

**CHAPTER 3**  
**RULES OF ORIGIN AND ORIGIN PROCEDURES**

**Section A : Rules of Origin**

**Article 3.1 : Origin Criteria**

1. For the purposes of this Agreement, a good imported into the territory of a Party shall be deemed to be originating and eligible for preferential tariff treatment if it conforms to the origin requirements under any one of the following:

- (a) a good which is wholly obtained or produced entirely in the territory of the exporting Party as set out and defined in Article 3.2;
- (b) a good not wholly obtained or produced in the territory of the exporting Party, provided that the good is eligible under Article 3.3 or 3.4 or 3.5 or 3.6; or
- (c) a good which is produced entirely in the territory of the exporting Party exclusively from originating materials.

2. Except as provided for in Article 3.6, the conditions for acquiring originating status set out in this Chapter must be fulfilled without interruption in the territory of the exporting Party.

**Article 3.2 : Wholly Obtained or Produced Goods**

Within the meaning of subparagraph 1(a) of Article 3.1, the following goods shall be considered to be wholly obtained or produced in the territory of a Party:

- (a) plants and plant products grown and harvested there;
- (b) live animals born and raised there;
- (c) goods obtained from live animals referred to in subparagraph (b);
- (d) goods obtained from hunting or trapping within the land territory, or fishing or aquaculture conducted within the internal waters or within the territorial sea of that Party;
- (e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d), extracted or taken from the soil, waters, seabed or beneath the seabed in that Party;
- (f) products of sea-fishing and other marine products taken by vessels registered with the Party and entitled to fly its flag, and other products taken by the

Party or a person of that Party, from the waters, seabed or beneath the seabed outside the territorial seas of the Party, provided that the Party has the rights to exploit<sup>1</sup> the natural resources of such waters, seabed and beneath the seabed under international law<sup>2</sup>;

- (g) goods produced and/or made on board factory ships registered with a Party and entitled to fly its flag, exclusively from products referred to in subparagraph (f);
- (h) goods taken from outer space provided that they are obtained by the Party or a person of that Party;
- (i) articles collected from there which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for the disposal or recovery of parts of raw materials, or for recycling purposes;
- (j) waste and scrap derived from:
  - (i) production there; or
  - (ii) used goods collected there, provided that such goods are fit only for the recovery of raw materials; and
- (k) goods obtained or produced in the territory of the Party solely from goods referred to in subparagraphs (a) through (j).

### **Article 3.3 : Not Wholly Obtained or Produced Goods**

1. For the purposes of subparagraph 1(b) of Article 3.1, goods which are not wholly obtained, as provided for in Annex 3-A, shall be deemed to be originating when the conditions set out in the Annex 3-A are satisfied.

2. The formula for calculating the regional value content (hereinafter referred to as ‘‘RVC’’) will be either<sup>3</sup> :

- (a) Direct / Build-Up Method

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<sup>1</sup> The Parties understand that for the purposes of determining the origin of products of sea-fishing and other products, ‘‘rights’’ in this subparagraph include those rights of access to the fisheries resources of a coastal state, as accruing from agreements or other arrangements concluded between a Party and the coastal state at the level of governments or duly authorized private entities.

<sup>2</sup> ‘‘International law’’ in this subparagraph refers to generally accepted international law such as the *United Nations Convention on the Law of the Sea*.

<sup>3</sup> The Parties shall be given the flexibility to adopt the method of calculating the RVC, whether it is the build-up or the build-down method.

$$\text{RVC} = \frac{\text{VOM}}{\text{FOB}} \times 100\%$$

VOM means value of originating materials, which includes the value of originating material cost, labor cost, overhead cost, profit and other costs, where:

- (i) material cost is the value of originating materials, parts or goods that are acquired or self-produced by the producer in the production of the good;
- (ii) labor cost includes wages, remuneration and other employee benefits;
- (iii) overhead cost is the total overhead expense; and
- (iv) other costs are the costs incurred in placing the good in the ship or other means of transport for export including, but not limited to, domestic transport costs, storage and warehousing, port handling, brokerage fees and service charges.

or

- (b) Indirect / Build-Down Method

$$\text{RVC} = \frac{\text{FOB} - \text{VNM}}{\text{FOB}} \times 100\%$$

VNM means value of non-originating materials, which shall be:

- (i) the CIF value at the time of importation of the materials, parts or goods; or
- (ii) the earliest ascertained price paid for the materials, parts or goods of undetermined origin in the territory of the Party where the working or processing has taken place.

3. For the purposes of paragraph 1 and the relevant Product Specific Rules set out in Annex 3-A, the rules requiring that the materials that are used have undergone a change in tariff classification, or a specific manufacturing or processing operation, shall apply only to non-originating materials.

4. When an originating good is used in the subsequent production of another good, no account shall be taken of the non-originating materials contained in the originating good for the purposes of determining the originating status of the subsequently produced good.

### **Article 3.4 : Product Specific Rules**

For the purposes of Article 3.1, goods which satisfy the Product Specific Rules provided in Annex 3-A shall be considered to be originating in the territory of the Party where working or processing of the goods has taken place.

