

*This document contains an EU proposal for a legal text on an annex concerning the definition of the concept of “originating products” and methods of administrative co-operation in the Trade Part of a possible modernised EU-Mexico Association Agreement. It has been tabled for discussion with Mexico. The actual text in the final agreement will be a result of negotiations between the EU and Mexico. The EU reserves the right to make subsequent modifications to this proposal.*

## **EU-Mexico Free Trade Agreement**

### **EU TEXTUAL PROPOSAL**

#### **Annex concerning the definition of the concept of “originating products” and methods of administrative co-operation**

##### **TITLE**

##### **GENERAL PROVISIONS**

##### *Article 1*

##### **Definitions**

For the purposes of this Protocol:

- (a) "manufacture" means any kind of working or processing including assembly;
- (b) "material" means any ingredient, raw material, component or part, etc., used in the manufacture of the product;
- (c) "product" means the product being manufactured, even if it is intended for later use in another manufacturing operation;
- (d) "goods" means both materials and products;
- (e) "customs value" means the value as determined in accordance with the [1994 Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade (WTO Agreement on customs valuation)];
- (f) "ex-works price" means the price paid for the product ex-works to the manufacturer in whose undertaking the last working or processing is carried out, provided that the price includes the value of all the materials used and all other costs related to its production, minus any internal taxes which are, or may be, repaid when the product obtained is exported.

Where the actual price paid does not reflect all costs related to the manufacturing of the product which are actually incurred in the Union or in Mexico, the ex-works

- price means the sum of all those costs, minus any internal taxes which are, or may be, repaid when the product obtained is exported;
- (g) “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 the Union or in Mexico;
  - (h) “chapters” and “headings” and “subheadings” mean the chapters, the headings and sub-headings used in the nomenclature which makes up the [Harmonized Commodity Description and Coding System, referred to in this Protocol as “the Harmonized System” or] “HS” with the changes pursuant to the Recommendation of 26 June 2004 of the Customs Cooperation Council;
  - (i) “classified” refers to the classification of a product or material under a particular chapter, heading, or sub-heading of the Harmonized System;
  - (j) “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;
  - [(k) “territories” includes territorial seas;]
  - [(l) “Party” refers to the Union or Mexico;]
  - (m) ‘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 finished product;
2. For the purpose of paragraph 1(f), where the last working or processing has been subcontracted to a manufacturer, the term ‘manufacturer’ referred to in the first paragraph may refer to the enterprise that has employed the subcontractor.

**TITLE**  
DEFINITION OF THE CONCEPT OF “ORIGINATING PRODUCTS”

*Article 2*

**General requirements**

For the purpose of implementing this Agreement, 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.

*Article 3*

**Cumulation of origin**

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

*Article 4*

**Wholly obtained products**

- 1. The following shall be considered as wholly obtained in a Party:
  - (a) mineral products extracted from their soil or from their seabed;
  - (b) plants and vegetable products grown or harvested there;
  - (c) live animals born and raised there;
  - (d) products from live animals raised there;
  - (e) products from slaughtered animals born and raised there;
  - (f) products obtained by hunting or fishing conducted there;
  - (g) products of aquaculture, where the fish, crustaceans and molluscs are born and raised there;
  - (h) products of sea fishing and other products taken from the sea outside any territorial sea by their vessels;

- (i) products made aboard their factory ships exclusively from products referred to in (h);
- (j) used articles collected there fit only for the recovery of raw materials; [provision on remanufactured goods]
- (k) waste and scrap resulting from manufacturing operations conducted there;
- (l) products extracted from marine soil or subsoil outside any territorial sea provided that they have sole rights to work that soil or subsoil;
- (m) goods produced there exclusively from the products specified in (a) to (l).

2. The terms 'their vessels' and 'their factory ships' in paragraph 1(h) and (i) shall apply only to vessels and factory ships:

- (a) which are registered in a Member State of the Union or in Mexico;
- (b) which sail under the flag of a Member State of the Union or of Mexico;
- (c) which meet one of the following conditions:
  - (i) they are at least 50% owned by nationals of a Member State of the Union or of Mexico;
  - or
  - (ii) they are owned by companies
    - which have their head office and their main place of business in a Member State of the Union or Mexico, and
    - which are at least 50% owned by a Member State of the Union or by Mexico, by public entities or nationals of one of those Parties.

#### *Article 5*

#### **Sufficiently worked or processed products**

1. For the purposes of Article 2, 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 are fulfilled.

2. The conditions referred to above indicate, for all products covered by the 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 product which has acquired originating status, by fulfilling the conditions set out in the list is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account shall be taken of the non-originating materials which may have been used in its manufacture.

3. By way of derogation from paragraph 1 and subject to paragraphs 4 and 5 of this Article, non-originating materials which, according to the conditions set out in the list, in Annex II are not to be used in the manufacture of a given product may nevertheless be used, provided that their total value or net weight assessed for the product does not exceed:

- (a) 10 % of the weight of the product for products falling within Chapters 2 and 4 to 24 of the Harmonized System, other than processed fishery products of Chapter 16;
- (b) 10 % of the ex-works price of the product for other products, except for products falling within Chapters 50 to 63 of the Harmonized System, for which the tolerances mentioned in Notes 6 and 7 of Annex I, shall apply.

4. Paragraph 3 shall not allow to exceed any of the percentages for the maximum content of non-originating materials as specified in the rules laid down in the list in Annex II.

5. Paragraphs 3 and 4 shall not apply to products wholly obtained in a Party within the meaning of Article 4. However, without prejudice to Article 6 and 7(2), the tolerance provided for in those paragraphs shall nevertheless apply to the sum of all the materials which are used in the manufacture of a product and for which the rule laid down in the list in Annex II for that product requires that such materials be wholly obtained.

