DISCLAIMER: *These texts are published for information purposes only and may undergo further modifications. These texts are without prejudice to the outcome of the Agreement between India and the EU. The texts will be final upon signing. The Agreement will become binding on the Parties only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.*

ANNEX 3-A

INTRODUCTORY NOTES
TO PRODUCT-SPECIFIC RULES OF ORIGIN

NOTE 1

General principles

1. This Annex sets out the general rules for the applicable requirements of Annex 3-B (Product-specific rules of origin) as provided for in Article 3.2(1) (Requirements for originating products).

2. For the purposes of this Annex and Annex 3-B (Product-specific rules of origin), the requirements for a product to have originating status in accordance with point (b) of Article 3.2(1) (Requirements for originating products) are:

(a) a change in tariff classification,

(b) a maximum value or weight of non-originating materials,

(c) a minimum qualifying value content,

(d) that the product is the result of a production process, or

(e) any other requirement specified in this Annex and Annex 3-B (Product-specific rules of origin).

3. Reference to weight in a product-specific rule of origin means the net weight, which is the weight of a material or a product, not including the weight of packaging for retail sale.

4. This Annex and Annex 3-B (Product-specific rules of origin) are based on the Harmonized System, as amended on 1 January 2022.

NOTE 2

The structure of Annex 3-B (Product-specific rules of origin)

1. Notes on HS sections or chapters, where applicable, are read in conjunction with the product-specific rules of origin for the relevant HS section, chapter, heading or subheading.

2. Each product-specific rule of origin set out in Column 2 of Annex 3-B (Product-specific rules of origin) applies to the corresponding product indicated in Column 1 of Annex 3-B (Product-specific rules of origin).

3. If a product is subject to alternative product-specific rules of origin, that product shall be originating in a Party if it satisfies one of the alternatives. In those cases, alternative product-specific rules are separated by one or more semi-colon (;), the last semi-colon being followed by "or".

4. If a product is subject to a product-specific rule of origin that includes multiple requirements, the product shall be originating in a Party only if it satisfies all of the requirements.

5. For the purposes of this Annex and Annex 3-B (Product-specific rules of origin), the following definitions apply:

(a) "chapter" means the first two-digits in the tariff classification number under the Harmonized System;

(b) "heading" means the first four-digits in the tariff classification number under the Harmonized System;

(c) "section" means a section of the Harmonized System; and

(d) "subheading" means the first six-digits in the tariff classification number under the Harmonized System.

6. For the purposes of the product-specific rules of origin, the following abbreviations apply:

(a) "CC" means production from non-originating materials of any chapter, except that of the product; this means that any non-originating material used in the production of the product must be classified under a chapter (2-digit level of the Harmonized System) other than that of the product (i.e. a change in chapter);

(b) "CTH" means production from non-originating materials of any heading, except that of the product; this means that any non-originating material used in the production of the product must be classified under a heading (4-digit level of the Harmonized System) other than that of the product (i.e. a change in heading);

(c) "CTSH" means production from non-originating materials of any subheading, except that of the product; this means that any non-originating material used in the production of the product must be classified under a subheading (6-digit level of the Harmonized System) other than that of the product (i.e. a change in subheading); and

(d) "WO" means that the product must be Wholly Obtained in the territory of the exporting Party within the meaning of Article 3.3 (Wholly obtained products).

NOTE 3

Application of the product-specific rules of origin

1. Article 3.2 (Requirements for originating products), concerning a product having acquired originating status which is used in the production of another product, applies whether or not originating status has been acquired inside the same place of production or factory in a Party where the product is used.

2. If a product-specific rule of origin specifically excludes certain non-originating materials or provides that the value or weight of a specified non-originating material shall not exceed a specific threshold, these conditions do not apply to non-originating materials classified elsewhere in the Harmonized System.

Example: When the rule for bulldozers (subheading 8429.11) requires: "CTH except from non-originating materials of heading 84.31", the use of non-originating materials classified elsewhere than headings 84.29 and 84.31 – such as screws (heading 73.18), insulated wires and electric conductors (heading 85.44) and various electronics (chapter 85) – is allowed.

