

## Chapter Four

### Rules of Origin

#### Article 401: Originating Goods

Except as otherwise provided in this Chapter, a good shall originate in the territory of a Party where:

- (a) the good is wholly obtained or produced entirely in the territory of one or more of the Parties, as defined in Article 415;
- (b) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification set out in Annex 401 as a result of production occurring entirely in the territory of one or more of the Parties, or the good otherwise satisfies the applicable requirements of that Annex where no change in tariff classification is required, and the good satisfies all other applicable requirements of this Chapter;
- (c) the good is produced entirely in the territory of one or more of the Parties exclusively from originating materials; or
- (d) except for a good provided for in Chapters 61 through 63 of the Harmonized System, the good is produced entirely in the territory of one or more of the Parties but one or more of the non-originating materials provided for as parts under the Harmonized System that are used in the production of the good does not undergo a change in tariff classification because
  - (i) the good was imported into the territory of a Party in an unassembled or a disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the Harmonized System, or
  - (ii) the heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings, or the subheading for the good provides for and specifically describes both the good itself and its parts,

provided that the regional value content of the good, determined in accordance with Article 402, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and that the good satisfies all other applicable requirements of this Chapter.

**Article 402: Regional Value Content**

1. Except as provided in paragraph 5, each Party shall provide that 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 either the transaction value method set out in paragraph 2 or the net cost method set out in paragraph 3.
2. Each Party shall provide that an exporter or producer may calculate the regional value content of a good on the basis of the following transaction value method:

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

where

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

TV is the transaction value of the good adjusted to a F.O.B. basis; and

VNM is the value of non-originating materials used by the producer in the production of the good.

3. Each Party shall provide that an exporter or producer may calculate the regional value content of a good on the basis of the following 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; and

VNM is the value of non-originating materials used by the producer in the production of the good.

4. Except as provided in Article 403(1) and for a motor vehicle identified in Article 403(2) or a component identified in Annex 403.2, the value of non-originating materials used by the producer in the production of a good shall not, for purposes of calculating the regional value content of the good

under paragraph 2 or 3, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.

5. Each Party shall provide that an exporter or producer shall calculate the regional value content of a good solely on the basis of the net cost method set out in paragraph 3 where:

- (a) there is no transaction value for the good;
- (b) the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code;
- (c) the good is sold by the producer to a related person and the volume, by units of quantity, of sales of identical or similar goods to related persons during the six-month period immediately preceding the month in which the good is sold exceeds 85 percent of the producer's total sales of such goods during that period;
- (d) the good is
  - (i) a motor vehicle provided for in heading 87.01 or 87.02, subheading 8703.21 through 8703.90, or heading 87.04, 87.05 or 87.06,
  - (ii) identified in Annex 403.1 or 403.2 and is for use in a motor vehicle provided for in heading 87.01 or 87.02, subheading 8703.21 through 8703.90, or heading 87.04, 87.05 or 87.06,
  - (iii) provided for in subheading 6401.10 through 6406.10, or
  - (iv) provided for in tariff item 8469.10.aa (word processing machines);
- (e) the exporter or producer chooses to accumulate the regional value content of the good in accordance with Article 404; or
- (f) the good is designated as an intermediate material under paragraph 10 and is subject to a regional value-content requirement.

6. If an exporter or producer of a good calculates the regional value content of the good on the basis of the transaction value method set out in paragraph 2 and a Party subsequently notifies the exporter or producer, during the course of a verification pursuant to Chapter Five (Customs Procedures), that the transaction value of the good, or the value of any material used in the production of the good, is required to be adjusted or is unacceptable under Article 1 of the Customs Valuation Code, the exporter or producer may then also calculate the regional value content of the good on the basis of the net cost method set out in paragraph 3.

7. Nothing in paragraph 6 shall be construed to prevent any review or appeal available under Article 510 (Review and Appeal) of an adjustment to or a rejection of:

- (a) the transaction value of a good; or
- (b) the value of any material used in the production of a good.

8. For purposes of calculating the net cost of a good under paragraph 3, the producer of the good may:

- (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 the Uniform Regulations, established under Article 511 (Customs Procedures - Uniform Regulations).

