

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 provided that:

(a) the good is wholly obtained or produced 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 described in Annex 401.1 as a result of production occurring entirely in the territory of one or more of the Parties, 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) with the exception of 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 parts 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 tariff heading for the good provides for both the good itself and its parts and is not further subdivided into subheadings, or the tariff subheading for the good provides for both the good itself and its parts,

provided that the good is the good specifically described by the nomenclature of the heading or subheading and 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 50 percent where the net cost method is used, and that the good satisfies all other applicable

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 described in paragraph 2 or the net cost method described in paragraph 3.

2. The regional value content of a good, where calculated on the basis of the transaction value method, shall be determined as follows:

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

where:

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

TV is the transaction value of the good;
and

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

3. The regional value content of a good, where calculated on the basis of the net cost method, shall be determined as follows:

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

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. For purposes of paragraphs 2 and 3, and except as provided

in Articles 403(1) and 403(2)(a)(i), the value of non-originating materials used by the producer in the production of the good shall not include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.

5. The regional value content of a good shall be calculated solely on the basis of the net cost method described 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 with respect to such goods;

(d) the good is

(i) identified in Article 403(1) or 403(2),

(ii) provided for in headings 64.01 through 64.05, or

(iii) provided for in tariff item 8469.10.a1 (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 has been designated as an intermediate material under paragraph 10 and is subject to a regional value-content requirement.

6. If an exporter or producer calculates the regional value content of a good using the transaction value method described 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, or both, is required to be adjusted or is unacceptable under Article 1 of the Customs Valuation Code, the exporter or producer of the good may then calculate the regional value content of the good using the net cost method described in paragraph 3.

7. Nothing in paragraph 6 shall be construed to preclude a review and appeal, pursuant to Chapter Five (Customs Procedures), of an adjustment or rejection of a transaction value for a good or the value of any material used in the production of the good, or both.

8. For purposes of calculating the net cost of a good pursuant to paragraph 3, the producer of the good may use any one of the following methods:

(a) calculate the total cost incurred with respect to all goods produced by that producer minus 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 goods and then reasonably allocate the resulting net cost of those goods to the good;

(b) reasonably allocate the total cost incurred with respect to all goods produced by that producer to the good minus 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 the individual costs that are 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 are consistent with the provisions regarding the reasonable allocation of costs set out in the Uniform Regulations.

9. With the exception of an intermediate material described in paragraph 10 and except as provided in Article 403(1) and (2)(a)(i), the value of a material used in the production of a good shall be:

(a) the price actually paid or payable by the producer for the material, provided that the price is acceptable under Article 1 of the Customs Valuation Code; or

(b) if the price actually paid or payable is unacceptable under Article 1 of the Customs Valuation Code, the value shall be determined in accordance with the other Articles of the Customs Valuation Code; and

(c) when not included under subparagraph (a) or (b)

(i) freight, insurance, packing and all other costs incurred in transporting such materials to the location of the producer,

(ii) duties, taxes and customs brokerage fees on such materials paid in the territory of one or more of the Parties,

(iii) the cost of waste and spoilage resulting from the use or consumption, or both, of such materials, less the value of renewable scrap or by-product, and

(iv) the value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of Article 8 of the Customs Valuation Code.

10. Except as provided in Article 403, the producer of a good may designate any self-produced material used in the production of the good as an intermediate material, provided that, when the intermediate material is subject to a regional value-content requirement, no other intermediate material subject to a regional value-content requirement is used in the production of that intermediate material.

11. For purposes of determining the value of an intermediate material, the producer of the intermediate material may use either of the following methods:

(a) calculate the total cost incurred with respect to all goods produced by that producer and then reasonably allocate the resulting cost to the intermediate material; or

(b) reasonably allocate to the intermediate material the individual costs that are part of the total cost incurred with respect to that intermediate material.

Article 403: Automotive Goods

1. Where applying the net cost method under Article 402(3) for purposes of calculating the regional value content of any one of the following goods:

(a) a motor vehicle provided for in subheadings 8702.xx (vehicles for the transport of 15 or fewer persons), 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 subheadings 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 customs values of non-originating materials imported from outside the territories of the Parties under the tariff provisions listed in Annex 403.1.

