CHAPTER 3

RULES OF ORIGIN AND ORIGIN PROCEDURES

SECTION A

RULES OF ORIGIN

ARTICLE 3.1

Definitions

1. For the purposes of this Chapter:

(a) "competent authority" means:

(i) for European Union, the customs authorities; and

(ii) for India, the Department of Commerce or any other designated authority;

(b) "consignment" means products which are either sent simultaneously from one consignor to one consignee or covered by a single transport document or, in the absence of such a document, by a single invoice;

(c) "exporter" means a person, located in a Party, who, in accordance with the requirements laid down in the laws and regulations of that Party, exports or produces the originating product;

(d) "issuing authority" means:

(i) for the European Union, the customs authorities; and

(ii) for India, the authorities designated for issuance of certificates of origin, notified as appropriate;

(e) "material" means any substance, including any ingredient, raw material, component or part, used in the production of a product and physically incorporated into it;

(f) "non-originating material" means a material that does not qualify as originating under this Chapter, including a material whose originating status cannot be determined;

(g) "producer" means a person who engages in the production of a product in the territory of a Party;

(h) "product" means the product resulting from the production, even if it is intended for later use as a material in the production of another product; and

(i) "production" means any kind of working or processing operation including growing, cultivating, raising, mining, harvesting, picking, breeding, extracting, gathering, collecting, fishing, farming, trapping, hunting, capturing, aquaculture, manufacturing, processing, disassembling or assembling a good.

2. Any cost and value referred to in this Chapter shall be recorded and maintained in accordance with the accounting principles generally accepted in the Party in which the product is produced.

ARTICLE 3.2

Requirements for originating products

1. The following products shall be considered as originating in a Party, provided that they satisfy all other applicable requirements of this Chapter:

(a) products wholly obtained or wholly produced in that Party within the meaning of Article 3.3 (Wholly obtained products); or

(b) products produced in that Party incorporating non-originating materials, provided they satisfy the requirements set out in Annexes 3-A (Introductory notes to product-specific rules of origin) and 3-B (Product-specific rules of origin).

2. The originating products referred to in paragraph 1 shall be considered as originating goods for the purpose of applying the preferential tariff treatment in accordance with this Agreement.

3. If a product has acquired originating status, the non-originating materials used in the production of that product shall not be considered as non-originating when that product is incorporated as a material in another product.

4. The acquisition of originating status shall be fulfilled without interruption in the European Union or in India.

ARTICLE 3.3

Wholly obtained products

1. The following shall be considered as wholly obtained or wholly produced in a Party:

(a) mineral products and other naturally occurring substances extracted or taken in a Party, but not beyond the outer limits of the Party's territorial sea;

(b) plants, plant and vegetable products[1] grown, harvested, picked, or gathered in a Party;

(c) live animals born and raised in a Party;

(d) products obtained from live animals raised in a Party;

(e) products obtained from slaughtered animals born and raised in a Party;

(f) products obtained by hunting, trapping, gathering, or capturing conducted in a Party;

(g) products obtained from aquaculture in a Party if aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, are born or raised from seed stock, such as eggs, fry, fingerlings, larvae, or other immature fish at a post-larval stage, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;

(h) products obtained by fishing conducted in a Party, but not beyond the outer limits of the Party's territorial sea;

(i) products of sea fishing conducted outside any territorial sea by a vessel of a Party;

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[1] Plants, plant and vegetable products include fruits, flowers, vegetables, trees, seaweed, fungi, algae, tobacco and live plants. Those plants, plant and vegetable products can be obtained in the territory of a Party, even if grown from seeds, bulbs, rhizomes, rootstock, cuttings, slips, grafts, shoots, buds, or other live parts of plants imported from a third country.

(j) products made aboard of a factory ship of a Party exclusively from products referred to in point (i);

(k) products other than fish, shellfish and other marine life extracted or taken from the seabed or subsoil outside any territorial sea, provided that the Party or person of that Party has the right to exploit such seabed or subsoil in accordance with international law;

(l) waste and scrap excluding precious metals derived from production in a Party;

(m) waste and scrap derived from consumption or used products collected in a Party, provided that those products are fit only for the recovery of raw materials; and

(n) products produced in a Party exclusively from the products specified in points (a) to (m) or from their derivatives at any stage of production.

2. The terms "vessel of a Party" and "factory ship of a Party" in points (i) and (j) of paragraph 1 mean a vessel and a factory ship which:

(a) is registered in a Member State or in India;

(b) sails under the flag of a Member State or of India; and

(c) meets one of the following conditions[2]:

(i) one or more nationals of a Member State or of India own a substantial share of it, as defined by the law of a Party, and not below 50 %; or

(ii) one or more juridical persons own it and those meet the following criteria:

(A) have their head office and place of business in a Member State or in India; and

(B) public entities or juridical persons of a Member State or of India own a substantial share of them, as defined by the law of a Party, and not below 50 %.

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[2] Products of fishing or other products taken from the sea by chartered vessels sailing under the flag of India or a Member State are considered to originate in India or in the Member State in which the vessel is chartered, provided that the vessel is chartered by a natural person of a Member State or of India or a juridical person who fulfils the criteria set out in this point.

