PROTOCOL

concerning the definition of 'originating products' and methods of administrative cooperation

TABLE OF CONTENTS

SECTION A

RULES OF ORIGIN

TITLE I

General provisions

Article 1

Definitions

For the purposes of this Protocol:

(a) "**manufacture**" means any kind of working or processing including growing, fishing, raising, hunting, assembly or specific operations;

(b) "**material**" means any ingredient, raw material, component or part, etc., used in the manufacture of a product;

(c) "**product**" means the product being manufactured, even if it is intended for later use as a material in another manufacturing operation;

(d) "**goods**" means materials, products or articles;

(e) "**customs value**" means the value as determined in accordance with the Customs Valuation Agreement;

(f) "**ex-works price**" means the price paid or payable for the product ex-works to the manufacturer in a Party in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used, minus any internal taxes which are, or should be, repaid when the product obtained is exported;

(g) "**value of the non-originating 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 the UK or in Korea;

(h) "**value of originating materials**" means the value of such materials as defined in subparagraph (g) applied *mutatis mutandis*;

(i) "**chapters, headings, and subheadings**" mean the chapters (two-digit codes), the headings (four-digit codes) and the subheadings (six-digit codes) used in the nomenclature which make up the Harmonised Commodity Description and Coding System, referred to in this Protocol as 'the Harmonised System' or 'HS';

(j) "**classified**" refers to the classification of a product or material under a particular chapter, heading and subheading;

(k) "**consignment**" means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;

(l) "**HS**" means the Harmonised Commodity Description and Coding System in force, including its general rules and legal notes;

(m) "**territories**" includes territorial sea;

(n) "**EU**" means the European Union; and

(o) "**UK**" means the United Kingdom of Great Britain and Northern Ireland.

TITLE II

Definition of 'originating products'

Article 2

Originating products

For the purpose of a preferential tariff treatment the following products shall be considered as originating in a Party:

(a) products wholly obtained in a Party within the meaning of Article 4;

(b) products obtained in a Party incorporating materials which have not been wholly obtained there, provided that such

materials have undergone sufficient working or processing in the Party concerned within the meaning of Article 5; or

(c) products obtained in a Party exclusively from materials that qualify as originating pursuant to this Protocol.

Article 3

Cumulation of origin

1. Notwithstanding Article 2, products shall be considered as originating in a Party if such products are obtained there, incorporating materials originating in the other Party or in the EU, provided that the working or processing carried out goes beyond the operations referred to in Article 6. It shall not be necessary that such materials have undergone sufficient working or processing[1].

2. Notwithstanding Article 2, working or processing carried out in the EU shall be considered as having been carried out in a Party when the products obtained undergo subsequent working or processing in the Party, provided that the working or processing carried out in the Party goes beyond the operations referred to in Article 6[1].

Article 4

Wholly obtained products

1. For the purposes of Article 2(a), the following shall be considered as wholly obtained in a Party:

(a) mineral products extracted from the soil or from the seabed in the territory of a Party;

(b) vegetable products grown and harvested there;

(c) live animals born and raised there;

(d) products from live animals raised there;

(e) (i) products obtained by hunting, trapping within the land territory or fishing, conducted within the land waters or within the territorial sea of a Party;
(ii) products of aquaculture, where the fish, crustaceans and mollusc are born and raised there;

(f) products of sea fishing and other products taken from the sea outside the territorial sea of a Party by its vessels;

(g) products made aboard its factory ships exclusively from products referred to in subparagraph (f);

(h) products extracted from marine soil or subsoil outside the territorial sea of a Party provided that a Party has rights to exploit that soil or subsoil;

(i) used articles collected there fit only for the recovery of raw materials or for use as waste;

(j) waste and scrap derived from manufacturing or processing operations conducted there; or

[1] Cumulation with the EU as provided for in Article 3 will cease to apply three years after the entry into force of this Agreement. Not later than two years following the date of the entry into force of this Agreement, the Parties shall commence a review of this Article. The Parties shall continue to seek and work towards mutually beneficial and business-friendly rules of origin in the future which facilitate trade between Korea and the UK.