2. (a) Where applying the net cost method under Article 402(3) with respect to a good identified in subparagraph (b), the producer of the good shall include in the value of non-originating materials used by the producer in the production of the good the sum of

(i) for each material used by the producer that is listed in Annex 403.2, at the choice of the producer, either

(A) the value of such material that is non-originating, or

(B) the value of non-originating materials used in the production of such material, and

(ii) the value of any non-originating material used by the producer that is not in listed in Annex 403.2.

(b) Subparagraph (a) shall apply to the following goods

(i) a motor vehicle provided for in heading 8701 or subheading 8702.yy (vehicles for the transport of 16 or more persons),

(ii) a motor vehicle provided for in subheadings 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90,

(iii) a motor vehicle provided for in headings 8705 or 8706, and

(iv) any of the components identified in Annex 403.2 for use in such motor vehicles.

3. A producer may designate a self-produced material used in the production of any material listed in Annex 403.2 as an intermediate material, provided that, when the intermediate material is subject to a regional value-content requirement, no other intermediate material subject to a regional value-content requirement is used in the production of that intermediate material.

4. In calculating the regional value content of a motor vehicle described in paragraphs 1 and 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) the basis described in Annex 403.4.

5. In calculating the regional value content for any or all goods provided for in a tariff provision listed in Annex 403.1 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, or over any quarter or month, or

(ii) over its fiscal year, if the good is sold as an after-market part;

(b) calculate the average referred to in subparagraph (a) separately for any or all goods sold to one or more motor vehicle producers; and

(c) with respect to any calculation under this paragraph, calculate separately those goods that are exported to the territory of one or more of the Parties.

6. Notwithstanding Annex 401.1,

(a) the regional value-content requirement shall be, for a producer's fiscal year beginning nearest to January 1, 1998 and thereafter, 56 percent under the net cost method, and for a producers's fiscal year beginning nearest to January 1, 2002 and thereafter, 62.5 percent under the net cost method, for the following

(i) a motor vehicle provided for in subheading 8702.xx (vehicles for the transport of 15 or fewer persons), 8703.21 through 8703.90, 8704.21 or

8704.31, and

(ii) a good provided for in heading 8407 or 8408 or subheading 8708.40 which is for use as original equipment in the production of a motor vehicle identified in subparagraph (a)(i); and

(b) the regional value-content requirement shall be, for a producer's fiscal year beginning nearest to January 1, 1998 and thereafter, 55 percent under the net cost method, and for a motor vehicle producers's fiscal year beginning nearest to January 1, 2002 and thereafter, 60 percent under the net cost method, for the following

(i) a motor vehicle provided for in heading 8701, subheadings 8702.yy (vehicles for the transport of 16 or more persons), 8704.10, 8704.22, 8704.23, 8704.32 and 8704.90, and heading 8705 or 8706,

(ii) a good provided for in heading 8407 or 8408 or subheading 8708.40 which is for use as original equipment in the production of a motor vehicle identified in subparagraph (b)(i), and

(iii) except for a good identified in subparagraph (a)(ii) or provided for in subheadings 8482.10 through 8482.80 or subheadings 8483.10 through 8483.40, a good identified in Annex 403.1 which is for use as original equipment in the production of a motor vehicle identified in subparagraphs (a)(i) or (b)(i).

7. Notwithstanding paragraph 6,

(a) the regional value content of a motor vehicle referred to in Article 403(1) or 403(2) shall not be less than 50 percent for a period of five years from the date on which the first motor vehicle prototype is produced in a plant by a motor vehicle assembler, provided that

(i) it is a motor vehicle of a class, or marque, or, for a motor vehicle identified in Article 403(1)(a), size 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;

(b) the regional value content of a motor vehicle referred to in Article 403(1) or 403(2) shall not be less than 50 percent for a period of two years from the date on which the first motor vehicle prototype is produced at a plant following a refit, provided that it is a different motor vehicle of a class, or marque, or, for a motor vehicle identified in Article 403(1)(a), size and underbody, than was assembled by the motor vehicle assembler in the plant before the refit; and

(c) for the purposes of subparagraphs (a) and (b) sizes means in the case of a motor vehicle identified in Article 403(1)(a)

(i) minicompacts -- less than 85 cubic feet of passenger and luggage volume,

(ii) subcompacts -- between 85 and 100 cubic feet of passenger and luggage volume,

(iii) compacts -- between 100 and 110 cubic feet of passenger and luggage volume,

(iv) midsize -- between 110 and 120 cubic feet of passenger and luggage volume, and

(v) large -- between 120 or more cubic feet of passenger and luggage volume.