ARTICLE 3.4

Tolerances or *de minimis*

1. If a product does not satisfy the requirements of Annex 3-B (Product-specific rules of origin), including a change in tariff classification, due to the use of a non-originating material in its production, that product shall nevertheless be considered as originating in a Party, provided that:

(a) the total weight of non-originating materials used in the production of products classified under HS chapters 1 to 8 and HS chapters 10 and 13 does not exceed 5 % of the weight of the product;

(b) the total weight of non-originating materials used in the production of products classified under HS chapters 9, 11 and 12 and HS chapters 14 to 24, other than processed fishery products of HS chapter 16, does not exceed 10 % of the weight of the product;

(c) for a product classified under HS chapters 50 to 63, the tolerances or *de minimis* set out in Notes 6, 7 and 8 of Annex 3-A (Introductory notes to product-specific rules of origin) apply; or

(d) the total value of non-originating materials for all other products does not exceed 10 % of the ex-works price or Free-On-Board value (hereinafter referred to as "FOB value") of the product.

2. Paragraph 1 does not apply if the value or weight of non-originating materials used in the production of a product exceeds any of the percentages for the maximum value or weight of non-originating materials as specified in the requirements set out in Annex 3-B (Product-specific rules of origin).

3. Paragraph 1 does not apply to products wholly obtained in a Party within the meaning of Article 3.3 (Wholly obtained products).

4. Where, in Annex 3-B (Product-specific rules of origin), the product-specific rule requires:

(a) "production in which all the materials of [one or more HS chapters] used are wholly obtained", paragraph 1 applies; or

(b) that the product is "WO", non-originating materials may be used in the production provided that the total value or weight of these non-originating materials does not exceed 1 % of the ex-works price or FOB value or of the weight of the product.

ARTICLE 3.5

Insufficient production or minimal operations and processes

1. Notwithstanding point (b) of Article 3.2(1) (Requirements for originating products), a product shall not be considered as originating in a Party if the production of the product in that Party consists only of one or more of the following operations conducted on non-originating materials:

(a) preserving operations, such as drying, freezing or keeping in brine, where their sole purpose is to ensure that the products remain in good condition during transport and storage;

(b) breaking-up, assembly or change of packaging or packing;

(c) washing, cleaning, dry cleaning or removal of dust, oxide, oil, paint or other coverings;

(d) ironing or pressing of textiles and textiles articles;

(e) simple painting and polishing operations;

(f) husking, partial or total polishing, bleaching and glazing of cereals and rice, milling of rice;

(g) operations to colour or flavour sugar or form sugar lumps, partial or total milling or grinding of sugar in solid form;

(h) peeling, stoning and shelling of fruits, nuts and vegetables;

(i) sharpening, simple grinding or simple cutting;

(j) simple sifting, screening, sorting, classifying, grading, matching including the making-up of sets of articles;

(k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;

(l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;

(m) simple mixing of products, whether or not of different kinds; mixing of sugar with any material;

(n) simple addition of water or dilution with water or another substance that does not materially alter the characteristics of the product, or dehydration of products or denaturation of products of HS chapter 22[3];

(o) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts; or

(p) slaughter of animals.

2. For the purpose of paragraph 1, operations shall be considered simple if neither special skills nor machines, apparatus or equipment especially produced or installed are needed for carrying out those operations.

ARTICLE 3.6

Cumulation of origin between the Parties

1. A product originating in a Party shall be considered as originating in the other Party if that product is used as a material in the production of another product in that latter Party.

[3] Making unfit for human consumption by the simple addition of toxic or foul-tasting substances.

2. Paragraph 1 does not apply if the production carried out in the other Party does not go beyond the operations referred to in Article 3.5(1) (Insufficient production or minimal operations and processes).

ARTICLE 3.7

Unit of qualification

1. For the purposes of this Chapter, the unit of qualification shall be the particular product which is considered as the basic unit when classifying the product under the Harmonized System.

2. For a consignment consisting of a number of identical products classified under the same heading of the Harmonized System, each individual product shall be taken into account when applying this Chapter.

ARTICLE 3.8

Accessories, spare parts, tools and informational or instructional material

1. This Article applies to accessories, spare parts, tools and informational or instructional material that:

(a) are classified and delivered with, but not invoiced separately from, the product; and

(b) are of the types, quantities and values which are customary for that product.

2. Accessories, spare parts, tools and informational or instructional material referred to in paragraph 1 shall be disregarded in determining the origin of the product, except for the purposes of calculating the value of non-originating materials, if a product is subject to a maximum value of non-originating materials as set out in Annex 3-B (Product-specific rules of origin).

ARTICLE 3.9

Packing materials and containers for shipment

Packing materials and containers for shipment that are used to protect a product during transportation shall be disregarded in determining whether that product is originating in a Party.

ARTICLE 3.10

Packaging materials and containers for retail sale

Packaging materials and containers in which the product is packaged for retail sale, if classified with the product, shall be disregarded in determining the origin of the product, except for the purposes of calculating the value of non-originating materials if a product is subject to a maximum value of non-originating materials in accordance with Annex 3-B (Product-specific rules of origin).