(k) products manufactured in a Party exclusively from the products referred to in this paragraph.

2. The terms 'its vessels' and 'its factory ships' in paragraph 1(f) and (g) shall apply only to vessels and factory ships:

(a) which are registered in the UK or Korea;

(b) which sail under the flag of the UK or Korea; and

(c) which meet one of the following conditions:

(i) they are at least 50 percent owned by nationals of the UK or Korea; or

(ii) they are owned by companies:

(A) which have their head office and their main place of business in the UK or in Korea; and

(B) which are at least 50 percent owned by the UK or by Korea, public entities of the UK or Korea, or nationals of the UK or Korea.

Article 5

Sufficiently worked or processed products

1. For the purposes of Article 2(b), products which are not wholly obtained are considered to be sufficiently worked or processed when the conditions set out in the list in Annex II or Annex II(a) are fulfilled. Those conditions indicate, for all products covered by this Agreement, the working or processing which must be carried out on non-originating materials used in manufacturing and apply only in relation to such materials. It follows that if:

(a) non-originating materials undergo sufficient working or processing, which results in an originating product, and when that product is used in the subsequent manufacture of another product, no account shall be taken of the non-originating material contained therein; and

(b) non-originating and originating materials undergo processing, which results in a non-originating product, and when that product is used in a subsequent manufacture of another product, account shall be taken only of the non-originating materials contained therein.

2. Notwithstanding paragraph 1, non-originating materials which, according to the conditions set out in the list in Annex II, should not be used in the manufacture of a product may nevertheless be used, provided that:

(a) their total value does not exceed 10 percent of the ex-works price of the product; and

(b) any of the percentages given in the list in Annex II for the maximum value of non-originating materials are not exceeded through the application of this paragraph.

3. Paragraph 2 shall not apply to products falling within Chapters 50 to 63 of the HS.

4. Paragraphs 1 through 3 shall apply subject to the provisions of Article 6.

Article 6

Insufficient working or processing

1. Without prejudice to paragraph 2, the following operations shall be considered to be insufficient working or processing to confer the status of originating products whether or not the requirements of Article 5 are satisfied:

(a) preserving operations to ensure that the products remain in good condition during transport and storage;

(b) change of packaging, breaking-up and assembly of packages;

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

(d) ironing or pressing of textiles;

(e) simple painting and polishing operations;

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

(g) operations to colour or flavour sugar or form sugar lumps; partial or total milling of crystal sugar;

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

(i) sharpening, simple grinding or simple cutting;

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

(k) simple placing in bottles, cans, flasks, bags, cases or 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 assembly of parts of articles to constitute a complete article or disassembly of products into parts;

(o) testing or calibrations;

(p) a combination of two or more operations specified in subparagraphs (a) through (o); or

(q) slaughter of animals.

2. All operations carried out in a Party on a given product shall be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of paragraph 1.

Article 7

Unit of qualification

1. The unit of qualification for the application of the provisions of this Protocol shall be the product which is considered as the basic unit when determining classification using the nomenclature of the HS. It follows that:

(a) when a product composed of a group or assembly of articles is classified under the terms of the HS in a single heading, the whole constitutes the unit of qualification; and

(b) when a consignment consists of a number of identical products classified under the same heading of the HS, each product must be taken individually when applying the provisions of this Protocol.

2. Where, under General Rule 5 of the HS, packaging is included with the product for classification purposes, it shall be included for the purposes of determining origin, and considered as originating if the product is originating.

Article 8

Accessories, spare parts and tools

Accessories, spare parts and tools delivered with a product, which are part of the normal equipment and included in the price thereof or which are not separately invoiced, shall be regarded as one with the product in question.

Article 9

Sets of goods

Sets, as defined in General Rule 3 of the HS, shall be regarded as originating when all component products are originating, and both the set and the products meet all other applicable requirements in this Protocol. Nevertheless, when a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating, provided that the value of the non-originating products does not exceed 15 percent of the ex-works price of the set.

Article 10

Neutral elements

In order to determine whether a product originates, it shall not be necessary to determine the origin of the goods which might be used in its manufacture but which do not enter and which are not intended to enter into the final composition of the product.

