

**THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES
FREE TRADE AGREEMENT**

**DECISION OF THE FREE TRADE COMMISSION REGARDING COMMON
GUIDELINES FOR THE INTERPRETATION, APPLICATION AND
ADMINISTRATION OF CHAPTER FOUR**

The Governments of the Republic of Costa Rica, the Dominican Republic, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras, the Republic of Nicaragua, and the United States of America, pursuant to Article 4.21 (Common Guidelines) of the Dominican Republic – Central America – United States Free Trade Agreement (the “Agreement”), agree on the common guidelines for the interpretation, application and administration of Chapter Four of the Agreement, as set forth in Annex I.

DONE in English and Spanish,

For the Republic of Costa Rica:



Fernando Ocampo
Vice Minister on behalf of
the Minister of Foreign Trade

27 Oct., 2011
DATE


For the Dominican Republic:



Marcelo Puello
Vice Minister on behalf of the
Minister for Industry and Trade

27 Oct. 2011
DATE

For the Republic of El Salvador:



Mario Roger Hernández
Vice Minister on behalf of the
Minister of Economy

4. Nov. 2011
DATE



For the Republic of Guatemala:



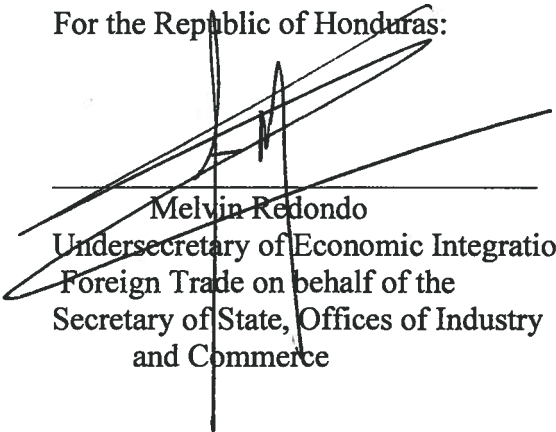
Alexander Cutz

Director of Administration of Foreign Trade
on behalf of the Minister of Economy

27 OCT. 2011

DATE

For the Republic of Honduras:



Melvin Redondo

Undersecretary of Economic Integration and
Foreign Trade on behalf of the
Secretary of State, Offices of Industry
and Commerce

27-OCT-2011

DATE

For the Republic of Nicaragua:



Jesús Bermúdez

Director General of Foreign Trade
on behalf of Minister
of Development, Industry and Commerce
For the United States of America:

27 OCT-2011

DATE

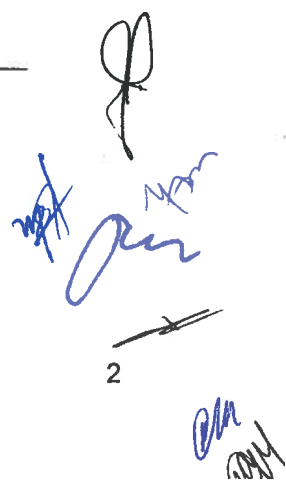


John Melle

Assistant USTR for the Western Hemisphere
on behalf of the United States Trade Representative

27 OCT. 2011

DATE



ANNEX I

COMMON GUIDELINES FOR THE INTERPRETATION, APPLICATION AND ADMINISTRATION OF CHAPTER FOUR OF THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES FREE TRADE AGREEMENT

FIRST PART GENERAL DEFINITIONS

Article 1: General definitions

Fiscal year or term:

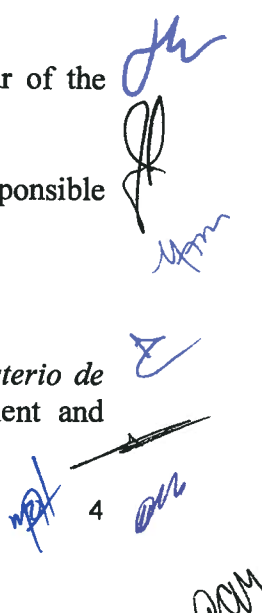
1. For the Republic of Costa Rica:
 - (i) The fiscal year begins October 1 of a specified year and ends September 30 of the following year; or
 - (ii) Any other 12 consecutive month term specified by the Tax Administration Office within its discretion and at the request of tax payers or in accordance with the interests of the Tax Administration Office provided that the terms are not detrimental to fiscal interest.
2. For the Republic of El Salvador:
 - (i) The fiscal year begins January 1 of a specified year and ends December 31 of the same year.
3. For the Republic of Guatemala:
 - (i) The fiscal year begins January 1 of a specified year and ends December 31 of the same year; or
 - (ii) Any other 12 consecutive month term requested by the interested party, and duly authorized by the *Superintendencia de Administración Tributaria* (SAT).
4. For the Republic of Honduras:
 - (i) The fiscal year begins January 1 of a specified year and ends December 31 of the same year; or
 - (ii) Any other 12 consecutive month term requested by the interested party, and duly authorized by the *Dirección Ejecutiva de Ingresos* (DEI) of the *Secretaría de Estado en Asuntos Financieros*.

