

## CHAPTER 4

### TEXTILE AND APPAREL GOODS

#### Article 4.1: Definitions

For the purposes of this Chapter:

**customs offence** means any act committed for the purpose of, or having the effect of, avoiding a Party's laws or regulations pertaining to the terms of this Agreement governing importations or exportations of textile or apparel goods between the Parties, specifically those that violate a customs law or regulation for restrictions or prohibitions on imports or exports, duty evasion, falsification of documents relating to the importation or exportation of goods, fraud or smuggling; and

**transition period** means the period beginning on the date of entry into force of this Agreement between the Parties concerned until five years after the date on which the importing Party eliminates duties on a good for the exporting Party pursuant to this Agreement.

#### Article 4.2: Rules of Origin and Related Matters

##### *Application of Chapter 3*

1. Except as provided in this Chapter, Chapter 3 (Rules of Origin and Origin Procedures) shall apply to textile and apparel goods.

##### *De Minimis*

2. A textile or apparel good classified outside of Chapters 61 through 63 of the Harmonized System that contains non-originating materials that do not satisfy the applicable change in tariff classification requirement specified in Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin), shall nonetheless be considered to be an originating good if the total weight of all those materials is not more than 10 per cent of the total weight of the good and the good meets all the other applicable requirements of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures).

3. A textile or apparel good classified in Chapters 61 through 63 of the Harmonized System that contains non-originating fibres or yarns in the component of the good that determines the tariff classification of the good that do not satisfy the applicable change in tariff classification set out in Annex 4-A

(Textiles and Apparel Product-Specific Rules of Origin), shall nonetheless be considered to be an originating good if the total weight of all those fibres or yarns is not more than 10 per cent of the total weight of that component and the good meets all the other applicable requirements of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures).

4. Notwithstanding paragraphs 2 and 3, a good described in paragraph 2 containing elastomeric yarn or a good described in paragraph 3 containing elastomeric yarn in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of one or more of the Parties.<sup>1, 2</sup>

#### *Treatment of Sets*

5. Notwithstanding the textile and apparel product-specific rules of origin set out in Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin), textile and apparel goods put up in sets for retail sale, classified as a result of the application of Rule 3 of the General Rules for the Interpretation of the Harmonized System, shall not be regarded as originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed 10 per cent of the value of the set.

6. For the purposes of paragraph 5:

- (a) the value of non-originating goods in the set shall be calculated in the same manner as the value of non-originating materials in Chapter 3 (Rules of Origin and Origin Procedures); and
- (b) the value of the set shall be calculated in the same manner as the value of the good in Chapter 3 (Rules of Origin and Origin Procedures).

#### *Treatment of Short Supply List Materials*

7. Each Party shall provide that, for the purposes of determining whether a textile or apparel good is originating under Article 3.2(c) (Originating Goods), a material listed in Appendix 1 (Short Supply List of Products) to Annex 4-A

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<sup>1</sup> For greater certainty, this paragraph shall not be construed to require a material listed in Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin) to be produced from elastomeric yarns wholly formed in the territory of one or more of the Parties.

<sup>2</sup> For the purposes of this paragraph, “wholly formed” means all production processes and finishing operations, beginning with the extrusion of filaments, strips, film or sheet, and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibres into yarn, or both, and ending with a finished yarn or plied yarn.

(Textiles and Apparel Product-Specific Rules of Origin) is originating provided that the material meets any requirement, including any end use requirement, specified in the Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin).

8. If a claim that a textile or apparel good is originating relies on the incorporation of a material listed in Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin), the importing Party may require in the importation documentation, such as a certification of origin, the number or description of the material on Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin).

9. Non-originating materials marked as temporary in Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin) may be considered as originating under paragraph 7 for five years from the date of entry into force of this Agreement.