3. If a product-specific rule of origin uses the expression "production from non-originating materials of any heading" this means the use of non-originating materials classified within the same heading or even subheading is allowed, provided the production goes beyond the insufficient production listed in Article 3.5 (Insufficient production or minimal operations and processes).

NOTE 4

Application of rules
based on a maximum value of non-originating materials
or a minimum qualifying value content

1. For the purposes of the product-specific rules of origin, the following definitions apply:

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

(b) "EXW" or "ex-works price" means:

(i) the price of the product paid or payable to the producer 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 incurred in the production of the product, minus any internal taxes which are, or may be, repaid when the product obtained is exported[1]; or

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[1] For the purposes of this point, where the last production has been subcontracted in the Party, the term "producer" means a person who has employed the subcontractor.

(ii) if there is no price paid or payable or if the actual price paid does not reflect all costs related to the production of the product which are actually incurred in the production of the product, the value of all the materials used and all other costs incurred in the production of the product in the exporting Party:

(A) including selling, general and administrative expenses, as well as profit, that can reasonably be allocated to the product; and

(B) excluding the cost of freight, insurance, all other costs incurred in transporting the product and any internal taxes of the exporting Party which are, or may be, repaid when the product obtained is exported;

(c) "FOB value" or "Free-On-Board value" means the price actually paid or payable to the exporter for a good when the good is loaded onto the carrier at the named port of exportation, including the cost of the good and all costs necessary to bring the good onto the carrier not taking into account any internal taxes which are, or may be, repaid when the product obtained is exported;

(d) "MaxNOM (EXW)" means the maximum value of non-originating materials that may be used in the production of a product, expressed as a percentage of the ex-works price of the final product;

(e) "QVC (FOB)" means the minimum qualifying value content that should be achieved in the production of a product, expressed as a percentage of the FOB value of the final product; and

(f) "VNM" means the value of the non-originating materials including materials whose originating status cannot be determined used in the production of the product, which is its customs value at the time of importation, including freight, insurance if appropriate, packing and all other costs incurred in transporting the materials to the importation port in the Party where the producer of the product is located; where the value of the non-originating materials is not known and cannot be ascertained, the first ascertainable price paid for the non-originating materials in the European Union or in India is used; the value of the non-originating materials used in the production of the product may be calculated on the basis of any inventory valuation method, including the weighted average cost or first- in, first- out, formula under accounting principles which are generally accepted in the Party.

2. A product complies with the product specific rule specified for that product in Annex 3-B (Product-specific rules of origin) when:

(a) the VNM used in the production, expressed as a percentage of the EXW of the product, is less than or equal to the MaxNOM (EXW) (%) specified for that product in Annex 3-B (Product-specific rules of origin), according to the following formula:

$$\frac{VNM}{EXW} * 100 \leq MaxNOM\ (EXW)(\%)$$

(b) the product has a qualifying value content that is greater than or equal to the QVC (FOB) (%) specified for that product in Annex 3-B (Product-specific rules of origin), according to the following formula:

$$QVC(FOB)(\%) \leq \frac{FOB - VNM}{FOB} * 100$$

NOTE 5

Definitions of processes referred to in sections V to VII, XIV and XV of Annex 3-B (Product-specific rules of origin)

For the purposes of the product-specific rules of origin, the following definitions apply:

(a) "biotechnological processing" means:

(i) fermentation[1]; or

(ii) biological or biotechnological culturing (including cell culturing[2]), hybridisation or genetic modification of:

(A) micro-organisms (such as bacteria and viruses (including bacteriophages)); or

(B) human, animal or plant cells, or algae; and

(iii) production, isolation or purification of cellular or intercellular structures (such as isolated genes, gene fragments and plasmids);

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[1] "Fermentation" means the biotechnological process in which human cells, animal cells, plant cells, micro-organisms such as bacteria, yeasts or fungi are used to produce the products.

[2] "Cell culturing" means the cultivation of human cells, animal cells or plant cells under controlled conditions (such as defined temperatures, growth medium, gas mixture, pH) outside a living organism that are used to produce the products.

