PROTOCOL

CONCERNING THE DEFINITION OF

'ORIGINATING PRODUCTS' AND

METHODS OF ADMINISTRATIVE COOPERATION

SECTION B
ORIGIN PROCEDURES

TITLE IV
DRAWBACK OR EXEMPTION

ARTICLE 14: DRAWBACK OF, OR EXEMPTION FROM, CUSTOMS DUTIES

1. After five years from the entry into force of this Agreement, upon the request of either Party, the Parties shall jointly review their duty drawback and inward processing schemes. One year after entry into force, and subsequently on a yearly basis, the Parties shall exchange available information on a reciprocal basis on the operation of their duty drawback and inward processing schemes, as well as detailed statistics as follows:

1.1 Import statistics at the 8/10 digit level by country starting from one year after the entry into force of this Agreement shall be provided for imports of materials classified under HS 2007 headings 8407, 8408, 8522, 8527, 8529, 8706, 8707 and 8708, as well as export statistics for 8703, 8519, 8521 and 8525 through 8528. Upon request, such statistics shall be provided on other materials or products. Regular information shall be exchanged on the measures taken to implement limitations on duty drawback and inward processing schemes introduced on the basis of paragraph 3 of this Article.

2. At any time after the initiation of the above review, a Party may request consultations with the other Party with a view to discussing possible limitations on duty drawback and inward processing schemes for a particular product in case there is evidence of a change in sourcing patterns since the entry into force of this Agreement which may have a negative effect on competition for domestic producers of like or directly competitive products in the requesting Party.

2.1 The abovementioned conditions would be established on the basis of evidence provided by the Party requesting consultations that:

(a) the rate of increase of dutiable imports into a Party of materials incorporated into a particular product from countries with which no free trade agreement is in force is significantly greater than the rate of increase of exports to the other Party of the product incorporating such materials, unless the Party to which the consultation request is addressed establishes that, *inter alia* such increase in imports of materials is:

(i) essentially due to an increase in domestic consumption of the product incorporating such materials of the Party;

(ii) essentially due to use of imported materials in a product other than that covered by paragraph 2;

(iii) due to an increase in exports to countries other than the other Party of the product incorporating such materials; or

(iv) limited to imports of high tech/value components, not lowering the price of the export product of the Party; and

(b) imports from the Party into the other Party of the product incorporating such materials have significantly increased in absolute terms or relative to domestic production. Consideration shall also be given to pertinent evidence as regards the effect on conditions of competition for producers of the like or directly competitive products of the other Party.[1]

3. In case of disagreement as to whether the conditions in paragraph 2 are fulfilled, the issue shall be determined through binding arbitration by a Panel established in accordance with Article 14.5 (Establishment of the Arbitration Panel) of Chapter Fourteen (Dispute Settlement) as a case of urgency[2]. Should the Panel rule that the conditions of paragraph 2 are fulfilled, unless otherwise agreed, the Parties shall, normally within 90 days and in no case more than 150 days of the ruling, limit the maximum rate of customs duties on non-originating material for that product that can be refunded to five percent.

TITLE V
PROOF OF ORIGIN

ARTICLE 15: GENERAL REQUIREMENTS

1. Products originating in the EU Party shall, on importation into Korea and products originating in Korea shall, on importation into the EU Party benefit from preferential tariff treatment of this Agreement on the basis of a declaration, subsequently referred to as the "origin declaration", given by the exporter on an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified. The texts of the origin declarations appear in Annex III.

2. Notwithstanding paragraph 1, originating products within the meaning of this Protocol shall, in the cases specified in Article 21, benefit from preferential tariff treatment of this Agreement without it being necessary to submit any of the documents referred to in paragraph 1.

ARTICLE 16: CONDITIONS FOR MAKING OUT AN ORIGIN DECLARATION

[1] The base year for the purpose of evaluating the statistical data under this Article will be the average of the latest three years immediately before the entry into force of this Agreement, each year being the fiscal year of January through December. The evidence could be based on an aggregate of all materials used as non-originating material for the product concerned or a subset of such materials. In the latter case, limitations on duty drawback and inward processing would only apply to the subset.

