

This document is the European Union's (EU) proposal for a legal text on the concept of originating products in the EU-Indonesia FTA. It has been tabled for discussion with Indonesia. The actual text in the final agreement will be a result of negotiations between the EU and Indonesia.

DISCLAIMER: *The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

PROTOCOL [XX]

CONCERNING THE DEFINITION OF THE CONCEPT OF “ORIGINATING PRODUCTS” AND METHODS OF ADMINISTRATIVE COOPERATION

SECTION 1

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Protocol:

- (a) “manufacture” means any kind of working or processing, manufacturing, producing, processing or assembling goods;
- (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) “good” means both a material and a product;
- (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) “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 European Union or in Indonesia;

- (g) “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 European Union or in Indonesia, 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;

Where the last working or processing has been subcontracted to a manufacturer, the term “manufacturer” referred to in paragraph (g) may refer to the enterprise that has employed the subcontractor.

- (h) “chapters” and “headings” and “sub-headings” mean the chapters, the headings (four digit codes) and sub-headings (six digit codes) 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”;
- (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 Indonesia;
- (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;
- (n) “exporter” means a person located in the exporting Party who is exporting the goods to the other Party and who is able to prove the origin of the exported goods, whether or not he is the manufacturer and whether or not he himself carries out the export formalities.

SECTION 2

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 (Wholly Obtained Products);
- (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 (Sufficiently Worked or Processed Products).

Article 3

Cumulation of Origin

Notwithstanding Article 2 (General Requirements), 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 7 (Insufficient Working or Processing).

Article 4

Wholly Obtained Products

1. The following shall be considered as wholly obtained in a Party:
 - (a) plant or plant products grown, cultivated, harvested, picked or gathered there;
 - (b) live animals born and raised there;
 - (c) products obtained from live animals raised there;
 - (d) products obtained from slaughtered animals born and raised there;
 - (e) products obtained by hunting, trapping, fishing, gathering or capturing there;
 - (f) products of aquaculture, where the fish, crustaceans and molluscs are born and raised there;
 - (g) minerals or other naturally occurring substances, not included in subparagraphs (a) through (f), extracted or taken from the soil or the seabed there;
 - (h) products of sea fishing and other products taken from the sea outside any territorial seas by their vessels;
 - (i) products made aboard their factory ships exclusively from products referred to in (h);

- (j) products other than fish, shellfish and other marine life taken by a Party or a person of a Party from the seabed or subsoil outside the territories of the Parties, and beyond areas over which non-Parties exercise jurisdiction provided that a Party or person of that Party has the right to exploit that seabed or subsoil in accordance with international law;
 - (k) a product that is:
 - (i) waste or scrap derived from manufacture there; or
 - (ii) waste or scrap derived from used products collected there, provided that those products are fit only for the recovery of raw materials; and
 - (l) goods produced there exclusively from products referred to in subparagraphs (a) through (k), or from their derivatives.
2. The terms “vessels” and “factory ships” in subparagraph 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 Indonesia;
 - (b) which sail under the flag of a Member State of the Union or of Indonesia; and
 - (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 Indonesia; or
 - (ii) they are owned by juridical persons:
 - (A) which have their head office and their main place of business in a Member State of the Union or Indonesia; and
 - (B) which are at least 50% owned by a Member State of the Union or by Indonesia, by public entities or nationals of one of those Parties.

Article 5

Sufficiently Worked or Processed Products

1. For the purposes of Article 2 (General Requirements), products which are not wholly obtained are considered to be sufficiently worked or processed when the conditions set out in the list in Annex (Product-Specific Rules of Origin) 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.

Article 6

Tolerances

1. By way of derogation from Article 5 (Sufficiently Worked or Processed Products) and subject to paragraphs 2 and 3 of this Article, non-originating materials which, according to the conditions set out in the list in Annex (Product-Specific Rules of Origin) 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 (Product-Specific Rules of Origin), shall apply.
2. Paragraph 1 shall not allow exceeding any of the percentages for the maximum value or weight of non-originating materials as specified in the rules laid down in the list in Annex (Product-Specific Rules of Origin).
3. Paragraphs 1 and 2 shall not apply to products wholly obtained in the territory of a Party within the meaning of Article 4 (Wholly Obtained Products). However, without prejudice to Articles 7 (Insufficient Working or Processing) and 8 (Unit of Qualification), 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 (Product-Specific Rules of Origin) for that product requires that such materials be wholly obtained.

Article 7

Insufficient Working or Processing

1. Without prejudice to paragraph 3, 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 (Sufficiently Worked or Processed Products) 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 subparagraphs (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 Indonesia 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 8

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.

Article 9

Accessories, Spare Parts and Tools

Accessories, spare parts, tools and instructional or other information materials 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 10

Sets

A set, as defined in General Rule 3 of the Harmonized System, shall be regarded as originating when all component products are originating. Where a set is composed of originating and non-originating components, the set as a whole shall be regarded as originating, provided that the value of the non-originating components does not exceed 15 per cent of the ex-works price of the set.

Article 11

Neutral Materials and Elements

The following neutral materials and elements which may be used in the manufacture of a product shall be disregarded to determine whether a product is originating:

- (a) energy and fuel;
- (b) plant and equipment, including materials used and to be used for their maintenance;
- (c) machines and tools and dies and moulds;
- (d) spare parts and materials used in the maintenance of equipment and buildings;

- (e) lubricants, greases, compounding materials and other materials used in manufacture or used to operate equipment and buildings;
- (f) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (g) equipment, devices and supplies used for testing or inspecting the good; catalyst and solvent;
- (h) other goods which are not incorporated into the final composition of the product but whose use in the manufacture of the product can be reasonably demonstrated to be a part of that manufacture.

Article 12

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. If authorised, the accounting segregation method and its application shall be recorded on the basis of the general accounting principles applicable in the Union or in Indonesia, depending on where the product is manufactured.
5. A manufacturer using the accounting segregation method shall make out 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.
6. 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.

Article 13

Packing Materials and Containers for Shipment and for Retail Sale

1. Packing materials and containers for shipment are disregarded in determining whether a

product is originating.

2. Packaging materials and containers in which a product is packaged for retail sale, if classified with the good, shall be included for the purposes of determining origin.

SECTION 3

TERRITORIAL REQUIREMENTS

Article 14

Non-Alteration

1. The originating products declared for importation in a Party shall be the same products as exported from the other Party in which they obtained originating status. 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 or exhibition of products may take place in a non-Party provided that they remain under customs supervision in the non-Party.
3. Without prejudice to the provisions of Section [XX] (Administrative Cooperation), the splitting of consignments may take place in the territory of a non-Party where carried out by the exporter or under his responsibility provided they remain under customs supervision in the non-Party.
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 15

Principle of Territoriality

1. The conditions set out in Section 2 (Definition of the Concept of “Originating Products”) 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.

SECTION 4

Article 16

Prohibition of Drawback of, or Exemption from, Customs Duties

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