5. For the Republic of Nicaragua:
 - (i) The fiscal year begins July 1 of a specified year and ends June 30 of the following year; or
 - (ii) Any other 12 consecutive month period requested by interested party and duly authorized by the *Dirección General de Ingresos* (DGI) of the *Ministerio de Hacienda y Crédito Público* (MHCP) or their successors.
6. For the Dominican Republic:
 - (i) The fiscal year begins January 1 of a specified year and ends December 31 of the same year.
7. For the United States:
 - (i) The fiscal year begins October 1 of a specified year and ends September 30 of the following year.

The following section provides information on the relevant authorities in each Party with responsibilities for managing and implementing Chapter Four of the Agreement.

Relevant Authority:

1. For the Republic of Costa Rica:
 - (i) The *Servicio Nacional de Aduanas* is responsible for managing and implementing the customs laws and regulations of Costa Rica, as well as applying Chapter Four of the Agreement, as appropriate.
 - (ii) The *Ministerio de Comercio Exterior* is responsible for managing Chapter Four of the Agreement, as appropriate.
2. For the Republic of El Salvador:
 - (i) The *Ministerio de Economía* is responsible for managing Chapter Four of the Agreement.
 - (ii) The *Dirección General de Aduanas* of the *Ministerio de Hacienda* is responsible for applying Chapter Four of the Agreement, as appropriate.
3. For the Republic of Guatemala:
 - (i) The *Dirección de la Administración de Comercio Exterior* of the *Ministerio de Economía* is responsible for managing Chapter Four of the Agreement and



applying the procedures for verification of origin in Chapter Four of the Agreement.

- (ii) The *Superintendencia de Administración Tributaria* is responsible for applying Chapter Four of the Agreement, as appropriate.

4. For the Republic of Honduras:

- (i) The *Dirección Ejecutiva de Ingresos* is responsible for applying Chapter Four of the Agreement, as appropriate.
- (ii) The *Secretaría de Estado en los Despachos de Industria y Comercio* is responsible for applying Chapter Four of the Agreement, as appropriate.

5. For the Republic of Nicaragua:

- (i) The *Ministerio de Fomento, Industria y Comercio* is responsible for managing Chapter Four of the Agreement.
- (ii) The *Dirección General de Servicios Aduaneros* is responsible for applying Chapter Four of the Agreement, as appropriate.

6. For the Dominican Republic:

- (i) The *Dirección General de Aduanas* is responsible for managing and applying the customs rules and laws of the Dominican Republic and applying Chapter Four of the Agreement, as appropriate.
- (ii) The *Dirección de Comercio Exterior* of the *Ministerio de Industria y Comercio* is responsible for managing Chapter Four of the Agreement, as appropriate.

7. For the United States of America:

- (i) The Office of the United States Trade Representative is responsible for administering Chapter Four of the Agreement.
- (ii) The Department of Homeland Security, U.S. Customs and Border Protection, is responsible for administering customs laws and regulations of the United States.

**SECOND PART
RULES OF ORIGIN AND ORIGIN PROCEDURES**

SECTION A: RULES OF ORIGIN

Article 2: Transit and Transshipment

1. In accordance with the provisions of Article 4.12 (Transit and Transshipment) of the Agreement, the customs authority of the importing Party may request that an importer claiming preferential treatment for a good under the Agreement provide documents or any other information to demonstrate, to the satisfaction of the customs authority of the importing Party, that the good has not undergone subsequent production or has not been subject to any other operation outside the territories of the Parties (other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party), or that the good has remained under the control of customs authorities in the territory of a non-Party.

2. Such documents include, but are not limited to, bills of lading, packing lists, commercial invoices, and customs entry and exit documents. The failure of the importer to provide documents or information may result in a denial of the claim for preferential treatment for such good.

