

*This **document** is the European Union's (EU) proposal for the revised Protocol 1 on the concept of originating products in the ESA-EU Economic Partnership Agreement. It will be tabled for discussion with the ESA States. The actual text in the final agreement will be a result of negotiations between the EU and the ESA States.*

***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 1

Rules of origin and origin procedures

INDEX

SECTION A: RULES OF ORIGIN

Articles

1. **Definitions**
2. **Requirements for originating products**
3. **Wholly obtained products**
4. **Tolerances**
5. **Insufficient working or processing**
6. **Cumulation of origin between the Parties**
- 6 *bis* **Cumulation of origin with other ACP EPA States or with the overseas countries and territories**
7. **Cumulation respect to materials duty-free quota-free originating in countries benefiting from the EU's Generalized Scheme of Preferences**
8. **Cumulation respect to materials originating in neighbouring developing countries belonging to a coherent geographical entity benefiting from a free trade agreement with the EU**
9. **Unit of qualification**
10. **Accessories, spare parts and tools**
11. **Packing materials and containers for shipment**
12. **Packaging materials and containers for retail sale**
13. **Sets**
14. **Neutral elements**

20/12/19

15. **Accounting segregation for fungible materials**
16. **Returning goods**
17. **Non-alteration**

SECTION B: ORIGIN PROCEDURES

Articles

18. **Claim for preferential treatment**
19. **Timing for the claim for preferential treatment**
20. **Statement on origin**
21. **Discrepancies and minor errors**
22. **Importer's knowledge**
23. **Record keeping requirements**
24. **Waiver for low value consignments**
25. **Administrative conditions for products to benefit from the Agreement**
26. **Verification**
27. **Administrative cooperation**
28. **Denial of preferential treatment**
29. **Customs authorities involved in verification**
30. **Confidentiality**
31. **Administrative measures and sanctions**
32. **Customs Cooperation Committee**
33. **Derogations**

SECTION C: FINAL PROVISIONS

Articles

34. **Ceuta and Melilla**
35. **Revision and application of rules of origin**
36. **Annexes**
37. **Implementation of the Protocol**
38. **Transitional provision for movement certificates EUR.1 issued prior to entry into force of this Protocol**

ANNEXES

20/12/19

ANNEX I to Protocol 1: **Introductory notes to the list in Annex II**

ANNEX II to Protocol 1: **Product specific rules of origin**

ANNEX III to Protocol 1: **Information for cumulation purposes**

ANNEX IV to Protocol 1: **Statement on origin**

ANNEX V to Protocol 1: **Form for application for a derogation**

JOINT DECLARATION concerning the **Principality of Andorra**

JOINT DECLARATION concerning the **Republic of San Marino**

SECTION A

RULES OF ORIGIN

Article 1

Definitions

For the purposes of this Protocol:

- (a) ‘Chapters’, ‘headings’ and ‘sub-headings’ mean the two digit chapters, the four digit headings and the six-digit sub-headings used in the nomenclature which makes up the Harmonised Commodity Description and Coding System, referred to in this Protocol as ‘the Harmonised System’ or ‘HS’;
- (b) ‘classified’ refers to the classification of a product or material under a particular Chapter, heading or sub-heading of the Harmonised System;
- (c) ‘customs authority’ means:
 - i. in the ESA States, **[TO COMPLETE BY ESA]**
 - ii. in the EU, the services of the European Commission responsible for customs matters and the customs administrations and any other authorities responsible in the Member States of the EU for the application and enforcement of customs legislation;
- (d) ‘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);
- (e) ‘EPA’ means Economic Partnership Agreement;
- (f) ‘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;
- (g) ‘exporter’ means a person, located in an ESA State or in the EU who, in accordance with the requirements laid down in the laws and regulations of that Party, exports or produces the originating product and makes out a statement on origin;
- (h) ‘ex-works price’ means the price paid for the product ex works to the producer in whose undertaking the last working or processing is carried out, provided the price includes the value

of all the materials used and all other costs incurred in the production, minus any internal taxes which are, or may be, repaid when the product obtained is exported;

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

- i. include selling, general and administrative expenses, as well as profit, that can be reasonably allocated to the product; and
 - ii. exclude the costs 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;
- (i) ‘goods’ means both materials and products;
 - (j) ‘identical products’ means products which correspond in every respect to those described in the product description. The product description on the commercial document used for making out a statement on origin for multiple shipments must be precise enough to clearly identify that product but also the identical products to be subsequently imported under cover of that statement.
 - (k) ‘importer’ means a person who imports the originating product and claims preferential tariff treatment for it;
 - (l) ‘production’ means any kind of working or processing including assembly;
 - (m) ‘material’ means any substance used in the production of a product, including any ingredients, raw materials, components or parts;
 - (n) ‘non-originating’ material means material that does not qualify as originating under this Protocol, including a material whose originating status cannot be determined;
 - (o) ‘OCTs’ means the Overseas Countries and Territories as defined in Annex II of the Treaty on the Functioning of the European Union;
 - (p) ‘other ACP EPA States’ means all the African Caribbean and Pacific States, with the exception of the ESA States, which have at least provisionally applied an Economic Partnership Agreement with the EU;
 - (q) ‘product’ means the product resulting from the production, even if it is intended for later use as a materials in the production of another product;
 - (r) ‘territories’ includes territorial sea;
 - (s) ‘this Agreement’ means the Economic Partnership Agreement between the ESA States, of the one part, and the European Union and its Member States, of the other part;
 - (t) ‘value of non-originating materials’ means their customs value at the time of importation or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in the EU or in an ESA State.