ARTICLE 3.11

Sets

Sets, as defined in General Rule 3 for the Interpretation of the Harmonized System, shall be considered as originating in a Party if all of their components are originating. If a set is composed of originating and non-originating components, the set as a whole shall be considered as originating in a Party if the value of the non-originating components does not exceed 10 % of the ex-works price or FOB value of the set.

ARTICLE 3.12

Neutral or indirect elements

In order to determine whether a product is originating in a Party, the following elements, which might be used in its production but not physically incorporated, shall be disregarded:

(a) fuel, energy, catalysts and solvents;

(b) plant, equipment, spare parts and materials used in the maintenance of equipment and buildings;

(c) machines, tools, dies and moulds;

(d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;

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

(f) equipment, devices and supplies used for testing or inspecting the product; and

(g) any other element used in the production.

ARTICLE 3.13

Accounting segregation for fungible materials

1. For the purposes of this Article, "fungible materials" means materials that are interchangeable for commercial purposes, whose properties are essentially identical, and, once incorporated into the finished product, cannot be distinguished from one another for origin purposes.

2. Originating and non-originating fungible materials shall be physically segregated during storage in order to maintain their originating and non-originating status.

3. Notwithstanding paragraph 2, originating and non-originating fungible materials may be used in the production of a product without being physically segregated during storage if an accounting segregation method or an inventory management method recognised under accounting principles generally accepted in the Party is used, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

4. An accounting segregation method referred to in paragraph 3 shall be applied in conformity with an inventory management method under the accounting principles that are generally accepted in the Party.

5. The accounting segregation method or inventory management method shall be any method that ensures that at any time no more materials receive originating status than would have been the case if the materials had been physically segregated.

ARTICLE 3.14

Returned products

If a product originating in a Party is exported from that Party to a third country and returns to that Party, it shall be considered as non-originating product unless the returning product:

(a) is the same as that exported; and

(b) has not undergone any operation other than that necessary to preserve it in good condition while in that third country or while being exported.

ARTICLE 3.15

Transport

1. The preferential tariff treatment provided for under this Agreement applies only to originating products that have been transported:

(a) directly from the exporting Party to the importing Party; or

(b) through one or more third countries and that have not been subjected to operations, other than the ones listed in paragraph 2, after their exportation from the exporting Party and prior to entering the customs territory of the importing Party, and provided that the originating products remain under customs control in each third country where the operations take place.

2. The operations referred to in point (b) of paragraph 1 shall be limited to the following:

(a) operations to preserve the originating products in good condition;

(b) relabelling, adding or affixing marks, labels, seals or any other documentation to ensure compliance with specific domestic requirements of the importing Party;

(c) unloading and reloading;

(d) repacking;

(e) storage; and

(f) splitting or consolidating consignments.

3. In case of doubt as to whether the requirements provided for in paragraphs 1 and 2 are complied with, the customs authority of the importing Party may request the importer to provide evidence of compliance, which may be given by any means, including contractual transport documents such as bill of lading, non-manipulation certificate, factual or concrete evidence based on marking or numbering of packages or any evidence related to the product itself.

SECTION B

ORIGIN PROCEDURES

ARTICLE 3.16

Claim for preferential tariff treatment

1. To benefit from the preferential tariff treatment for a product originating in the other Party, within the meaning of this Chapter, the importer shall make a claim for preferential tariff treatment indicating that the product qualifies as originating product. The importer shall be responsible for the correctness of the claim for preferential tariff treatment and for the compliance with the requirements provided for in this Chapter.

2. A claim for preferential tariff treatment shall be based on a proof of origin in the form of a declaration (hereinafter referred to as "Statement on Origin") that the product is originating, made out in accordance with Article 3.18 (Statement on Origin). In the European Union, a claim for preferential tariff treatment may also be based on the importer's knowledge that the product is originating.

3. The importer, for the purposes of claiming preferential tariff treatment based on a Statement on Origin as referred to in the first sentence of paragraph 2, shall:

(a) have a valid Statement on Origin in its possession at the time the claim for preferential tariff treatment referred to in paragraph 1 is made;

(b) provide a copy thereof to the customs authority of the importing Party, if required by that customs authority; and

(c) for India, make a declaration in the bill of entry that the products qualify as originating products and enter the details of the Statement on Origin in the bill of entry.

4. The importer claiming preferential tariff treatment on the basis of a Statement on Origin shall possess information other than the Statement on Origin to demonstrate that the product is originating, only to the extent that such information is made available by the exporter. For greater certainty, nothing in this paragraph shall be construed to require an exporter to share information that the exporter is not willing to share if requested by the importer.

5. For the purpose of enabling the importing Party to establish the authenticity of a Statement on Origin as referred to in paragraph 2, the exporting Party shall have an authentication mechanism at the date of entry into force of this Agreement. Each Party shall ensure that the modalities of such authentication mechanism follow the procedure set out in Annex 3-D (Authentication procedure for the Statement on Origin).

6. If an authentication mechanism pursuant to paragraph 5 is not operational in a Party at the date of entry into force of this Agreement, the issuing authority of the exporting Party shall issue certificates of origin as provided in Annex 3-E (Certification of Origin) which shall have the same effect as a Statement on Origin for determination of origin of the product. This arrangement shall remain in force until the authentication mechanism pursuant to paragraph 5 becomes operational in that Party. All other provisions of this Section apply *mutatis mutandis* to the Certificate of Origin.

