

Annex 3
Referred to in Chapter 3

Operational Certification Procedures

Section 1
Definitions

For the purposes of this Annex:

- (a) the term "competent governmental authority" means the authority that, according to the legislation of each Party, is responsible for the issuing of a certificate of origin, for the designation of certification entities or bodies, or, for taking appropriate measures when necessary in relation to the issuance of a certificate of origin. In the case of Japan, the Ministry of Economy, Trade and Industry, and in the case of India, Department of Commerce, Ministry of Commerce and Industry; and
- (b) the term "preferential tariff treatment" means the rate of customs duties applicable to an originating good of the exporting Party in accordance with paragraph 1 of Article 19.

Section 2
Claim for Preferential Tariff Treatment

1. For the purposes of claiming the preferential tariff treatment for an originating good of the exporting Party, a certificate of origin shall be submitted to the customs authority of the importing Party by the importer, together with the documents required for the importation of the good in accordance with the laws and regulations of the importing Party.

2. Notwithstanding paragraph 1, the importing Party may waive the requirement for a certificate of origin in accordance with its laws and regulations.

3. Where an originating good of the exporting Party is imported through one or more non-Parties as provided for in Article 34, the customs authority of the importing Party may require the importer, who claims the preferential tariff treatment for the good, to submit:

- (a) a copy of through bill of lading indicating the port of exportation and importation; or
- (b) a certificate or any other information given by the customs authorities of such non-Parties or other relevant entities, which evidences that the good has not undergone operations other than unloading, reloading and any other operation to preserve it in good condition in those non-Parties.

4. Notwithstanding paragraph 3, the customs authority of the importing Party may require the importer to submit documents provided for in subparagraph 3(b) in addition to a copy of through bill of lading provided for in subparagraph 3(a) in accordance with the relevant provisions of Implementing Procedures referred to in Section 11.

Section 3 Issuance of Certificate of Origin

1. A certificate of origin referred to in paragraph 1 of Section 2 shall be issued by the competent governmental authority of the exporting Party on request having been made in writing by the exporter or its authorised agent.

2. For the purposes of this Section, the competent governmental authority of the exporting Party may designate other entities or bodies for the issuance of certificate of origin, under the authorisation given in accordance with the applicable laws and regulations of the exporting Party.

3. Where the competent governmental authority of the exporting Party designates other entities or bodies to carry out the issuance of certificate of origin, the exporting Party shall notify in writing the other Party of its designees.

4. For the purposes of this Annex, upon the entry into force of this Agreement, the Parties shall establish a format of certificate of origin in the English language in the Implementing Procedures referred to in Section 11.

5. A certificate of origin shall be completed in the English language.

6. Where the exporter of a good is not the producer of the good in the exporting Party, the exporter may request a certificate of origin on the basis of:

- (a) a declaration provided by the exporter to the competent governmental authority of the exporting Party or its designees based on the information provided by the producer of the good to that exporter; or
- (b) a declaration voluntarily provided by the producer of the good directly to the competent governmental authority of the exporting Party or its designees by the request of the exporter.

7. A certificate of origin shall be issued only after the exporter who requests the certificate of origin, or the producer of a good in the exporting Party referred to in subparagraph 6(b), proves to the competent governmental authority of the exporting Party or its designees that the good to be exported qualifies as an originating good of the exporting Party.

8. The competent governmental authority of the exporting Party shall provide the importing Party with specimen signatures and impressions of stamps used in the offices of the competent governmental authority or its designees, upon entry into force of this Agreement and their modification thereafter.

9. Each Party shall, in accordance with its laws and regulations, ensure that the exporter to whom a certificate of origin has been issued, or the producer of a good in the exporting Party referred to in subparagraph 6(b), shall notify in writing the competent governmental authority of the exporting Party or its designees without delay when such exporter or producer knows that such good does not qualify as an originating good of the exporting Party.

10. The competent governmental authority of the exporting Party shall, when it cancels the decision to issue the certificate of origin, promptly notify the cancellation to the exporter to whom the certificate of origin has been issued, and to the customs authority of the importing Party, except where the certificate has been returned to the competent governmental authority.

Section 4 Validity of Certificate of Origin

1. An issued certificate of origin shall be applicable to a single importation of originating goods of the exporting Party into the importing Party and be valid for 12 months from the date of issuance.

2. A certificate of origin submitted to the customs authority of the importing Party after the expiration of its validity as a result of *force majeure* shall be accepted.

Section 5 Record Keeping

1. Each Party shall ensure that the competent governmental authority of the Party or its designees shall keep a record of the issued certificate of origin for a period of five years after the date on which the certificate was issued. Such record will include all antecedents, which were presented to prove the qualification as an originating good of the exporting Party.

2. Each Party shall, in accordance with its laws and regulations, ensure that the exporter to whom a certificate of origin has been issued, or the producer of a good in the exporting Party referred to in subparagraph 6(b) of Section 3 shall keep the records relating to the origin of the good for five years after the date on which the certificate of origin was issued.

3. The records to be kept in accordance with this Section may include electronic records.

Section 6
Request for Checking of Certificate of Origin

1. For the purposes of determining whether a good imported from the exporting Party under preferential tariff treatment qualifies as an originating good of the exporting Party, the customs authority of the importing Party may request information relating to the origin of the good from the competent governmental authority of the exporting Party on the basis of the certificate of origin.

