the provisions of Article 2.6.]

[For purposes of calculating regional value content, the value of non-originating materials used in the production of a good shall not include the value of non-originating materials used in the production of an originating material used in the production of that good.]

[4.3. For the purposes of paragraph 2, if the producer of a good does not export it directly, the transaction value shall be adjusted up to the point at which the purchaser receives the good in the territory where the producer is located.]

[4.4. Each Party shall provide that an exporter or producer calculate the regional value content of a good solely on the basis of the net cost method set out in paragraph 5 when:

- a) there is no transaction value because the good is not subject to sale;
- b) the transaction value of the good cannot be determined due to existing restrictions on the transfer to or use of the good by the buyer, with the exception of those that:
 - i) are imposed or required by law or by the authorities of the Party where the buyer of the good is located;
 - ii) limit the geographic territory where the good can be resold; or
 - iii) do not noticeably affect the value of the good;

- c) the sale or the price depend on a condition or consideration, the value of which cannot be determined for the good;
- d) part of the proceeds of the resale of the good or of any subsequent transfer or use of the good reverts directly or indirectly to the seller, unless the due adjustment can be made in accordance with Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (WTO Agreement on Customs Valuation);
- e) the buyer and the seller are related and the relationship between them influences the price, except as provided in Article 1.2 of the WTO Agreement on Customs Valuation;
- f) the producer sells the good to a related person and the volume of sale in units of quantity of identical or similar goods sold to related persons during the six (6)-month period immediately preceding the month in which the producer sold the good is greater than eighty-five percent (85%) of the producer's total sales of said goods during the period; and
- g) the good is designated as an intermediate material pursuant to the provisions on indirect materials used in production in Article 7. (Qualification of Specific Types of Goods and Materials) and is subject to a regional value content requirement.]

[4.5. To calculate the regional value content of a good on the basis of the net cost method, the following formula shall be used:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

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 used by the producer in the production of the good, determined in accordance with Article 4.6. ([Regional value content][Value test]) .]

[Value of the materials

4.6. For purposes of calculating the regional value content, the value of non-originating goods used by the producer in the production of the good shall be the sum of the values of the non-originating materials, determined in accordance with this article, imported from outside the territory of the Party and that are used in the production of the good or are used in the production of any material used in the production of the good.

4.7. Determination of the value of the materials.

- a) this shall be the transaction value of the material; or

- b) in the event there is no transaction value or the transaction value of the material cannot be determined pursuant to the principles of Article 1 of the Customs Valuation Code, shall be calculated in accordance with the principles of Articles 2 to 7 of that Code.

4.8. When not considered in subparagraphs a) or b) of Article 4.7. ([Regional value content][Value test]) the value of a material shall include:

- a) freight, insurance, packing and all other costs incurred in transporting the material to the port of importation in the Party where the producer of the good is located, except as provided for in Article 4.9. ([Regional value content][Value test]); and
- b) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the recovery of these costs, provided recovery does not exceed thirty (30) percent of the value of the material determined in accordance with Article 4.7. ([Regional value content][Value test]).]

4.9. [If the producer of the good acquires a non-originating material in the territory of the Party in which it is located, the value of the non-originating material shall not include freight, insurance, costs of packaging and any other costs incurred in transporting the material from the supplier's warehouse to the place where the producer is located.]

4.10. [The value of an indirect material shall be based on the generally accepted accounting principles applicable in the territory of the Party in which the good is produced.]]

[4.1. Where the applicable rule of origin in Annex XX for the tariff provision under which a good is classified specifies a value test, the value test shall be satisfied provided the value of non-originating materials used in the production of the good does not exceed the percentage of the transaction value of the good that is specified in the rule.

4.2. For purposes of paragraph 1, the value test shall be expressed as “provided that the value of the non-originating materials (...) does not exceed (...) percent of the transaction value of the good”, where

- a) “value of non-originating materials”, including, for the purposes of this definition, non-originating component goods as referred to in the provisions on sets or assortments in Article 7. (Qualification of Specific Types of Goods and Materials) and in Annex XX, means
 - i) the transaction value or the customs value of the materials at the time of their importation into a Party, adjusted, if necessary, to include freight, insurance, packing and all other costs incurred in transporting the materials to the place of importation; or
 - ii) in the case of domestic transactions, the value of the materials determined in accordance with the principles of the WTO Agreement on Customs Valuation in the same manner as international transactions, with such modifications as may be required by the circumstances; and

- b) “transaction value of the good”, including for the purposes of this definition, sets or assortments of Article 7. (Qualification of Specific Types of Goods and Materials) and of Annex XX, means
 - i) the transaction value of a good when sold by the producer at the place of production, or
 - ii) the customs value of that good, adjusted, if necessary, to exclude any costs incurred subsequent to the good leaving the place of production, such as freight or insurance.