ARTICLE 3.17

Time of the claim for preferential tariff treatment

1. The importer shall make a claim for preferential tariff treatment at the time of importation.

2. By way of derogation from paragraph 1, if the importer did not make a claim for preferential tariff treatment at the time of importation, or if the claim for preferential tariff treatment was denied on the ground that the Statement on Origin could not be authenticated in accordance with Article 3.16(5) (Claim for preferential tariff treatment), the importing Party shall grant preferential tariff treatment and repay or remit any excess customs duty paid, provided that:

(a) the claim for preferential tariff treatment is made no later than one year after the date of importation, or such longer time period as specified in the laws and regulations of the importing Party;

(b) the importer provides the basis for the claim as referred to in Article 3.16(2) (Claim for preferential tariff treatment); and

(c) the product would have been considered originating and would have satisfied all other applicable requirements within the meaning of Section A (Rules of origin) of this Chapter if it had been claimed by the importer at the time of importation.

3. Without prejudice to the time limit specified in point (a) of paragraph 2, the requirements applicable to the importer as set out in Article 3.16 (Claim for preferential tariff treatment) apply *mutatis mutandis* for the purpose of this paragraph.

ARTICLE 3.18

Statement on Origin

1. A Statement on Origin shall be made out by an exporter or a producer of a product on the basis of information demonstrating that the product is originating, including information on the originating status of materials used in the production of the product. The person making the Statement on Origin shall be responsible for the correctness of the Statement on Origin and the information provided. Where the exporter is not the producer and makes out a Statement on Origin, the exporter shall ensure that it is based on information demonstrating that the product is originating, including information supplied by the producer.

2. The Statement on Origin must be accompanied by an invoice or any other commercial document that describes the products concerned in sufficient detail to enable them to be identified.

3. A Statement on Origin shall be made out in accordance with the template set out in Annex 3-C (Template of the Statement on Origin), in the English language. The declaration of the exporter in box 9 of Annex 3-C (Template of the Statement on Origin) shall be made out in one or more of the linguistic versions included in Appendix 3-C-1 (Language versions of the declaration by the exporter), at least one of which is English.

4. A Statement on Origin shall be valid for 12 months from the date of its completion.

5. A Statement on Origin may apply to a single consignment of one or more products imported into a Party.

6. If, at the request of the importer, unassembled or disassembled products within the meaning of General Rule 2(a) of the Harmonized System that fall within sections XV to XXI of the Harmonized System are imported by instalments, a single Statement on Origin for such products may be used in accordance with the requirements laid down by the customs authorities of the importing Party.

ARTICLE 3.19

Errors and discrepancies

The customs authority of the importing Party shall not reject a claim for preferential tariff treatment due to minor errors or discrepancies, typing errors or formatting errors, in the Statement on Origin provided these do not create doubt as to the originating status of the product.

ARTICLE 3.20

Third party invoicing

The customs authority of the importing Party shall not deny a claim for preferential tariff treatment for the sole reason that an invoice was not issued by the exporter or producer of a product or was issued in a third country.

ARTICLE 3.21

Importer's knowledge

For the purposes of a claim for preferential tariff treatment that is made pursuant to the second sentence of Article 3.16(2) (Claim for preferential tariff treatment), the importer's knowledge that a product is originating in the exporting Party shall be based on information demonstrating that the product is originating and satisfies the requirements provided for in this Chapter.

ARTICLE 3.22

Record keeping requirements

1. For a minimum of three years after the date on which the claim for preferential tariff treatment was made pursuant to Article 3.16(2) (Claim for preferential tariff treatment) or Article 3.17(2) and (3) (Time of the claim for preferential tariff treatment), or such longer period as required by the laws and regulations of the importing Party, an importer making a claim for preferential tariff treatment for a product imported into the importing Party shall keep:

(a) if the claim was based on a Statement on Origin, the Statement on Origin completed by the exporter along with documents or information received from the exporter as well as evidence of compliance with the requirements set out in Article 3.15 (Transport). The importer shall keep relevant records of such importation in accordance with the laws and regulations of the importing Party; and

(b) if the claim was based on the importer's knowledge, all records demonstrating that the product satisfies the requirements to obtain originating status.

2. An exporter or producer who has completed a Statement on Origin shall, for a minimum of five years, or such longer period as required by the laws and regulations of the exporting Party, after the date of completion of the Statement on Origin, keep a copy of that Statement on Origin and all other records demonstrating that the product satisfies the requirements to obtain originating status, including, where applicable, information from the suppliers.

3. If the Statement on Origin referred to in paragraph 2 is made on the basis of information provided by suppliers, those suppliers shall be required to maintain records in accordance with paragraph 2, if those records are not in possession of the exporters.

4. The records to be kept in accordance with this Article may be held in electronic format.

ARTICLE 3.23

Waiver of procedural requirements

1. A Party may, in accordance with its laws and regulations, waive the requirement to present a Statement on Origin as referred to in Article 3.16 (Claim for preferential tariff treatment), for low value consignments of originating products from the other Party and for originating products forming part of the personal luggage of a traveller coming from the other Party.