#### *Treatment for Certain Handmade or Folkloric Goods*

10. An importing Party may identify particular textile or apparel goods of an exporting Party to be eligible for duty-free or preferential tariff treatment that the importing and exporting Parties mutually agree fall within:

- (a) hand-loomed fabrics of a cottage industry;
- (b) hand-printed fabrics with a pattern created with a wax-resistance technique;
- (c) hand-made cottage industry goods made of such hand-loomed or hand-printed fabrics; or
- (d) traditional folklore handicraft goods;

provided that any requirements agreed by the importing and exporting Parties for such treatment are met.

#### **Article 4.3: Emergency Actions**

1. Subject to this Article if, as a result of the reduction or elimination of a customs duty under this Agreement, a textile or apparel good benefiting from preferential tariff treatment under this Agreement is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent and for such

time as may be necessary to prevent or remedy such damage and to facilitate adjustment, take emergency action in accordance with paragraph 6, consisting of an increase in the rate of duty on the good of the exporting Party or Parties to a level not to exceed the lesser of:

- (a) the most-favoured-nation applied rate of customs duty in effect at the time the action is taken; and
- (b) the most-favoured nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement for the importing Party.

2. Nothing in this Article shall be construed to limit the rights and obligations of a Party under Article XIX of GATT 1994 and the Safeguards Agreement, or Chapter 6 (Trade Remedies).

3. In determining serious damage, or actual threat thereof, the importing Party:

- (a) shall examine the effect of increased imports from the exporting Party or Parties of a textile or apparel good benefiting from preferential tariff treatment under this Agreement on the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilisation of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment, none of which either alone or combined with other factors shall necessarily be decisive; and
- (b) shall not consider changes in technology or consumer preference in the importing Party as factors supporting a determination of serious damage, or actual threat thereof.

4. The importing Party may take an emergency action under this Article only following its publication of procedures that identify the criteria for a finding of serious damage, or actual threat thereof, and an investigation by its competent authorities. Such an investigation must use data based on the factors described in paragraph 3(a) that serious damage or actual threat thereof is demonstrably caused by increased imports of the product concerned as a result of this Agreement.

5. The importing Party shall submit to the exporting Party or Parties, without delay, written notice of the initiation of the investigation provided for in paragraph 4, as well as of its intent to take emergency action and, on the request of the exporting Party or Parties, shall enter into consultations with that Party or Parties regarding the matter. The importing Party shall provide the exporting Party or Parties with the full details of the emergency action to be taken. The Parties concerned shall begin consultations without delay and, unless otherwise decided, shall complete them within 60 days of receipt of the request. After

completion of the consultations, the importing Party shall notify the exporting Party or Parties of any decision. If it decides to take an emergency action, the notification shall include the details of the emergency action, including when it will take effect.

6. The following conditions and limitations shall apply to any emergency action taken under this Article:

- (a) no emergency action shall be maintained for a period exceeding two years unless extended for an additional period of up to two years;
- (b) no emergency action shall be taken or maintained beyond the expiration of the transition period;
- (c) no emergency action shall be taken by an importing Party against any particular good of another Party or Parties more than once; and
- (d) on termination of the emergency action, the importing Party shall accord to the good that was subject to the emergency action the tariff treatment that would have been in effect but for the emergency action.

7. The Party taking an emergency action under this Article shall provide to the exporting Party or Parties against whose goods the emergency action is taken mutually agreed trade liberalising compensation in the form of concessions either having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the emergency action. Such concessions shall be limited to textile and apparel goods, unless the Parties concerned otherwise agree. If the Parties concerned are unable to agree on compensation within 60 days or a longer period agreed by the Parties concerned, the Party or Parties against whose good the emergency action is taken may take tariff action that has trade effects substantially equivalent to the trade effects of the emergency action taken under this Article. The tariff action may be taken against any goods of the Party taking the emergency action. The Party taking the tariff action shall apply it only for the minimum period necessary to achieve the substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Party's right to take tariff action shall terminate when the emergency action terminates.