2. For the purposes of paragraph 1, the competent governmental authority of the exporting Party shall, in accordance with the laws and regulations of the Party, provide the requested information in a period not exceeding three months after the date of receipt of the request. If the customs authority of the importing Party considers necessary, it may require additional information relating to the origin of the good. If additional information is requested by the customs authority of the importing Party, the competent governmental authority of the exporting Party shall, in accordance with the laws and regulations of the exporting Party, provide the requested information in a period not exceeding two months after the date of receipt of the request.

3. For the purposes of paragraph 2, the competent governmental authority of the exporting Party may request the exporter to whom the certificate of origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 6(b) of Section 3, to provide the former with the requested information.

4. The request of information in accordance with paragraph 1 shall not preclude the use of a verification method provided for in Section 7.

5. During the procedures provided for in this Section and Section 7, the customs authority of the importing Party may suspend the preferential tariff treatment while awaiting the result of verification. However, it shall not wait for the procedures to be completed before it releases the good to the importer, in accordance with its laws and regulations.

Section 7
Verification Visit

1. If the customs authority of the importing Party is not satisfied with the outcome of the request for checking pursuant to Section 6, it may request the exporting Party:

- (a) to collect and provide information relating to the origin of a good and check, for that purpose, the facilities used in the production of the good, through a visit by the competent governmental authority of the exporting Party along with the customs authority of the importing Party to the premises of the exporter to whom the certificate of origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 6(b) of Section 3; and
- (b) to provide information relating to the origin of the good in the possession of the competent governmental authority of the exporting Party or its designees during or after the visit pursuant to subparagraph (a).

2. When requesting the exporting Party to conduct a visit pursuant to paragraph 1, the customs authority of the importing Party shall deliver a written communication with such request to the exporting Party at least 60 days in advance of the proposed date of the visit, the receipt of which is to be confirmed by the exporting Party. The competent governmental authority of the exporting Party shall request the written consent of the exporter, or the producer of the good in the exporting Party, whose premises are to be visited.

3. The communication referred to in paragraph 2 shall include:

- (a) the identity of the customs authority of the importing Party issuing the communication;
- (b) the name of the exporter, or the producer of the good in the exporting Party, whose premises are requested to be visited;
- (c) the proposed date and place of the visit;

- (d) the objective and scope of the proposed visit, including specific reference to the good subject of the verification referred to in the certificate of origin; and
- (e) the names and titles of the officials of the customs authority of the importing Party to be present during the visit.

4. The exporting Party shall respond in writing to the importing Party, within 30 days of the receipt of the communication referred to in paragraph 2, whether it accepts or refuses to conduct the visit requested pursuant to paragraph 1.

5. The competent governmental authority of the exporting Party shall, in accordance with the laws and regulations of the Party, provide within 45 days or any other mutually agreed period from the last day of the visit, to the customs authority of the importing Party the information obtained pursuant to paragraph 1.

Section 8
Determination of Origin
and Preferential Tariff Treatment

1. The customs authority of the importing Party may deny preferential tariff treatment to a good for which an importer claims preferential tariff treatment where the good does not qualify as an originating good of the exporting Party or where the importer fails to comply with any of the relevant requirements of this Annex.

2. The customs authority of the importing Party may determine that a good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment, and a written determination thereof shall be sent to the competent governmental authority of the exporting Party:

- (a) where the competent governmental authority of the exporting Party fails to provide the information within the period referred to in paragraph 2 of Section 6 or paragraph 5 of Section 7;

- (b) where the exporting Party refuses to conduct a visit, or that Party fails to respond to the communication referred to in paragraph 2 of Section 7 within the period referred to in paragraph 4 of Section 7; or
- (c) where the information provided to the customs authority of the importing Party pursuant to Section 6 or 7, is not sufficient to prove that the good qualifies as an originating good of the exporting Party.

3. After carrying out the procedures outlined in Section 6 or 7 as the case may be, the customs authority of the importing Party shall provide the competent governmental authority of the exporting Party with a written determination of whether or not the good qualifies as an originating good of the exporting Party, including findings of fact and the legal basis for the determination. The competent governmental authority of the exporting Party shall inform such determination by the customs authority of the importing Party to the exporter, or the producer of the good in the exporting Party, whose premises were subject of the visit referred to in Section 7.

Section 9 Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it as confidential pursuant to this Annex, and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

2. Information obtained by the customs authority of the importing Party pursuant to this Annex:

- (a) may only be used by such authority for the purposes of this Annex; and

- (b) shall not be used by the importing Party in any criminal proceedings carried out by a court or a judge, unless the information is requested to the exporting Party and provided to the importing Party, through the diplomatic channels or other channels established in accordance with the applicable laws of the exporting Party.

Section 10
Penalties and Measures against Fraudulent Acts

Each Party shall establish or maintain, in accordance with its laws and regulations, appropriate penalties or other measures against its exporters to whom a certificate of origin has been issued and the producers of a good in the exporting Party referred to in subparagraph 6(b) of Section 3 who have committed fraudulent acts in connection with a certificate of origin, including submission of false declarations or documents to its competent governmental authority of the exporting Party or its designees.

Section 11
Implementing Procedures

Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Implementing Procedures that provide detailed regulations pursuant to which the customs authorities and the competent governmental authorities of the Parties shall implement their functions under this Annex.