Article 404: Accumulation

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, be considered to have been performed in the territory of a Party by that exporter or producer, provided that:

(a) the applicable tariff classification change has occurred, or the regional value-content requirement has been satisfied, or both, entirely in the territory of one or more of the Parties;

(b) the good satisfies all other applicable requirements of this Chapter; and

(c) the production of the producer that chooses to accumulate its production with that of other producers is deemed to be the production of a single producer for purposes of Article 402(10).

Article 405: De Minimis

1. Notwithstanding Article 401(b), 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 the applicable change in tariff classification is not more than seven percent of the transaction value of the good or, if the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, 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 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 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. Paragraphs 1 and 2 shall not apply to:

(a) a material provided for in Chapter 4 of the Harmonized System or tariff item 1901.90.a1 (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 material provided for in Chapter 4 of the Harmonized System or tariff item 1901.90.a1 (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in heading 21.05, subheading 2202.90, or tariff items 1901.10.a1 (infant preparations containing over 10 percent by weight of milk solids), 1901.20.a1 (mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale), 1901.90.a1 (dairy preparations containing over 10 percent by weight of milk solids), 2106.90.a4 (preparations containing over 10 percent by weight of milk solids) or 2309.90.a1 (animal feeds containing over 10 percent by weight of milk solids and less than 6 percent by weight of grain or grain products);

(c) a material provided for in heading 17.01 that is used

in the production of a good provided for in headings 17.01 through 17.03;

(d) a material provided for in Chapter 15 of the Harmonized System that is used in the production of a good provided for in headings 15.01 through 15.08, 15.12, 15.14 or 15.15;

(e) a material provided for in heading 08.05 and subheadings 2009.11 through 2009.30 that is used in the production of a good provided for in subheadings 2009.11 through 2009.30 or tariff item 2106.90.a2 (concentrated fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins) or 2202.90.a1 (fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins); and

(f) a material provided for in headings 22.03 through 22.08 that is used in the production of a good provided for in headings 22.07 through 22.08.

4. Paragraph 1 shall not apply for purposes of calculating the volume or weight of:

(a) a non-originating material of Chapter 17 of the Harmonized System or heading 18.05 that are used in the production of a good provided for in subheading 1806.10;

(b) a non-originating material of Chapter 9 of the Harmonized System that is used in the production of a good provided for in tariff item 2101.10.a1 (instant coffee, not flavored); and

(c) a non-originating material of heading 20.09 that is used in the production of a good provided for in subheading 2009.90, or 2106.90.a3 (concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins) 2202.90.a2 (mixtures of fruit or vegetable juices, fortified with minerals or vitamins).

5. A good of Chapters 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 gives the good its essential character do not undergo the applicable change in tariff classification described in Annex 401.1 for the good, shall nonetheless be considered to originate if the weight of all such fibers or yarns in the good is not more than seven percent of the weight of that component.

6. Paragraphs 1 and 2 shall not apply to a good of Chapters 1 through 44 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.

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 origin of the materials need not be determined through the identification of any specific fungible material, but may be determined on the basis of any of the inventory management methods provided for in the Uniform Regulations; and

(b) where originating and non-originating fungible goods are commingled and exported in the same form, the origin of the good may be determined on the basis of any of the inventory management methods provided for in the Uniform Regulations.

Article 407: Accessories, Spare Parts, or Tools

For purposes of determining whether a good, is an originating good, 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 one with the good and shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification described in Annex

401.1, 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 either originating or non-originating materials 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 as one 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 described in Annex

401.1, 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 in calculating the regional value content of the good.