4.3. For purposes of paragraph 2,

- a) “transaction value” means the price actually paid or payable for a good or material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the WTO Agreement on Customs Valuation to include, *inter alia*, such costs as commissions, production assists, royalties or license fees; and
- b) “customs value” means the value as determined in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (WTO Agreement on Customs Valuation).]

[4.1. [A good shall be considered to be originating when in its production or transformation process originating and non-originating materials from the territory of the Parties are used, provided that the CIF value of the non-originating materials does not exceed (...) percent of the FOB export value of the product (...) percent for smaller economies and/or countries in different levels of development].]

Article 5. Treatment of Accumulation

5.1. Each Party shall provide that goods produced in one or more of the Parties exclusively from materials wholly obtained or produced in any of the Parties shall be considered as [wholly obtained] [originating] in the qualification of the origin of the final good.

5.2. Each Party shall provide that any good produced in one or more of the Parties from originating and non-originating materials that fulfills the origin requirements established in this Chapter shall be considered as [originating] [wholly produced] materials in the determination of the origin of the good into which it is incorporated, including when these materials may come from the Party in which the final production takes place [except when a good to be used as an input must satisfy a rule of origin based on a value test criterion, in which case the non-originating inputs incorporated in the intermediate good must be considered as non-originating inputs the determination of the origin of the final good].

[5.3. When a good is produced in one or more Parties from originating and non-originating inputs, the rule of origin applicable to the good may be fulfilled through [production processes] [the origin requirements established in this Chapter] carried out in more than one Party.][The good shall be originating from the Party where the last productive process was carried out.]

5.4. The provisions of paragraphs 1, 2 and 3 shall take effect [on a bilateral basis between the Parties participating in the commercial transaction during the transition period] [among all the Parties the moment this Agreement enters into force].

5.5. The provisions of this Article shall be applied during the transition period to all trade conducted under this Agreement [independently of the negotiated preferential tariff treatments] [in accordance with the criteria determined by the Parties for the application of accumulation to those products for which differential tariff treatment is granted].

[Article 6. “De Minimis”]

[6.1. Notwithstanding Article 3.c) ([Goods produced in the territory of one or more Parties from originating and non-originating materials or exclusively from non-originating materials]), [except as identified in subparagraph e) of Annex [XX]] [and with exception of chapters 50 through 63,] [and any other heading of the tariff universe] a good shall be considered as originating if the [CIF] value of all non-originating materials that do not comply with the requirements of a change in tariff classification [established in Annex XX] does not exceed (...) percent [of the adjusted value of the good] [of the transaction value of the good][of the total FOB cost of the good in conformity with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994,][provided that:

- a) [Annex XX (Specific Rules of Origin) does not specifically exempt the good from this provision;]
- b) [if the rule of Annex XX applicable to the good contains a percentage for the maximum value of non-originating materials, the value of these non-originating materials is taken into account when calculating the value of the non-originating materials;] and
- c) the good satisfies all other applicable requirements of this Chapter.]

[In the case of the smaller economies the de minimis percentage shall be (...) percent, upon entry into force of the Agreement.]

6.2. [In the case of goods classified in Chapters 50 through 63 of the Harmonized System, that do not originate because certain fibers and yarns used in the production of the material that determines the tariff classification of the good do not undergo a change in tariff classification as stipulated in Annex XX, they shall nonetheless be considered as originating if the total weight of all such fibers and yarns in that component is not more than (... percent) of the total weight of that component.]

[In the case described in the previous paragraph, the producer shall not be obligated to comply with any other rule of origin.] [Notwithstanding the preceding paragraph, a good containing elastomeric yarns in the component of the good that determines the classification of the good originates only if such yarns are wholly formed in the territory of one of the Parties.]

Article 7. Qualification of Specific Types of Goods and Materials

Fungible materials and goods

[7.1. For purposes of determining whether [a material or] a good qualif[y][ies] as originating, the following shall be taken into account:

- a) where originating and non-originating fungible goods [and materials] are commingled or physically combined in inventory and prior to their export to the territory of another Party do not undergo any productive process or any other operation, the origin of the good may be determined on the basis of any of the inventory management methods [recognized in the generally accepted accounting principles of the Party from which the good is exported or otherwise generally accepted in that Party][agreed between the Parties].]
- b) where originating and non-originating fungible materials are used in the production of a good, and are commingled or physically combined in inventory, the origin of the materials shall be determined on the basis of any of the inventory management methods, [such as average, last in first out (LIFO), or first in first out (FIFO),] recognized in the generally accepted accounting principles [of the Party in which the production takes place, [or otherwise [generally] accepted in the Party in which the production takes place.]]
- c) Once one of the inventory management methods has been selected, it shall be used for the entire period or fiscal year.

