

U.S.-Korea Free Trade Agreement

Frequently Asked Questions and Answers (FAQ's)

General Information

Q1: Where can I find information on importing from Korea under the U.S.-Korea Free Trade Agreement (FTA)?

A1: For questions about importing from Korea under the U.S.-Korea FTA, see the U.S. Customs and Border Protection (CBP) Korea FTA page by searching “Korea” at www.cbp.gov and selecting the corresponding Smart Link.

Q2: What information is available on the www.cbp.gov U.S.-Korea FTA webpage?

A2: The following information is available and/or linked from the www.cbp.gov U.S.-Korea FTA webpage:

- U.S.-Korea FTA Text
- U.S.-Korea FTA Interim Regulations (March 19, 2012)
- Harmonized Tariff Schedule of the United States (HTSUS) General Note (GN) 33 referencing the U.S.-Korea FTA
- U.S. International Trade Commission Publication 4308, including tariff items that became free immediately and the tariff phase out schedule for all other tariff items
- U.S.-Korea FTA Implementation Instructions, including certification data elements
- Quota Book Transmittals (QBTs) with quota information, including fill levels

Q3: Where can I find information on exporting to Korea?

A3: Answers to questions on exporting to Korea can be found on www.export.gov or www.USKoreaConnect.org.

Making a Claim for Preferential Tariff Treatment

Q4: How does an importer make a preference claim under the U.S.-Korea FTA?

A4: A U.S.-Korea FTA claim is made by prefacing the tariff item with the Special Program Indicator “KR” at entry summary, or by filing a 19 USC 1520(d) post-importation claim within one year of importation (19 CFR 10.1010 – 10.1011).

Q5: May a Post Entry Amendment (PEA) or Post Summary Correction (PSC) be used to make a U.S.-Korea FTA claim?

A5: No. Claims not made at entry summary should be made by filing a 19 USC 1520(d) post-importation claim within one year of importation (19 CFR 10.1010 – 10.1011).

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Q6: What responsibilities does an importer assume by making a U.S.-Korea FTA duty preference claim?

A6: When making a U.S.-Korea FTA duty preference claim, the importer certifies that the good is eligible for U.S.-Korea FTA preference and is responsible for the truthfulness of the claim. The importer is also responsible for providing the certification of origin and supporting documentation to CBP upon request if the claim is based on a written or electronic certification by the importer, exporter, or producer (19 CFR 10.1005). (Note: The fact that an importer has made a claim and/or submitted a certification based on information provided by an exporter or producer will not relieve the importer of the aforementioned responsibilities.)

Certification of Origin and Required Data Elements

Q7: If CBP requests a U.S.-Korea FTA certification of origin, which one should the importer provide to CBP - the exporter's, the producer's, or its own?

A7: If the U.S.-Korea FTA claim is based on the exporter's or producer's certification of origin [19 CFR 10.1003(a)(1)], the importer should provide that certification to CBP. If the U.S.-Korea FTA claim is based on importer certification or importer knowledge, the importer should provide its own certification of origin.

Q8: Is there an official form or format for the certification of origin under the U.S.-Korea FTA?

A8: Although there is no official certification of origin form or format required under the U.S.-Korea FTA, per 19 CFR 10.1004 there are certain data elements that must be provided to certify the origin of the goods. For specifics, see the U.S.-Korea FTA Implementation Instructions, Attachment A, available at www.cbp.gov by searching "Korea" and selecting the corresponding Smart Link.

Q9: When must the importer provide a U.S.-Korea FTA certification of origin to CBP?

A9: The importer must provide CBP with a U.S.-Korea FTA certification of origin only when requested, per 19 CFR 10.005, or when filing a 19 USC 1520(d) post-importation claim, in accordance with 19 CFR 10.1010 - 10.1011.

Q10: Can an importer make a U.S.-Korea FTA claim without an exporter or producer certification?

A10: It depends. If the importer has knowledge that the goods originate and can provide documentation to substantiate the claim, then the importer need not possess an exporter or producer certification of origin. However, if an importer makes a claim based on a certification by the exporter or producer, the certification must be in the possession of the importer at the time the claim for preferential treatment is made.

Q11: Will CBP accept an unsigned or undated certification of origin?