Article 410: Packing Materials and Containers for Shipment

For the purpose of determining whether a good is an originating good, packing materials and containers in which the good is packed for shipment shall be disregarded in determining whether:

(a) the non-originating materials used in the production of the good undergo the applicable change in tariff classification described in Annex 401.1; 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 virtue 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 virtue of having undergone:

(a) mere dilution with water or another substance that does not materially alter the characteristics of the good;
or

(b) any process, work or pricing practice, or any

combination thereof, in respect of which it is demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent the provisions of this Chapter.

Article 413: Interpretation

For purposes of this Chapter, the following rules of interpretation shall apply:

(a) the basis for tariff classification in Article 401 is the Harmonized System;

(b) a more specific rule in Annex 401.1 shall take precedence over a general requirement under Article 401;

(c) for purposes of applying Article 401(d), when determining whether a tariff heading or subheading provides for both a good and its parts, reference shall be made both to the nomenclature of the heading or subheading and to any legal note provided in the Harmonized System;

(d) the principles of the Customs Valuation Code shall apply to domestic transactions as well as international transactions;

(e) in the event of any inconsistency between the provisions of this Chapter and the Customs Valuation Code, the provisions of this Chapter shall prevail to the extent of the inconsistency;

(f) in applying Customs Valuation Code under this Chapter, the definitions in Article 415 shall take precedence over the definitions of the Customs Valuation Code to the extent of any difference; and

(g) all costs referred to in this Chapter shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles in the territory of the Party in which the good is produced.

Article 414: Consultation and Revision

1. The Parties shall consult regularly to ensure that the provisions of this Chapter are administered effectively, uniformly and consistently with the spirit and intent of this Agreement, and shall cooperate in the administration of the provisions of this Chapter in accordance with the provisions of Chapter Five (Customs Procedures).

2. If any Party concludes that the provisions of this Chapter require revision to take into account developments in production processes or other matters, the proposed revision along with supporting rationale and any studies shall be submitted to the other Parties for consideration and any appropriate action pursuant to Chapter Five (Customs Procedures).

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 subheadings 8701.20 and 8702.yy (vehicles for the transport of 16 or more persons), subheadings 8704.22, 8704.23, 8704.32 and 8704.90, and headings 87.05 and 87.06;

(b) motor vehicles provided for in subheadings 8701.10 and 8701.30 through 8701.90;

(c) motor vehicles provided for in subheadings 8702.xx (vehicles for the transport of 15 or fewer persons) and 8704.21 and 8704.31; or

(d) motor vehicles provided for in subheadings 8703.21 through 8703.90;

customs value means the value of a good for the purposes of levying duties of customs on an imported good;

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;

identical or similar goods has the same meaning as prescribed for identical goods and similar goods, respectively, 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 used in the maintenance or operation of equipment or buildings 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 by labor or used to operate equipment and buildings, or both;

(e) gloves, glasses, footwear, clothing, safety equipment and supplies;

(f) equipment, other 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;

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

material means a good, other than an indirect material, that is used in the production of another good;

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 new construction, including at least the pouring or construction of new foundations and floors, erection of new structure and roof, and installation of new plumbing, electrical and other utilities to house the complete vehicle assembly process (need definition of 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 the good using one of the methods set forth in Article 402 (8) (a);

non-allowable interest costs means interest costs actually incurred by the producer in excess of the applicable federal government rate identified in the Uniform Regulations for comparable maturities, plus seven percentage points;

non-originating good or non-originating material means a good or material that has not satisfied the rule of origin applicable to the good or material under this Chapter;

producer means a person who grows, mines, harvests, manufactures, processes or assembles a good, or any combination thereof;

production means growing, mining, harvesting, manufacturing, processing or assembling a good, or any combination thereof;

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

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

related person means persons who are related only if:

- (a) they are officers or directors of one another's business;
- (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 per cent or more of the outstanding voting stock or shares of both 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 and 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 (e.g., 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 customer 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 the good;

shipping and packing costs means the costs incurred in packing the 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;

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 of a good actually paid or payable to the producer of the good, adjusted to a F.O.B. basis and in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the Customs Valuation Code;

used means used or consumed, or both, in the production of goods;
and

wholly obtained or produced in the territory of one or more of the Parties means goods that are:

(a) mineral goods extracted in the territory of one or more of the Parties;

(b) goods 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 (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(e) goods produced on board factory ships from the goods referred to in subparagraph (d) provided such factory ships are registered or recorded with that Party and fly its flag;

(f) 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;

(g) 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; and

(h) waste and scrap derived from

(i) production in the territory of one or more of the Parties,

(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, or

(iii) goods produced in the territory of one or more of the Parties exclusively from goods referred to in subparagraphs (a) through (h) inclusive or from their derivatives, at any stage of production.