<p>NOTE: For greater certainty, references to “a Party” or to “Parties” in this Protocol shall be understood to refer to the European Union, of the one hand, and to each of the individual ESA States, of the other hand. This note will be reviewed in light of the horizontal definition of the Parties.</p>

Requirements for originating products

1. For the purpose of implementing the preferential tariff treatment in accordance with this Agreement, a product shall be considered as originating in an ESA State if it is:
 - (a) wholly obtained in an ESA State within the meaning of Article 3; or
 - (b) produced in an ESA State exclusively from originating materials; or
 - (c) produced in an ESA State incorporating non-originating materials provided the product fulfils the conditions set out in Annex II,and it satisfies all other applicable requirements of this Protocol.

2. For the purpose of implementing the preferential tariff treatment in accordance with this Agreement, a product shall be considered as originating in the European Union if it is:
 - (a) wholly obtained in the European Union within the meaning of Article 3; or
 - (b) produced in the European Union exclusively from originating materials; or
 - (c) produced in the European Union incorporating non-originating materials provided the product fulfils the conditions set out in Annex IIand it satisfies all other applicable requirements of this Protocol.

3. The acquisition of originating status of the products referred to in paragraph 1 shall be fulfilled without interruption in an ESA State or in the European Union.

4. When a product has acquired originating status, the non-originating materials used in the production of the product shall not be taken into account when that product is incorporated as a material in another product.

Article 3

Wholly obtained products

1. The following shall be considered as wholly obtained in an ESA State or the European Union:
 - (a) a mineral or other naturally occurring substance extracted or taken from there;
 - (b) plants and vegetable products grown, cultivated, picked, gathered or harvested there;
 - (c) live animals born and raised there;
 - (d) products obtained from live animals raised there;
 - (e) products obtained from slaughtered animals born and raised there;
 - (f) products obtained by hunting, trapping, fishing, gathering, or capturing there;
 - (g) products obtained from aquaculture there, including mariculture, where the fish are born and raised there;

- (h) products of sea fishing 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) products other than fish, shellfish and other marine life extracted from the seabed or subsoil thereof outside any territorial sea provided that the Party or person of that Party has the right to work that seabed or subsoil in accordance with international law;
 - (k) waste and scrap resulting from production there;
 - (l) used goods collected there that are fit only for the recovery of raw materials, including such raw materials;
 - (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 an ESA State or in a Member State of the European Union; and
 - (b) which fly the flag of an ESA State or of a Member State of the European Union; and
 - (c) which meet one of the following conditions:
 - (i) they are at least 50 per cent owned by nationals of an ESA State or of a Member State of the European Union;
- or
- (ii) they are owned by legal person(s):
 - which have their head office and their main place of business in a an ESA State or in a Member State of the European Union; and
 - which are at least 50 per cent owned by a legal persons or nationals of one of those Parties.
3. Notwithstanding paragraph 2, upon request of an ESA State, vessels chartered or leased by the ESA State shall be treated as ‘their vessels’ to undertake fisheries activities in its Exclusive Economic Zone provided that the charter or lease agreement, for which the EU has been offered the right of first refusal, has been accepted by the Customs Cooperation Committee as providing adequate opportunities for developing the capacity of the ESA State to fish on its own account and in particular, as conferring on the ESA State the responsibility for the nautical and commercial management of the vessel at its disposal for a significant period of time. The Customs Cooperation Committee shall monitor that the conditions laid down in this paragraph are respected.
4. The conditions of paragraph 2 can be fulfilled in different States insofar they belong to ESA States. In this case, products shall be deemed to have the origin of the ESA State of the person to which the vessel or factory ship belongs in accordance with paragraph 2(c). In the event of a vessel or factory ship owned by legal or natural persons of different ESA States, the products shall be deemed to have the origin of the ESA State whose legal or natural persons contribute to the highest share in accordance with the provisions of paragraph 2(c).

Article 4

Tolerances

1. If the non-originating materials used in the production of a product do not satisfy the requirements of Annex II, the product shall be considered as originating in an ESA State or the European Union, provided that:
 - (a) the total weight of non-originating materials classified under Chapters 2 and 4 to 24 of the Harmonised System, other than processed fishery products of Chapter 16, shall not exceed 15 % of the weight of the product;
 - (b) the total value of non-originating materials for all other products, except for products falling within Chapters 50 to 63 of the Harmonised System shall not exceed 15 % of the ex-works price of the product; and
 - (c) for a product classified under Chapters 50 to 63 of the Harmonised System, tolerance shall apply as set out [in Notes 6 and 7 of Part I of Annex I].
2. Paragraph 1 does not apply if the value or weight of non-originating materials used in the production of a product exceeds any of the percentages for the maximum value or weight of non-originating materials as specified in the conditions set out in Annex II.
3. Paragraphs 1 and 2 shall not apply to products wholly obtained in an ESA State or the European Union within the meaning of Article 3. If Annex II requires that the materials used in the production of a product are wholly obtained, paragraphs 1 and 2 apply.

Article 5

Insufficient working or processing

1. Notwithstanding paragraph 1(c) and 2(c) of Article 2, a product shall not be considered originating in an ESA State or the European Union if the production of the product in that Party consists only of one or more of the following operations conducted on non-originating materials:
 - (a) preserving operations to ensure that the products remain in good condition during transport and storage;
 - (b) breaking-up, assembly or changes of packages;
 - (c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;
 - (d) ironing or pressing of textiles and textiles articles;
 - (e) simple painting or polishing operations;
 - (f) husking, partial or total bleaching; 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 or 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.
2. For the purpose of paragraph 1, operations shall be considered simple if neither special skills or machines, apparatus or equipment especially produced or installed are needed for carrying out those operations.