9. Except as provided in paragraph 11, the value of a material used in the production of a good shall:

- (a) be the transaction value of the material determined in accordance with Article 1 of the Customs Valuation Code; or
- (b) in the event that there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Customs Valuation Code, be determined in accordance with Articles 2 through 7 of the Customs Valuation Code; and
- (c) where not included under subparagraph (a) or (b), include
  - (i) freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer,
  - (ii) duties, taxes and customs brokerage fees on the material paid in the territory

of one or more of the Parties, 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.

10. Except as provided in Article 403(1), any self-produced material, other than a component identified in Annex 403.2, that is used in the production of a good may be designated by the producer of the good as an intermediate material for the purpose of calculating the regional value content of the good under paragraph 2 or 3, provided that where the intermediate material is subject to a regional value-content requirement, no other self-produced material subject to a regional value-content requirement used in the production of that intermediate material may itself be designated by the producer as an intermediate material.

11. The value of an intermediate material shall be:

- (a) the total cost incurred with respect to all goods produced by the producer of the good that can be reasonably allocated to that intermediate material; or
- (b) the aggregate of each cost that forms part of the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material.

12. 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.

#### **Article 403: Automotive Goods**

1. For purposes of calculating the regional value content under the net cost method set out in Article 402(3) for:

- (a) a good that is a motor vehicle provided for in tariff item 8702.10.bb or 8702.90.bb (vehicles for the transport of 15 or fewer persons), or subheading 8703.21 through 8703.90, 8704.21 or 8704.31, or
- (b) a good provided for in the tariff provisions listed in Annex 403.1 where the good is subject to a regional value-content requirement and is for use as original equipment in the production of a good provided for in tariff item 8702.10.bb or 8702.90.bb (vehicles for the transport of 15 or fewer persons), or subheading 8703.21 through 8703.90, 8704.21 or 8704.31,

the value of non-originating materials used by the producer in the production of the good shall be the sum of the values of non-originating materials, determined in accordance with Article 402(9) at the time the non-originating materials are received by the first person in the territory of a Party who takes title to them, that are imported from outside the territories of the Parties under the tariff provisions

listed in Annex 403.1 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.

2. For purposes of calculating the regional value content under the net cost method set out in Article 402(3) for a good that is a motor vehicle provided for in heading 87.01, tariff item 8702.10.aa or 8702.90.aa (vehicles for the transport of 16 or more persons), subheading 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or heading 87.05 or 87.06, or for a component identified in Annex 403.2 for use as original equipment in the production of the motor vehicle, the value of non-originating materials used by the producer in the production of the good shall be the sum of:

- (a) for each material used by the producer listed in Annex 403.2, whether or not produced by the producer, at the choice of the producer and determined in accordance with Article 402, either
  - (i) the value of such material that is non-originating, or
  - (ii) the value of non-originating materials used in the production of such material; and
- (b) the value of any other non-originating material used by the producer that is not listed in Annex 403.2, determined in accordance with Article 402.

3. For purposes of calculating the regional value content of a motor vehicle identified in paragraph 1 or 2, the producer may average its calculation over its fiscal year, using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the other Parties:

- (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;
- (c) the same model line of motor vehicles produced in the territory of a Party; or
- (d) if applicable, the basis set out in Annex 403.3.

4. For purposes of calculating the regional value content for any or all goods provided for in a tariff provision listed in Annex 403.1, or a component or material identified in Annex 403.2, produced in the same plant, the producer of the good may:

- (a) average its calculation
  - (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, if the good is sold as an aftermarket part;
- (b) calculate the average referred to in subparagraph (a) separately for any or all goods sold to one or more motor vehicle producers; or
  - (c) with respect to any calculation under this paragraph, calculate separately for those goods that are exported to the territory of one or more of the Parties.