A11: No, the certification of origin must be signed and dated by an individual with the authority to legally bind the company [19 CFR 10.1004(a)(3)(vi) and 10.1004(a)(4)(b)].

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Q12: Will CBP accept a certification of origin if the HTSUS number is incorrect?

A12: CBP may accept a certification of origin if the HTSUS number is incorrect or request that an amended certification be submitted with a copy of the original certification as an attachment. The correct HTSUS number on the certification is a very important indicator that the origination analysis was performed using the correct product-specific rule in GN 33(o).

Q13: Can an importer submit a certification of origin to CBP dated after the preference claim?

A13: If the importer makes a claim based on a certification by the importer, exporter, or producer, the certification must be in the possession of the importer at the time the claim for preferential treatment is made. Such certification should also be dated prior to filing the claim. However, if the preferential tariff treatment is claimed on the basis of the importer's knowledge, no certification is required.

Requesting Documentation and Verification

Q14: Why is CBP requesting a U.S.-Korea FTA certification of origin?

A14: CBP periodically selects importations to review based on risk management principles.

Q15: Why is CBP requesting additional documentation to substantiate the certification of origin?

A15: CBP is authorized to conduct verifications of an importer, exporter, or producer in accordance with 19 CFR 10.1026 and 19 CFR 10.1027. If the importation is selected for verification, the importer is responsible for providing the certification and the documentation substantiating the certification to CBP, pursuant to 19 CFR 10.1005.

Q16: CBP has requested that the importer provide documentation substantiating that the good originates. What information must be provided?

A16: The information required to substantiate an origination claim depends on the rule of origin and the nature of the good. In the case of a manufactured good using a product-specific rule of origin in GN 33(o), at a minimum, the following documentation should be provided:

- descriptive literature to support classification of the imported good
- bill of materials (with a description, HTSUS number, and the originating status of each material)
- affidavit or certification attesting to the originating status of all originating materials that fail the product-specific rule
- cost data, if the product-specific rule has a regional value content requirement
- the Build Up, Build Down or Net Cost computation, if the product-specific rule has a RVC requirement

Q17: CBP has requested manufacturing information to substantiate the originating status of a good, but as the importer, I do not have those records in my possession. Must I comply?

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A17: Yes, the importer is responsible for ensuring that CBP receives documentation substantiating that the good meets a rule of origin and otherwise complies with the terms of the U.S.-Korea FTA. To protect confidentiality, a manufacturer may provide documentation substantiating the originating status of its good directly to CBP. Per 19 CFR 103.35, CBP is barred from releasing any business confidential information to the importer or any other party without consent.

Q18: If CBP requests information under the U.S.-Korea FTA, must the certifying statement and substantiating documentation be in English?

A18: CBP may request English translations of the certification and all supporting documentation.

Q19: If CBP requests a certification of origin, can the importer provide it via fax or as an email attachment?

A19: Yes, CBP will accept a digitized certification of origin as long as it contains a handwritten signature or the image of a handwritten signature.

Origination

Q20: How does a good “originate” under the U.S.-Korea FTA?

A20: In order to be an “originating” good, a good must meet a rule of origin and all other requirements [GN 33 and 19 CFR 10.1002(p)].

Q21: What are the rules of origin under the U.S.-Korea FTA?

A21: Generally speaking, a good will originate if it is:

- Wholly obtained [usually grown, fished or mined but see definition](GN 33(b)(i), 19 CFR 10.1014(a));
- Produced entirely in Korea, the United States, or both, and all non-originating materials have met an applicable product-specific rule of origin [GN 33(b)(ii), 19 CFR 10.1014(b)]; or
- Produced entirely in Korea, the United States, or both, exclusively of originating materials [GN 33(b)(iii), 19 CFR 10.1014(c)].

Q22: How does a producer know if a material used to produce his good originates?

A22: Generally speaking, the producer will know that a material originates because his supplier will provide a certification or affidavit to that effect. If a material supplier will not provide a certification or affidavit, then the producer should consider the material to be non-originating.

Q23: If the imported good is substantially manufactured in Korea, can the U.S. importer reasonably assume that it meets the terms of the U.S.-Korea FTA and make a preference claim?