Article 6

Cumulation of origin between the Parties

1. Notwithstanding Article 2, materials originating in the European Union or in any ESA State shall be considered as originating in a Party when incorporated into a product obtained there, when the production carried out in that Party goes beyond the operations referred to in paragraph 1 of Article 5.
2. Notwithstanding Article 2, working and processing carried out in the European Union or in any ESA State shall be considered as having been carried out in a Party, when the materials undergo subsequent working or processing going beyond that referred to in paragraph 1 of Article 5.
3. The origin of the final product shall be determined according to the rules of origin of this Protocol and in accordance with paragraph 1 of Annex III of this Protocol.
4. In order for an exporter to complete the statement on origin referred to in paragraph 2(a) of Article 18 [[Claim for preferential tariff treatment](#)] for a product referred to paragraph 2, the exporter shall obtain from its supplier information as provided for in paragraph 2 of Annex III of this Protocol.
5. For the purpose of applying the cumulation provided for in this Article between the ESA States, Section B shall apply to cumulating ESA States.

Article 6 bis

Cumulation of origin with other ACP EPA States or with the Overseas Countries and Territories

1. Notwithstanding Article 2, materials originating in other ACP EPA State or in the OCTs shall be considered as originating in the European Union or an ESA State when incorporated into a product obtained there, provided the production carried out in that Party goes beyond the operations referred to in paragraph 1 of Article 5.

The origin of materials originating in other ACP EPA State and in the OCTs shall be determined in accordance with the rules of origin applicable under the EU's preferential arrangements with those countries and territories, and in accordance with paragraph 1 of Annex III of this Protocol.

2. Notwithstanding Article 2, working and processing carried out in other ACP EPA State or in the OCTs shall be considered as having been carried out in a Party, when the materials undergo subsequent working or processing going beyond that referred to in paragraph 1 of Article 5.

The origin of the final product shall be determined according to the rules of origin of this Protocol and in accordance with paragraph 2 of Annex III of this Protocol.

3. In order for an exporter to complete the statement on origin referred to in paragraph 2(a) of Article 18 [[Claim for preferential treatment](#)] for a product referred to paragraph 2, the exporter shall obtain from its supplier information as provided for in Annex III of this Protocol.
4. The cumulation provided for in this Article may be applied with respect to other ACP EPA State and to the OCTs only if:

- (a) all the countries or territories involved in the acquisition of the originating status have signed an arrangement or agreement on administrative cooperation which ensures correct implementation of this Article and includes a reference to the use of appropriate proofs of origin.
- (b) the ESA States and the EU supply each other, through the European Commission, with the details of the administrative cooperation agreements with the other countries or territories referred to in this Article. Each Party shall publish according to its own procedures the date on which the cumulation provided for in this Article may be applied with those countries and territories listed in this Article which have fulfilled the necessary requirements.

5. The cumulation provided for in this Article shall not apply to materials:

- (a) of Harmonised Systems Headings 16.04 and 16.05 originating in the EPA Pacific States by use of Article 6.6 of Protocol II of the Interim Partnership Agreement between the European Union, on the one part, and the Pacific States, on the other part;
- (b) of Harmonised System Headings 16.04 and 16.05 originating in the Pacific States by use of any future provision of a comprehensive Economic Partnership Agreement between the European Union and Pacific States;
- (c) originating in South Africa and which cannot be imported directly into the European Union duty-free quota-free.

6. The products to which the provisions of paragraph 5(c) shall apply are those listed in the EU's database TARIC¹, and subsequent versions, at the date of importation. The EU shall notify the Committee any change of the EU's database.

Article 7

¹ https://ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en

Cumulation respect to materials duty-free quota-free originating in countries benefiting from the EU's Generalized Scheme of Preferences

1. Notwithstanding Article 2, materials originating in countries:
 - (a) benefiting from the “Special arrangement for least developed countries” of the Generalized System of Preferences of the EU¹; or
 - (b) benefiting from duty-free quota-free access to the market of the European Union under the general provisions of the Generalized System of Preferences of the EU²;shall be considered as materials originating in an ESA State when incorporated into a product obtained there, provided the production goes beyond operations that referred to in paragraph 1 of Article 5.
2. The origin of the materials of the countries concerned shall be established in accordance with the rules of origin applicable under the Generalized System of Preferences of the EU and in accordance with Annex III of this Protocol.
3. The cumulation provided for in this paragraph shall not apply to materials:
 - (a) which at importation to the EU are subject to antidumping or countervailing duties when originating from a country which is subject to these antidumping or countervailing duties³;
 - (b) which are included in tuna products classified under HS Chapter 3 and 16 for which the duties are suspended in accordance with the general arrangements of Generalised System of Preferences of the EU;
 - (c) in respect of which tariff preferences are removed as result of graduation, of a temporary withdrawal or of a safeguard clause in accordance with the general arrangements of the Generalized System of Preferences of the EU.
4. The products to which the provisions of this Article shall apply are those listed in the EU's database TARIC⁴, and subsequent versions, at the date of importation. The EU shall notify the Committee any change of the EU's database.

The ESA States shall notify yearly to the European Commission the countries to which the cumulation provided for in this Article has been applied.
5. The cumulation provided for in this Article may be applied only provided that:
 - (a) the ESA State(s) and the countries concerned have signed an arrangement or agreement on administrative cooperation with each other, which ensures correct implementation of this Article and includes a reference to the use of appropriate proofs of origin.

¹ According to Articles 17 and 18 of Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalized tariff preferences, and subsequent versions.

² According to Article 6 of Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalized tariff preferences, and subsequent versions; materials that benefit from duty free treatment by virtue of the special incentive arrangement for sustainable development and good governance of Articles 9 to 16 of the same Regulation, but not under the general arrangement of Article 6, are not covered by this provision.

³ For the purpose of the implementation of this specific exclusion, EU non-preferential rules of origin shall apply.

⁴ https://ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en

- (b) the ESA State(s) provides the European Union, through the European Commission, with details of arrangements or agreements on administrative cooperation with the other countries referred to in this Article. Each Party shall publish according to its own internal procedures the date on which the cumulation provided for in this Article may be applied with those countries concerned by this Article which have fulfilled the necessary requirements.