### **Article 3.5 : Treatment for Certain Goods**

Notwithstanding Articles 3.1, 3.3 and 3.4, certain goods shall be considered to be originating even if the production process or operation has been undertaken in the Gaeseong Industrial Complex located in the Korean Peninsula, on materials exported from a Party and subsequently re-imported to that Party provided that the conditions set out in Annex 3-B are fulfilled.

### **Article 3.6 : Accumulation**

Unless otherwise provided for in this Chapter, a good originating in the territory of a Party, which is used in the territory of the other Party as material for a finished good eligible for preferential tariff treatment, shall be considered to be originating in the territory of the latter Party where working or processing of the finished good has taken place.<sup>4</sup>

### **Article 3.7 : Non-Qualifying Operations**

1. Notwithstanding any provision in this Chapter, a good shall not be considered to be originating in the territory of a Party if the following operations are undertaken, exclusively by itself or in combination, in the territory of that Party:

- (a) preserving operations to ensure that the good remains in good condition during transport and storage;
- (b) changes of packaging, breaking-up and assembly of packages;
- (c) simple<sup>5</sup> washing, cleaning, removal of dust, oxide, oil, paint or other coverings;
- (d) ironing or pressing of textiles;
- (e) simple<sup>5</sup> painting and polishing operations;

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<sup>4</sup> The Parties agree to review this Article three years from the date of entry into force of this Agreement, taking into due consideration the economic integration agreements in force in the Asia Pacific region at the time of such review.

<sup>5</sup> "Simple" generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity.

- (f) husking, partial or total bleaching, polishing and glazing of cereals and rice;
- (g) operations to color sugar or form sugar lumps;
- (h) simple<sup>5</sup> peeling, stoning, or un-shelling<sup>6</sup>;
- (i) sharpening, simple grinding or simple cutting;
- (j) sifting, screening, sorting, classifying, grading, or matching;
- (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<sup>7</sup> of products, whether or not of different kinds;
- (n) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (o) simple<sup>5</sup> testing or calibrations; or
- (p) slaughtering of animals<sup>8</sup>

2. A good originating in the territory of a Party shall retain its initial originating status, when exported from the other Party, where operations undertaken have not gone beyond those referred to in paragraph 1.

### **Article 3.8 : Direct Transport**

1. Preferential tariff treatment shall be applied to a good satisfying the requirements of this Chapter and which is transported directly between the territories of the Parties.

2. Notwithstanding paragraph 1, a good of which transport involves transit through one or more non-Parties, other than the territories of the Parties, shall be considered to be transported directly, provided that:

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<sup>6</sup> For greater certainty, this subparagraph shall not apply to HS 0801.32.

<sup>7</sup> “Simple mixing” generally describes an activity which does not need special skills, machines, apparatus or equipment especially produced or installed for carrying out the activity. However, “simple mixing” does not include chemical reaction. Chemical reaction means a process (including a biochemical process) which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

<sup>8</sup> “Slaughtering” means the mere killing of animals and subsequent processes such as cutting, chilling, freezing, salting, drying or smoking, for the purposes of preservation for storage and transport.

- (a) the transit is justified for geographical reason or by consideration related exclusively to transport requirement;
- (b) the good has not entered into trade or consumption there; and
- (c) the good has not undergone any operation other than unloading and reloading or any operation required to keep it in good condition.

### **Article 3.9 : *De Minimis***

1. A good that does not undergo a change in tariff classification shall be considered as originating if:

- (a) for a good, other than that provided for in Chapters 50 through 63 of the Harmonized System, the value of all non-originating materials used in its production that do not undergo the required change in tariff classification does not exceed 10 percent of the FOB value of the good; and
- (b) for a good provided for in Chapters 50 through 63 of the Harmonized System, the weight of all non-originating materials used in its production that do not undergo the required change in tariff classification does not exceed 10 percent of the total weight of the good, or the value of all non-originating materials used in the production of the good that do not undergo the required change in tariff classification does not exceed 10 percent of the FOB value of the good;

and the good specified in subparagraphs (a) and (b) meets all other applicable criteria set out in this Chapter for qualifying as an originating good.

2. The value of non-originating materials referred to in paragraph 1 shall, however, be included in the value of non-originating materials for any applicable RVC requirement for the good.

### **Article 3.10 : Treatment of Packaging and Packing Materials**

1. (a) If a good is subject to the RVC criterion as set out in Article 3.3 and Annex 3-A, the value of the packaging and packing materials for retail sale shall be taken into account in the determination of its origin, where the packaging and packing materials are considered to be forming a whole with the good.

(b) If a good is subject to a criterion other than the RVC criterion as set out in Article 3.3 and Annex 3-A, the packaging and packing materials for retail sale shall, if classified together with the packaged good, be disregarded in determining whether all the non-originating materials used in the production of the good satisfy the applicable requirements set out in Article 3.3 and Annex 3-A.

2. Packing materials and containers for transportation of a good shall not be taken into account in determining the origin of the good.

### **Article 3.11 : Accessories, Spare Parts and Tools**

The origin of accessories, spare parts, tools, and instructional or other informational materials presented with a good shall not be taken into account in determining the origin of the good, provided that such accessories, spare parts, tools, and instructional or other informational materials are classified with the good and their customs duties are collected with the good by the importing Party.