A23: No, the importer would not be exercising reasonable care and may be subject to penalties if the good were found not to originate. By making a preference claim, the importer is certifying

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that the good meets the terms of the agreement and that the importer/exporter/producer will provide CBP with substantiating documentation upon request.

Q24: Can a chemical reaction result in origination?

A24: Yes, there is a chemical reaction rule of origin for goods of HTSUS Chapters 27 – 40. A chemical reaction is defined in GN 33(n)(vii).

Q25: Can purification result in origination?

A25: Yes, there is a purification rule of origin for goods of HTSUS Chapters 28 – 40. Purification is defined in GN 33(n)(viii).

Q26: If a good undergoes a chemical reaction or purification, does it also need to meet a product-specific rule of origin?

A26: No, the purpose of the chemical reaction and purification rules is to provide producers of goods in HTSUS chapters 27-40 an alternative means of establishing origination.

Q27: What is remanufacturing and can it result in origination?

A27: Remanufactured goods, classified in HTSUS Chapters 84-85, 87, or 90, or under heading 94.02, are entirely or partially comprised of recovered goods, and have a similar life expectancy and enjoy a factory warranty similar to such new goods. The U.S.-Korea FTA allows recovered goods derived in the territory of one or both of the Parties from used goods and utilized in the territory of one or both of the Parties in the production of remanufactured goods to be considered originating in accordance with GN 33(c)(ii) and 33(e).

Q28: Is there a provision to allow for goods to originate even if they have been commingled with non-originating goods? What if originating materials have been commingled with non-originating materials?

A28: Yes, see GN 33(j) and 19 CFR 10.1019 for the use of an inventory management system when calculating originating and non-originating fungible goods and materials.

Q29: What does it mean when a producer claims that a good meets a product-specific rule of origin?

A29: With respect to a tariff shift rule, the most common, it means that all non-originating materials, with the possible exception of a small de minimis value, used to produce the good undergo a tariff shift prescribed in GN 33(o).

Q30: What is de minimis?

A30: The de minimis provision allows a good to originate, as long as all non-originating materials that do not meet the prescribed tariff shift are not more than 10 percent of the adjusted value of the good (for non-textiles). However, if the good must meet a regional value content requirement to originate, the value of such non-originating materials must be taken into account when calculating the regional value content (GN 33(e) and 19 CFR 10.1018).

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Q31: What if the good in question does not have a product-specific rule of origin?

A31: Some tariff items do not have product-specific rules of origin because the U.S.-Korea FTA was negotiated using the 2002 HTSUS. If the good in question corresponds to a tariff item without a product-specific rule, until a rule is implemented, the analysis should be performed using the 2002 HTSUS tariff item and its corresponding product-specific rule. The 2002 HTSUS is available at www.usitc.gov.

Regional Value Content (RVC)

Q32: When can the RVC formula be used under the U.S.-Korea FTA?

A32: The RVC formula may be used only when the product-specific rule of origin in GN 33(o) provides for it.

Q33: When performing the RVC calculation, how is the value of the good and the materials used to produce it determined? What adjustments can be made?

A33: The value of a good and its constituent materials is determined in accordance with GN 33(e)(iii) and GN 33(g), and 19 CFR 10.1013(a), 10.1015 and 10.1016. For permissible adjustments to the value of materials, see 19 CFR 10.1016(c).

Indirect Materials

Q34: Does the U.S.-Korea FTA treat indirect materials differently from other U.S. FTAs?

A34: Yes, under the U.S.-Korea FTA, indirect materials shall be disregarded in determining the value of the non-originating or originating materials [GN 33(g)(i)(B) and GN33(h)(i), and 19 CFR 10.1015(b) and (d)]. Indirect materials are treated as originating materials in some of the other U.S. FTAs [GN 33(g)(i)(B) and GN33(h)(i), and 19 CFR 10.1015(b) and (d)].

Sets

Q35: Does the U.S.-Korea FTA allow a non-originating good to be part of a set?

A35: Yes, a non-originating good may be part of a set as long as it does not exceed 15% of the adjusted value of the set for non-textile goods, or 10% of the value of the set for textiles (19 CFR 10.1021).

Transit and Transshipment

Q36: May a U.S.-Korea FTA claim be made on goods that entered the commerce of a non-Party or that were further processed while under customs control in a non-Party country?