Article 11

Accounting segregation of materials

1. Where identical and interchangeable originating and non-originating materials are used in the manufacture of a product, those materials shall be physically segregated, according to their origin, during storage.

2. Where considerable costs or material difficulties arise in keeping separate stocks of identical and interchangeable originating and non-originating materials used in the manufacture of a product, the producer may use the so-called 'accounting segregation' method for managing stocks.

3. This method is recorded and applied in accordance with the generally accepted accounting principles applicable in the Party where the product is manufactured.

4. This method must be able to ensure that, for a specific reference-period, no more products receive originating status than would be the case if the materials had been physically segregated.

5. A Party may require that the application of the method for managing stocks provided for in this Article is subject to a prior authorisation by customs authorities. Should this be the case, the customs authorities may grant such an authorisation subject to any conditions deemed appropriate and they shall monitor the use of the authorisation and may withdraw it at any time whenever the beneficiary makes improper use of it in any manner or fails to fulfil any of the other conditions laid down in this Protocol.

TITLE III

Territorial requirements

Article 12

Principle of territoriality

1. Except as provided for in Article 3 and paragraph 3 of this Article, the conditions for acquiring originating status set out in Title II must be fulfilled without interruption in a Party.

2. Except as provided for in Article 3, where originating goods exported from a Party to a non-party return, they must be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that:

(a) the returning goods are the same as those exported; and

(b) they have not undergone any operation beyond that necessary to preserve them in good condition while in that non-party or while being exported.

3. Notwithstanding paragraphs 1 and 2 of this Article, the Parties agree that certain goods shall be considered to be originating even if they have undergone working or processing outside Korea, on materials exported from Korea and subsequently re-imported there, provided that the working or processing is done in the areas designated by the Parties pursuant to Annex IV.

Article 13

Direct transport

1. The preferential treatment provided for under this Agreement applies only to products, satisfying the requirements of this Protocol, which are transported directly between the Parties or through the EU[2]. However, products constituting one single consignment may be transported through other territories with, should the occasion arise, trans-shipment or temporary warehousing in such territories, provided that they are not released for free circulation in the country of transit or warehousing and do not undergo operations other than unloading, reloading, or any operation designed to preserve them in good condition.

2. Evidence that the conditions set out in paragraph 1 have been fulfilled shall be supplied to the customs authority, in accordance with the procedures applicable in the importing Party, by the production of:

(a) evidence of the circumstances connected with trans-shipment or the storage of the originating products in third countries;

(b) a single transport document covering the passage from the exporting Party through the country of transit; or

(c) a certificate issued by the customs authorities of the country of transit:

(i) giving an exact description of the products;

(ii) stating the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport used; and

(iii) certifying the conditions under which the products remained in the country of transit.

SECTION B

ORIGIN PROCEDURES

TITLE IV

Drawback or exemption

Article 14

Drawback of, or exemption from, customs duties

1. After five years from the entry into force of this Agreement, upon the request of either Party, the Parties shall jointly review their duty drawback and inward processing schemes. One year after entry into force, and subsequently on a yearly basis, the Parties shall exchange available information on a reciprocal basis on the operation of their duty drawback and inward processing schemes, as well as detailed statistics as follows:

1.1 Import statistics at the 8/10 digit level by country starting from one year after the entry into force of this Agreement shall be provided for imports of materials classified under HS 2007 headings 8407, 8408, 8522, 8527, 8529, 8706, 8707 and 8708, as well as export statistics for 8703, 8519, 8521 and 8525 through 8528. Upon

[2] In line with the review period referenced in footnote 1 of Article 3, "or through the EU" shall be deemed to be deleted from paragraph 1 of Article 13, three years after the entry into force of this Agreement.

ANNEX IV

COMMITTEE ON OUTWARD PROCESSING ZONES ON THE KOREAN PENINSULA

1. Recognising the Republic of Korea's constitutional mandate and security interests, and both Parties' commitment to promoting peace and prosperity on the Korean Peninsula, and the importance of intra-Korean economic cooperation toward that goal, a Committee on Outward Processing Zones on the Korean Peninsula is established pursuant to Article 15.2.1 (Specialised Committees) of the Agreement. The Committee shall review whether the conditions on the Korean Peninsula are appropriate for further economic development through the establishment and development of outward processing zones.

