

ANNEX IV

REFERRED TO IN ARTICLE 2.2

RULES OF ORIGIN

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SECTION I
GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Annex:

- (a) “chapter” means a chapter (two-digit codes) of the Harmonized System;
- (b) “customs value” means the value as determined in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (WTO Agreement on customs valuation);
- (c) “ex-works price” means the price paid for a product to the manufacturer in the Party where the last working or processing was carried out, in accordance with the international commercial terms (incoterms), excluding internal taxes which may be repaid when the product is exported;
- (d) “goods” means articles, materials or products;
- (e) “Harmonized System” or “HS” means the Harmonized Commodity Description and Coding System;
- (f) “heading” means a heading (four-digit codes) of the Harmonized System;
- (g) “manufacture” means working or processing, including assembly;
- (h) “material” means any ingredient, raw material, component or part, used in the production of a product;
- (i) “producer” means a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles a product;
- (j) “product” means the result of production and includes any material used in the production of another product;
- (k) “production” means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a product;
- (l) “subheading” means a subheading (six-digit codes) of the Harmonized System;

- (m) “value of materials” means the customs value at the time of importation of the non-originating materials used, or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in a Party.

Article 2

General Requirements

1. For the purposes of the Agreement, a product shall be considered as originating in a Party if:
 - (a) it has been wholly obtained in that Party, in accordance with Article 3;
 - (b) the non-originating materials used in the working or processing of that product have undergone sufficient working or processing in a Party, in accordance with Article 4; or
 - (c) it has been produced in a Party exclusively from materials originating in one or more Parties.

2. Without prejudice to paragraph 1, a product originating in Liechtenstein shall, due to the customs union between Switzerland and Liechtenstein, be considered as originating in Switzerland.

Article 3

Wholly Obtained Products

The following products shall be considered as wholly obtained in a Party:

- (a) mineral products and other non-living natural resources extracted or taken from their soil, waters or from their seabed;
- (b) plants, vegetables, fruits and other vegetable products grown, harvested, picked or gathered there;
- (c) live animals born and raised there;
- (d) products from live animals raised there;
- (e) products obtained by hunting, trapping, fishing, aquaculture, gathering or capturing conducted there;

- (f) products of sea fishing and other marine products taken from outside the waters of Hong Kong, China and outside the territorial sea of any country by a vessel registered in a Party and flying its flag or by a vessel licensed in a Party;
- (g) products manufactured on board a factory ship flying the flag of a Party, exclusively from products referred to in subparagraph (f);
- (h) products extracted from marine soil or sub-soil outside the waters of Hong Kong, China, outside the territorial sea of the EFTA States and outside the territorial sea of any non-party, provided that the Party has the exclusive rights to exploit that soil or sub-soil under exploitation rights granted in accordance with international law;
- (i) products obtained there by the use of plant or animal cell structures;
- (j) waste and scrap resulting from manufacturing operations conducted there;
- (k) used products collected there fit only for the recovery of raw materials;
- (l) products manufactured there exclusively from those specified in subparagraphs (a) to (k).

Article 4

Sufficient Working or Processing

1. Without prejudice to Article 5, a product listed in Appendix 1 shall be considered to have undergone sufficient working or processing if the product specific rules of that Appendix are fulfilled.
2. If a product, which has acquired originating status in a Party, in accordance with paragraph 1, is further processed in that Party and used as material in the manufacture of another product, no account shall be taken of the non-originating components of that material.
3. Where a rule set out in Appendix 1 is based on compliance with a sufficient processing threshold or a maximum content of non-originating materials, the value of non-originating materials may be calculated on an average basis over a period of three months in order to take into account the fluctuations in costs or currency rates, subject to the domestic requirements of the Party of export.
4. Notwithstanding paragraph 1, non-originating materials do not have to fulfil the conditions set out in Appendix 1 to be considered to have undergone sufficient working or processing, provided that:
 - (a) their total value does not exceed 20 per cent of the ex-works price of the product; and

- (b) the percentages set out in Appendix 1 as maximum value of non-originating materials are not exceeded by application of subparagraph 4 (a).

Article 5

Insufficient Working or Processing

1. Notwithstanding Article 4, the following operations shall be considered insufficient to confer originating status:

- (a) preserving operations to ensure that a product remains in good condition during transport and storage;
- (b) freezing or thawing;
- (c) packaging and re-packaging;
- (d) washing, cleaning, removal of dust, oxide, oil, paint or other coverings;
- (e) ironing or pressing of textiles;
- (f) simple painting and polishing;
- (g) husking, partial or total bleaching, polishing and glazing of cereals and rice;
- (h) operations to colour sugar or form sugar lumps;
- (i) peeling and removal of stones and shells from fruits, nuts and vegetables;
- (j) sharpening, simple grinding or simple cutting;
- (k) sifting, screening, sorting, classifying, grading, matching;
- (l) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (m) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (n) simple mixing of products, whether or not of different kinds;
- (o) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (p) a combination of two or more operations specified in (a) to (o); or
- (q) slaughter of animals.