Article 8

Cumulation with respect to materials originating in neighbouring developing countries belonging to a coherent geographical entity having a free trade agreement with the EU

1. In support of African integration, materials originating in neighbouring developing countries belonging to a coherent geographical entity¹, which having a free trade agreement with the European Union that provide for duty-free quota-free access to the market of the European Union, can be considered as materials originating in an ESA State, when incorporated into a product obtained there, provided that the production goes beyond the operations referred to in paragraph 1 of Article 5.
2. The origin of the materials of the countries concerned shall be established in accordance with the rules of origin applicable in the framework of the EU's preferential arrangements with those countries and in accordance with Annex III of this Protocol.
3. The cumulation provided for in this Article shall be applicable to the countries and the products listed upon a decision of the Customs Cooperation Committee.
4. The cumulation provided for in this Article may be applied only provided that:
 - (a) the ESA State(s) and the countries concerned have signed an arrangement or agreement on administrative cooperation with each other, which ensures correct implementation of this Article and includes a reference to the use of appropriate proofs of origin.
 - (b) the ESA State provides the EU, through the European Commission, with details of arrangements or agreements on administrative cooperation with the countries referred to in this Article. Each Party shall publish according to its own internal procedures the date on which the cumulation provided for in this Article may be applied with those countries listed in this Article which have fulfilled the necessary requirements.

Article 9

Unit of qualification

1. For the application of the provisions of this Protocol the unit of qualification shall be the particular product which is considered as the basic unit when classifying the product under the Harmonised System.
2. When a consignment consists of a number of identical products classified under the same heading of the Harmonised System, each individual product shall be taken into account when applying the provisions of this Protocol.

¹ Algeria, Egypt, Morocco and Tunisia

Article 10

Accessories, spare parts and tools

Accessories, spare parts, tools and instructional or other information material classified and delivered with a good that are not invoiced separately from the product, and are of a type, in quantities and of value which is customary for the product, shall have the originating status of the product with which they are delivered.

Article 11

Packing materials and containers for shipment

Packing materials and containers for shipment that are used to protect a product during transportation shall be disregarded in determining whether that product is originating.

Article 12

Packaging materials and containers for retail sale

1. The packaging materials and containers in which a product is packaged for retail sale, if classified with the product, shall be
 - (a) taken into account as originating or non-originating, as the case may be, in the calculation of the maximum value of non-originating materials if a product is subject to a maximum value of non-originating materials set out in Annex II [[Product Specific Rules of Origin](#)], and
 - (b) disregarded for determining the origin in all other cases.

Article 13

Sets

A set, as defined in General Rule 3 for the Interpretation of the Harmonised System, shall be considered as originating in an ESA State or the European Union when all of its components are originating in accordance with this Protocol. Where the set is composed of originating and non-originating components, the set as a whole shall be considered as originating in an ESA State or the European Union, provided that the value of the non-originating components does not exceed 15 per cent of the ex-works price of the set.

Article 14

Neutral elements

In order to determine whether a product is originating in an ESA State or the European Union, it shall not be necessary to determine the originating status of the following neutral elements:

- (a) fuel, energy, catalysts and solvents;
- (b) plant and equipment, spare parts and materials used in the maintenance of equipment and buildings;
- (c) machines, tools, dies and moulds;
- (d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (f) equipment, devices and supplies used for testing or inspecting the good; and
- (g) any other materials that are not incorporated and that are not intended to be incorporated into the final composition of the product.

Article 15

Accounting segregation for fungible materials

1. Originating and non-originating fungible materials shall be physically segregated during storage in order to maintain their originating and non-originating status, as the case may be. These materials may be used in the production of a product without being physically segregated during storage provided that an accounting segregation method is used.
2. The accounting segregation method referred to in paragraph 1 shall be applied in conformity with a stock management method under the accounting principles which are generally accepted in the Party. The accounting segregation method shall ensure that at any time the number of materials which could be considered as originating in a Party is the same as the number that would have been obtained by physical segregation of the stocks.
3. For the purpose of paragraph 1, '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 product.

[Article XX

Shipment of sugar

Shipment by sea between the territories of the Parties of raw sugar not containing added flavouring or colouring matter and destined for further refining, of subheadings 1701.12, 1701.13 and 1701.14 of the Harmonised System, of different origins, shall be allowed without keeping the sugar in separate stores. It shall be ensured that the amounts of such sugar which could be considered as originating is the same as the amounts that would have been declared for import by keeping the sugar in separate stores. The last port of loading should be in the territory of an ACP EPA State.]

Article 16

Returning products

If an originating product of a an ESA State or the European Union exported from that Party to a third country returns, it shall be considered as non-originating unless it can be demonstrated to the satisfaction of the customs authority of that Party that the returning product:

- (a) is the same as that exported; and
- (b) has not undergone any operation other than that necessary to preserve it in good condition while in the non-Party or while being exported.

Article 17

Non alteration

1. An originating product declared for home use in the importing Party shall not have, after exportation and prior to being declared for home use, 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.
2. Storage or exhibitions of products may take place in a third country provided that the product remains under customs supervision in that third country.
3. Without prejudice to the provisions of Section B, the splitting of consignments may take place in a third country if it is carried out by the exporter or under its responsibility, and provided that they remain under customs supervision in that third country.
4. In case of doubt as to whether the requirements provided for in paragraphs 1 to 3 are complied with, the customs authorities of the importing Party may request the importer 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 or any evidence related to the product itself.

SECTION B

ORIGIN PROCEDURES

Article 18

Claim for preferential tariff treatment

1. The importing Party shall grant preferential tariff treatment to a product originating in the other Party on the basis of a claim by the importer for preferential tariff treatment. The importer shall bear the responsibility for the correctness of the claim for preferential tariff treatment and for the compliance with the requirements provided for in this Protocol
2. A claim for preferential tariff treatment shall be based on:
 - (a) a statement on origin that the product is originating, made out by the exporter; or
 - (b) the importer's knowledge that the product is originating.
3. The importer making a claim for preferential tariff treatment based on a statement on origin shall, when required by the customs authority of the importing Party, provide a copy thereof to that authority.

