

CANADA – CHILE FREE TRADE AGREEMENT

AMENDMENTS TO CHAPTER D: RULES OF ORIGIN

Article D-01: Originating Goods

Subparagraph (a): Replace reference to “Article D-16” to “Article D-17”, as follows:

- (a) the good is wholly obtained or produced entirely in the territory of one or both of the Parties, as defined in Article D-17;

Subparagraph (d): Delete text in subparagraph (d) and footnote 1 and replace with the following:

- (d) except as provided in Annex D-01 (Specific Rules of Origin) or except for a good of heading 39.01 through 39.15 or Chapter 50 through 63 of the Harmonized System:
 - (i) the good is produced entirely in the territory of one or both of the Parties,
 - (ii) one or more of the non-originating materials used in the production of the good cannot satisfy the requirements set out in Annex D-01 (Specific Rules of Origin) because both the good and the non-originating materials are classified in the same subheading, or heading that is not further subdivided into subheadings,
 - (iii) the regional value content of the good, determined in accordance with Article D-02 is not less than 35 per cent when the transaction value method is used, or not less than 25 per cent when the net cost method is used, and
 - (iv) the good satisfies all other applicable requirements of this Chapter.

Article D-02: Regional Value Content

Paragraph 4: Renumber footnote as footnote number 1.

Subparagraph 5(d): Delete.

Subparagraph 5(e): Renumber subparagraph 5(e) as subparagraph 5(d).

Subparagraph 5(f): Renumber subparagraph 5(f) as subparagraph 5(e).

Paragraph 8: Renumber footnote as footnote number 2.

Paragraph 10: Renumber footnote as footnote number 3.

Paragraph 13: Delete.

Paragraph 14: Delete.

Article D-03: Automotive Goods

Paragraph 1: Delete.

Paragraph 2: Renumber as paragraph 1, insert new subparagraph (b), renumber existing subparagraphs (b), (c) and (d) as subparagraphs (c), (d) and (e) respectively and, in subparagraph (e), replace reference to “Annex D-03.2” with “Annex D-03.1”, as follows:

1. For purposes of calculating the regional value content of a motor vehicle, 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 the other Party:

- (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 model line of motor vehicles produced in the same plant in the territory of a Party;
 - (c) the same class of motor vehicles produced in the same plant in the territory of a Party;
 - (d) the same model line of motor vehicles produced in the territory of a Party;
- or

- (e) if applicable, the basis set out in Annex D-03.1.

Paragraph 3: Renumber as paragraph 2 and, in the chapeau, replace reference to “Annex D-03.1” with “Annex D-03.2”, as follows:

2. For purposes of calculating the regional value content for any or all goods provided for in a tariff provision listed in Annex D-03.2 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 the other Party.

Article D-04: Accumulation

Paragraphs 1 and 2: Delete and replace with the following:

1. For purposes of determining whether a good is an originating good, the production of the good in the territory of one or both 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 either of the Parties by that exporter or producer, provided that:

- (a) all non-originating materials used in the production of the good satisfy the requirements set out in Annex D-01 (Specific Rules of Origin), entirely in the territory of one or both of the Parties; and

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

2. Subject to paragraph 3, where each Party has a trade agreement that, as contemplated by the WTO Agreement, leads to the establishment of a free trade area with the same non-Party, the territory of that non-Party shall be deemed to form part of the territory of the free trade area established by this Agreement, for purposes of determining whether a good is an originating good under this Agreement.

3. A Party shall give effect to paragraph 2 only once provisions with effect equivalent to paragraph 2 are in force between each Party and the non-Party and upon agreement by the Parties on whether to limit such provisions to specified goods or under specified conditions.

Article D-05: *De Minimis*

Paragraph 1: Delete and replace with the following:

1. Except as provided in paragraphs 3 through 5, 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 D-01 is not more than 10 per cent 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 Agreement, the value of all such non-originating materials is not more than 10 per cent 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.

Paragraph 2: Replace the two references to “9 per cent” with “10 per cent”, as follows:

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 10 per cent 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 Agreement, the value of all non-originating materials is not more than 10 per cent of the total cost of the good, provided that the good satisfies all other applicable requirements of this Chapter.

Paragraph 3: Delete.

Paragraph 4: Delete.

Paragraph 5: Renumber as paragraph 3.