5. Notwithstanding Annex 401, and except as provided in paragraph 6, the regional value-content requirement shall be:

- (a) for a producer's fiscal year beginning on the day closest to January 1, 1998 and thereafter, 56 percent under the net cost method, and for a producer's fiscal year beginning on the day closest to January 1, 2002 and thereafter, 62.5 percent under the net cost method, for
  - (i) a good that is a motor vehicle provided for in tariff item 8702.10.bb or 8702.90.bb (vehicles for the transport of 15 or fewer persons), or subheading 8703.21 through 8703.90, 8704.21 or 8704.31, and
  - (ii) a good provided for in heading 84.07 or 84.08, or subheading 8708.40, that is for use in a motor vehicle identified in subparagraph (a)(i); and
- (b) for a producer's fiscal year beginning on the day closest to January 1, 1998 and thereafter, 55 percent under the net cost method, and for a producer's fiscal year beginning on the day closest to January 1, 2002 and thereafter, 60 percent under the net cost method, for
  - (i) a good that is a motor vehicle provided for in heading 87.01, tariff item 8702.10.aa or 8702.90.aa (vehicles for the transport of 16 or more persons), 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or heading 87.05 or 87.06,
  - (ii) a good provided for in heading 84.07 or 84.08 or subheading 8708.40 that is for use in a motor vehicle identified in subparagraph (b)(i), and
  - (iii) except for a good identified in subparagraph (a)(ii) or provided for in subheading 8482.10 through 8482.80, 8483.20 or 8483.30, a good identified in Annex 403.1 that is subject to a regional value content requirement and that is for use in a motor vehicle identified in subparagraph (a)(i) or (b)(i).

6. The regional value-content requirement for a motor vehicle identified in Article 403(1) or (2)

shall be:

- (a) 50 percent for five years after the date on which the first motor vehicle prototype is produced in a plant by a motor vehicle assembler, if
  - (i) it is a motor vehicle of a class, or marque, or, except for a motor vehicle identified in Article 403(2), size category and underbody, not previously produced by the motor vehicle assembler in the territory of any of the Parties,
  - (ii) the plant consists of a new building in which the motor vehicle is assembled, and
  - (iii) the plant contains substantially all new machinery that is used in the assembly of the motor vehicle; or
- (b) 50 percent for two years after the date on which the first motor vehicle prototype is produced at a plant following a refit, if it is a different motor vehicle of a class, or marque, or, except for a motor vehicle identified in Article 403(2), size category and underbody, than was assembled by the motor vehicle assembler in the plant before the refit.

**Article 404: Accumulation**

1. For purposes of determining whether a good is an originating good, the production of the good in the territory of one or more of the Parties by one or more producers shall, at the choice of the exporter or producer of the good for which preferential tariff treatment is claimed, be considered to have been performed in the territory of any of the Parties by that exporter or producer, provided that:

- (a) all non-originating materials used in the production of the good undergo an applicable tariff classification change set out in Annex 401, and the good satisfies any applicable regional value-content requirement, entirely in the territory of one or more of the Parties; and
- (b) the good satisfies all other applicable requirements of this Chapter.

2. For purposes of Article 402(10), the production of a producer that chooses to accumulate its production with that of other producers under paragraph 1 shall be considered to be the production of a single producer.

## **Article 405: De Minimis**

1. Except as provided in paragraphs 3 through 6, a good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo an applicable change in tariff classification set out in Annex 401 is not more than seven percent of the transaction value of the good, adjusted to a F.O.B. basis, or, if the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all such non-originating materials is not more than seven percent of the total cost of the good, provided that:

- (a) if the good is subject to a regional value-content requirement, the value of such non-originating materials shall be taken into account in calculating the regional value content of the good; and
- (b) the good satisfies all other applicable requirements of this Chapter.

2. A good that is otherwise subject to a regional value-content requirement shall not be required to satisfy such requirement if the value of all non-originating materials used in the production of the good is not more than seven percent of the transaction value of the good, adjusted to a F.O.B. basis, or, if the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all non-originating materials is not more than seven percent of the total cost of the good, provided that the good satisfies all other applicable requirements of this Chapter.

3. Paragraph 1 does not apply to:

- (a) a non-originating material provided for in Chapter 4 of the Harmonized System or tariff item 1901.90.aa (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in Chapter 4 of the Harmonized System;
- (b) a non-originating material provided for in Chapter 4 of the Harmonized System or tariff item 1901.90.aa (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in tariff item 1901.10.aa (infant preparations containing over 10 percent by weight of milk solids), 1901.20.aa (mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale), 1901.90.aa (dairy preparations containing over 10 percent by weight of milk solids), heading 21.05, or tariff item 2106.90.dd (preparations containing over 10 percent by weight of milk solids), 2202.90.cc (beverages containing milk) or 2309.90.aa (animal feeds containing over 10 percent by weight of milk solids);
- (c) a non-originating material provided for in heading 08.05 or subheading 2009.11 through 2009.30 that is used in the production of a good provided for in subheading 2009.11 through 2009.30 or tariff item 2106.90.bb (concentrated fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins) or