Sets or Assortments

[7.2. [[Except as provided in Annex XX][Sets [or] assortments of goods [classified pursuant to rule 3 of the General Rules of Interpretation of the Harmonized System,] [as well as goods whose description conforms to the Harmonized System Nomenclature, whether specifically that of a set or assortment,] shall qualify as originating, provided that:

- a) all the component goods in the set or assortment, including packaging materials and containers, are originating; or
- b) where a set or assortment contains non-originating component goods, including packaging materials and containers:
 - i) [each of the goods contained in the set or assortment complies with the corresponding specific rule of origin]
 - ii) [at least one of the component goods, or all the packaging materials and containers for the set or assortment, is originating,] and
 - iii) [the value of non-originating component goods [, including any non-originating packaging materials and containers for the set or assortment], does not exceed (...) percent of the [transaction] value of the set or assortment, [adjusted on a FOB basis][adjusted on a CIF basis]].

[7.3. These provisions on Sets or Assortments shall prevail over the specific rules set forth in Annex XX of specific rules.]

Accessories, spare parts and tools

7.4. Accessories, spare parts and tools delivered with the good that [usually] form part of the same shall be considered as originating if the good originates and shall be disregarded in determining whether all the

non-originating materials used in the production of a good undergo the applicable change of tariff classification set out in Annex XX provided that:

- (a) the accessories, spare parts and tools are classified with the good and are not invoiced separately from the good; [and]]
- (b) the quantity and value of the accessories, spare parts and tools are customary for the good being classified.]

7.5. [Where the good is subject to a [value test] [regional value content requirement], the accessories, spare parts and tools shall be considered to be originating or non-originating materials, as appropriate, for calculating the [regional value content of the good.] [value test.]

Packaging materials and containers for retail sale

7.6. [Except as provided in the provisions on sets or assortments in Article 7. (Qualification of Specific Types of Goods and Materials),] [p] Packaging materials and containers in which a good is packaged for retail sale shall [, if classified as one with the good,][in accordance with General Rule 5 b of the Harmonized System,] be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification or fulfil any other condition established in Annex XX.

[7.7. However, where the good is subject to a regional value content requirement][value test], the value of any non-originating packaging materials and containers shall [be disregarded in determining the origin of the goods, where the packaging materials and containers are those used usually, and they are classified as one with the goods and are not priced separately.] [be taken into account as originating or non-originating, as the case may be], in calculating the [value of non-originating materials] [regional value content of the good].]

[Packaging] [Packing] materials and containers for shipment

7.8. [Packaging] [Packing] materials and containers in which a good is packed for transport shall be disregarded for the purpose of determining the origin of the good.

7.9. [If the good is subject to a [regional value content requirement] [value test], the value of the [packaging] [packing] materials and containers for transport of the good [shall be disregarded when determining the origin of the goods.] [shall be considered to be originating or non-originating, as appropriate, for calculating the [regional value content][value test] of the good and the value of that material shall be the cost thereof reported in the accounting records of the producer of the good.]]

Indirect materials used in production

7.10. [An indirect material shall be considered to be an originating material without regard to where it was produced [[and the value of that material shall be the cost thereof reported in the accounting records of the producer of the good] [or other evidence providing a reasonable indication of its value]].]

[Indirect materials may include, among others, all those used in the production, testing or inspection of a good but that are not physically incorporated into it; or goods used for the maintenance of buildings or for operating equipment related to the production of the good, including, but not limited to:

- a) fuel and energy;
- b) machines, tools, dies and molds;
- c) spare parts and materials used in the maintenance of equipment and buildings;
- d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and/or buildings;
- e) gloves, glasses, footwear, clothing, safety equipment and safety supplies;
- f) equipment, devices and supplies used for testing or inspecting goods; and
- g) catalysts and solvents.]

Intermediate materials used in production

[7.11. An intermediate material is defined as a material that is self-produced that contains non-originating inputs and satisfies the conditions required to qualify as originating, and which subsequently is used in the production of final goods in a Party. Non-originating inputs of intermediate materials shall be disregarded for classification of the origin of the final goods of which they are a part.]

[7.11. For purposes of calculating the regional value content in accordance with Article 4. ([Regional Value Content] [Value Test]), the producer of a good may designate as an intermediate material any self-produced material used in the production of the good, provided said material complies with the provisions of Articles 3.a) (Goods wholly obtained or produced entirely in the territory of one or more of the Parties) to c) ([Goods produced in the territory of one or more Parties from originating and non-originating materials or exclusively from non-originating materials]) and Article 5. (Treatment of Accumulation).