SECTION B: ORIGIN PROCEDURES

Article 3: Claims of Origin

1. The certification of origin (written or electronic) that covers imported goods for which preferential tariff treatment is claimed must be completed by the importer, exporter, or producer in the territory of a Party, in compliance with the Agreement.

2. When making a claim for preferential tariff treatment in accordance with Article 4.16 (Claims of Origin), an importer shall submit, at the request of the customs authority of the importing Party, information, including but not limited to the following:
 - a) Legal name, address, telephone, fax, electronic mail (if any) of the importer of record, the exporter (if different than the producer) and the producer, if known;
 - b) When a certificate of origin covers multiple shipments of identical goods as provided in Article 4.16 of the Agreement, the specific dates for which the certification covers such goods, not exceeding 12 months from the date of the certification;
 - c) Description of the good(s) for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate to the invoice and the Harmonized System nomenclature;

- d) Harmonized System classification at the 6-digit level for the goods for which preferential tariff treatment is claimed;
- e) The origin criteria according to the provisions of Article 4.1 of the Agreement pursuant to which the goods are entitled to preferential treatment.

Article 4: Correction of Origin Certification

1. If a Party determines that a certification is illegible or defective or has not been completed in accordance with the Agreement, the importer, exporter or producer in the territory of a Party shall be given a reasonable period of time to submit a corrected certification.

ANNEX 1: ILLUSTRATIVE EXAMPLES FOR APPLICATION FOR CERTAIN PROVISIONS OF CHAPTER 4

Provision:

Article 4.1: Originating Goods

Except as otherwise provided in this Chapter, each Party shall provide that a good is originating where:

- (a) *it is a good wholly obtained or produced entirely in the territory of one or more of the Parties;*

Examples:

Silver mined in Guatemala is originating.

Reason: It was extracted in the territory of one of the Parties.

Wheat grown in El Salvador is originating.

Reason: It was harvested in the territory of one of the Parties.

Copper recovered in Costa Rica from scrap telephone or electrical wires is originating.

Reason: It was wholly obtained or produced in Costa Rica, regardless of where the wire was originally produced.

Silver jewelry made in the United States from silver mined in Guatemala is originating.

Reason: It was wholly obtained or produced in the CAFTA-DR territory (it is made exclusively of a mineral good extracted in Guatemala).

Provision:

4.1 (b) it is produced entirely in the territory of one or more of the Parties and

- (i) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4.1, or*
and the good satisfies all other applicable requirements of this Chapter; or

Example:

Frozen pork meat (heading 0203) is imported into the United States from Hungary and is combined with spices imported from the Caribbean (subheadings 0907-0910) and cereals grown and produced in the United States to make fresh pork sausage (heading 1601). The sausage is then shipped to Honduras for importation.

The rule of origin for heading 1601 states:

A change to heading 1601 through 1605 from any other chapter or from mechanically deboned fowl of heading 0207, except from any other good of heading 0207.

This good is originating.

Reason: Since the imported frozen meat is classified in Chapter 2 and the spices are classified in Chapter 9, these non-originating materials meet the required tariff change. One does not consider whether the cereal meets the applicable tariff change, since only non-originating materials have to undergo the tariff change.

Provision:

4.1 (b) it is produced entirely in the territory of one or more of the Parties and

- (ii) the good otherwise satisfies any applicable regional value content or other requirements specified in Annex 4.1,*
and the good satisfies all other applicable requirements of this Chapter;
or

Examples:

Method Based on Value of Non-Originating Materials (“Build-down Method”)

Plastic eyeglass frames (subheading 9003.11) are assembled in Honduras from Japanese parts (subheading 9003.90). The plastic eyeglass frames are sold for U.S. \$40.00 (adjusted value); the value of the non-originating parts is U.S. \$18.00.

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The rule of origin for subheading 9003.11 states:

A change to subheading 9003.11-9003.19 from subheading 9003.90 whether or not there is also a change from any other subheading, provided there is a regional value content of not less than:

- a) 35% when the build-up method is used; or
- b) 45% when the build-down method is used.

This good is originating.

Reason: The first part of this rule is met, since there is a subheading change from parts to plastic eyeglass frames.

Next, one proceeds to calculate the regional value content. The regional value content under the build-down method is $(40.00-18.00)/40.00 \times 100 = 55\%$. The plastic eyeglass frames would be considered an originating good under the build-down method, since the required regional value content is 45 percent.

Method Based on Value of Originating Materials ("Build-up Method")

A guitar is produced in Honduras and imported into the U.S. with an adjusted value of U.S. \$1,000.00. The turning pin and strings (subheading 9209.92) are from South Korea and are valued at U.S. \$100.00. The wood for the guitar is from Honduras and is valued at U.S. \$100.00. The labor for the production in Honduras is valued at U.S. \$100.00.