2. A Party may exclude any importation from the provisions of paragraph 1 when the importation forms part of a series of importations which the customs authority of the importing Party reasonably considers to have been undertaken or carried-out for the purpose of evading the requirements of this Chapter related to the Statement on Origin.

3. Each Party may set value limits for products referred to in paragraph and shall exchange information regarding those limits.

ARTICLE 3.24

Verification

1. The customs authority of the importing Party may conduct a verification on whether a product is originating or the other requirements of this Chapter are satisfied, on the basis of risk assessment methods, which may include reasonable doubts or random selection, as to the originating status of the products concerned or the fulfilment of the other requirements of this Chapter. Such a verification may be conducted by means of a request for information to the importer who made the claim for preferential tariff treatment.

2. If the claim for preferential tariff treatment was based on a Statement on Origin completed by an exporter or a producer, the information requested pursuant to paragraph 1 shall cover no more than the following elements:

(a) that Statement on Origin; and

(b) where necessary, the information elements detailed in paragraph 9.

3. The importer shall, no later than 10 working days after the date of the request made pursuant to paragraph 1, provide to the customs authority of the importing Party the Statement on Origin and the information requested pursuant to point (b) of paragraph 2 in the importer's possession, subject to Article 3.16(4) (Claim for preferential tariff treatment).

4. Upon the expiry of the period of 10 working days referred to in paragraph 3, if the customs authority of the importing Party considers that additional information is required, the importer shall be provided with additional 30 days to submit that information. The importer shall provide the information within the 30-day period where such information has been made available by the exporter, and where such information has not been made available, the importer shall inform the customs authority that it is not in a position to provide that information.

5. If the importer replies that it is not in position to provide that information referred to in paragraph 4 or if, upon the expiry of the 30-day period, the information provided by the exporter is insufficient to determine that the product is originating, the customs authority of the importing Party may submit a written request to the competent authority of the exporting Party pursuant to Article 3.25 (Administrative cooperation).

6. If the claim for preferential tariff treatment was based on the importer's knowledge in accordance with the second sentence of Article 3.16(2) (Claim for preferential tariff treatment), the information requested pursuant to paragraph 1 shall cover the information elements detailed in paragraph 9. The importer shall provide the information to the customs authority of the importing Party no later than 90 days after the date of the request made under paragraph 1.

7. After having received the requested information in accordance with paragraph 6, the customs authority of the importing Party conducting the verification may request the importer to provide additional information, within 90 days of that request, if that customs authority considers that such additional information is necessary in order to verify the originating status of the product or whether the other requirements of this Chapter are satisfied. The customs authority of the importing Party may request the importer to provide specific information or documentation, if appropriate.

8. For greater certainty, Article 3.25 (Administrative cooperation) does not apply when the verification is conducted on a claim for preferential treatment based on the importer's knowledge.

9. The information elements referred to in paragraphs 2 to 7 may be requested by the importing Party as appropriate and shall include no more than the following:

(a) if the origin is determined pursuant to point (a) of Article 3.2(1) (Requirements for originating products), the applicable category (such as harvesting, mining or fishing) and the place of production;

(b) if the origin is determined pursuant to point (b) of Article 3.2(1) (Requirements for originating products) read with Annex 3-A (Introductory notes to product-specific rules of origin) and Annex 3-B (Product specific rules of origin), Article 3.2(3) (Requirements for originating products), Article 3.6 (Cumulation of origin between the Parties), information on the origin of the materials used relevant to demonstrate the origin of the product pursuant to points (c), (d), (e) and (f) of this paragraph;

(c) if the origin criterion is based on a change in tariff classification, a list of all the non-originating materials used in the production of the product in a Party, including their tariff classification (in 2-, 4- or 6-digit format, depending on the relevant product-specific rule of origin);

(d) if the origin criterion is based on a value method, the value of the final product as well as the value of all the non-originating materials used in the production of that final product;

(e) if the origin criterion is based on a specific production process, a description of that specific production process;

(f) if the origin criterion is based on "production from non-originating material of any heading", information on insufficient production or minimal operations and processes pursuant to Article 3.5 (Insufficient production or minimal operations and processes);

(g) if the origin criterion is based on weight, the weight of the final product as well as the weight of the relevant non-originating materials used in the production of that final product;

(h) information on any tolerances relied on pursuant to Article 3.4 (Tolerances or *de minimis*);

(i) information relating to compliance with the non-alteration rule established pursuant to Article 3.15 (Transport); and

(j) supporting documentation, where appropriate.

10. The importer may add any other information considered relevant for the purposes of verification.

11. If the customs authority of the importing Party decides to suspend the granting of preferential tariff treatment to the product concerned while awaiting the results of the verification, the release of the products shall be offered to the importer subject to appropriate precautionary measures, including guarantees as provided for in the importing Party's laws and regulations. As soon as the customs authority of the importing Party has ascertained that the products concerned are originating and that the other requirements of this Chapter are satisfied, it shall terminate the suspension and grant preferential tariff treatment in accordance with its laws and regulations.