7.12. When the intermediate good is subject to a regional value content requirement in accordance with Annex XX, it shall be calculated on the basis of the net cost methods established in Article 4. ([Regional Value Content] [Value Test]), and the good must satisfy all other applicable requirements of this Chapter.

7.13. For purposes of calculating the regional value content of the good, the value of the intermediate material shall be the total cost that can be reasonably allocated to such intermediate material in accordance with paragraph 5 of the annex to Article 2 of Option 2; moreover, the value of the intermediate goods used by the producer in the production of the good shall be the sum of the values of the non-originating materials, determined in accordance with Article XX, imported from outside the territory of the party and that are used in the production of the good or that are used in the production of any material used in the production of the good.

7.14. If a material designated as an intermediate material is subject to a regional value content requirement, no other self-produced material subject to a regional value content used in the production of such intermediate material can, in turn, be designated by the producer as an intermediate material.]

Article 8. Operations That Do Not Confer Origin

[8.1. Where Article 3.c) ([Goods produced in the territory of one or more Parties from originating and non-originating materials or exclusively from non-originating materials]) applies, whether or not the conditions specified in the annex are met, the carrying out of one or more of the following operations or processes [among others,] shall be considered insufficient to confer origin:

- [a) the mere dilution with water or another substance that does not materially alter the characteristics of the good;]
- [b) operations for conserving the goods during transport or storage;
- [c) dusting, screening, peeling, classification, selection, washing, cutting;
- [d) packing, repacking, division into lots or packaging for retail sale;
- [e) the collection of goods to make sets or assortments;
- [f) the application of marks, labels or other distinguishing signs;
- [g) cleaning, including the removal of rust, grease, paint or other coverings;
- [h) the slaughtering of animals;
- [i) the application of oils;
- [j) disassembly of the good into its parts;
- [k) a change in the end use of the good;
- [l) the mere separation of one or more individual materials or components from an artificial mixture.]

Article 9. [Direct Shipment], Transit and Transshipment

9.1. [In order for originating goods to receive preferential treatment, they must have been shipped directly from the exporting Party to the importing Party. For such purpose, direct shipment shall be considered:

- a) Goods transported without passing through the territory of a State not a Party to the Agreement; or
- b) Goods in transit through one or more States that are not Party to the Agreement, with or without transshipment or temporary warehousing, under the supervision of the competent customs authority, provided that:
 - i) the transit is justified for geographical reasons or considerations related to transport requirements;
 - ii) they are not destined for commercial trade or use in the transit State;
 - iii) they do not undergo, during their transport or warehousing, any operation other than packing, loading, unloading or [handling] [or operations] to keep them in good condition or ensure their conservation.]

[9.1. A good shall not be considered to be originating if, subsequent to its production, the good undergoes further 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 the other Party, provided that these activities take place under the vigilance of customs authorities.]

Section C Procedures and Institutions

Article 10. Application

10.1. For purposes of this Chapter the basis for tariff classification is the Harmonized Commodity Description and Coding System and its updates.

[Article 11. Consultation and Modification]

[11.1. The Parties create the Rules of Origin Committee, comprising representatives from each Party, which shall meet at least twice a year, and at the request of any Party.

11.5. The Committee shall:

- a) ensure effective implementation and administration of this Chapter;
- b) reach agreement on the interpretation, application and administration of this Chapter;
- c) address any other matter agreed to by the Parties.

11.3. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter.

11.4. Any Party that considers that this Chapter requires modification to take into account developments in production processes or other matters may submit to the consideration of the Committee a proposed modification along with supporting rationale and any studies that support it. The Committee shall present a report to the Commission for making the pertinent recommendations to the Parties.]

11.5. [The Specific Rules of Origin may be subject to technical modifications by the Rules of Origin Committee. The Parties will define by common agreement the procedures, time periods, and requirements for the establishment and revision of Specific Rules of Origin. In this respect, the level of development of the Parties shall be taken into account.]

[11.6. Cases of non-compliance for justified reasons.]

[The Parties establish the Committee for Regional Integration of Inputs (CRII), the aim of which is to assess cases of non-compliance with a rule of origin, because of the inability of a producer of goods to obtain in the territory of Parties under conditions of timeliness, volume, quantity and price, the materials used by the producer in the production of a good.

The Committee for Regional Integration of Inputs shall be formed and shall be subject by the procedures stipulated in Annex XX].

[ANNEX TO ARTICLE 1.3.

SPECIFIC RULES OF ORIGIN

(to be defined)]