#### *Article 6*

##### **Insufficient working or processing**

1. Without prejudice to paragraph 2, the following operations shall be considered as 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) breaking-up and assembly of packages;
- (c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;
- (d) ironing or pressing of textiles and textile articles;
- (e) simple painting and polishing operations;
- (f) husking and partial or total milling of rice; 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, matching (including the making-up of sets of articles);
- (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (m) simple mixing of products, whether or not of different kinds; mixing of sugar with any material;
- (n) simple addition of water or dilution or dehydration or denaturation of products;
- (o) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (p) slaughter of animals.
- (q) a combination of two or more of the operations specified in points (a) to (p);

2. For the purpose of paragraph 1, operations shall be considered simple when neither special skills nor machines, apparatus or tools especially produced or installed for those operations are required for their performance.

3. All operations carried out either in the Union or in Mexico 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 particular product which is considered as the basic unit when determining classification using the nomenclature of the Harmonized System.

2. When a consignment consists of a number of identical products classified under the same heading of the Harmonized System, each individual item shall be taken account when applying the provisions of this Protocol.

Where, under General Rule 5 of the Harmonized System, packaging is included with the product for classification purposes, it shall be included for the purposes of determining origin.

#### *Article 8*

#### **Accessories, spare parts and tools**

Accessories, spare parts and tools dispatched with a piece of equipment, machine, apparatus or vehicle, 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 piece of equipment, machine, apparatus or vehicle in question.

*Article 9*

**Sets**

Sets, as defined in General Rule 3 of the Harmonized System, shall be regarded as originating when all component products are originating products. 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 per cent 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 following which might be used in its manufacture:

- (a) energy and fuel;
- (b) plant and equipment, including goods to be used for their maintenance;
- (c) machines and tools and dies and moulds; spare parts and materials used in the maintenance of equipment and buildings; lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; gloves, glasses, footwear, clothing, safety equipments and supplies; equipment, devices and supplies used for testing or inspecting the good; catalyst and solvent; and;
- (d) and other goods which do not enter and which are not intended to enter into the final composition of the product.

*Article 11*

**Accounting segregation**

1. If originating and non-originating fungible materials are used in the working or processing of a product, competent authorities may, at the written request of economic operators, authorise the management of materials using the accounting segregation method without keeping the materials in separate stocks.

2. Competent governmental authorities may make the granting of authorisation referred to in paragraph 1 subject to any conditions they deem appropriate.
3. The authorisation shall be granted only if by use of the accounting segregation method it can be ensured that, at any time, the number of products obtained which could be considered as originating in a Party is the same as the number that would have been obtained by using a method of physical segregation of the stocks.
4. A manufacturer using the accounting segregation method shall make out or apply for a proof of origin for the quantity of products which may be considered as originating in the exporting Party. At the request of the customs authorities or competent governmental authorities of the exporting Party, the beneficiary shall provide a statement of how the quantities have been managed.
5. Competent authorities shall monitor the use made of the authorisation referred to in paragraph 3 and may withdraw it if the manufacturer makes improper use of it or fails to fulfil any of the other conditions laid down in this protocol.

**TITLE III**  
**TERRITORIAL REQUIREMENTS**

*Article 12*

**Principle of territoriality**

1. The conditions set out in Title II relating to the acquisition of originating status must be fulfilled without interruption in a Party.
2. If 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.

[Exception to the principle of territoriality]

*Article 13*

**Non alteration**

1. The products declared for home use in a Party shall be the same products as exported from the other Party in which they are considered to originate. They shall not have been altered, transformed in any way or subjected to operations other than to preserve them in good condition or than adding or affixing marks, labels, seals or any other documentation to ensure compliance with specific domestic requirements of the importing Party, prior to being declared for home use.
2. Storage of products or consignments may take place provided they remain under customs supervision in the country(ies) of transit.
3. Without prejudice to the provisions of Title V, the splitting of consignments may take place where carried out by the exporter or under his responsibility provided they remain under customs supervision in the country(ies) of transit.
4. Compliance with paragraphs 1 to 3 shall be considered as satisfied unless the customs authorities have reason to believe the contrary; in such cases, the customs authorities may request the declarant to provide evidence of compliance, which may be given by any means, including contractual transport documents such as bills of lading or factual or concrete evidence based on marking or numbering of packages or any evidence related to the goods themselves.

*Article 14*

**Exhibitions**

1. Originating products, sent for exhibition in a country other than a Party and sold after the exhibition for importation in a Party shall benefit on importation from the provisions of this Agreement provided it is shown to the satisfaction of the customs authorities that:

- (a) an exporter has consigned these products from a Party to the country in which the exhibition is held and has exhibited them there;
- (b) the products have been sold or otherwise disposed of by that exporter to a person in a Party;
- (c) the products have been consigned during the exhibition or immediately thereafter in the state in which they were sent for exhibition;

and

- (d) the products have not, since they were consigned for exhibition, been used for any purpose other than demonstration at the exhibition.

2. A proof of origin must be issued or made out in accordance with the provisions of Title V and submitted to the customs authorities of the importing Party in the normal manner. The name and address of the exhibition must be indicated thereon. Where necessary, additional documentary evidence of the conditions under which they have been exhibited may be required.

3. Paragraph 1 shall apply to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display which is not organised for private purposes in shops or business premises with a view to the sale of foreign products, and during which the products remain under customs control.

*[Article 15*

**Prohibition of drawback of, or exemption from, import duties]**