ARTICLE 3.25

Administrative cooperation

1. If the claim for preferential tariff treatment was based on a Statement on Origin, the Parties shall cooperate, through the competent authority of each Party, in verifying whether a product is originating and is in compliance with the other requirements provided for in this Chapter.

2. After having first requested information in accordance with Article 3.24(1) (Verification), the customs authority of the importing Party conducting the verification may also request information from the competent authority of the exporting Party, if the customs authority of the importing Party conducting the verification considers that additional information is necessary in order to verify the originating status of the product or to verify that the other requirements provided for in this Chapter have been met. The request for information shall include the following elements:

(a) the Statement on Origin;

(b) the identity of the customs authority issuing the request;

(c) the name of the exporter;

(d) the subject and scope of the verification; and

(e) any relevant documentation.

3. As part of the request for information referred to in paragraph 2, the customs authority of the importing Party may request the competent authority of the exporting Party to provide information listed under Article 3.24(9) (Verification), as applicable, with specific documentation and information related to the originating status of the product or the other requirements provided for in this Chapter.

4. Where the customs authority of the importing Party has *prima facie* evidence that an importer has suppressed material facts, made a wilful misstatement or colluded with the exporter or producer or any other person with the intention of wrongfully obtaining preferential tariff treatment under this Chapter, the customs authority of the importing Party may request the competent authority of the exporting Party to prioritise the verification request. Upon receipt of such a request, the competent authority of the exporting Party shall use its best endeavours to accord priority to the verification.

5. The competent authority of the exporting Party, upon receipt of the request for information referred to in paragraph 2 and depending on the scope of the request, may undertake to verify the originating status of the product by one or more of the following means:

(a) request information and documentation from the exporter, producer or supplier; or

(b) request an examination by:

  (i) calling for any evidence from the exporter, producer or supplier; or

  (ii) undertaking a verification visit of the premises of the exporter, producer or supplier.

6. Without prejudice to paragraph 7, the competent authority of the exporting Party shall respond no later than seven months after the date of receipt of the request referred to in paragraph 2 to the customs authority of the importing Party with the following:

(a) the description of the product that is subject to verification and the tariff classification relevant to the application of this Chapter;

(b) a description and explanation of the production process to substantiate the originating status of the product;

(c) information on the manner in which verification pursuant to paragraph 5 was conducted;

(d) inputs in accordance with paragraph 7; and

(e) relevant documentation, information and supporting evidence obtained during the verification, where available.

Based on the information referred to in points (a) to (e), the competent authority of the exporting Party shall also provide a reasoned opinion on the originating status of the product.

7. The competent authority of the exporting Party may decline to provide information to the customs authority of the importing Party if that information is considered as confidential by the exporter, producer or supplier. However, in such cases, the exporter, producer or supplier shall provide reasons for treating the information as confidential. These reasons shall be duly recorded in the verification findings by the competent authority of the exporting Party. In such cases, the competent authority of the exporting Party shall confirm that it has reviewed the information requested by the importing Party and shall also list the sources of information reviewed, stating clearly whether the information supports the claim for preferential tariff treatment.

8. The customs authority of the importing Party shall not deny preferential treatment for the sole reason that such confidential information is not provided to it but shall take into account the information provided by the competent authority of the exporting Party as well as its independent findings or investigation before making a final decision whether to grant preferential treatment, where appropriate.

9. In exceptional circumstances, if, after receiving the response provided under paragraph 6 pursuant to a request made under paragraph 2, the customs authority of the importing Party remains unable to determine the originating status of the products, it may request that the competent authority of the exporting Party conduct a verification visit to the premises of the exporter, producer or supplier, with the participation of up to two duly authorised officials from the customs authority of the importing Party as observers.

10. The importing Party shall provide detailed reasons for the requested visit referred to in paragraph 10 and may specify the specific parameters to be verified during the visit. The competent authority of the exporting Party shall determine the reasonable conditions for conducting the visit, including those relating to observer participation. If the importing Party disagrees with the conditions proposed, the exporting Party shall conduct the verification visit, taking into account the detailed reasons and specific parameters communicated by the importing Party. In the event that the request for the verification visit is not accepted, the competent authority of the exporting Party shall provide the customs authority of the importing Party with the reasons.

11. The request for verification visit under paragraph 9 shall be made within 30 days from the date of receipt of the response provided under paragraph 6. The competent authority of the exporting Party shall respond to such request within 30 days. The competent authority of the exporting Party shall, within 90 days from the date of the verification visit, provide an updated response pursuant to paragraph 6 incorporating the outcome of the visit. If the competent authority of the exporting Party requires additional time to provide such updated response, the period shall be extended by no more than 30 days with prior communication to the importing Party.

12. Notwithstanding the response indicating the originating status in accordance with paragraph 6 or 11, as applicable, where the customs authority of the importing Party considers that sufficient justification exists to deny preferential tariff treatment, it shall notify the competent authority of the exporting Party no later than 30 days from the date of receipt of the response provided pursuant to paragraph 6 or 11, as applicable. If the importing Party is unable to notify the exporting Party within 30 days, it may issue the notification at the earliest opportunity.