8. No Party shall take or maintain an emergency action under this Article against a textile or apparel good that is subject, or becomes subject, to a transitional safeguard measure under Chapter 6 (Trade Remedies), or to a safeguard measure that a Party takes pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

9. The investigations referred to in this Article shall be carried out according to procedures established by each Party. Each Party shall, on the date of entry into force of this Agreement for that Party or before it initiates an investigation, notify the other Parties of these procedures.

10. Each Party shall, in any year where it takes or maintains an emergency action under this Article, provide a report on such actions to the other Parties.

#### **Article 4.4: Cooperation**

1. Each Party shall, in accordance with its laws and regulations, cooperate with other Parties for the purposes of enforcing or assisting in the enforcement of their respective measures concerning customs offences for trade in textile or apparel goods between the Parties, including ensuring the accuracy of claims for preferential tariff treatment under this Agreement.

2. Each Party shall take appropriate measures, which may include legislative, administrative, judicial or other action for:

- (a) enforcement of its laws, regulations and procedures related to customs offences; and
- (b) cooperation with an importing Party in the enforcement of its laws, regulations and procedures related to the prevention of customs offences.

3. For the purposes of paragraph 2, “appropriate measures” means measures a Party takes, in accordance with its laws, regulations and procedures, such as:

- (a) providing its government officials with the legal authority to meet the obligations under this Chapter;
- (b) enabling its law enforcement officials to identify and address customs offences;
- (c) establishing or maintaining criminal, civil or administrative penalties that are aimed at deterring customs offences;
- (d) undertaking appropriate enforcement action when it believes, based on a request from another Party that includes relevant facts, that a customs offence has occurred or is occurring in the requested Party’s territory with regard to a textile or apparel good, including in free trade zones of the requested Party; and
- (e) cooperating with another Party, on request, to establish facts regarding customs offences in the requested Party’s territory with

regard to a textile or apparel good, including in free trade zones of the requested Party.

4. A Party may request information from another Party if it has relevant facts, such as historical evidence, indicating that a customs offence is occurring or is likely to occur.

5. Any request under paragraph 4 shall be made in writing, by electronic means or any other method that acknowledges receipt, and shall include a brief statement of the matter at issue, the cooperation requested, the relevant facts indicating a customs offence, and sufficient information for the requested Party to respond in accordance with its laws and regulations.

6. To enhance cooperative efforts under this Article between Parties to prevent and address customs offences, a Party that receives a request under paragraph 4 shall, subject to its laws, regulations and procedures, including those related to confidentiality referred to in Article 4.9.4 (Confidentiality) provide to the requesting Party, upon receipt of a request in accordance with paragraph 5, available information on the existence of an importer, exporter or producer, goods of an importer, exporter or producer, or other matters related to this Chapter. The information may include any available correspondence, reports, bills of lading, invoices, order contracts or other information regarding enforcement of laws or regulations related to the request.

7. A Party may provide information requested in this Article on paper or in electronic form.

8. Each Party shall designate and notify a contact point for cooperation under this Chapter in accordance with Article 27.5 (Contact Points) and shall notify the other Parties promptly of any subsequent changes.

#### **Article 4.5: Monitoring**

1. Each Party shall establish or maintain programmes or practices to identify and address textiles and apparel customs offences. This may include programmes or practices to ensure the accuracy of claims for preferential tariff treatment for textile and apparel goods under this Agreement.

2. Through those programmes or practices, a Party may collect or share information related to textiles or apparel goods for use for risk management purposes.