2202.90.aa (fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins);

- (d) a non-originating material provided for in Chapter 9 of the Harmonized System that is used in the production of a good provided for in tariff item 2101.10.aa (instant coffee, not flavored);
- (e) a non-originating material provided for in Chapter 15 of the Harmonized System that is used in the production of a good provided for in heading 15.01 through 15.08, 15.12, 15.14 or 15.15;
- (f) a non-originating material provided for in heading 17.01 that is used in the production of a good provided for in heading 17.01 through 17.03;
- (g) a non-originating material provided for in Chapter 17 of the Harmonized System or heading 18.05 that is used in the production of a good provided for in subheading 1806.10;
- (h) a non-originating material provided for in heading 22.03 through 22.08 that is used in the production of a good provided for in heading 22.07 through 22.08;
- (i) a non-originating material used in the production of a good provided for in tariff item 7321.11.aa (gas stove or range), subheading 8415.10, 8415.81 through 8415.83, 8418.10 through 8418.21, 8418.29 through 8418.40, 8421.12, 8422.11, 8450.11 through 8450.20 or 8451.21 through 8451.29, Mexican tariff item 8479.82.aa (trash compactors) or Canadian or U.S. tariff item 8479.89.aa (trash compactors), or tariff item 8516.60.aa (electric stove or range); and
- (j) a printed circuit assembly that is a non-originating material used in the production of a good where the applicable change in tariff classification for the good, as set out in Annex 401, places restrictions on the use of such non-originating material.

4. Paragraph 1 does not apply to a non-originating single juice ingredient provided for in heading 20.09 that is used in the production of a good provided for in subheading 2009.90, or tariff item 2106.90.cc (concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins) or 2202.90.bb (mixtures of fruit or vegetable juices, fortified with minerals or vitamins).

5. Paragraph 1 does not apply to a non-originating material used in the production of a good provided for in Chapter 1 through 27 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.

6. A good provided for in Chapter 50 through 63 of the Harmonized System that does not originate because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff

classification set out in Annex 401, shall nonetheless be considered to originate if the total weight of all such fibers or yarns in that component is not more than seven percent of the total weight of that component.

**Article 406: Fungible Goods and Materials**

For purposes of determining whether a good is an originating good:

- (a) where originating and non-originating fungible materials are used in the production of a good, the determination of whether the materials are originating need not be made through the identification of any specific fungible material, but may be determined on the basis of any of the inventory management methods set out in the Uniform Regulations; and
- (b) where originating and non-originating fungible goods are commingled and exported in the same form, the determination may be made on the basis of any of the inventory management methods set out in the Uniform Regulations.

**Article 407: Accessories, Spare Parts and Tools**

Accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts, or tools, 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 the good undergo the applicable change in tariff classification set out in Annex 401, 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 408: Indirect Materials**

An indirect material shall be considered to be an originating material without regard to where it is produced.

#### **Article 409: Packaging Materials and Containers for Retail Sale**

Packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, 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 401, 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 410: Packing Materials and Containers for Shipment**

Packing materials and containers in which a good is packed for shipment shall be disregarded in determining whether:

- (a) the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401; and
- (b) the good satisfies a regional value-content requirement.

#### **Article 411: Transshipment**

A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of Article 401 if, subsequent to that 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 a Party.

#### **Article 412: Non-Qualifying Operations**

A good shall not be considered to be an originating good merely by reason of:

- (a) mere dilution with water or another substance that does not materially alter the characteristics of the good; or
- (b) any production or pricing practice in respect of which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this Chapter.

### **Article 413: Interpretation and Application**

For purposes of this Chapter:

- (a) the basis for tariff classification in this Chapter is the Harmonized System;
- (b) where a good referred to by a tariff item number is described in parentheses following the tariff item number, the description is provided for purposes of reference only;
- (c) where applying Article 401(d), the determination of whether a heading or subheading under the Harmonized System provides for and specifically describes both a good and its parts shall be made on the basis of the nomenclature of the heading or subheading, or the General Rules of Interpretation, the Chapter Notes or the Section Notes of the Harmonized System;
- (d) in applying the Customs Valuation Code under this Chapter,
  - (i) the principles of the Customs Valuation Code shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions,
  - (ii) the provisions of this Chapter shall take precedence over the Customs Valuation Code to the extent of any difference, and
  - (iii) the definitions in Article 415 shall take precedence over the definitions in the Customs Valuation Code to the extent of any difference; and
- (e) all costs 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.