(b) "chemical reaction" means a process (including a biochemical processing) 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 a molecule, with the exception of the following, which are not considered to be chemical reactions for the purposes of this definition:

(i) dissolving in water or other solvents;

(ii) the elimination of solvents including solvent water; or

(iii) the addition or elimination of water of crystallisation;

(c) "Chemical Vapour Deposition"(hereinafter referred to as "CVD") means heating of a carbon rich gas so that carbon deposits on a diamond seed;

(d) "distillation" means:

(i) atmospheric distillation: a separation process in which petroleum oils are converted, in a distillation tower, into fractions according to boiling point and the vapour then condensed into different liquefied fractions; products produced from petroleum distillation may include liquefied petroleum gas, naphtha, gasoline, kerosene, diesel or heating oil, light gas oils and lubricating oil; or

(ii) vacuum distillation: distillation at a pressure below atmospheric but not so low that it would be classed as molecular distillation; vacuum distillation is used for distilling high-boiling and heat-sensitive materials such as heavy distillates in petroleum oils to produce light to heavy vacuum gas oils and residuum;

(e) "High Pressure High Temperature" (hereinafter referred to as "HPHT") means the growth process of diamond from a diamond seed by subjecting carbon to extreme temperatures and pressures;

(f) "isomer separation" means the isolation or separation of isomers from a mixture of isomers;

(g) "Melt and Pour" means the process by which raw steel or iron is initially produced in liquid form within a steelmaking or iron making furnace and subsequently poured into its first solid state; and

(h) "mixing and blending" means the deliberate and proportionally controlled mixing or blending (including dispersing) of materials, other than the addition of diluents, only to conform to predetermined specifications which results in the production of a product having chemical characteristics that are relevant to the purposes or uses of the product and are different from the input materials.

NOTE 6

Definitions of terms used in section XI of Annex 3-B (Product-specific rules of origin)

For the purposes of the product-specific rules of origin, the following definitions apply:

(a) "man-made staple fibres" means synthetic or artificial filament tow, staple fibres or waste, of headings 55.01 to 55.07;

(b) "mechanical operations" are substantial processes that physically change the characteristics of the yarn to improve its look, performance, feel and properties. Mechanical operations include spinning, gimping, heat treatment and texturizing and do not include chemical treatments and beaming;

(c) "natural fibres" means fibres other than synthetic or artificial fibres, the use of which is restricted to the stages before spinning takes place, including waste, and, unless otherwise specified, includes fibres which have been carded, combed or otherwise processed, but not spun; "natural fibres" includes horsehair of heading 05.11, silk of headings 50.02 and 50.03, wool-fibres and fine or coarse animal hair of headings 51.01 to 51.05, cotton fibres of headings 52.01 to 52.03, and other vegetable fibres of headings 53.01 to 53.05;

(d) "printing" means a technique by which an objectively assessed function, such as colour, design, or technical performance, is given to a textile substrate with a permanent character, using screen, roller, digital or transfer techniques; and

(e) "printing (as standalone operation)" means a technique by which an objectively assessed function, such as colour, design, or technical performance, is given to a textile substrate with a permanent character, using screen, roller, digital or transfer techniques combined with at least two preparatory or finishing operations (such as scouring, bleaching, mercerizing, heat setting, raising, calendaring, shrink resistance processing, permanent finishing, decatising, impregnating, mending and burling, shearing, singeing, process of air-tumbler, process of stenter, milling, steam and shrinking, and wet decatising), provided that the value of all the non-originating materials used does not exceed 50 % of the EXW or 45 % of the FOB value of the product.