Article 19

Timing for the claim for preferential tariff treatment

1. A claim for preferential tariff treatment and its basis as referred to in paragraph 2 of Article 18 shall be included in the customs import declaration in accordance with the laws and regulations of the importing Party.
2. Notwithstanding paragraph 1, the importing Party shall grant preferential tariff treatment and repay or remit any excess customs duty paid if the importer did not make a claim for preferential tariff treatment at the time of importation, provided that the product would have qualified for preferential tariff treatment when it was imported into the territory of the Party.
3. As a condition for granting preferential tariff treatment under paragraph 2, the importing Party may require that the importer makes a claim for preferential tariff treatment and provide the basis for the claim as referred to in paragraph 2 of Article 18 [[Claim for preferential tariff treatment](#)], no later than three years after the date of importation, or such longer time period as specified in the laws and regulations of a Party.

Article 20

Statement on origin

1. A statement on origin shall be made out by an exporter of a product on the basis of information demonstrating that the product is originating, including, when applicable, information on the originating status of materials used in the production of the product. The exporter shall bear the responsibility for the correctness of the statement on origin.
2. A statement on origin shall be made out by using the text which appears in Annex IV to this Protocol and in one of the linguistic versions set out in that Annex on an invoice or on any other commercial document that describes the originating product in sufficient detail to enable its identification. The importing Party shall not require the importer to submit a translation of the statement on origin.
3. A statement on origin shall be valid for one year from the date it was made out.
4. A statement on origin may apply to:
 - (a) a single shipment of a product into a Party, or;
 - (b) multiple shipments of identical products into a Party within the period specified in the statement on origin not exceeding twelve months.
6. The importing Party shall, upon the request of the importer and subject to requirements it may provide, allow a single statement on origin to be used for unassembled or disassembled products within the meaning of General Rule 2(a) of the Harmonised System falling within Sections XV to XXI of the Harmonised System when imported by instalments.

Article 21

Discrepancies and minors errors

The customs authority of the importing Party shall not reject a claim for preferential tariff treatment due solely to minor errors or discrepancies in the statement on origin.

Article 22

Importer's knowledge

Importer's knowledge that a product is originating in the exporting Party shall be based on information demonstrating that the product is originating and satisfies the requirements provided for in this Protocol.

Article 23

Record keeping requirements

1. An importer making a claim for preferential tariff treatment for a product imported into the importing Party shall, for a minimum of three years, or such longer period as required by the laws and regulations of the importing Party, after the date of claim for preferential tariff treatment, keep:
 - (a) if the claim was based on a statement on origin, the statement on origin made out by the exporter;
 - (b) if the claim was based on the importer's knowledge, all records demonstrating that the product satisfies the requirements to obtain originating status.
2. An exporter who has made out a statement on origin shall, for a minimum of four years, or such longer period as required by the laws and regulations of the exporting Party, after the making out of that statement on origin, keep a copy of the statement on origin and all other records demonstrating that the product satisfies the requirements to obtain originating status.
3. The records to be kept in accordance with this Article may be held in electronic format.

Article 24

Waiver for low value consignments

1. Notwithstanding Articles 18 [[Claim for Preferential Tariff Treatment](#)] to 22 [[Importer's knowledge](#)], the importing Party shall grant preferential treatment to products contained in low value consignments:
 - (a) sent from private persons to private persons; and
 - (b) forming part of a travellers' personal luggagewhen such products have been declared as meeting the requirements of this Protocol, where the customs authority of the importing Party has no doubts as to the veracity of such declaration.
2. The following products are excluded from the application of paragraph 1:
 - (a) a product imported by way of trade. The imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families shall not be considered as imports by way of trade if it is evident from the nature and quantity of the products that no commercial purpose is in view;

- (b) products whose importation forms part of a series of importations that may reasonably be considered to have been made separately for the purpose of avoiding the requirements of Article 18 [[Claim for Preferential Tariff Treatment](#)];
- (c) products whose total value exceeds EUR 500 in the case of low value consignments sent from private person to private person, or EUR 1 200 in the case of products forming part of a traveller's personal luggage, or a higher value limit set by each Party in accordance with their domestic legislation. The Parties shall exchange information regarding those limits.

The amounts to be used in a given national currency shall be the equivalent in that currency of the amounts expressed in euro as at the first working day of October. The amounts shall be those published for that day by the European Central Bank, unless a different amount is communicated to the European Commission by 15 October, and shall apply from 1 January the following year. The European Commission shall notify the ESA States of the relevant amounts.

- 3. The importer shall bear the responsibility for the correctness of the declaration and for the compliance with the requirements provided for in this Protocol. The record-keeping requirements set out in Article 23 [[Record Keeping Requirements](#)] shall not apply to the importer under this Article.

Article 25

Administrative conditions for products to benefit from the Agreement

- 1. Products originating within the meaning of this Protocol in a Party shall benefit, at the time of the customs import declaration, from the preferences resulting from the Agreement only on condition that they were exported on or after the date on which the exporting country complies with the provisions laid down in paragraph 2.
- 2. The Parties shall undertake to put in place:
 - (a) the necessary national and regional arrangements required for the implementation and enforcement of the rules and procedures laid down in this Protocol, including where appropriate the arrangements necessary for the application of Articles 6 to 8;
 - (b) the administrative structures and systems necessary for an appropriate management and control of the origin of products and compliance with the other conditions laid down in this Protocol.