### **Article 3.12 : Neutral Elements**

In order to determine whether a good originates, it shall not be necessary to determine the origin of the following which might be used in its production and not incorporated into the good:

- (a) fuel and energy;
- (b) tools, dies and moulds;
- (c) spare parts and materials used in the maintenance of equipment and buildings;
- (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 good; and
- (g) any other good that is not incorporated into the good but of which use in the production of the good can reasonably be demonstrated to be a part of that production.

### **Article 3.13 : Identical and Interchangeable Goods or Materials**

1. The determination of whether identical and interchangeable goods or materials are originating can be made by the use of generally accepted accounting principles of inventory management practiced in the territory of the exporting Party.

2. Once a decision has been taken on the inventory management method, that method shall be used throughout the fiscal year.

## **Section B : Origin Procedures**

### **Article 3.14 : Certificate of Origin**

1. Goods originating in a Party shall, on importation into the other Party, benefit from the preferential tariff treatment under this Agreement on the basis of a Certificate of Origin, a form of which appears in Annex 3-C.

2. Notwithstanding paragraph 1, originating goods within the meaning of this Chapter, in the cases specified in Article 3.17, may benefit from preferential tariff treatment without any Certificate of Origin referred to in paragraph 1.

3. A Certificate of Origin shall be issued by the issuing authority of the exporting Party on application by the producer or exporter or, under its responsibility, by its authorized representative. The Certificate of Origin shall:

- (a) be in a printed A4 size paper and be in the format of Attachment 1 of Annex 3-C. For multiple items declaration, the Parties may use the format of Attachment 2 of Annex 3-C as additional pages to the Certificate of Origin;
- (b) comprise one original and two copies. The original copy shall be forwarded by the producer or exporter to the importer for submission to the customs authority of the importing Party. The duplicate shall be retained by the issuing authority of the exporting Party. The triplicate shall be retained by the producer or exporter;
- (c) be completed in the English language and may cover one or more goods under one consignment;
- (d) be manually or electronically signed, stamped and printed;
- (e) include the description, quantity, and weight of the good, corresponding to the consignment to be exported; and
- (f) have a unique serial reference number given by the issuing authority.

4. A Certificate of Origin shall be issued prior to or on the date of shipment, or within three working days<sup>9</sup> from the date of shipment. In exceptional cases where a Certificate of Origin has not been issued prior to or on the date of shipment, or within three working days from the date of shipment due to involuntary errors, omissions or other valid causes, a Certificate of Origin may be issued retroactively but no later than one year from the date of shipment, bearing the words “ISSUED RETROACTIVELY.”

5. The producer or exporter of a good, or its authorized representative applying for the issuance of a Certificate of Origin, shall be prepared to submit at any time, upon request of the issuing authority of the exporting Party issuing the Certificate of Origin, all appropriate

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<sup>9</sup> For greater certainty, “three working days” shall include the date of shipment itself.



documents proving the originating status of such good in accordance with domestic legislation as well as the fulfilment of the other requirements of this Chapter.

6. In the event of theft, loss or destruction of a Certificate of Origin, the producer or exporter may apply to the issuing authority for a certified true copy of the original to be made out on the basis of the export documents in its possession bearing the endorsement of the words “CERTIFIED TRUE COPY” in box 12 of a Certificate of Origin. This copy shall bear the date of issuance of the original Certificate of Origin. The certified true copy of a Certificate of Origin shall be issued no later than one year from the date of issuance of the original Certificate of Origin.

7. Neither erasures nor superimpositions shall be allowed on a Certificate of Origin. Any alteration shall be made by striking out the erroneous materials and making any addition required. Such alterations shall be approved by an official authorized to sign a Certificate of Origin and certified by the issuing authority. Unused spaces shall be crossed out to prevent any subsequent addition. Alternatively, a new Certificate of Origin may be issued to replace the erroneous Certificate of Origin. The issuing authority shall specify the date of issuance of the originally issued Certificate of Origin in the new Certificate of Origin.

#### **Article 3.15 : Issuing Authority**

1. Each Party shall maintain an updated register of the names and seals of its issuing authority.

2. Each Party shall notify the other Party of the names and the impressions of seals of its issuing authority.

3. Any change to the register shall be notified to the other Party, and shall enter into force 15 days after the date of notification or on a later date indicated in such notification.

4. The issuing authority of each Party shall ensure that:

- (a) the description, quantity, and weight of the good, as specified, correspond to the consignment to be exported; and
- (b) a Certificate of Origin has a unique serial reference number given by the issuing authority.

#### **Article 3.16 : Claims for Preferential Tariff Treatment**

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment based on a Certificate of Origin.

2. Each Party may require that an importer who claims preferential tariff treatment for a good imported into its territory:

- (a) declare in the importation document that the good is an originating good;

- (b) have in its possession at the time the declaration referred to in subparagraph 2(a) is made, a Certificate of Origin as described in Article 3.14 and
  - (c) provide, upon request of the customs authority of the importing Party, the Certificate of Origin, supporting documents such as invoices, the through bill of lading issued in the territory of the exporting Party, and other documents as required in accordance with the domestic laws and regulations of the importing Party.
3. A Certificate of Origin shall be valid for one year after the date of its issuance.
4. Each Party shall provide that, where a good was originating when it was imported into its territory, but the importer did not gain preferential tariff treatment at the time of importation, that importer may, no later than one year after the date of importation, make a claim for preferential tariff treatment and apply for refund of any excess duties paid as a result of the good not having been accorded preferential tariff treatment, on presentation to the importing Party of:
- (a) a Certificate of Origin; and
  - (b) any other documentation as the importing Party may require.

