

ANNEX 3

[Rules of Origin]

1. This Agreement shall apply to any article if:

- (a) that article is wholly the growth, product, or manufacture of a party or is a new or different article of commerce that has been grown, produced, or manufactured in a Party;
- (b) that article is imported directly from one Party into the other Party; and
- (c) the sum of (i) the cost or value of the materials produced in the exporting Party, plus (ii) the direct costs of processing operations performed in the exporting Party is not less than 35 percent of the appraised value of the article at the time it is entered into the other Party.

2. No article shall be considered a new or different article of commerce under this Agreement and no material shall be eligible for inclusion as domestic content under this Agreement by virtue of having merely undergone (1) simple combining or packaging operations or (2) mere dilution with water or with another substance that does not materially alter the characteristics of the article or material.

3. For the purposes of this Agreement, the expression "wholly the growth, product, or manufacture of a Party" refers both to any article which has been entirely grown, produced, or manufactured in a Party and to all materials incorporated in an article which have been entirely grown, produced, or manufactured in a Party, as distinguished from articles or materials imported into a Party from a non-participating country, whether or not such articles or materials were substantially transformed into new or different articles of commerce after their importation into the Party.

4. For the purposes of this Agreement, "country of origin" requires that an article or material, not wholly the growth, product, or manufacture, of a Party, be substantially transformed into a new and different article of commerce, having a new name, character, or use, distinct from the article or material from which it was so transformed.

5. For purposes of determining the 35 percent domestic content requirement under this Agreement, the cost or value of materials which are used in the production of an article in one Party, and which are products of the other Party, may be counted in an amount up to 15 percent of the appraised value of the article. Such materials must in fact be products of the importing Party under the country of origin criteria set forth in this Agreement.

6. (a) For the purposes of this Agreement, the cost or value of materials produced in a Party includes:
(i) The manufacturer's actual cost for the materials;
(ii) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;
(iii) The actual cost of waste or spoilage (material list), less the value of recoverable scrap; and
(iv) axes and/or duties imposed on the materials by a Party, provided they are not remitted upon exportation.

(b) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

- (i) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;
- (ii) An amount for profit; and
- (iii) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant. If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

7. For the purposes of this Agreement, direct costs of processing operations performed in a Party mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly, of the specific article under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of articles imported into a Party:

- (a) all actual labor costs involved in the growth, production, manufacture, or assembly, of the specific article, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;
- (b) dies, molds, tooling and depreciation on machinery and equipment which are allocable to the specific article;
- (c) research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific article; and
- (d) costs of inspecting and testing the specific article.

Those items that are not included as direct costs of processing operations are those which are not directly attributable to the articles under consideration or are not costs of manufacturing the product. These include, but are not limited to:

- (i) profit; and
- (ii) general expenses of doing business which are either not allocable to the specific article or are not related to the growth, production, manufacture, or assembly, of the article, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

8. For the purposes of this Agreement, "imported directly" means:

- (a) direct shipment from one Party into the other Party without passing through the territory of any intermediate country; or
- (b) if shipment is through the territory of an intermediate country, the articles in the shipment do not enter into the commerce of any intermediate country and the invoices, bills of lading, and other shipping documents, show the other Party as the final destination; or
- (c) if shipment is through an intermediate country and the invoices and other documents do not show the other Party as the final destination, then the articles in the shipment, upon arrival in that Party, are imported directly only if they

- (i) remain under the control of the customs authority in an intermediate country;
- (ii) do not enter into the commerce of an intermediate country except for the purpose of a sale other than at retail, provided that the articles are imported as a result of the original commercial transaction between the importer and the producer or the latter's sales agent;
- (iii) have not been subjected to operations other than loading and unloading, and other activities necessary to preserve the article in good condition; and
- (iv) comply with the origin requirements for articles exported to a Party from the other Party under this Agreement as stated in the documents required under the certification procedure.

9. All articles entered under this Agreement shall be documented by a certificate, specimens of which are given in the attachment to this Annex, signed by the exporter to be completed in accordance with the rules specified in the certificate. The certificate should contain sufficient information to identify the articles described on the certificate as the articles to be exported and a statement as to the percentage of value added in a Party and that the articles comply with the country of origin requirements set forth in this Agreement. The certificate will be presented to the Customs authorities of the importing Party in accordance with its internal regulations.

Notwithstanding the above, either Party may waive production of the certificate on a case by case basis for articles imported into such Party and for which the benefits of this Agreement are claimed, if the Party is otherwise satisfied that the imported articles comply with the country of origin requirements set forth in this Agreement.

The exporter or person signing the certificate of origin shall be prepared to submit a declaration setting forth all pertinent details, concerning the production or manufacture of the articles, which were used to prepare the certificate of origin. The information on the declaration should contain at least the following pertinent details:

- A. a description of the article, quantity, numbers and marks of packages, invoice numbers, and bills of lading;
- B. a description of the operations performed in the production of the article in a Party and identification of the direct costs of processing operations;
- C. a description of any materials used in production of the article which are wholly the growth, product, or manufacture of either Party, and a statement as to the cost or value of such materials;
- D. a description of the operations performed on, and a statement as to the origin and cost or value of, any foreign materials used in the article which are claimed to have been sufficiently processed in a Party so as to be materials produced in that Party; and
- E. a description of the origin and cost or value of any foreign materials used in the article which have not been substantially transformed in a Party.

This declaration shall be prepared and submitted upon request by a Party. A declaration should only be requested when a Party has reason to question the accuracy of the statements on a certificate of origin, or when a Party randomly verifies certificates of origin.

10. In order to further the administration of this Agreement, the Parties agree to assist each other in obtaining information for the purpose of reviewing transactions made under this Agreement in order to verify compliance with the conditions set forth in this Agreement.

11. The Parties will consult from time to time on the interpretation of these provisions and on practical problems which may arise with a view to prevent unnecessary barriers to trade which are inconsistent with the objectives of this Agreement. In this connection, amendments of the present rules could be proposed.