The rule of origin for subheading 9202.90 states:

A changed to subheading 9202.90.10 from any other chapter; or

A change from heading 9202 from any other heading provided there is a regional value content of not less than:

- a) 30%, when the build-up method is used; or
- b) 35%, when the build-down method is used.

This good is not originating.

Reason: The first rule is not met because the tuning pin and strings do not undergo a chapter change. The first part of the second rule is met, since the non-originating parts (tuning pin and strings) undergo a heading change. Next, one proceeds to calculate the regional value content. The regional value content under the build-up method is $200/1000 = 20\%$. The guitar would not be considered an originating good under this method, since the required regional value-content is 30 percent when the build-up method is used.

Provision:

4.1 (c) it is produced entirely in the territory of one or more of the Parties exclusively from originating materials.

Example:

Company A imports whole raw bovine skins (heading 4101) into the Dominican Republic from Argentina and processes them into finished leather (subheading 4104.11). The finished leather is then purchased by Company B to make leather eyeglass cases (subheading 4202.31).

The rule of origin for 4104.11 states:

A change in subheading 4104.11-4104.49 from any other subheading.

This good is originating.

Reason: The finished leather originates in the Dominican Republic, because it meets the tariff-shift criterion. Assuming the eyeglass cases do not contain any non-originating materials, they originate since they are made wholly of a material that is originating (because it satisfied the tariff-shift criterion).

Provision:

Article 4.6: De Minimis

1. *Except as provided in Annex 4.6, each Party shall provide that a good that does not undergo a change in tariff classification pursuant to Annex 4.1 is nonetheless originating if the value of all non-originating materials used in the production of the good—and that do not undergo the applicable change in tariff classification—does not exceed ten percent of the adjusted value of the good, provided that the value of such non-originating materials shall be included in the value of non-originating materials for any applicable regional value content requirement, and that the good meets all other applicable requirements in this Chapter.*

2. *With respect to a textile or apparel good, Article 3.25.7 (Rules of Origin and Related Matters) applies in place of paragraph 1.*

Example:

A manufacturer purchases inexpensive metal watch straps made in Taiwan (heading 9113), to be assembled with originating mechanical watch movements (heading 9108) and originating cases (heading 9112). The value of the metal watch straps is U.S. \$8.00 and the adjusted value of the finished watch (subheading 9102.01), which is imported into the U.S., is U.S. \$100.00.

The rule of origin for heading 9102 is:

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A change to headings 9102 through 9107 from any other chapter; or

A change to headings 9102 through 9107 from heading 9114, provided there is a regional value content of not less than:

- a) 35%, when the build-up method is used; or
- b) 45%, when the build-down method is used.

The good is originating.

Reason: Only non-originating materials need to undergo the required tariff classification change: in this case, the metal straps. The straps do not satisfy either of the indicated tariff changes. However, since their value is less than 10 percent of the adjusted value of the watch, the *de minimis* rule applies and the watches can be considered originating.

Example:

Peanut butter (subheading 2008.11) imported into Costa Rica from Guatemala is manufactured from peanuts (heading 1202) from Spain and Costa Rica, vegetable oil (heading 1515), salt (heading 2501), and sugar (heading 1701) from Guatemala and molasses (heading 1703) from Belize. The non-originating peanuts represent 5 percent of the adjusted value of the peanut butter.

The rule of origin for subheading 2008.11 is:

A change to subheading 2008.11 from any other chapter, except from heading 1202.

This good is originating.

Reason: Only the peanuts from Spain and molasses need to undergo the required tariff classification change. The non-originating molasses meets the tariff shift criterion. Although the non-originating peanuts are excepted from the rule, their value is less than 10 percent of the adjusted value of the peanut butter, the *de minimis* rule applies and the peanut butter can be considered originating.

Provision:

Article 4.7: Fungible Goods and Materials

1. Each Party shall provide that an importer may claim that a fungible good or material is originating where the importer, exporter, or producer has:

- (a) physically segregated each fungible good or material; or

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- (b) *used any inventory management method, such as averaging, last-in-first-out (LIFO) or first-in-first-out (FIFO), recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.*

2. *Each Party shall provide that the inventory management method selected under paragraph 1 for a particular fungible good or material shall continue to be used for that good or material throughout the fiscal year of the person that selected the inventory management method.*

Example:

Company Y of Nicaragua supplies clips to airplane manufacturers in the U.S. Some of the clips Company Y supplied originate in Nicaragua, and others are made in China. All of the clips are of identical construction and are intermingled at Company Y's warehouse so that they are indistinguishable. On January 1, Company Y buys 3,000 clips of Nicaraguan origin; on January 3, it buys 1,000 clips of Chinese origin. Company Y uses first-in-first-out (FIFO) inventory procedures.