### **Article 3.17 : Waiver of Certificate of Origin**

A Party shall provide that a Certificate of Origin shall not be required where the customs value of the importation does not exceed 600 U.S. dollars FOB or such higher amount as the importing Party may establish, unless the importing Party considers the importation to be part of a series of importations carried out or planned for the purposes of evading compliance with the Party's domestic laws and regulations governing claims for preferential tariff treatment under this Agreement.

### **Article 3.18 : Record Keeping Requirements**

1. For the purposes of the verification process, the producer or exporter applying for the issuance of a Certificate of Origin shall, subject to the domestic laws and regulations of the exporting Party, keep its supporting records for application for not less than five years from the date of issuance of the Certificate of Origin.
2. The importer shall keep records relevant to the importation in accordance with the domestic laws and regulations of the importing Party.
3. The application for Certificates of Origin and all documents related to such application shall be retained by the issuing authority for not less than five years from the date of issuance.
4. The information related to the validity of a Certificate of Origin shall be furnished

upon request of the importing Party by an official authorized to sign a Certificate of Origin and certified by the appropriate government authorities.

5. Any information communicated between the Parties shall be treated as confidential in accordance with Article 4.6 (Confidentiality) and shall be used for the purposes of the validation of Certificates of Origin only.

### **Article 3.19 : Treatment of Minor Discrepancies and Errors**

1. Where the origin of a good is not in doubt, the discovery of minor discrepancies, between the statements made in a Certificate of Origin and those made in the documents submitted to the customs authority of the importing Party for the purposes of carrying out the formalities for importing the good shall not *ipso facto* invalidate the Certificate of Origin, if it does in fact correspond to the good submitted.

2. Upon discovering minor errors in a Certificate of Origin that do not affect the originating status of the goods, the customs authority of the importing Party shall notify the importer of the errors that make the Certificate of Origin unacceptable.

3. The importer shall submit the appropriate correction of the Certificate of Origin or a new Certificate of Origin issued to replace the erroneous Certificate of Origin according to paragraph 7 of Article 3.14 within 30 days following the date of receipt of the notification.

4. If the importer fails to submit the correction or the new Certificate of Origin within the period referred to in paragraph 3, the competent authority of the importing Party may proceed to conduct verification under Article 3.21.

5. For multiple items declared under the same Certificate of Origin, a problem encountered with one of the items listed shall not affect or delay the granting of preferential tariff treatment and customs clearance of the remaining items listed in that Certificate of Origin.

### **Article 3.20 : Non-Party Invoice**

The importing Party shall not reject a Certificate of Origin only for the reason that the invoice was issued in the territory of a non-Party.

### **Article 3.21 : Verification**

1. The importing Party may request the issuing authority<sup>10</sup> of the exporting Party to conduct a retroactive check at random or when the importing Party has a reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the good in question or of certain parts thereof, subject to the following procedures:

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<sup>10</sup> For Korea, for the purposes of origin verification under this Article, “the issuing authority” refers to the customs authority in accordance with its customs laws and regulations.

- (a) the request of the importing Party for a retroactive check shall be accompanied with the Certificate of Origin concerned and shall specify the reasons and any additional information suggesting that the particulars given on the said Certificate of Origin may be inaccurate, unless the retroactive check is requested on a random basis;
- (b) the issuing authority of the exporting Party shall, upon receipt of the origin verification request from the customs authority of the importing Party, promptly provide an acknowledgement of receipt of the request to the requesting authority by email or fax;
- (c) the issuing authority of the exporting Party receiving the request for a retroactive check shall promptly respond to the request and provide the result within six months after receipt of the request. Otherwise, the importing Party may deny preferential tariff treatment to the good subject to the retroactive check;
- (d) the customs authority of the importing Party may suspend provision of preferential tariff treatment while awaiting the result of verification. However, it may release the good to the importer subject to any administrative measures deemed necessary, provided that they are not held to be subject to import prohibition or restriction and there is no suspicion of fraud; and
- (e) the issuing authority of the exporting Party shall promptly transmit the results of the verification process to the importing Party which shall then determine whether or not the subject good is originating. The entire process of the retroactive check, including the process of notifying the issuing authority of the exporting Party of the result of determination on whether or not the good is originating, shall be completed within 10 months. While the process of the retroactive check is being undertaken, subparagraph 1(d) shall be applied.

2. The customs authority of the importing Party may request an importer for information or documents relating to the origin of an imported good in accordance with its domestic laws and regulations before requesting the retroactive check pursuant to paragraph 1.

3. If the importing Party is not satisfied with the outcome of the retroactive check, it may, under exceptional circumstances, request verification visits to the exporting Party.