### **Article 414: Consultation and Modifications**

1. 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 in accordance with Chapter Five.

2. Any Party that considers that this Chapter requires modification to take into account developments in production processes or other matters may submit a proposed modification along with supporting rationale and any studies to the other Parties for consideration and any appropriate action under Chapter Five.

## **Article 415: Definitions**

For purposes of this Chapter:

**class of motor vehicles** means any one of the following categories of motor vehicles:

- (a) motor vehicles provided for in subheading 8701.20, tariff item 8702.10.aa or 8702.90.aa (vehicles for the transport of 16 or more persons), subheading 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or heading 87.05 or 87.06;
- (b) motor vehicles provided for in subheading 8701.10 or 8701.30 through 8701.90;
- (c) motor vehicles provided for in tariff item 8702.10.bb or 8702.90.bb (vehicles for the transport of 15 or fewer persons), or subheading 8704.21 or 8704.31; or
- (d) motor vehicles provided for in subheading 8703.21 through 8703.90;

**F.O.B.** means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer;

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

**goods wholly obtained or produced entirely in the territory of one or more of the Parties** means:

- (a) mineral goods extracted in the territory of one or more of the Parties;
- (b) vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or more of the Parties;
- (c) live animals born and raised in the territory of one or more of the Parties;
- (d) goods obtained from hunting, trapping or fishing in the territory of one or more of the Parties;
- (e) goods (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;
- (f) goods produced on board factory ships from the goods referred to in subparagraph (e) provided such factory ships are registered or recorded with that Party and fly its flag;
- (g) goods taken by a Party or a person of a Party from the seabed or beneath the

seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

- (h) goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in a non-Party;
- (i) waste and scrap derived from
  - (i) production in the territory of one or more of the Parties, or
  - (ii) used goods collected in the territory of one or more of the Parties, provided such goods are fit only for the recovery of raw materials; and
- (j) goods produced in the territory of one or more of the Parties exclusively from goods referred to in subparagraphs (a) through (i), or from their derivatives, at any stage of production;

**identical or similar goods** means "identical goods" and "similar goods", respectively, as defined in the Customs Valuation Code;

**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;

**intermediate material** means a material that is self-produced and used in the production of a good, and designated pursuant to Article 402(10);

**marque** means the trade name used by a separate marketing division of a motor vehicle assembler;

**material** means a good that is used in the production of another good, and includes a part or an ingredient;

**model line** means a group of motor vehicles having the same platform or model name;

**motor vehicle assembler** means a producer of motor vehicles and any related persons or joint ventures in which the producer participates;

**new building** means a new construction, including at least the pouring or construction of new foundation and floor, the erection of a new structure and roof, and installation of new plumbing, electrical and other utilities to house a complete vehicle assembly process;

**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;

**net cost of a good** means the net cost that can be reasonably allocated to a good using one of the methods set out in Article 402(8);

**non-allowable interest costs** means interest costs incurred by a producer that exceed 700 basis points above the applicable federal government interest rate identified in the Uniform Regulations for comparable maturities;

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

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

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

**reasonably allocate** means to apportion in a manner appropriate to the circumstances;

**refit** means a plant closure, for purposes of plant conversion or retooling, that lasts at least three months;

**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 25 percent 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; or
- (g) they are members of the same family (members of the same family are natural or adoptive children, brothers, sisters, parents, grandparents, or spouses);

**royalties** means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:

- (a) personnel training, without regard to where performed; and
- (b) if performed in the territory of one or more of the Parties, engineering, tooling, die-setting, software design and similar computer services, or other services;

**sales promotion, marketing and after-sales service costs** means the following costs related to sales promotion, marketing and after-sales 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 after-sales service personnel;
- (d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

- (e) product liability insurance;
- (f) office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;
- (g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;
- (h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;
- (i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; 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 packing costs** means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding costs of preparing and packaging the good for retail sale;