Article 26

Verification

- 1. The customs authority of the importing Party may conduct a verification whether a product is originating or the other requirements of this Protocol are met based on risk assessment methods, which may include random selection. Such verification may be conducted by means of a request for information to the importer who made the claim referred to in Article 18 [[Claim for Preferential Tariff Treatment](#)], at the time the import declaration is submitted, before the release of the products, or after the release of the products.
- 2. The information requested pursuant to paragraph 1 shall cover no more than the following elements:

- (a) if a statement on origin was the basis of the claim referred to in subparagraph 2(a) of Article 18, that statement on origin;
 - (b) the origin criterion;
 - (c) and if the origin criterion is:
 - i. ‘wholly obtained’: the applicable category (such as harvesting, mining, fishing, etc.) and place of production;
 - ii. based on change in tariff classification: a list of all the non-originating materials including their tariff classification (in 2, 4 or 6 digit format, depending on the origin criterion);
 - iii. based on a value method: the value of the final product as well as the value of all the non-originating materials used in the production;
 - iv. based on weight: the weight of the final product as well as the weight of the relevant non-originating materials used in the final product;
 - v. based on a specific production process: a description of that process.
3. When providing the requested information, the importer may add any other information that he considers relevant for the purpose of verification.
4. Where the claim for preferential tariff treatment is based on a statement on origin referred to in paragraph 2(a) of Article 18 [[Claim for Preferential Tariff Treatment](#)], the importer shall inform the customs authority of the importing Party when the requested information of paragraph 2 may be provided by the exporter directly.
5. Where the claim for preferential tariff treatment is based on the importer’s knowledge referred to in paragraph 2(b) of Article 18 [[Claim for Preferential Tariff Treatment](#)], after having first requested information pursuant to paragraph 1 of this Article, the customs authority of the importing Party conducting the verification may send a request for information to the importer when it considers that additional information is required for verifying the originating status of the product or whether the other requirements of this Protocol are met. The customs authority of the importing Party may request the importer for specific documentation and information, where appropriate.
6. If the customs authority of the importing Party decides to suspend the granting of preferential tariff treatment to the products concerned while awaiting the results of the verification, release of the products shall be offered to the importer. As a condition for such release, the importing Party may require a guarantee or other appropriate precautionary measure. Any suspension of preferential tariff treatment shall be terminated as soon as possible after the customs authority of the importing Party has ascertained the originating status of the products concerned or the fulfilment of the other requirements of this Protocol.

Article 27

Administrative cooperation

1. In order to ensure the proper application of this Protocol, the Parties shall cooperate, through the customs authority of each Party, in verifying whether a product is originating and in compliance with the other requirements provided for in this Protocol.

2. If the claim for preferential tariff treatment is based on a statement on origin referred to in paragraph 2(a) of Article 18 [[Claim for Preferential Tariff Treatment](#)], after having first requested information in accordance with paragraph 1 of Article 26 [[Verification](#)], the customs authority of the importing Party conducting the verification may also send a request for information to the customs authority of the exporting Party within a period of two years from the date of claim for preferential tariff treatment, when the customs authority of the importing Party conducting the verification considers that it requires additional information for verifying the originating status of the product or whether the other requirements provided for in this Protocol are met. The customs authority of the importing Party may request the customs authority of the exporting Party for specific documentation and information, where appropriate.
3. The customs authority of the importing Party shall include the following information in the request referred to in paragraph 2 of this Article:
 - (a) the statement on origin;
 - (b) the identity of the customs authority issuing the request;
 - (c) the name of the exporter;
 - (d) the subject and scope of the verification; and
 - (e) where applicable any relevant documentation.
4. The customs authority of the exporting Party may, in accordance with its laws and regulations, request documentation or examination by calling for any evidence, or by visiting the premises of the exporter, to review records and observe the facilities used in the production of the product.
5. The customs authority of the exporting Party following the request referred to in paragraph 2 shall provide the following information:
 - (a) the requested documentation, where available;
 - (b) an opinion on the originating status of the product;
 - (c) the description of the product subject to examination and the tariff classification relevant to the application of the rules of origin;
 - (d) a description and explanation of the production process to support the originating status of the product;
 - (e) information on the manner in which the examination was conducted; and
 - (f) supporting documentation, where appropriate.

The customs authority of the exporting Party shall not transmit information to the customs authority of the importing Party referred to in paragraph 4 without the consent of the exporter.

6. The Parties shall provide each other, through the European Commission, the contact details of their respective customs authorities and any modification thereof within thirty days after such modification.

Denial of preferential tariff treatment

1. Subject to the requirements in paragraph 3, the customs authority of the importing Party may deny preferential tariff treatment if:
 - (a) within a period of three months following the request for information pursuant to paragraph 1 of Article 26 [Verification]:
 - (i) no reply is provided by the importer;
 - (ii) where the claim for preferential tariff treatment is based on a statement on origin referred to in subparagraph 2(a) of Article 18 [Claim for Preferential Tariff Treatment], the statement on origin was not provided; or
 - (iii) where the claim for preferential tariff treatment is based on the importer's knowledge referred to in subparagraph 2(b) of Article 18 [Claim for Preferential Tariff Treatment], the information provided by the importer is inadequate to confirm that the product is originating;
 - (b) within a period of three months following the request for additional information pursuant to paragraph 5 of Article 26 [Verification]:
 - (i) no reply is provided by the importer; or
 - (ii) the information provided by the importer is inadequate to confirm that the product is originating;
 - (c) within a period of ten months following the request for information pursuant to paragraph 2 of Article 27 [Administrative Cooperation]:
 - (i) no reply is provided by the customs authority of the exporting Party; or
 - (ii) the information provided by the customs authority of the exporting Party is inadequate to confirm that the product is originating;
2. The customs authority of the importing Party may deny preferential tariff treatment to a product for which an importer claims preferential tariff treatment where the importer fails to comply with requirements of this Protocol other than those relating to the originating status of the products.
3. Where the customs authority of the importing Party has sufficient justification to deny preferential tariff treatment in accordance with paragraph 1 of this Article, in cases where the customs authority of the exporting Party provided an opinion pursuant to paragraph 5(b) of Article 27 [Administrative Cooperation] confirming the originating status of the products, the customs authority of the importing Party shall notify the customs authority of the exporting Party, within two months of receiving the opinion, of its intention to deny the preference.