2. For the purposes of paragraph 1, “simple” describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed to carry out the activity.

3. All operations carried out in a Party on a given product shall be taken into account when determining whether the working or processing undergone by that product is considered as insufficient working or processing referred to in paragraph 1.

Article 6

Accumulation of Origin

1. Without prejudice to Article 2, a product originating in a Party, which is used as material in the production of a product in another Party, shall be considered as originating in the last Party where an operation beyond those referred to in paragraph 1 of Article 5 has been carried out.

2. A product originating in a Party, which is exported from one Party to another and does not undergo working or processing beyond those referred to in paragraph 1 of Article 5, shall retain its origin.

3. Where materials originating in two or more Parties are used in the production of a product and these materials have not undergone any working or processing beyond the operations referred to in Article 5, the origin of the product is determined by the material with the highest customs value, or if this cannot be ascertained, with the highest first ascertainable price paid for that material in that Party.

Article 7

Unit of Qualification

1. For the purpose of determining the originating status, the unit of qualification of a product or material shall be determined in accordance with the Harmonized System.

2. Pursuant to paragraph 1:

- (a) packaging shall be included with the product if it is included with that product in accordance with General Interpretative Rule 5 of the Harmonized System;
- (b) where a set of articles, in accordance with General Interpretative Rule 3 of the Harmonized System, is classified under a single heading, it shall constitute the unit of qualification; and
- (c) where a consignment consists of a number of identical products classified under a single heading or subheading of the Harmonized System, each product shall be considered separately.

3. Accessories, spare parts, tools and instructional or information materials dispatched with a piece of equipment, machine, apparatus or vehicle, which are part of the normal equipment and included in its ex-works price, or which are not separately invoiced, shall be considered as part of the product in question.

Article 8

Neutral Elements

In order to determine whether a product originates, it shall not be necessary to determine the origin of the following which might be used in its manufacture:

- (a) energy and fuel;
- (b) plant and equipment, including goods to be used for their manufacture;
- (c) machines, tools, dies and moulds; and
- (d) any other goods which do not enter into and which are not intended to enter into the final composition of the product.

Article 9

Accounting Segregation

1. If originating and non-originating fungible materials are used in the working or processing of a product, the determination of whether the materials used are originating may be determined on the basis of an inventory management system.

2. For the purposes of paragraph 1, “fungible materials” means materials that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another once they are incorporated into the final product.

3. The inventory management system shall be based on generally accepted accounting principles applicable in the Party in which the product is manufactured and ensure that no more final products receive originating status than would have been the case if the materials had been physically segregated.

4. A producer using an inventory management system as provided for in this Article shall keep records of the operation of the system that are necessary for the customs administration of the Party concerned to verify compliance with the provisions of this Annex.

5. A Party may require that the application of an inventory management system as provided for in this Article be subject to prior authorisation.

6. The authorisation to use accounting segregation may be withdrawn if the producer makes improper use of it.

Article 10

Conditions for Acquiring Originating Status in a Party

1. The conditions for acquiring originating status set out in the preceding provisions of this Section must be fulfilled without any interruption in a Party.

2. If an originating product is returned to the Party of export after having been exported to a non-party without having undergone any operation there, beyond those necessary to preserve it in good condition, that product shall retain its origin.

3. Notwithstanding paragraph 1, the acquisition of originating status of a product in accordance with the provisions of this Section shall not be affected by operations carried out in a non-party, under an outward processing procedure or a similar arrangement, if:

- (a) the re-imported product has been obtained from the exported materials;
- (b) the total added value acquired in the non-party does not exceed 20 per cent of the ex-works price of the product; and
- (c) the total value of the non-originating materials incorporated in the Party and the total added value acquired outside the Party concerned, taken together, do not exceed the value allowed in accordance with Appendix 1.

4. For the purposes of subparagraph 3 (b), the term “total added value” means all costs arising outside the Party concerned, including transport costs and the value of materials incorporated there.

Article 11

Direct Transport

1. Preferential treatment in accordance with the Agreement shall only be granted to originating products that are transported directly between the Parties.

2. Notwithstanding paragraph 1, an originating product may be transported through non-parties, provided that it:

- (a) does not undergo operations other than unloading, reloading, splitting-up of consignments or any operation designed to preserve it in good condition; and
- (b) remains under customs surveillance in those non-parties.

3. It is understood that an originating product may be transported by pipeline across non-parties.

4. An importer shall upon request supply appropriate evidence to the customs authorities of the Party of import that the conditions set out in paragraph 2 have been fulfilled.