**size category** means for a motor vehicle identified in Article 403(1)(a):

- (a) 85 or less cubic feet of passenger and luggage interior volume,
- (b) between 85 and 100 cubic feet of passenger and luggage interior volume,
- (c) 100 to 110 cubic feet of passenger and luggage interior volume,
- (d) between 110 and 120 cubic feet of passenger and luggage interior volume, and
- (e) 120 and more cubic feet of passenger and luggage interior volume;

**total cost** means all product costs, period costs and other costs incurred in the territory of one or more of the Parties;

**transaction value** means the price actually paid or payable for a good or material with respect to a transaction of, except for the application of Article 403(1) or 403(2)(a), the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Code, regardless of whether the good or material is sold for export;

**used** means used or consumed in the production of goods; and

**underbody** means the floor pan of a motor vehicle.

## Annex 403.1

## List of Tariff Provisions for Article 403(1)

**Note:** For purposes of reference only, descriptions are provided next to the corresponding tariff provision.

40.09	tubes, pipes and hoses
4010.10	rubber belts
40.11	tires
4016.93.aa	rubber, gaskets, washers and other seals for automotive goods
4016.99.aa	vibration control goods
7007.11 and 7007.21	laminated safety glass
7009.10	rear-view mirrors
8301.20	locks for the kind used on motor vehicles
8407.31	engines of a cylinder capacity not exceeding 50cc
8407.32	engines of a cylinder capacity exceeding 50cc but not exceeding 250cc
8407.33	engines of a cylinder capacity exceeding 250cc but not exceeding 1000cc
8407.34.aa	engines of a cylinder capacity exceeding 1000cc but not exceeding 2000cc
8407.34.bb	engines of a cylinder capacity exceeding 2000cc
8408.20	diesel engines for vehicles of Chapter 87
84.09	parts of engines
8413.30	pumps
8414.59.aa	turbochargers and superchargers for motor vehicles, where not provided for under subheading 8414.80
8414.80.aa	turbochargers and superchargers for motor vehicles, where not provided for under subheading 8414.59
8415.81 through 8415.83	air conditioners
8421.39.aa	catalytic convertors
8481.20, 8481.30 and 8481.80	valves
8482.10 through 8482.80	ball bearings
8483.10 through 8483.40	transmission shafts and housed ball bearings
8483.50	flywheels
8501.10	electric motors
8501.20	electric motors
8501.31	electric motors
8501.32.aa	electric motors that provide primary source for electric powered vehicles of subheading 8703.90
8507.20.aa, 8507.30.aa, 8507.40.aa and 8507.80.aa	batteries that provide primary source for electric cars
8511.30	distributors
8511.40	starter motors
8511.50	other generators
8512.20	other lighting or visual signalling equipment
8512.40	windscreen wipers, defrosters
8519.91	cassette decks
8527.21	radios combined with cassette players
8527.29	radios
8536.50	switches
8536.90	junction boxes

8537.10.aa	motor control centers
8539.10	seal beamed headlamps
8539.21	tungsten halogen headlamps
8544.30	wire harnesses
87.06	chassis
87.07	bodies
8708.10.aa	bumpers, but not parts thereof
8708.21	safety seat belts
8708.29.aa	body stampings
8708.29.bb	inflators and modules for airbags
8708.29.cc	door assemblies
8708.29.dd	airbags for use in motor vehicles, where not provided for under subheading 8708.99
8708.39	brakes and servo-brakes, and parts thereof
8708.40	gear boxes, transmissions
8708.50	drive axles with differential, whether or not provided with other transmission components
8708.60	non-driving axles, and parts thereof
8708.70.aa	road wheels, but not parts or accessories thereof
8708.80	suspension shock-absorbers
8708.91	radiators
8708.92	silencers (mufflers) and exhaust pipes
8708.93.aa	clutches, but not parts thereof
8708.94	steering wheels, steering columns and steering boxes
8708.99.aa	vibration control goods containing rubber
8708.99.bb	double flanged wheel hub units
8708.99.cc	airbags for use in motor vehicles, where not provided for under subheading 8708.29
8708.99.dd	half-shafts and drive shafts
8708.99.ee	other parts for powertrains
8708.99.ff	parts for suspension systems
8708.99.gg	parts for steering systems
8708.99.hh	other parts and accessories not provided for elsewhere in subheading 8708.99
9031.80	monitoring devices
9032.89	automatic regulating instruments
9401.20	seats