A36: No, goods may not enter the commerce of a non-Party, nor may they be further processed outside of the territories of the Parties per GN 33(c)(iii) and 19 CFR 10.1025.

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Goods Subject to Tariff Rate Quotas

Q37: Does the U.S.-Korea FTA provide for Tariff Rate Quotas?

A37: Yes, the U.S.-Korea FTA provides for several Tariff Rate Quotas. These are found in Chapter 98 and 99 of the HTSUS and are available at <http://usitc.gov/tata/hts/bychapter/index.htm>.

Tobacco, dairy, and certain sugar products are subject to Tariff Rate Quota.

The U.S.-Korea FTA also includes a “prospective” short supply provision for textile and apparel goods made from specified fibers, yarns and fabrics found to be not available in the U.S. or Korea in commercial quantities in a timely manner. **Currently, there are no items on this “short supply list.”** If and when the U.S. Committee for the Implementation of Textile Agreements (CITA) approves additions to the list, then headings 9920.95.00 and 9920.99.00 will be utilized to file claims for preferential treatment. If and when these temporary provisions are activated, there will be quantitative restrictions associated with the Square Meter Equivalent (SME) quantities of the imported goods made from the short supply items.

U.S. Goods Returned

Q38: May U.S. goods returned from Korea to the United States be claimed under the U.S.-Korea FTA?

A38: No, U.S. goods returned from Korea to the United States cannot be claimed under the U.S.-Korea FTA, but may be exempt from duty under HTSUS 9801.00.10.

Merchandise Processing Fee (MPF)

Q39: Are originating goods exempt from MPF under the U.S.-Korea FTA?

A39: Yes, they are exempt from MPF per 19 CFR 24.23(c)(12).

Q40: Can unconditionally free goods obtain the MPF exemption even though the “KR” Special Program Indicator is not listed in the “Special” column of the HTSUS?

A40: Yes, the importer can still make a U.S.-Korea FTA claim on unconditionally free goods to obtain the MPF exemption. All of the same requirements apply.

Q41: What is the value of the MPF exemption?

A41: MPF is 0.3464% of the adjusted value of the goods with a \$25 minimum and \$485 maximum.

Q42: Are Tariff Preference Level (TPL) goods exempt from MPF?

A42: No, TPL goods are not “originating” and thus are not exempt from MPF.

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Duty Rates and Staging (Phase Out)

Q43: Where can I find the list of goods that became duty free upon inception of the U.S.-Korea FTA?

A43: Reference USITC Publication 4308, Annex 2, Section A, available as a link from the Korea page at www.cbp.gov.

Q44: Where can I find the current and future duty rates on goods still dutiable under the U.S.-Korea FTA and information on when those goods will become duty free?

A44: Please reference USITC Publication 4308, Annex 2, Section B, available as a link from the Korea page at www.cbp.gov.

Q45: Where can I get additional information with respect to importing into the U.S. under the U.S.-Korea FTA?

A45: Questions may be addressed to our mailbox at fta@cbp.gov.

Helpful Links:

Harmonized Tariff Schedule of the United States General Note 33.
19 CFR 10, Subpart R, U.S.-Korea Free Trade Agreement.

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U.S. Customs and
Border Protection

OCT 10 2012

MEMORANDUM FOR: Directors, Field Operations

FROM: Acting Executive Director, Trade Policy and Programs
Office of International Trade *John P. Genaud*

SUBJECT: **Guidance:** U.S.-Korea Free Trade Agreement Frequently Asked Questions (FAQ's)

In the interest of informed compliance and shared responsibility, the Office of International Trade, Trade Policy and Agreements Division, is making the attached U.S.-Korea Free Trade Agreement (FTA) Frequently Asked Questions document available to U.S. importers of Korean goods.

This document provides answers to some of the most common questions arising from the implementation of the U.S.-Korea FTA. It should be referenced in conjunction with the U.S.-Korea FTA text, the Harmonized Tariff Schedule of the United States General Note 33, and 19 CFR 10, Subpart R; all available from www.cbp.gov by searching "Korea" and selecting the associated Smart Link.

Copies of this memorandum and attachment should be made available to CBP personnel and the trade community.

Questions regarding this memorandum can be directed to the Trade Agreements Branch at fta@dhs.gov.

Attachment