Paragraph 6: Delete text and footnote attached thereto and replace with the following paragraphs:

4. A good of Chapter 50 through 60 of the Harmonized System that does not originate because certain non-originating fibres or yarns used in the production of the good do not fulfil the conditions set out for that good in Annex D-01 (Specific Rules of Origin), shall nonetheless be considered to originate if the total weight of all such fibres or yarns does not exceed 10 per cent of the total weight of that good.

5. A good of Chapter 61 through 63 of the Harmonized System that does not originate because certain non-originating fibres or yarns used in the production of the component of the good that determines the tariff classification of that good do not fulfil the conditions set out for that good in Annex D-01 (Specific Rules of Origin), shall nonetheless be considered to originate if the total weight of all such fibres or yarns in that component does not exceed 10 per cent of the total weight of that component.

Article D-06: Fungible Goods and Materials

Subparagraph (a): replace “on the basis of any of the inventory management methods set out in the Uniform Regulations” with “in accordance with any of the inventory management methods recognized in, or otherwise accepted by, the Generally Accepted Accounting Principles of the Party in which the production is performed” as follows:

- (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 in accordance with any of the inventory management methods recognized in, or otherwise accepted by, the Generally Accepted Accounting Principles of the Party in which the production is performed; and

Subparagraph (b): replace “on the basis of any of the inventory management methods set out in the Uniform Regulations” with “in accordance with any of the inventory management methods recognized in, or otherwise accepted by, the Generally Accepted Accounting Principles of the Party from which the good is exported” as follows:

- (b) where originating and non-originating fungible goods are commingled and exported in the same form, the determination may be made in accordance with any of the inventory management methods recognized in, or otherwise accepted by, the Generally Accepted Accounting Principles of the Party from which the good is exported.

Article D-13: Interpretation and Application

Subparagraph (a): Delete footnote.

Subparagraph (c): Delete “and specifically describes” and replace “its parts” with “the materials that are used in the production of the good”, as follows:

- (c) where applying Article D-01(d), the determination of whether a heading or subheading under the Harmonized System provides for both a good and the materials that are used in the production of the good shall be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonized System;

Subparagraph (d)(iii): Replace the reference to “Article D-16” with “Article D-17”, as follows:

- (iii) the definitions in Article D-17 shall take precedence over the definitions in the Customs Valuation Agreement to the extent of any difference, and

Article D-16: Insert the following new Article D-16 after Article D-15:

Article D-16: Sets or Assortments of Goods

1. Except as provided in Annex D-01 (Specific Rules of Origin), an assortment of goods, or a set as referred to in Rule 3 of the General Rules for the Interpretation of the Harmonized System, shall be considered as originating, provided that:
 - (a) all the component products, including packaging materials and containers, are originating; or
 - (b) where the set or assortment contains non-originating component products, including packaging materials and containers, the regional value content of the set or assortment is not less than 50 per cent under the transaction value method.
2. For purposes of subparagraph 1(b), the value of packaging materials and containers for the set shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the set.

Article D-16: Definitions

Renumber Article D-16 as Article D-17, as follows:

Article D-17: Definitions

aquaculture: Insert the following new definition immediately after the chapeau:

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

goods wholly obtained or produced entirely in the territory of one or both of the Parties:

Subparagraph (d) – delete “or” before “fishing”, insert comma after “trapping”, and

insert “or aquaculture” after “fishing”, as follows:

- (d) goods obtained from hunting, trapping, fishing or aquaculture in the territory of one or both of the Parties;

Subparagraph (i) – delete “and” at the end of subparagraph (ii), as follows:

- (i) waste and scrap derived from:
 - (i) production in the territory of one or both of the Parties, or
 - (ii) used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

Subparagraph (j) – insert new subparagraph (j), renumber existing subparagraph (j) as “(k)” and, in renumbered subparagraph (k), replace reference to “(i)” with “(j)”, as follows:

- (j) components that have been extracted from used goods collected in the territory of one or both of the Parties that have undergone any process necessary to ensure their working condition; and
- (k) goods produced in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives, at any stage of production;

producer: Delete “or” after “processes”, insert comma after “processes”, and insert “or disassembles” after “assembles”, as follows:

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

production: Delete “or” after “processing”, insert comma after “processing”, and insert “or disassembling” after “assembling”, as follows:

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