The first 3,000 clips Company Y uses to fill an order are originating regardless of their actual origin.

Reason: The clips meet the definition of fungible goods as they are interchangeable for commercial purposes and have identical properties. In this case, the clips are not physically segregated but Company Y uses a GAAP recognized inventory management method. Therefore, Company Y can claim the first 3,000 clips it uses to fill an order as Nicaraguan and originating, regardless of their actual origin.

Provision:

Article 4.8: Accessories, Spare Parts, and Tools

1. *Each Party shall provide that a good's standard accessories, spare parts, or tools delivered with the good shall be treated as originating goods if the good is an originating 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, provided that:*

- (a) *the accessories, spare parts, or tools are classified with and not invoiced separately from the good, regardless of whether they appear specified or separately identified in the invoice itself; and*
- (b) *the quantities and value of the accessories, spare parts, or tools are customary for the good.*

2. *If a good is subject to a regional value content requirement, the value of 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.*

Example:

A pump originating in Costa Rica is sold with rubber suction and discharge hoses made in Taiwan. The hoses from Taiwan are classified, invoiced, and packed with the pump, and are customarily sold with pumps of this kind.

The rubber suction and discharge hoses are originating.

Reason: Since the pump originates, the rubber hoses are considered originating for the purposes of satisfying the required change in tariff classification. Their value, however, has to be counted as non originating materials in any regional value content calculation.

Provision:

Article 4.9: Packaging Materials and Containers for Retail Sale

Each Party shall provide that 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 4.1 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 as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example:

Wrist watches (heading 9102) are made in Costa Rica. The watches are wrapped in tissue paper and packed in cardboard boxes described with the brand logo for retail sale; both the tissue paper and the cardboard box are of Indian origin.

The rule of origin for heading 9102 is:

A change to headings 9102 through 9107 from any other chapter; or

A change to heading 9102 through 9107 from heading 9114, provided there is a regional value content of not less than:

- a) 35%, when the build-up method is used; or
- b) 45%, when the build-down method is used.

The watches are originating and the non-originating packaging is disregarded.

Reason: Although the tissue paper and cardboard boxes are disregarded for the purposes of the tariff change, their value must be counted as non-originating when calculating the regional value content of the wrist watches.

Provision:

Article 4.10: Packing Materials and Containers for Shipment

Each Party shall provide that packing materials and containers for shipment shall be disregarded in determining whether a good is originating.

Example:

Company X makes barber's chairs (subheading 9402.10) in the Dominican Republic from Brazilian leather (heading 4104), which is the only non-originating material used. Company Y buys chairs from Company X for U.S. \$10.90; this price includes U.S. \$0.90 for Taiwanese crates used to hold each chair during international shipment.

The rule of origin for subheading 9402.10 is:

A change to subheading 9402.10 through 9402.90 from any other subheading provided there is a regional value content of not less than:

- a) 35%, when the build-up method is used; or
- b) 45%, when the build-down method is used.

The value of the Brazilian leather is U.S. \$4.10. Under the build-down method, the regional value content is $(10.00 - 4.10) / 10.00 \times 100 = 59\%$.

The barber's chair is originating.

Reason: The chair meets the minimum regional value content of 45 percent. Note that the packing and shipping costs (U.S. \$0.90) were deducted from the adjusted value before calculating the regional value content.

Provision:

Article 4.12: Transit and Transshipment

Each Party shall provide that a good shall not be considered to be an originating good if the good:

- (a) *undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to*

preserve the good in good condition or to transport the good to the territory of a Party; or

- (b) *does not remain under the control of customs authorities in the territory of a non-Party.*

Example:

Surgical instruments made in the United States (wholly of originating materials) and cotton grown and bandages made in El Salvador (from fibers and fabrics wholly grown and produced in El Salvador) are sent to China, where they are packaged together and then sterilized for use in operating rooms.

On their return to the United States, the surgical instruments would not be originating and not be eligible for preferential treatment under the CAFTA-DR.

Reason: They underwent operations in China that were not necessary to preserve the goods in good condition, or to transport them to the United States.



Chu

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