SECTION II

SELF-DECLARATION OF ORIGIN

Article 12

Origin Declaration

1. For the purpose of obtaining preferential tariff treatment in a Party, an exporter established in another Party may complete an origin declaration in accordance with Appendix 2 for products originating in a Party and fulfilling the other requirements of this Annex.

2. The origin declaration may be provided on an invoice or any other commercial document that identifies the exporter and the originating products, and, except as provided in Article 14, bear the original signature of the exporter.

3. An origin declaration may be completed when the products to which it relates are exported, or after exportation. An origin declaration shall be valid for 12 months, from the date of completion.

Article 13

Representation

1. For the purposes of Article 12, a person, company or enterprise such as a forwarding agent, customs broker or the like shall not be entitled to complete origin declarations on behalf of an exporter, unless that person, company or enterprise has been authorised in writing by the exporter.

2. Such authorised person, company or enterprise must submit the authorisation to the competent authorities at their request.

Article 14

Approved Exporter

1. The customs authorities of the Party of export may, subject to its domestic requirements, authorise an exporter established in that Party to complete origin declarations without signing them, provided that he submits a written undertaking to those customs authorities, stating that he accepts full responsibility for any origin declaration which identifies him, as if he had signed it.
2. An exporter who requests such authorisation must offer to the satisfaction of the customs authorities all guarantees necessary to verify the originating status of the products as well as the fulfilment of the other requirements of this Annex.
3. The customs authorities of the Party of export shall provide an authorisation number to an approved exporter established in that Party. The authorisation number must be included in the origin declaration instead of the signature.
4. The customs authorities of the Party of export may verify the proper use of an authorisation and withdraw it if the exporter no longer meets the conditions referred to in paragraph 2 or otherwise makes improper use of it.

SECTION III

PREFERENTIAL TREATMENT

Article 15

Importation Requirements

1. Each Party shall grant preferential tariff treatment in accordance with the Agreement to originating products imported from a Party, on the basis of an origin declaration referred to in Article 12.
2. In order to obtain preferential tariff treatment, the importer must, in accordance with the procedures applicable in the Party of import, request preferential tariff treatment at the time of importation of an originating product, whether or not the importer is in possession of an origin declaration.
3. If the importer is not in possession of an origin declaration at the time of importation, the importer may, in accordance with the domestic law of the Party of import, present the origin declaration and, if required, other documentation relating to the importation, at a later stage.
4. An origin declaration shall be submitted to the customs authorities of the Party of import within 12 months. The expiration of this period may be suspended as long as the products covered by that origin declaration remain under customs surveillance of the

Party of import. After this period, an origin declaration may be accepted only in exceptional circumstances.

Article 16

Importation by Instalments

Where, at the request of an importer and on the conditions laid down by the customs authorities of the Party of import, dismantled or non-assembled products within the meaning of General Rule 2 (a) of the Harmonized System are imported by instalments, a single proof of origin for such products shall be submitted to the customs authorities upon importation of the first instalment.

Article 17

Exemption from Origin Declarations

Notwithstanding Article 15, a Party may, in accordance with its domestic law, waive the requirements to request preferential tariff treatment on the basis of an origin declaration and grant preferential tariff treatment to non-commercial low value shipments of originating products and originating products for personal use forming part of the personal luggage of a traveller.

Article 18

Denial of Preferential Treatment

1. The Party of import may deny preferential tariff treatment or recover unpaid customs duties in accordance with its domestic law where a product does not meet the requirements of this Annex or where the importer or exporter fails to demonstrate compliance with the relevant requirements of this Annex.
2. In the event preferential tariff treatment is denied pursuant to paragraph 1, the customs authorities of the Party of import shall inform the importer of the reasons. In addition, the customs authorities of the Party of import may impose the applied non-preferential import customs duty or require payment of a deposit on that product, where applicable.
3. Slight discrepancies between the statements made in the origin declaration and those made in other documents submitted to the customs office for customs clearance or obvious formal errors, such as typing errors in an origin declaration, shall not as such render the origin declaration invalid.

SECTION IV
OBLIGATIONS OF IMPORTERS AND EXPORTERS

Article 19

Cooperation of Exporters and Importers with Customs Authorities

Subject to the domestic law of the respective Party, exporters and importers benefitting from the Agreement must co-operate with the customs authorities of the Party where they are established.

Article 20

Documentary Evidence

1. An exporter who has completed an origin declaration must keep an electronic or hard copy of the origin declaration and all documents supporting the originating status of the product, for three years from the date of completion, or longer if required by the domestic law of the Party of export. Exporters other than approved exporters must keep a copy reflecting the signature of the person who signed it.