3. In addition to paragraphs 1 and 2, some Parties have bilateral agreements that apply between those Parties.

## **Article 4.6: Verification**

1. An importing Party may conduct a verification with respect to a textile or apparel good pursuant to Article 3.27.1(a), Article 3.27.1(b) or Article 3.27.1(e) (Verification of Origin) and their associated procedures to verify whether a good qualifies for preferential tariff treatment or through a request for a site visit as described in this Article.<sup>3</sup>
2. An importing Party may request a site visit under this Article from an exporter or producer of textile or apparel goods to verify whether:
  - (a) a textile or apparel good qualifies for preferential tariff treatment under this Agreement; or
  - (b) customs offences are occurring or have occurred.
3. During a site visit under this Article, an importing Party may request access to:
  - (a) records and facilities relevant to the claim for preferential tariff treatment; or
  - (b) records and facilities relevant to the customs offences being verified.
4. If an importing Party seeks to conduct a site visit under paragraph 2, it shall notify the host Party, no later than 20 days before the visit, regarding:
  - (a) the proposed dates;
  - (b) the number of exporters and producers to be visited in appropriate detail to facilitate the provision of any assistance, but does not need to specify the names of the exporters or producers to be visited;
  - (c) whether assistance by the host Party will be requested and what type;
  - (d) if relevant, the customs offences being verified under paragraph 2(b), including relevant factual information available at the time of the notification related to the specific offences, which may include historical information; and

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<sup>3</sup> For the purposes of this Article, the information collected in accordance with this Article shall be used for the purpose of ensuring the effective implementation of this Chapter. A Party shall not use these procedures to collect information for other purposes.



- (e) whether the importer claimed preferential tariff treatment.

5. On receipt of information on a proposed visit under paragraph 2, the host Party may request information from the importing Party to facilitate planning of the visit, such as logistical arrangements or provision of requested assistance.

6. If an importing Party seeks to conduct a site visit under paragraph 2, it shall provide the host Party, as soon as practicable and prior to the date of the first visit to an exporter or producer under this Article, with a list of the names and addresses of the exporters or producers it proposes to visit.

7. If an importing Party seeks to conduct a site visit under paragraph 2:

- (a) officials of the host Party may accompany the officials of the importing Party during the site visit;
- (b) officials of the host Party may, in accordance with its laws and regulations, on request of the importing Party or on its own initiative, assist the officials of the importing Party during the site visit and provide, to the extent available, information relevant to conduct the site visit;
- (c) the importing and host Parties shall limit communication regarding the site visit to relevant government officials and shall not inform the exporter or producer outside the government of the host Party in advance of a visit or provide any other verification or enforcement information not publicly available whose disclosure could undermine the effectiveness of the action;
- (d) the importing Party shall request permission from the exporter or producer<sup>4</sup> for access to the relevant records or facilities, no later than the time of the visit. Unless advance notice would undermine the effectiveness of the site visit, the importing Party shall request permission with appropriate advance notice; and
- (e) if the exporter or producer of textile or apparel goods denies such permission or access, the visit will not occur. The importing Party shall give consideration to any reasonable alternative dates proposed, taking into account the availability of relevant employees or facilities of the person visited.

8. On completion of a site visit under paragraph 2, the importing Party shall:

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<sup>4</sup> The importing Party shall request permission from a person who has the capacity to consent to the visit at the facilities to be visited.

- (a) on request of the host Party, inform the host Party of its preliminary findings;
- (b) on receiving a written request from the host Party, provide the host Party with a written report of the results of the visit, including any findings, no later than 90 days after the date of the request. If the report is not in English, the importing Party shall provide a translation of it in English on request of the host Party; and
- (c) on receiving a written request of the exporter or producer, provide that person with a written report of the results of the visit as it pertains to that exporter or producer, including any findings, no later than 90 days after the date of the request. This may be a report prepared under subparagraph (b), with appropriate changes. The importing Party shall inform the exporter or producer of the entitlement to request this report. If the report is not in English, the importing Party shall provide a translation of it in English on request of that exporter or producer.

9. If an importing Party conducts a site visit under paragraph 2 and, as a result, intends to deny preferential tariff treatment to a textile or apparel good, it shall, before it may deny preferential tariff treatment, provide to the importer and any exporter or producer that provided information directly to the importing Party 30 days to submit additional information to support the claim for preferential tariff treatment. If advance notice was not given under paragraph 7(d), that importer, exporter or producer may request an additional 30 days.