4. Prior to conducting a verification visit pursuant to paragraph 3:

- (a) an importing Party shall deliver a written notification of its intention to conduct the verification visit simultaneously to:
  - (i) the producer or exporter whose premises are to be visited;

- (ii) the issuing authority of the Party in the territory of which the verification visit is to occur;
  - (iii) the customs authority of the Party in the territory of which the verification visit is to occur; and
  - (iv) the importer of the good subject to the verification visit;
- (b) the written notification mentioned in subparagraph 4(a) shall be as comprehensive as possible and shall include, *inter alia*:
- (i) the name of the customs authority issuing the notification;
  - (ii) the name of the producer or exporter whose premises are to be visited;
  - (iii) the proposed date of the verification visit;
  - (iv) the coverage of the proposed verification visit, including reference to the good subject to the verification; and
  - (v) the names and designation of the officials performing the verification visit.
- (c) an importing Party shall obtain the written consent of the producer or exporter whose premises are to be visited;
- (d) when a written consent from the producer or exporter is not obtained within 30 days from the date of receipt of the notification pursuant to subparagraph 4(a), the notifying Party may deny preferential tariff treatment to the good referred to in the Certificate of Origin that would have been subject to the verification visit; and
- (e) the issuing authority receiving the notification may postpone the proposed verification visit and notify the importing Party of such intention within 15 days from the date of receipt of the notification. Notwithstanding any postponement, any verification visit shall be carried out within 60 days from the date of such receipt, or a longer period as the Parties may agree.

5. The Party conducting the verification visit shall provide the producer or exporter, whose good is subject to such verification, and the relevant issuing authority with a written determination of whether or not the good subject to such verification qualifies as an originating good.

6. Any suspended preferential tariff treatment shall be reinstated upon written determination referred to in paragraph 5 that the good qualifies as an originating good.

7. The producer or exporter shall be allowed 30 days from the date of receipt of the written determination to provide in writing comments or additional information regarding the

eligibility of the good for preferential tariff treatment. If the good is still found to be non-originating, the final written determination shall be communicated to the relevant issuing authority within 30 days from the date of receipt of the comments or additional information from the producer or exporter.

8. The verification visit process, including the actual visit and the determination under paragraph 5 whether the good subject to such verification is originating or not, shall be carried out and its results shall be communicated to the relevant issuing authority within a maximum period of six months from the first day the initial verification visit was conducted. While the process of verification is being undertaken, subparagraph 1(e) shall be applied.

### **Article 3.22 : Denial of Preferential Tariff Treatment**

Except as otherwise provided in this Chapter, the importing Party may deny a claim for preferential tariff treatment or recover unpaid duties in accordance with its domestic laws and regulations, where the good does not meet the requirements of this Agreement.

### **Article 3.23 : Implementation of Direct Transport**

For the purposes of implementing Article 3.8, where transportation is effected through the territory of one or more intermediate countries, other than those of the exporting Party and the importing Party, the following shall be produced to the relevant government authorities of the importing Party:

- (a) a through bill of lading issued in the territory of the exporting Party;
- (b) a Certificate of Origin;
- (c) a copy of the original commercial invoice in respect of the good; and
- (d) other relevant supporting documents, if any, as evidence that the requirements of Article 3.8 are complied with.

### **Article 3.24 : Transitional Provision for Goods in Transit or Storage**

The provisions of this Agreement may be applied to goods which comply with the provisions of this Chapter and which, on the date of entry into force of this Agreement, are either in transit, in temporary storage in customs warehouses or in free zones in the Parties, subject to the submission to the customs authorities of the importing Party, within 12 months of that date, of a Certificate of Origin issued retrospectively together with the documents showing that the goods have been transported directly in accordance with Articles 3.8 and 3.23.

### **Article 3.25 : Implementation**

The Parties agree to review the origin certification system aside from Certificate of Origin three years from the date of entry into force of this Agreement, taking into due consideration the development of the domestic implementation procedures in the approved exporter system.

## Section C : Definitions

### Article 3.26 : Definitions

For the purposes of this Chapter:

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

**CIF** means the value of the good imported, and includes the cost of freight and insurance up to the port or place of entry into the country of importation. The valuation shall be made in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement;

**exporter** means a natural person or juridical person located in the territory of a Party from where a good is exported by such a person;

**FOB** means the free-on-board value of a good, inclusive of the cost of transport from the producer to the port or site of final shipment abroad. The valuation shall be made in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement;

**identical and interchangeable goods or materials** means goods or materials being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which once they are incorporated into the finished good cannot be distinguished from one another for origin purposes by virtue of any markings, *et cetera*;

**importer** means a natural person or juridical person located in the territory of a Party into where a good is imported by such a person;

**issuing authority** means the competent authority designated by the exporting Party to issue a Certificate of Origin and notified to the other Party in accordance with this Chapter;

**materials** shall include ingredients, raw materials, parts, components, and sub-assemblies used in the production process;

**non-originating goods** means products or materials that do not qualify as originating under this Chapter;

**packing materials and containers for transportation** means the goods used to protect a good during its transportation, different from those materials or containers used for its retail sale;

**producer** means a person who carries out the production of goods in the territory of a Party;

**Product Specific Rules** means the rules that specify that the materials have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a RVC or a combination of any of these criteria; and

**production** means methods of obtaining goods including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, processing or assembling goods.