[2] For greater clarity, no additional consultations other than those foreseen in paragraph 2, for which the deadlines are the same as those of Article 14.3.4, are required before a Party may request the establishment of such Panel. The deadlines for the Panel to issue its ruling are indicated in Article 14.7.2.

1. An origin declaration as referred to in Article 15.1 of this Protocol may be made out:

(a) by an approved exporter within the meaning of Article 17; or

(b) by any exporter for any consignment consisting of one or more packages containing originating products whose total value does not exceed 6,000 euros.

2. Without prejudice to paragraph 3, an origin declaration may be made out if the products concerned can be considered as products originating in the EU Party or in Korea and fulfil the other requirements of this Protocol.

3. The exporter making out an origin declaration shall be prepared to submit at any time, at the request of the customs authorities of the exporting Party, all appropriate documents proving the originating status of the products concerned including statements from the suppliers or producers in accordance with domestic legislation as well as the fulfilment of the other requirements of this Protocol.

4. An origin declaration shall be made out by the exporter by typing, stamping or printing on the invoice, the delivery note or another commercial document, the text which appears in Annex III, using one of the linguistic versions set out in that Annex and in accordance with the legislation of the exporting Party. If the declaration is handwritten, it shall be written in ink in capital characters.

5. Origin declarations shall bear the original signature of the exporter in manuscript. However, an approved exporter within the meaning of Article 17 shall not be required to sign such declarations provided that he gives the customs authorities of the exporting Party a written undertaking that he accepts full responsibility for any origin declaration which identifies him as if it had been signed in manuscript by him.

6. An origin declaration may be made out by the exporter when the products to which it relates are exported, or after exportation on condition that it is presented in the importing Party no longer than two years or the period specified in the legislation of the importing Party after the importation of the products to which it relates.

ARTICLE 17: APPROVED EXPORTER

1. The customs authorities of the exporting Party may authorise any exporter, (hereinafter referred to as "approved exporter"), who exports products under this Agreement to make out origin declarations irrespective of the value of the products concerned in accordance with appropriate conditions in the respective laws and regulations of the exporting Party. An exporter seeking such authorisation must offer to the satisfaction of the customs authorities all guarantees necessary to verify the originating status of the products as well as the fulfilment of the other requirements of this Protocol.

2. The customs authorities may grant the status of approved exporter subject to any conditions which they consider appropriate.

3. The customs authorities shall grant to the approved exporter a customs authorisation number which shall appear on the origin declaration.

4. The customs authorities shall monitor the use of the authorisation by the approved exporter.

5. The customs authorities may withdraw the authorisation at any time. They shall do so where the approved exporter no longer offers the guarantees referred to in paragraph 1, no longer fulfils the conditions referred to in paragraph 2 or otherwise makes an incorrect use of the authorisation.

ARTICLE 18: VALIDITY OF PROOF OF ORIGIN

1. A proof of origin shall be valid for 12 months from the date of issue in the exporting Party, and preferential tariff treatment shall be claimed within the said period to the customs authorities of the importing Party.

2. Proofs of origin which are submitted to the customs authorities of the importing Party after the final date for presentation specified in paragraph 1 may be accepted for the purpose of preferential tariff treatment in accordance with the respective laws and regulations of the importing Party, where the failure to submit these documents by the final date set is due to exceptional circumstances.

3. In cases of belated presentation other than those of paragraph 2, the customs authorities of the importing Party may accept the proofs of origin in accordance with the procedures of the Parties where the products have been presented before the said final date.

ARTICLE 19: CLAIMS FOR PREFERENTIAL TARIFF TREATMENT AND SUBMISSION OF PROOF OF ORIGIN

For the purpose of claiming preferential tariff treatment, proofs of origin shall, if required by the laws and regulations of the importing Party, be submitted to the customs authorities of the importing Party. The said authorities may require a translation of a proof of origin and may also require the import declaration to be accompanied by a statement from the importer to the effect that the products meet the conditions required for the application of this Agreement.