**Annex 403.2**

**List of Components and Materials**

**1. Component: Engines provided for in heading 84.07 or 84.08**

Materials: cast block, cast head, fuel nozzle, fuel injector pumps, glow plugs, turbochargers and superchargers, electronic engine controls, intake manifold, exhaust manifold, intake/exhaust valves, crankshaft/camshaft, alternator, starter, air cleaner assembly, pistons, connecting rods and assemblies made therefrom (or rotor assemblies for rotary engines), flywheel (for manual transmissions), flexplate (for automatic transmissions), oil pan, oil pump and pressure regulator, water pump, crankshaft and camshaft gears, and radiator assemblies or charge-air coolers.

**2. Component: Gear boxes (transmissions) provided for in subheading 8708.40**

Materials: (a) for manual transmissions - transmission case and clutch housing; clutch; internal shifting mechanism; gear sets, synchronizers and shafts; and (b) for torque convertor type transmissions - transmission case and convertor housing; torque convertor assembly; gear sets and clutches; and electronic transmission controls.

**Annex 403.3**

**Regional Value-Content Calculation for CAMI**

1. For purposes of Article 403, in determining whether motor vehicles produced by CAMI Automotive, Inc. ("CAMI") in the territory of Canada and imported into the territory of the United States qualify as originating goods, CAMI may average its calculation of the regional value content of a class of motor vehicles or a model line of motor vehicles produced in a fiscal year in the territory of Canada by CAMI for sale in the territory of one or more of the Parties with the calculation of the regional value content of the corresponding class of motor vehicles or model line of motor vehicles produced in the territory of Canada by General Motors of Canada Limited in the fiscal year that corresponds most closely to CAMI's fiscal year, provided that:

- (a) at the beginning of CAMI's fiscal year General Motors of Canada Limited owns 50 percent or more of the voting common stock of CAMI; and
- (b) General Motors of Canada Limited, General Motors Corporation, General Motors de Mexico, S.A. de C.V., and any subsidiary directly or indirectly owned by any of them, or by any combination thereof, ("GM") acquires 75 percent or more by unit of quantity of the class of motor vehicles or model line of motor vehicles, as the case may be, that CAMI has produced in the territory of Canada in CAMI's fiscal year for sale in the territory of one or more of the Parties.

2. If GM acquires less than 75 percent by unit of quantity of the class of motor vehicles or model line of motor vehicles, as the case may be, that CAMI has produced in the territory of Canada in CAMI's fiscal year for sale in the territory of one or more of the Parties, CAMI may average in the manner set out in paragraph 1 only those motor vehicles that are acquired by GM for distribution under the GEO marque or other GM marque.

3. In calculating the regional value content of motor vehicles produced by CAMI in the territory of Canada, CAMI may choose to average the calculation in paragraph 1 or 2 over a period of two fiscal years in the event that any motor vehicle assembly plant operated by CAMI or any motor vehicle assembly plant operated by General Motors of Canada Limited with which CAMI is averaging its regional value content is closed for more than two consecutive months:

- (a) for the purpose of re-tooling for a model change, or
- (b) as the result of any event or circumstance (other than the imposition of antidumping and countervailing duties, or an interruption of operations resulting from a labor strike, lock-out, labor dispute, picketing or boycott of or by employees of CAMI or GM), that CAMI or GM could not reasonably have been expected to avert by corrective action or by exercise of due care and diligence, including a shortage of materials, failure of utilities, or inability to obtain or delay in obtaining raw materials,

parts, fuel or utilities.

The averaging may be for CAMI's fiscal year in which a CAMI or any General Motors of Canada Limited plant with which CAMI is averaging is closed and either the previous or subsequent fiscal year. In the event that the period of closure spans two fiscal years, the averaging may be only for those two fiscal years.

4. For purposes of this Article, where as a result of an amalgamation, reorganization, division or similar transaction:

- (a) a motor vehicle producer (the "successor producer") acquires all or substantially all of the assets used by GM, and
- (b) the successor producer, directly or indirectly controls, or is controlled by, GM, or both the successor producer and GM are controlled by the same person,

the successor producer shall be deemed to be GM.