2. For the purposes of paragraph 1, the “documents supporting the originating status” include, *inter alia*, the following:

- (a) direct evidence of the processes carried out by the exporter or supplier to obtain the product, contained, for example, in his accounts or internal bookkeeping;
- (b) documents proving the originating status of materials, used or issued in a Party in accordance with its domestic law;
- (c) documents proving the working or processing of materials in a Party, issued in that Party in accordance with its domestic law;
- (d) origin declarations proving the originating status of materials used or issued in a Party in accordance with this Annex; and
- (e) evidence concerning working or processing undergone outside the Parties in accordance with Article 11, proving the fulfillment of the requirements of that Article.

3. The customs authorities of the Party of export may, at any time, carry out inspections and verify the accounts of exporters who have completed an origin declaration or producers who have contributed to origin conferring processes. Upon request of those authorities, these exporters or producers must submit the documents referred to in paragraphs 1 and 2.

4. In accordance with the domestic law of the Party of import, an importer who has been granted preferential tariff treatment must keep the origin declaration, based on which preferential treatment was granted, and all documents supporting the originating status of the product, for at least three years. Upon request of the customs authorities of the Party of import, the importer must submit the documents to those authorities.

Article 21

Incorrect Information

When becoming aware of or having reason to believe that an origin declaration contains incorrect information affecting the originating status of a product covered by that origin declaration:

- (a) an exporter must immediately notify the importer; and
- (b) an importer must immediately notify the customs authorities of the Party of import.

SECTION V

ADMINISTRATIVE COOPERATION

Article 22

Notifications and Cooperation

1. The Parties shall provide each other, through the EFTA Secretariat, with:
 - (a) the addresses of the customs authorities of the Parties responsible for verifications referred to in Article 23 and other issues related to the implementation or application of this Annex;
 - (b) if applicable, information on authorisation numbers allocated to approved exporters, pursuant to Article 14; and
 - (c) clarifications on the interpretation, application and administration of this Annex.
2. The Parties shall endeavour to resolve technical matters related to the implementation or application of this Annex, to the extent possible, through direct consultations between the customs authorities referred to in subparagraph (1)(a) or in the Sub-Committee on Rules of Origin, Customs Procedures, and Trade Facilitation.

Disputes that cannot be settled through such consultations shall be submitted to the Joint Committee.¹

Article 23

Verification of Origin Declarations

1. The customs authorities of the Party of export shall, consistent with its domestic law, carry out verifications of origin declarations on request of the Party of import.
2. The verification request shall specify the reasons for the inquiry. It may address the authenticity of origin declarations, the originating status of the products concerned or the fulfilment of other requirements of this Annex. It shall include a copy of the origin declaration and, if appropriate, any other document or information giving reason to believe that the origin declaration may be invalid.
3. The customs authorities of the Party of import may, subject to its domestic law, suspend preferential tariff treatment to a product covered by an origin declaration until the verification procedure has been finalised.
4. The customs authorities of the Party of export may, consistent with its domestic law, request evidence, carry out inspections at the exporter's or producer's premises, check the exporter's and the producer's accounts and take other appropriate measures to verify compliance with this Annex.
5. The requested Party shall inform the requesting Party of the results and findings of the verification within 12 months from submission of the verification request, unless the Parties agree upon another time period. If appropriate, supporting documents and information may be joined to this communication. If the requesting Party receives no reply within 12 months, or if the reply does not contain sufficient information to arrive at a conclusion as to whether a product is originating, the requesting Party may deny preferential tariff treatment to the product.

¹ It is understood that consultations held pursuant to paragraph 2 shall be without prejudice to the rights and obligations of the Parties under Chapter 10 or under the WTO Dispute Settlement Understanding.

SECTION VI

FINAL PROVISIONS

Article 24

Penalties

A Party may, in accordance with its domestic law, impose penalties for infringement to the provisions of this Annex, committed in that Party. In particular, penalties may be imposed on any person who draws up, or causes to be drawn up, a document which contains incorrect information for the purpose of obtaining a preferential treatment for products.

Article 25

Products in Transit or Storage

The provisions of the Agreement may be applied to products which, on the date of entry into force of the Agreement, are either in transit or in temporary storage in a customs warehouse or free zone under customs surveillance. For such products, an origin declaration may be completed retrospectively up to six months after the entry into force of the Agreement, provided that the provisions of this Annex and in particular Article 11 have been fulfilled.

Article 26

Review

The Parties shall review this Annex and its Appendices every three years, or more frequently if agreed by the Parties, within the framework of the Joint Committee, taking into account the prevailing circumstances including any technological advances, changes in market conditions, free trade agreements or similar arrangements concluded by the Parties or other international developments, with a view to further liberalising, improving and updating the provisions of this Annex and its Appendices. The first such review shall take place no later than three years after the entry into force of the Agreement.