NOTE 7

Tolerances applicable to products
containing two or more basic textile materials

1. For the purposes of this Note, basic textile materials are:

(a) silk;

(b) wool;

(c) coarse animal hair;

(d) fine animal hair;

(e) horsehair;

(f) cotton;

(g) paper-making materials and paper;

(h) flax;

(i) true hemp;

(j) jute and other textile bast fibres;

(k) sisal and other textile fibres of the genus Agave;

(l) coconut, abaca, ramie and other vegetable textile fibres;

(m) synthetic man-made filaments;

(n) artificial man-made filaments;

(o) current-conducting filaments;

(p) synthetic man-made staple fibres of polypropylene;

(q) synthetic man-made staple fibres of polyester;

(r) synthetic man-made staple fibres of polyamide;

(s) synthetic man-made staple fibres of polyacrylonitrile;

(t) synthetic man-made staple fibres of polyimide;

(u) synthetic man-made staple fibres of polytetrafluoroethylene;

(v) synthetic man-made staple fibres of poly (phenylene sulphide);

(w) synthetic man-made staple fibres of poly (vinyl chloride);

(x) other synthetic man-made staple fibres;

(y) artificial man-made staple fibres of viscose;

(z) other artificial man-made staple fibres;

(aa) yarn made of polyurethane segmented with flexible segments of polyether, whether or not gimped;

(bb) yarn made of polyurethane segmented with flexible segments of polyester whether or not gimped;

(cc) products of heading 56.05 (metallised yarn) incorporating strip consisting of a core of aluminium foil or of a core of plastic film irrespective of whether or not coated with aluminium powder, of a width not exceeding 5 mm, sandwiched by means of a transparent or coloured adhesive between two layers of plastic film;

(dd) other products of heading 56.05;

(ee) glass fibres; and

(ff) metal fibres.

2. When a reference to this Note is made in Annex 3-B (Product-specific rules of origin), the requirements set out in its Column 2 shall not apply as a tolerance to non-originating basic textile materials that are used in the production of a product, provided that:

(a) the product contains two or more basic textile materials; and

(b) the weight of the non-originating basic textile materials, taken together, does not exceed 10 % of the total weight of all the basic textile materials used.

Example: For a woollen fabric of heading 51.12 containing woollen yarn of heading 51.07, cotton yarn of heading 52.05 and materials other than basic textile materials, non-originating woollen yarn which does not satisfy the requirement set out in Annex 3-B (Product-specific rules of origin), or non-originating cotton yarn which does not satisfy the requirement set out in Annex 3-B (Product-specific rules of origin), or a combination of both, may be used, provided that their total weight does not exceed 10 % of the weight of all the basic textile materials.

3. Notwithstanding point (b) of paragraph 2, for products containing "yarn made of polyurethane segmented with flexible segments of polyether, whether or not gimped", the maximum tolerance is 20 %. However, the percentage of the other non-originating basic textile materials shall not exceed 10 %.

4. Notwithstanding point (b) of paragraph 2, for products containing "strip consisting of a core of aluminium foil or of a core of plastic film irrespective of whether or not coated with aluminium powder, of a width not exceeding 5 mm, sandwiched by means of a transparent or coloured adhesive between two layers of plastic film", the maximum tolerance is 30 %. However, the percentage of the other non-originating basic textile materials shall not exceed 10 %.

NOTE 8

Other tolerances applicable to certain textile products

1. Where reference to this Note is made in Annex 3-B (Product-specific rules of origin), non-originating textile materials (with the exception of linings and interlinings) which do not satisfy the requirements set out in its Column 2 of Annex 3-B (Product-specific rules of origin) for a made-up textile product may be used, provided that they are classified in a heading other than that of the product and that their value does not exceed 9 % of the EXW or FOB value of the product.

2. Non-originating materials which are not classified under chapters 50 to 63 may be used without restriction in the production of textile products classified under chapters 50 to 63, whether or not they contain textiles.

Example: If a requirement set out in Annex 3-B (Product-specific rules of origin) provides that yarn shall be used, for a certain textile item (such as trousers), this does not prevent the use of non-originating metal items (such as buttons), because metal items are not classified under chapters 50 to 63. For the same reasons, it does not prevent the use of non-originating slide fasteners, even though slide-fasteners normally contain textiles.

3. If a requirement set out in Annex 3-B (Product-specific rules of origin) consists in a maximum value of non-originating materials, the value of the non-originating materials which are not classified under chapters 50 to 63 shall be taken into account in the calculation of the value of the non-originating materials.

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