2. The Committee shall be comprised of officials of the Parties. The Committee shall meet on the first anniversary of the entry into force of this Agreement and at least once annually thereafter, or at any time as mutually agreed.

3. The Committee shall identify geographic areas that may be designated outward processing zones. The Committee shall determine whether any such outward processing zone has met the criteria established by the Committee. The Committee shall also establish a maximum threshold for the value of the total input of the originating final good that may be added within the geographic area of the outward processing zone.

Joint Declaration concerning the Principality of Andorra

1. Products originating in the Principality of Andorra, meeting the conditions of Article 3 of the Protocol Concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation, and falling within Chapters 25 to 97 of the HS shall be accepted by the Parties as originating in the EU within the meaning of this Agreement.

2. The Protocol Concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation shall apply *mutatis mutandis* for the purpose of defining the originating status of the above-mentioned products.

Joint Declaration concerning the Republic of San Marino

1. Products originating in the Republic of San Marino meeting the conditions of Article 3 of the Protocol Concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation shall be accepted by the Parties as originating in the EU within the meaning of this Agreement.

2. The Protocol Concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation shall apply *mutatis mutandis* for the purpose of defining the originating status of the above-mentioned products.

Joint Declaration concerning the revision of the rules of origin contained in the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation

1. The Parties agree to review the rules of origin contained in the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation and discuss the necessary amendments upon request of one of the Parties. While discussing the amendments to the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation, the Parties shall take into account the development of technologies, production processes, price fluctuations and all other factors, which might justify the changes to the rules of origin.

2. Annex II to the Protocol concerning the Definition of 'Originating Products' and Methods of Administrative Cooperation will be adapted in accordance with the periodical changes to the HS.

Joint Declaration on the Explanatory Notes

The Parties agree to the necessity to establish Explanatory Notes to this Protocol. The Notes shall be implemented by the Parties in accordance with their internal procedures.

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EXPLANATORY NOTES

1. For the purposes of Article 1, manufacture includes harvesting, trapping, producing, breeding and disassembly.

2. For the purposes of Article 1(g), **ascertainable** means 'established in accordance with the Customs Valuation Agreement'.

3. For the purposes of Article 5.1(b), the value of non-originating material can be acquired by deducting from the ex-works price of the product the value of originating material, including self-produced originating material used in producing the resulting non-originating material.

4. The value of originating material that is self-produced includes all the costs incurred in the production of the material and an amount for profit equivalent to the profit added in the normal course of trade.

5. For the purposes of Article 6, 'simple' describes activities which need neither special skills nor 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 molecule.

6. For the purposes of Article 10, neutral elements, for example, will include:

   (a) energy and fuel;

   (b) plant and equipment;

   (c) machines and tools; and

   (d) goods which do not enter and which are not intended to enter into the final composition of the product.

7. For the purposes of Article 11, **identical and interchangeable materials** means materials being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which cannot be distinguished from one another for origin purposes, once they are incorporated into the finished product.

8. For the purposes of Article 11, specific 'period' will be determined in accordance with the relevant domestic laws and regulations of each Party.

9. Only for the following specific reasons, the preferential treatment may be refused without verification of the proof of origin as the proof can be considered as inapplicable when:

   (a) the requirements on direct transport of Article 13 have not been fulfilled;

   (b) the proof of origin is produced subsequently for goods that were initially imported fraudulently;

   (c) the proof of origin has been issued by an exporter from a non-party to this Agreement;

   (d) the importer fails to submit a proof of origin to the customs authorities of the importing Party within the period specified in legislation of the importing Party.

10. For the purposes of the Joint Declaration concerning the Principality of Andorra, the customs authorities of the Principality of Andorra shall be responsible for the application of the Joint Declaration in the Principality of Andorra.

11. For the purposes of the Joint Declaration concerning the Republic of San Marino, the customs authorities of the Italian Republic shall be responsible for the application of the Joint Declaration in the Republic of San Marino.