ARTICLE 20: IMPORTATION BY INSTALMENTS

Where, at the request of the importer and on the conditions laid down by the customs authorities of the importing Party, dismantled or non-assembled products within the meaning of General Rule 2(a) of the HS falling within Sections XVI and XVII or headings 7308 and 9406 of the HS are imported by instalments, a single proof of origin for such products shall be submitted to the customs authorities upon importation of the first instalment.

ARTICLE 21: EXEMPTIONS FROM PROOF OF ORIGIN

1. Products sent as small packages from private persons to private persons or forming part of a traveller's personal luggage shall be admitted as originating products without requiring the submission of a proof of origin, provided that such products are not imported by way of trade and have been declared as meeting the requirements of this Protocol and where

there is no doubt as to the veracity of such a declaration. In the case of products sent by post, this declaration may be made on a postal customs declaration or on a sheet of paper annexed to that document.

2. 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 intended.

3. Furthermore, the total value of these products shall not exceed:

(a) for importation into the EU Party, 500 euros in the case of small packages or 1,200 euros in the case of products forming part of a traveller's personal luggage;

(b) for importation into Korea, 1,000 US dollars both in the case of small packages and in the case of the products forming part of a traveller's personal luggage.

4. For the purpose of paragraph 3, in cases where the products are invoiced in a currency other than euro or US dollars, amounts in the national currencies of the Parties equivalent to the amounts expressed in euro or US dollars shall be fixed in accordance with the current exchange rate applicable in the importing Party.

ARTICLE 22: SUPPORTING DOCUMENTS

The documents referred to in Article 16.3 used for the purpose of proving that products covered by proofs of origin can be considered as products originating in the EU Party or in Korea and fulfil the other requirements of this Protocol may consist *inter alia* of the following:

(a) direct evidence of the processes carried out by the exporter, supplier or producer to obtain the goods concerned, contained for example in his accounts or internal bookkeeping;

(b) documents proving the originating status of materials used, issued or made out in a Party where these documents are used as provided for in its domestic law;

(c) documents proving the working or processing of materials in a Party, issued or made out in a Party where these documents are used as provided for in its domestic law;

(d) proofs of origin proving the originating status of materials used issued or made out in a Party in accordance with this Protocol; and

(e) appropriate evidence concerning working or processing undergone outside territories of the Parties by application of Article 12, proving that the requirements of that Article have been satisfied.

ARTICLE 23: PRESERVATION OF PROOF OF ORIGIN AND SUPPORTING DOCUMENTS

1. The exporter making out an origin declaration shall keep for five years a copy of this origin declaration as well as the documents referred to in Article 16.3.

2. The importer shall keep all records related to the importation in accordance with laws and regulations of the importing Party.

3. The customs authorities of the importing Party shall keep for five years the origin declarations submitted to them.

4. The records to be kept in accordance with paragraphs 1 through 3 may include electronic records.

ARTICLE 24: DISCREPANCIES AND FORMAL ERRORS

1. The discovery of slight discrepancies between the statements made in the proof of origin and those made in the documents submitted to the customs authorities for the purpose of carrying out the formalities for importing the products shall not *ipso facto* render the proof of origin null and void if it is duly established that such document does correspond to the products submitted.

2. Obvious formal errors such as typing errors on a proof of origin should not cause this document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in this document.

ARTICLE 25: AMOUNTS EXPRESSED IN EURO

1. For the application of the provisions of Article 16.1(b) in cases where products are invoiced in a currency other than euro, amounts in the national currencies of the Member States of the European Union equivalent to the amounts expressed in euro shall be fixed annually by the EU Party and submitted to Korea.

2. A consignment shall benefit from the provisions of Article 16.1(b) by reference to the currency in which the invoice is drawn up, according to the amount fixed by the EU Party.

3. The amounts to be used in any given national currency of the Member States of the European Union shall be the equivalent in that currency of the amounts expressed in euro as at the first working day of October. The European Commission shall notify Korea of these amounts by 15 October and these amounts shall apply from 1 January the following year.