## ANNEX 3-A

### PRODUCT SPECIFIC RULES

#### Headnote

1. The Product Specific Rules in this Annex are structured on the basis of the Harmonized System 2012. In the event of any inconsistency between this description and the description set out in the legal text of the Harmonized System established by the World Customs Organization, the description set out in the latter shall prevail.

2. The specific rule of origin, or specific set of rules of origin, that applies to a particular subheading, is set out immediately adjacent to the subheading.

3. When a subheading is subject to alternative specific rules of origin, the rule will be considered to be met if a good satisfies one of the alternatives.

4. Where a specific rule of origin is defined using the criterion of a change in tariff classification, each of the non-originating materials used in the production of the good shall be required to undergo the applicable change in tariff classification. A requirement of a change in tariff classification shall apply only to non-originating materials.

5. Where a specific rule of origin is defined using the criterion of a change in tariff classification, and the rule is written to exclude tariff provisions at the level of a chapter, heading or subheading of the Harmonized System, each Party shall construe the rule of origin to require that materials classified in those excluded provisions be originating for the good to qualify as originating.

6. For the purposes of this Annex:

**chapter** means the first two digits of the tariff classification number under the Harmonized System;

**heading** means the first four digits of the tariff classification number under the Harmonized System; and

**subheading** means the first six digits of the tariff classification number under the Harmonized System.

7. For the purposes of column 5 of this Annex:

**CC** means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the two-digit level;

**CTH** means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the four-digit level;

**CTSH** means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the six-digit level;

**RVC(XX)** means that the good must have a regional value content of not less than XX percent as calculated under Article 3.3; and

**WO** means that the good must be wholly produced or obtained in accordance with Article 3.1.

## ANNEX 3-B

### TREATMENT FOR CERTAIN GOODS

1. Origin Conferring
  - (a) “Certain goods” referred to in Article 3.5 as reflected in the lists referred to in paragraph 7 and any subsequent amendments, which are reimported as the goods that do not undergo any process beyond operations within the territory of the reimporting Party for export as set out in Article 3.7 shall be deemed to be originating in the territory of the Party, provided that the total value of non-originating input<sup>11</sup> does not exceed 40 percent of the FOB price of the final good for which originating status is claimed.
  - (b) Except as otherwise provided for in this Annex, relevant rules in this Chapter shall be applied, *mutatis mutandis*, to the origin conferring of the goods to which Article 3.5 applies.
2. Specific Procedures for the Implementation of Article 3.5
  - (a) Certificate of Origin for goods covered by Article 3.5 shall be issued by the issuing authority<sup>12</sup> of the exporting Party in accordance with Section B of this Chapter.
  - (b) The issuing authority of the exporting Party shall indicate in the Certificate of Origin that the good is covered by Article 3.5.
  - (c) Except as otherwise provided for in this Annex, the relevant Articles in Section B of this Chapter shall be applied, *mutatis mutandis*, to the goods to which Article 3.5 applies.
  - (d) Korea shall assist the customs authority of Viet Nam to conduct verification on goods covered by Article 3.5 in accordance with the relevant Articles in Section B of this Chapter.
3. Special Safeguard
  - (a) When a Party determines that there is an increase of importation of a good covered by Article 3.5 into the territory of that Party in such quantities and under such conditions as to cause, or threaten to cause, serious injury to its domestic industry, that Party shall be free to suspend the application of Article 3.5 to such a good for such a period of time as it may consider necessary to prevent or remedy such injury or threat to cause injury to the

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<sup>11</sup> "Total value of non-originating input" shall mean the value of any non-originating materials added inside as well as any materials added and all other cost accumulated outside Korea and Viet Nam, including transport costs.

<sup>12</sup> For Korea, for the purposes of this Annex, “issuing authority” means the Korean Customs Authority.

domestic industry of the Party.

- (b) A Party that intends to suspend the application of Article 3.5 pursuant to subparagraph (a) shall notify the other Party two months in advance of the start of the suspension period and afford the other Party an opportunity to exchange views with it in respect of the proposed suspension.
- (c) The period mentioned in subparagraph (a) may be extended provided that the Party that has taken the action of suspension has determined that the suspension continues to be necessary to prevent or remedy injury.
- (d) In critical circumstances, where delay would cause damage which would be difficult to repair, the suspension of the application of Article 3.5 under subparagraph (a) may be taken provisionally without two-month advance notification to the other Party, on the condition that the notification shall be made before such suspension takes effect.
- (e) When a Party has made a determination mentioned in subparagraph (a) and the requirements set out in subparagraph (b) are fulfilled, the Party concerned may suspend the application of Article 3.5 unilaterally and unconditionally, including as follows:
  - (i) there shall be no obligation to prove that there is serious injury;
  - (ii) there shall be no obligation for advance consultation;
  - (iii) there shall be no limit to the duration or frequency of suspension; and
  - (iv) there shall be no obligation for compensation.