10. The importing Party shall not reject a claim for preferential tariff treatment on the sole grounds that the host Party does not provide the requested assistance or information under this Article.

11. While a verification is being conducted under this Article, the importing Party may take appropriate measures under procedures established in its laws and regulations, including suspending or denying the application of preferential tariff treatment to textile or apparel goods of the exporter or producer subject to a verification.

12. If verifications of identical textile or apparel goods by an importing Party indicate a pattern of conduct by an exporter or producer of false or unsupported representations that a textile or apparel good imported into its territory qualifies for preferential tariff treatment, the importing Party may withhold preferential tariff treatment for identical textile or apparel goods imported, exported or produced by that person until it is demonstrated to the importing Party that those identical textile or apparel goods qualify for preferential tariff treatment. For the purposes of this paragraph, “identical textile or apparel goods” means textile or apparel goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating.

#### **Article 4.7: Determinations**

The importing Party may deny a claim for preferential tariff treatment for a textile or apparel good:

- (a) for a reason listed in Article 3.28.2 (Determination on Claims for Preferential Tariff Treatment);
- (b) if, pursuant to a verification under this Chapter, it has not received sufficient information to determine that the textile or apparel good qualifies as originating; or
- (c) if, pursuant to a verification under this Chapter, access or permission for the visit is denied, the importing Party is prevented from completing the visit on the proposed date, and the exporter or producer does not provide an alternative date acceptable to the importing Party, or the exporter or producer does not provide access to the relevant records or facilities during a visit.

#### **Article 4.8: Committee on Textile and Apparel Trade Matters**

1. The Parties hereby establish a Committee on Textile and Apparel Trade Matters, (Committee), composed of government representatives of each Party.
2. The Committee shall meet at least once within one year of the date of entry into force of this Agreement, and thereafter at such times as the Parties decide and on request of the Commission. The Committee shall meet at such venues and times as the Parties decide.
3. The Committee may consider any matter arising under this Chapter, and its functions shall include review of the implementation of this Chapter, consultation on technical or interpretive difficulties that may arise under this Chapter, and discussion of ways to improve the effectiveness of cooperation under this Chapter.
4. In addition to discussions under the Committee, a Party may request in writing discussions with any other Party or Parties regarding matters under this Chapter concerning those Parties, with a view to resolution of the issue, if it believes difficulties are occurring with respect to implementation of this Chapter.
5. Unless the Parties amongst whom a discussion is requested agree otherwise, they shall hold the discussions pursuant to paragraph 4 within 30 days of receipt of a written request by a Party and endeavour to conclude within 90 days of receipt of the written request.

6. Discussions under this Article shall be confidential and without prejudice to the rights of any Party in any other proceeding.

7. Prior to the entry into force of an amended version of the Harmonized System, the Committee shall consult to prepare updates to this Chapter that are necessary to reflect changes to the Harmonized System.

#### **Article 4.9: Confidentiality**

1. Each Party shall maintain the confidentiality of the information collected in accordance with this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.

2. If a Party provides information to another Party in accordance with this Chapter and designates the information as confidential, the other Party shall keep the information confidential. The Party that provides the information may require the other Party to furnish written assurance that the information will be held in confidence, used only for the purposes specified in the other Party's request for information, and not disclosed without the specific permission of the Party that provided the information or the person that provided the information to that Party.

3. A Party may decline to provide information requested by another Party if that Party has failed to act in conformity with paragraph 1 or 2.

4. Each Party shall adopt or maintain procedures for protecting from unauthorised disclosure confidential information submitted in accordance with the administration of the Party's customs or other laws related to this Chapter, or collected in accordance with this Chapter, including information the disclosure of which could prejudice the competitive position of the person providing the information.