13. If a notification pursuant to paragraph 12 is made, the exporting Party may request consultations with the other Party within 30 days after the date of the notification. If the Parties agree to enter into consultations, such consultations shall be completed within two months from the date of the request. The period for consultations may be extended by mutual agreement between the Parties. Each Party shall inform the other Party of the authorities that will participate in the consultations.

14. After the notification pursuant to paragraph 12 is made, the customs authority of the importing Party shall retain the right to deny the preferential tariff treatment if it has a sufficient justification for doing so taking into account the information provided by the competent authority of the exporting Party together with its own independent findings or investigations in any of the following circumstances:

(a) the exporting Party does not request consultations within one month of receipt of the notification issued pursuant to paragraph 12 and the information provided by the competent authority of the exporting Party is inadequate to confirm that the product is originating;

(b) where the exporting Party has requested consultations and, upon the expiry of the period for consultations referred to in paragraph 13, the information provided by the competent authority of the exporting Party is inadequate to confirm that the product is originating; or

(c) in exceptional circumstances, where the customs authority of the importing Party determines, prior to the expiry of the period for consultations referred to in paragraph 13, that immediate action is necessary. The importing Party shall notify the reasons to the competent authority of the exporting Party.

15. If the customs authority of the importing Party decides to deny the preferential tariff treatment, it shall inform the importer of the reasons. The customs authority of the importing Party shall also notify its decision to the competent authority of the exporting Party without undue delay.

16. Each Party shall notify the other Party of the contact details of the competent authorities and issuing authorities and shall notify the other Party of any change to those contact details no later than 30 days after the date of the change.

17. The competent authorities responsible for initiating verifications are the customs authorities. The competent authorities responsible for conducting verifications are:

(a) for the European Union, the customs authority; and

(b) for India, the Department of Commerce, or any other designated authority.

ARTICLE 3.26

Denial of preferential tariff treatment

1. Following the verification conducted pursuant to Article 3.24(1) (Verification), the customs authority of the importing Party may deny the preferential tariff treatment, without recourse to administrative cooperation pursuant to Article 3.25 (Administrative cooperation), in the following cases:

(a) the products for which preferential tariff treatment has been claimed are not the same as those mentioned in the Statement on Origin;

(b) the Statement on Origin in possession of the importer has not been made out by an exporter holding a valid unique identification number in accordance with the laws and regulations of the exporting Party;

(c) the Statement on Origin has not been made out in accordance with the template set out in Annex 3-C (Template of the Statement on Origin), without prejudice to Article 3.19 (Errors and discrepancies);

(d) the Statement on Origin has not been authenticated as stipulated in Annex 3-D (Authentication procedure for the Statement on Origin);

(e) the importer relinquishes the claim; or

(f) the requirements set out in Article 3.17(2) and (3) (Time of the claim for preferential tariff treatment) are not met.

2. Following the verification pursuant to Article 3.24(2) (Verification), the customs authority of the importing Party may deny preferential tariff treatment if no Statement on Origin has been provided as per the timelines set out in Article 3.24(3) to (5) (Verification).

3. Following the verification under Article 3.24(6) to (9) (Verification), the customs authority of the importing Party may deny preferential tariff treatment:

(a) if no reply has been provided by the importer as per the timelines set out in Article 3.24(6) and (7) (Verification); or

(b) if the information provided by the importer in accordance with Article 3.24 (6) and (7) (Verification) is inadequate to confirm that the product is originating.

4. Following a request for information pursuant to Article 3.25(2) (Administrative cooperation), the customs authority of the importing Party may deny preferential tariff treatment:

(a) if no reply has been provided by the customs authority of the exporting Party as per the timelines set out in Article 3.25(6) (Administrative cooperation);

(b) if the competent authority of the exporting Party has confirmed that the product is not originating;

(c) if the exporting Party does not provide a response within the timelines set out in Article 3.25(11) (Administrative cooperation); or

(d) in accordance with Article 3.25(14) (Administrative cooperation)).

5. The customs authority of the importing Party may deny preferential tariff treatment to a product for which an importer claims preferential tariff treatment where the importer fails to comply with or fails to demonstrate compliance with the requirements of Article 3.15 (Transport).

ARTICLE 3.27

Temporary suspension of preferential treatment

1. If, following administrative cooperation and the procedures laid down in the Article 3.25 (Administrative cooperation), a Party establishes that the exporter or producer has persistently and deliberately made out incorrect Statements on Origin, the Parties shall consult, at the request of the importing Party, with a view for the exporting Party to take appropriate measures.

2. Upon the expiry of three months from the date of request for consultations, where the exporting Party has not initiated any appropriate measure to prevent the exporter or producer from making out incorrect Statements on Origin, the customs authority of the importing Party may decide to temporarily suspend preferential tariff treatment to that exporter or producer for the concerned product or products.

3. If the importing Party intends to temporarily suspend preferential tariff treatment in accordance with paragraph 2, it shall notify the exporting Party at least 15 days prior to the commencement of any suspension. This notification shall include the following:

(a) the name of the exporter or producer and their reference number;

(b) reasons for the intention to suspend preferential tariff treatment;

(c) description of the product or products subject to suspension; and

(d) any other relevant information.