#### 4. Annual Review

- (a) The Parties shall review the implementation and operation of Article 3.5 in the Joint Committee . For this purpose:
  - (i) the exporting Party shall provide the Joint Committee with a brief factual report on the operation of Article 3.5, including export statistics of each good listed in paragraph 7 to the importing Party during the previous one-year period; and
  - (ii) the importing Party shall provide, upon request of the Joint Committee, information pertaining to the denial of claims for preferential tariff treatment, if any, including the number of Certificates of Origin not accepted, and reasons for the denial.
- (b) The Joint Committee may request such additional information as it may consider necessary for its review of the implementation and operation of Article 3.5 from the exporting Party.

- (c) Taking into account the result of the review provided for in subparagraph (a), the Joint Committee may make recommendations as it may consider necessary.

## 5. Dispute Settlement

Any dispute concerning the interpretation, implementation or application of this Annex shall not be subject to the procedures and mechanism as set out in Chapter 15 (Dispute Settlement).

## 6. Relations to other Provisions of this Agreement

Nothing in this Annex shall affect the rights and obligations of the Parties under this Agreement, including Article 7.1 (Application of a Safeguard Measure).

## 7. List of Goods

The following shall be the list of goods covered by this Annex. A Party may request amendment of the list referred to in this paragraph, which the other Party shall consider in good faith. Such amendment shall be adopted when mutually agreed by both Parties.

No.	HS 6 (2012)	Product Description (HS 6)
1	121221	Fit for human consumption
2	321310	Colours in sets
3	340700	Modelling pastes, including those put up for children's amusement; preparations known as "dental wax" or as "dental impression compounds", put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms; other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulphate).
4	350610	Products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg
5	391740	Fittings
6	392310	Boxes, cases, crates and similar articles
7	392329	Of other plastics
8	392350	Stoppers, lids, caps and other closures
9	392690	Other
10	401699	Other
11	420229	Other
12	481940	Other sacks and bags, including cones
13	520839	Other fabrics
14	550932	Multiple (folded) or cabled yarn
15	560811	Made up fishing nets
16	580421	Of man-made fibres
17	581092	Of man-made fibres
18	610230	Of man-made fibres
19	610290	Of other textile materials
20	610711	Of cotton
21	610791	Of cotton
22	610821	Of cotton
23	610822	Of man-made fibres
24	610891	Of cotton
25	610910	Of cotton
26	610990	Of other textile materials

No.	HS 6 (2012)	Product Description (HS 6)
27	611011	Of wool
28	611120	Of cotton
29	611130	Of synthetic fibres
30	611522	Of synthetic fibres, measuring per single yarn 67 decitex or more
31	611529	Of other textile materials
32	611594	Of wool or fine animal hair
33	611595	Of cotton
34	611596	Of synthetic fibres
35	611599	Of other textile materials
36	620113	Of man-made fibres
37	620119	Of other textile materials
38	620193	Of man-made fibres
39	620211	Of wool or fine animal hair
40	620213	Of man-made fibres
41	620293	Of man-made fibers
42	620312	Of synthetic fibres
43	620319	Of other textile fibres
44	620331	Of wool or fine animal hair
45	620333	Of synthetic fibres
46	620341	Of wool or fine animal hair
47	620342	Of cotton
48	620343	Of synthetic fibres
49	620433	Of synthetic fibres
50	620443	Of synthetic fibres
51	620453	Of synthetic fibres
52	620462	Of cotton
53	620463	Of synthetic fibres
54	620520	Of cotton
55	620530	Of man-made fibres
56	620640	Of man-made fibres
57	620690	Of other textile materials
58	620711	Of cotton
59	620719	Of other textile materials
60	620799	Of other textile materials
61	620892	Of man-made fibres
62	621143	Of man-made fibres
63	621600	Gloves, mittens and mitts.
64	630231	Of cotton
65	630493	Not knitted or crocheted, of synthetic fibres
66	630532	Flexible intermediate bulk containers
67	630533	Other, of polyethylene or polypropylene strip or the like
68	630612	Of synthetic fibres
69	630790	Other
70	650700	Head-bands, lining, covers, hat foundations, hat frames, peaks and chinstraps, for headgear.
71	691200	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china.
72	691490	Other
73	732393	Of stainless steel
74	761699	Other
75	841330	Fuel, lubricating or cooling medium pumps for internal combustion piston engines
76	842123	Oil or petrol-filters for internal combustion engines
77	848490	Other
78	850110	Motors of an output not exceeding 37.5 W
79	850300	Parts suitable for use solely or principally with the machines of heading 85.01 or 85.02.

No.	HS 6 (2012)	Product Description (HS 6)
80	851240	Windscreen wipers, defrosters and demisters
81	851290	Parts
82	851610	Electric instantaneous or storage water heaters and immersion heaters
83	851660	Other ovens; cookers, cooking plates, boiling rings, grillers and roasters
84	851690	Parts
85	851770	Parts
86	852990	Other
87	853669	Other
88	853670	Connectors for optical fibres, optical fibre bundles or cables
89	853890	Other
90	853990	Parts
91	854430	Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships
92	854442	Fitted with connectors
93	870892	Silencers (mufflers) and exhaust pipes; parts thereof
94	870894	Steering wheels, steering columns and steering boxes; parts thereof
95	870899	Other
96	940510	Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares
97	940592	Of plastics
98	940599	Other
99	960820	Felt tipped and other porous-tipped pens and markers
100	960910	Pencils and crayons, with leads encased in a rigid sheath