4. The Member States of the European Union may round up or down the amount resulting from the conversion into their national currency of an amount expressed in euro. The rounded-off amount may not differ from the amount resulting from the conversion by more than five percent. The Member States of the European Union may retain unchanged their national currency equivalent of an amount expressed in euro if, at the time of the annual adjustment provided for in paragraph 3, the conversion of that amount, prior to any rounding-off, results in an increase of less than 15 percent in the national currency equivalent. The national currency equivalent may be retained unchanged if the conversion would result in a decrease in that equivalent value.

5. The amounts expressed in euro shall be reviewed by the Customs Committee at the request of a Party. When carrying out this review, the Customs Committee shall consider the desirability of preserving the effects of the limits concerned in real terms. For this purpose, it may decide to modify the amounts expressed in euro.

TITLE VI
ARRANGEMENTS FOR ADMINISTRATIVE COOPERATION

ARTICLE 26: EXCHANGE OF ADDRESSES

The customs authorities of the Parties shall provide each other, through the European Commission, with the addresses of the customs authorities responsible for verifying proofs of origin.

ARTICLE 27: VERIFICATION OF PROOFS OF ORIGIN

1. In order to ensure the proper application of this Protocol, the Parties shall assist each other, through the customs authorities, in checking the authenticity of the proofs of origin and the correctness of the information given in these documents.

2. Subsequent verifications of proofs of origin shall be carried out at random or whenever the customs authorities of the importing Party have reasonable doubts as to the authenticity of such documents, the originating status of the products concerned or the fulfilment of the other requirements of this Protocol.

3. For the purposes of implementing the provisions of paragraph 1, the customs authorities of the importing Party shall return the proofs of origin or a copy of these documents, to the customs authorities of the exporting Party giving, where appropriate, the reasons for the enquiry. Any documents and information obtained suggesting that the information given on proof of origin is incorrect shall be forwarded in support of the request for verification.

4. The verification shall be carried out by the customs authorities of the exporting Party. For this purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate.

5. If the customs authorities of the importing Party decide to suspend the granting of preferential treatment to the products concerned while awaiting the results of the verification, release of the products shall be offered to the importer subject to any precautionary measures judged necessary.

6. The customs authorities requesting the verification shall be informed of the results of this verification including findings and facts, as soon as possible. These results must indicate clearly whether the documents are authentic and whether the products concerned can be considered as products originating in a Party and fulfil the other requirements of this Protocol.

7. If in cases of reasonable doubt there is no reply within 10 months of the date of the verification request or if the reply does not contain sufficient information to determine the

authenticity of the document in question or the real origin of the products, the requesting customs authorities shall except in exceptional circumstances, refuse entitlement to the preference.

8. Notwithstanding Article 2 of the Protocol on Mutual Administrative Assistance in Customs Matters, the Parties will refer to Article 7 of that Protocol for joint enquiries related to proofs of origin.

ARTICLE 28: DISPUTE SETTLEMENT

1. Where disputes arise in relation to the verification procedures of Article 27 which cannot be settled between the customs authorities requesting verification and the customs authorities responsible for carrying out this verification or where they raise a question as to the interpretation of this Protocol, they shall be submitted to the Customs Committee.

2. In all cases the settlement of disputes between the importer and the competent authorities of the importing Party shall be under the legislation of the said Party.

ARTICLE 29: PENALTIES

Penalties shall be imposed in accordance with the legislation of the Parties on any person who draws up, or causes to be drawn up, a document which contains incorrect information for the purpose of obtaining preferential treatment for products.

ARTICLE 30: FREE ZONES

1. The Parties shall take all necessary steps to ensure that products traded under cover of a proof of origin which in the course of transport use a free zone situated in their territories, are not substituted by other products and do not undergo handling other than normal operations designed to prevent their deterioration.

2. By means of an exemption to the provisions contained in paragraph 1, when products originating in a Party enter into a free zone under cover of a proof of origin and undergo treatment or processing, another proof of origin can be made out if the treatment or processing undergone is in conformity with the provisions of this Protocol.