In such case, and at the request of either Party, consultations shall be held within a period of three months from the date of the notification referred to in the first subparagraph. The period for consultation may be extended on a case by case basis by mutual agreement between the customs authorities of the Parties. The consultation may take place in line with the procedure set by the Customs Cooperation Committee established pursuant to this Agreement.

At the expiry of the period for consultation, the customs authority of the importing Party shall deny the preferential tariff treatment only if, on the basis of sufficient justification, it

cannot confirm that the product is originating, and after having granted the importer the right to be heard.

Article 29

Customs authorities involved in verification

For the purpose of the verification of origin referred to in Article 26 [Verification], the administrative cooperation referred to in Article 27 [Administrative Cooperation] and the denial of preferential tariff treatment referred to in Article 29 [Denial of Preferential Tariff Treatment], the customs authority of each Party shall be a governmental authority of the Party concerned.

Article 30

Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it by the other Party, pursuant to this [Protocol], and shall protect that information from disclosure.
2. Information obtained by the authorities of the importing Party may only be used by such authority for the purposes of this Protocol. A Party may use information collected pursuant to this Protocol in any administrative, judicial, or quasi-judicial proceedings instituted for failure to comply with any condition laid down in this Protocol. A Party shall notify the person or Party who provided the information in advance of such use.
3. Confidential business information obtained from the exporter by the customs authority of the exporting Party or by importing Party through the application of Articles 26 [Verification] and 27 [Administrative Cooperation] shall not be disclosed unless otherwise provided for in this Protocol.
4. Information obtained by the customs authority of the importing Party pursuant to this Protocol shall not be used by the importing Party in any criminal proceedings carried out by a court or a judge, unless permission to use such information is requested by and provided to the importing Party through the diplomatic channels or other channels established in accordance with the applicable laws and regulations of the exporting Party.

Article 31

Administrative measures and sanctions

A Party shall impose administrative measures, and sanctions where appropriate, in accordance with its respective laws and regulations, on a person who draws up a document, or causes a document to be drawn up, which contains incorrect information provided for the purpose of obtaining a preferential tariff treatment to a product, or who does not comply with the requirements set out in Article 23 [Record Keeping Requirements], or who does not provide the evidence or refuses the visit referred to in paragraph 4 of Article 27 [Administrative Cooperation].

Article 32

[Customs Cooperation Committee

1. A [Customs Cooperation Committee] established pursuant to **Article XX** of the EPA (hereinafter referred to as ‘the Committee’), shall be responsible for the effective implementation and operation of this Protocol, in addition to other responsibilities specified in **paragraph X of Article Y** of the EPA.
2. For the purpose of this Protocol, the Committee shall have the following functions:
 - (a) taking decisions on cumulation under the conditions laid down in Article 8;
 - (b) taking decisions on derogations from this Protocol, under the conditions laid down in Article 33;
 - (c) taking decisions on the amendments of Annex II to this Protocol related to regular updates of the World Customs Organization Harmonised System nomenclature;
 - (c) reviewing and making appropriate recommendations, as necessary, to the EPA Committee on:
 - (i) the implementation and operation of this Protocol; and
 - (ii) any amendments of the provision of this Protocol proposed by a Party;For this purpose, the Committee shall examine regularly the effect on the ESA States, in particular on the least developed states, of application of this Protocol.
 - (d) setting the consultation procedure referred to in paragraph 3 of Article 29; and
 - (e) considering any other matter related to this Protocol as the representatives of the Parties may agree.
3. The Committee shall meet annually and with an agenda agreed in advance by the ESA States and the EU.]

[Article 33

Derogations

The text of this Article will be discussed during negotiations taking into account the product specific rules (PSR) and the provisions on cumulation.

The revised PSR should aim to give much more predictability to economic operators in comparison to temporary derogations from those PSR.

Therefore, we propose to discuss the text at a later stage to better assess the needs for improvements to the current provision on derogations, with regards requirements and procedural aspects.]

- X. Notwithstanding paragraphs Y to Z, an automatic derogation concerning canned tuna and tuna loins shall be granted from the date of entering into force of this Protocol within an annual quota of 8 000 tones for canned tuna and 2 000 tonnes for tuna loins.

SECTION C

FINAL PROVISIONS

Article 34

Ceuta and Melilla

1. For the purpose of this Protocol, the term “EU” does not include Ceuta and Melilla.
2. Products originating in an ESA State, when imported into Ceuta and Melilla, shall in all respects be subject to the same customs regime, including preferential tariff treatment, as that which is applied to products originating in the customs territory of the EU under Protocol 2 of the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities. The ESA States shall apply to imports of products covered by this Agreement and originating in Ceuta and Melilla the same customs regime, including preferential tariff treatment, as that which is applied to products imported from and originating in the EU.
3. The rules of origin applicable to ESA States under this Protocol shall apply in determining the origin of products exported from an ESA State to Ceuta and Melilla. The rules of origin applicable to the EU under this Protocol shall apply in determining the origin of products exported from Ceuta and Melilla to an ESA State.
4. Ceuta and Melilla shall be considered as a single territory.
5. The Spanish customs authorities shall be responsible for the application of this Protocol in Ceuta and Melilla.

[Article 35

Review of rules of origin

[to be reviewed depending in view of institutional set up of the agreement]

- [1. The EPA Committee may modify by decision the provisions of this Protocol and of its Annexes.*
- 2. In accordance with [Article 73] of this Agreement, the EPA Committee shall, whenever requested by a Party, examine the application of the provisions of this Protocol and their economic effects with a view to making any necessary amendments or adaptations.]*
- 3. The EPA Committee shall take into account among other elements the effects on the rules of origin of technological developments and development needs of the ESA States.]*

Article 36

Annexes

The Annexes to this Protocol shall form an integral part thereof.