**ANNEX 3-C**  
**CERTIFICATE OF ORIGIN**



**Original (Duplicate/Triplicate)**

1. Goods consigned from (Exporter's business name, address, country)		Reference No. KOREA-VIETNAM FREE TRADE AGREEMENT PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN (Combined Declaration and Certificate)  FORM KV  Issued in _____ (Country)  See Notes Overleaf			
2. Goods consigned to (Consignee's name, address, country)					
3. Means of transport and route (as far as known)  Departure date   Vessel's name/Aircraft etc.   Port of Discharge		4. For Official Use  <input type="checkbox"/> Preferential Tariff Treatment Given Under Korea-Viet Nam Free Trade Agreement  <hr/> <input type="checkbox"/> Preferential Tariff Treatment Not Given (Please state reason/s)  <hr/> ..... Signature of Authorized Signatory of the Importing Country			
5. Item number	6. Marks and numbers on packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS code of the good in the importing country)	8. Origin criterion (see Overleaf Notes)	9. Gross weight or other quantity and value (FOB only when RVC criterion is used)	10. Number and date of invoices
11. Declaration by the exporter  The undersigned hereby declares that the above details and statement are correct, that all the goods were produced in  ..... (Country)  and that they comply with the origin requirements specified for these goods in the Korea-Viet Nam Free Trade Agreement for the goods exported to  ..... (Importing Country)  ..... Place and date, signature of authorized signatory			12. Certification  It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.   ..... Place and date, signature and stamp of certifying authority		
13. Remarks					

## OVERLEAF NOTES

1. The Parties which accept this form for the purposes of preferential tariff treatment under the Korea-Viet Nam Free Trade Agreement (KVFTA):

THE REPUBLIC OF KOREA  
THE SOCIALIST REPUBLIC OF VIET NAM

2. **CONDITIONS:** To enjoy preferential tariff under the KVFTA, goods sent to any Party listed above shall:

- (i) fall within a description of goods eligible for concessions in the country of destination;
- (ii) comply with the transportation conditions in accordance with Article 3.8(Direct Transport) of the KVFTA; and
- (iii) comply with the origin criteria in Chapter 3(Rules of Origin and Origin Procedures) of the KVFTA.

3. **ORIGIN CRITERIA:** For goods that meet the origin criteria, the exporter or producer must indicate in box 8 of this Form, the origin criteria met, in the manner shown in the following table:

Circumstances of production or manufacture in the exporting party named in box 11 of this form	Insert in box 8
(a) Goods wholly obtained or produced in the territory of the exporting Party	”WO”
(b) Goods satisfying the Product Specific Rules <ul style="list-style-type: none"> <li>- Change in Tariff Classification</li> <li>- Wholly Obtained or Produced in the territory of any Party</li> <li>- Regional Value Content</li> <li>- Regional Value Content + Change in Tariff Classification</li> <li>- Specific Processes</li> </ul>	- “CTC” - “WO-KV” - “RVC” that needs to be met for the good to qualify as originating; e.g. “RVC 45%” - The combination rule that needs to be met for good to qualify as originating; e.g. “CTH + RVC 40%” “Specific Processes”
(c) Goods satisfying Article 3.5	“Article 3.5”

4. **EACH ARTICLE MUST QUALIFY:** It should be noted that all the goods in a consignment must qualify separately in their own right. This is of particular relevance when similar articles of different sizes or spare parts are sent.

5. **DESCRIPTION OF GOODS:** The description of goods must be sufficiently detailed to enable the goods to be identified by the customs officers examining them. Any trade mark shall also be specified.

6. **FREE-ON-BOARD (FOB) VALUE:** The FOB value in box 9 shall be reflected only when the Regional Value Content criterion is applied in determining the origin of goods.
7. **HARMONIZED SYSTEM CODE:** The Harmonized System code shall be that of the importing Party.
8. **EXPORTER:** The term “exporter” in box 11 may include the manufacturer or the producer.
9. **FOR OFFICIAL USE:** The customs authority of the importing Party must indicate (√) in the relevant boxes in box 4 whether or not preferential tariff treatment is accorded.
10. **REMARKS IN BOX 13:**
  - (i) In cases where invoices are issued by a non-party, “Non-Party Invoicing” should be recorded and such information as name and country of the company issuing the invoice shall be indicated;
  - (ii) Other remarks should be recorded as necessary.

**Original (Duplicate/Triplicate)  
(Additional Page)**

Reference No.

5. Item number	6. Marks and numbers on packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS code of the good in the importing country)	8. Origin criterion (see Overleaf Notes)	9. Gross weight or other quantity and value (FOB only when RVC criterion is used)	10. Number and date of invoices
<p>11. Declaration by the exporter</p> <p>The undersigned hereby declares that the above details and statement are correct, that all the goods were produced in</p> <p align="center">..... (Country)</p> <p>and that they comply with the origin requirements specified for these goods in the Korea-Viet Nam Free Trade Agreement for the goods exported to</p> <p align="center">..... (Importing Country)</p> <p align="center">..... Place and date, signature of authorized signatory</p>			<p>12. Certification</p> <p>It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.</p> <p align="center">..... Place and date, signature and stamp of certifying authority</p>		
13. Remarks					