4. The importing Party and exporting Party shall coordinate on the measures necessary for the restoration of preferential tariff treatment and on the time period for which the temporary suspension is to be in effect. The temporary suspension shall apply only for a period necessary to address the situation referred to in paragraph 1 and in any case no longer than six months or any other period that the Parties agree.

5. If, following administrative cooperation and the procedures laid down in Article 3.25 (Administrative cooperation), a Party establishes that two or more exporters or producers of the other Party have persistently and deliberately made out Statements on Origin wrongly for the same product at the Harmonized System classification level and this same product of these exporters or producers accounts for more than half of the preferential imports of the same product in value terms from the exporting Party over a period of one year prior to the first verification request, then the importing Party may submit the matter to the Joint Committee with a view to temporarily suspend preferential treatment for all imports of that product from the exporting Party.

6. The Joint Committee shall discuss the matter and recommend within six months whether to temporarily suspend the preferential tariff treatment for this product. The importing Party may only suspend preferential treatment for this product if recommended by the Joint Committee.

7. The temporary suspensions shall apply only for a period necessary to address the situation referred to in paragraph 5 and to protect the financial interests of the Party concerned, and in any case no longer than six months or any other period that the Parties agree.

8. In the cases established in paragraph 5, where the importing Party has made a finding, based on objective information, that large-scale and systematic breaches or circumventions of the provisions of this Chapter have been committed, and where the exporting Party repeatedly refuses or otherwise fails to cooperate, Article 2.17 (Specific measures concerning the management of preferential tariff treatment) applies.

9. Each Party shall inform, in accordance with its internal procedures, its importers and exporters about any decision concerning temporary suspensions referred to in paragraph 2 or 6.

ARTICLE 3.28

Confidentiality

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of any information provided to it by the other Party pursuant to this Chapter and protect that information from disclosure.

2. Confidential business information obtained from the exporter by the competent authority of the exporting Party or by the importing Party through the application of Article 3.24 (Verification) and Article 3.25 (Administrative cooperation) shall not be disclosed unless otherwise provided for in this Chapter.

3. Information obtained by the authorities of the importing Party may only be used by such authorities for the purposes of this Chapter. The use of information collected pursuant to this Chapter in any administrative, judicial or quasi-judicial proceedings instituted for failure to comply with customs-related laws or regulations implementing this Chapter is allowed. In such case, the person or Party who provided the information shall be notified, where possible, in advance.

4. Where one of the Parties wishes to use such information for other purposes than for the purposes of this Chapter, it shall obtain the prior written consent of the person or Party which provided the information. Such use shall then be subject to any restrictions laid down by that person or Party.

ARTICLE 3.29

Penalties

Each Party shall adopt or maintain measures to impose, where appropriate, civil penalties, administrative penalties and criminal sanctions for violations of its laws or regulations relating to the provisions of this Chapter.

SECTION C

FINAL PROVISIONS

ARTICLE 3.30

Ceuta and Melilla

1. Products originating in India, when imported into Ceuta and Melilla, shall in all respect be subject to the same customs treatment under this Agreement, as that which is applied to products originating in the customs territory of the European Union under Protocol 2 of the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities. India shall grant to imports of products covered by this Agreement and originating in Ceuta and Melilla the same customs treatment as that which is granted to products imported from and originating in the European Union.

2. The rules of origin and origin procedures referred to in this Chapter apply *mutatis mutandis* to products exported from India to Ceuta and Melilla and to products exported from Ceuta and Melilla to India.

3. Ceuta and Melilla shall be considered as a single territory.

4. The exporters shall enter "India" or "Ceuta and Melilla" in box 9 of the template of the Statement on Origin in Annex 3-C (Template of the Statement on Origin), depending on the origin of the product.

5. The customs authority of the Kingdom of Spain shall be responsible for the application and implementation of this Chapter in Ceuta and Melilla.

6. The European Union shall notify India promptly on any changes that may affect the customs treatment provided by this Article. The Committee on Customs and Rules of Origin shall, on the request of either Party, meet to discuss these changes and seek to find a mutually satisfactory solution.

ARTICLE 3.31

Committee on Customs and Rules of Origin

1. The Committee on Customs and Rules of Origin is established pursuant to Article 18.3(1) (Specialised committees). In addition to the functions specified in Article 18.4 (Functions of the specialised committees) and Article 4.20 (Committee on Customs and Rules of Origin), the Committee on Customs and Rules of Origin may adopt explanatory notes providing guidance to facilitate effective implementation of this Chapter.

2. The Committee on Customs and Rules of Origin shall consider periodic Harmonized System transposition of the product-specific rules as part of the preparatory technical work for the adoption of decisions by the Joint Committee.

ARTICLE 3.32

Transitional provisions for products in transit or storage

1. The customs authority of the importing Party shall grant preferential tariff treatment for an originating product of the exporting Party, if such product complies with the provisions of this Chapter and, on the date of entry into force of this Agreement, it:

(a) is in transit from the exporting Party to the importing Party; or

(b) has not yet been cleared for home consumption in the importing Party.

2. A product referred to in paragraph 1 is subject to an importer making a claim for preferential tariff treatment in accordance with Article 3.16 (Claim for preferential tariff treatment), within 12 months of the entry into force of this Agreement.