Article 37

Implementation of the Protocol

1. The EU and the ESA States shall each take the steps necessary to implement this Protocol, including:
 - (a) the necessary national and regional arrangements required for the implementation and enforcement of the rules and procedures laid down in this Protocol, in particular the arrangements necessary for the application of the articles on cumulation;
 - (b) the creation of the administrative structures and systems required for proper management and verification of the origin of products.
2. Moreover, the ESA States and the EU shall provide each other with all necessary administrative cooperation and support in the event of a request for monitoring of the proper management and control of the Protocol in the country concerned, including visits on the spot.

Article 38

Transitional provision for movement certificates EUR.1 issued prior to entry into force of this Protocol

The customs authorities of the Parties shall accept movement certificates EUR.1 or invoice declarations which have been issued prior to the entry into force of this Protocol and in accordance with the provisions of the Protocol which is replaced by this one.

Annex III

INFORMATION FOR CUMULATION PURPOSES

1. When paragraphs 1 of article 6 and 6 *bis*, articles 7 and 8 are applied, the evidence of the originating status, of the materials exported from one of the countries referred to in Article 6, 6 *bis*, 7 and 8 to one of the Parties to be used in the production of a product shall be established by a valid proof of origin in accordance with the rules of the respective preferential arrangement between that country and the EU.

2. When paragraphs 2 of article 6 and 6 *bis* are applied, the information referred to in paragraphs 3 of articles 6 and 6 *bis* shall be limited to the following elements:
 - (a) description and HS tariff classification number of the product supplied and the non-originating materials used in its productions;
 - (b) if value methods are applied in accordance with Annex II, the value per unit and the total value of the product supplied and of the non-originating materials used in its production;
 - (c) is specific production processes are required in accordance with Annex II, a description of the production carried out on the non-originating materials used; and
 - (d) a statement by the supplier that the elements of information referred to in items (a) to (c) of this paragraph are accurate and complete, the date on which the statement is provided, and printed name and address of the supplier.

Annex IV

TEXT OF THE STATEMENT ON ORIGIN

A statement on origin shall be made out using the text set out below in one of the following linguistic versions and in accordance with the laws and regulations of the exporting Party. If the statement on origin is handwritten, it shall be written in ink in printed characters. The statement on origin shall be drawn up in accordance with the respective footnotes. The footnotes do not have to be reproduced.

[TO INSERT STATEMENT ON ORIGIN IN ALL EU OFFICIAL LANGUAGES]

English version

(Period: from to⁽¹⁾)

The exporter of the products covered by this document (Exporter Reference No⁽²⁾) declares that, except where otherwise clearly indicated, these products are of preferential origin⁽³⁾.

(Other relevant information⁽⁴⁾)

.....

(Place and date⁽⁵⁾)

.....

(name of the exporter)

.....

[TO INSERT STATEMENT ON ORIGIN IN ALL EU OFFICIAL LANGUAGES]

French version

(Période: du au⁽¹⁾)

L'exportateur des produits couverts par le présent document (n° de référence exportateur⁽²⁾) déclare que, sauf indication claire du contraire, ces produits ont l'origine préférentielle⁽³⁾.

20/12/19

(Autre information pertinente⁽⁴⁾)

.....

(Lieu et date⁽⁵⁾)

.....

(Nom de l'exportateur)

.....

[TO INSERT STATEMENT ON ORIGIN IN ALL EU OFFICIAL LANGUAGES]

(1) If the statement on origin is completed for multiple shipments of identical originating products within the meaning of subparagraph 4(b) of Article 20, indicate the period for which the statement on origin will apply. That period shall not exceed 12 months. All importations of the product must occur within the period indicated. Where a period is not applicable, the field can be left blank.

(2) Indicate the reference number through which the exporter is identified. For the European Union exporter, this will be the number assigned in accordance with the laws and regulations of the European Union. For the ESA exporter, this will be the **[TO COMPLETE BY ESA]**. The Parties shall notify each other the method used for identification of the exporters.

(3) Indicate the origin of the product; the European Union or the ESA State.

(4) Indicate, depending on the case, one or more of the following codes;

"A" for cumulation referred to in Article 6 *bis* indicating "Application of Article [6 *bis* (1) or 6 *bis* (2)] of Protocol 1 to ESA-EU EPA (name of the country(ies));

"B" for cumulation referred to in Article 7 indicating "Application of Article 7 of Protocol 1 to ESA-EU EPA (name of the country(ies)); or

(5) Place and date may be omitted if the information is contained on the document itself.

20/12/19

ANNEX V

[to be included]

JOINT DECLARATION CONCERNING THE PRINCIPALITY OF ANDORRA

1. Products originating in the Principality of Andorra falling within Chapter 25 to 97 of the Harmonised System shall be accepted by ESA States as originating in the Union within the meaning of this Agreement, provided that the customs union established by Council Decision 90/680/EEC of 26 November 1990 on the conclusion of an agreement in the form of an exchange of letters between the European Economic Community and the Principality of Andorra remains in force.
2. Protocol 1 shall apply mutatis mutandis for the purpose of defining the originating status of products referred to in paragraph 1 of this Joint Declaration.

JOINT DECLARATION CONCERNING THE REPUBLIC OF SAN MARINO

1. Products originating in the Republic of San Marino shall be accepted by ESA States as originating in the Union within the meaning of this Agreement, provided that these products are covered by the Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino, done at Brussels on 16 December 1991, and that the latter remains in force.
2. Protocol 1 shall apply mutatis mutandis for the purpose of defining the originating status of the products referred to in paragraph 1 of this Joint Declaration.