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ANNEX 403.1

List of Tariff Provisions for Article 403(1)

INTERIM NOTE: The nomenclature that follows the tariff provisions is for illustrative purposes only.

- 4009 (tubes, pipes and hoses)
- 4010.10 (rubber belts)
- 4011 (tires)
- 4016.93 (rubber, gaskets, washers and other seals)
- 4016.99.15.xx (seals)
- 7007.11 and 7007.21 (laminated safety glass)
- 7009.10 (mirrors)
- 8301.20 (locks)
- 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.xx (engines of a cylinder capacity exceeding 1000 cc but not exceeding 2,000 cc);
- 8407.34.yy (engines of a cylinder capacity exceeding 2000 cc)
- 8408 (diesel engines)
- 8409 (parts of engines)
- 8413.30 (pumps)
- 8414.59 (turbochargers and supercharges)

8415.81 through 8415.83 (air conditioners)
 8481.20, 8481.30 and 8481.80 (valves)
 8482.10 through 8482.80 (ball bearings)
 8483.10 through 8483.40 (transmission shafts)
 8483.50 (flywheels)
 8501.10 (electric motors)
 8501.20 (electric motors)
 8501.31 (electric motors)
 8501.32.xx (electric motors that provide primary source for
 electric powered vehicles of subheading 8703.90)
 8507.10.xx, 8507.30.xx, 8507.40.xx and 8507.80.xx (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 (cassette players combined with radios)
 8527.29 (radios)
 8536.50 (switches)
 8536.90 (junction boxes)
 8537.10.99.10 (U.S. tariff provision 8537.10.00.40) (motor
 control centres)
 8539.10 (seal beamed headlamps)
 8539.21 (tungsten halogen headlamps)
 8544.30 (wire harnesses)
 8706 (chassis)
 8707 (bodies)
 8708.10.xx (bumpers but not parts thereof)
 8708.21 (safety seat belts)
 8708.29.99.10 (U.S. tariff provision 8708.29.00.10) (body
 stampings)
 8708.29.xx (inflators and modules for airbags)
 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.xx (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.xx (clutches, but not parts thereof)
 8708.94 (steering wheels, steering columns and steering boxes)
 8708.99.50.xx (airbags)
 8708.99.81 (catalytic convertors)
 8708.99.99.11 (half-shafts and drive shafts)
 8708.99.99.19 (other parts for powertrains)
 8708.99.99.20 (parts for suspension systems)
 8708.99.99.49 (parts for steering systems)
 8708.99.xx (other parts not included above)
 9031.80 (monitoring devices)

9031.80.xx (electronic diagnostics for air bag systems)
9032.89 (automatic regulating instruments)
9401.20 (seats)

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ANNEX 403.2

List of Components and Materials for Article 403(2)

1. Component: Engines of heading 8407 or 8408

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) 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.

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ANNEX 403.4

Regional Value-Content Calculation for CAMI

1. For purposes of Article 403, when determining the origin of
motor vehicles produced in the territory of Canada and imported
into the territory of the United States, CAMI Automotive, Inc.
("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 a fiscal year that corresponds most closely to CAMI's fiscal year, provided that:

(a) 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., and any subsidiary directly or indirectly owned by any of them, or by any combination thereof, ("GM") acquires 75 percent (75 percent) or more by unit of the class of motor vehicles or model line of motor vehicles, as the case may be, that CAMI Automotive Inc. 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 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 described 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 labour strike, lock-out, labour 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.

Such averaging may be for CAMI's fiscal year in which a CAMI or the 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

year, the averaging may be only for those two fiscal years.

4. For the purposes of this Article, where by virtue 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 the same person and a continuation of GM from which it acquired the assets.