



INSTRUCTION AND GUIDELINE

Korea-Australia Free Trade Agreement

Rules of Origin

B_INT02/4

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B_INT02 Free Trade Agreement Rules of Origin**

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Summary of Main Points

This Instruction and Guideline outlines the rules of origin under the Korea-Australia Free Trade Agreement.

1. Introduction

1.1. Coverage of the Instruction and Guideline

- This Instruction and Guideline deals only with origin issues as they relate to the Korea-Australia Free Trade Agreement (the Agreement or KAFTA). KAFTA entered into force on 01 December 2014.

1.2. Abbreviations

1.2.1. The following abbreviations are used throughout this Instruction and Guideline:

▪ ACBPS	Australian Customs and Border Protection Service
▪ KAFTA	Korea-Australia Free Trade Agreement
▪ KAFTA Regulation	<i>Customs (Korean Rules of Origin) Regulation 2014</i>
▪ CTC	change in tariff classification
▪ Customs Act	<i>Customs Act 1901</i>
▪ Customs Regulations	Customs Regulations 1926
▪ HS	Harmonized Commodity Description and Coding System
▪ ROO	rule(s) of origin
▪ RVC	regional value content

2. Legislation

2.1. General outline of legislation

2.1.1. The requirements for claiming preferential tariff treatment under KAFTA for goods imported into Australia are contained within the following documents:

- Combined Australian Customs Tariff Nomenclature and Statistical Classification, commonly known as the 'Working Tariff'
 - Introduction
- *Customs Tariff Act 1995* (the Customs Tariff)
 - Part 1 – Main amendments
 - Part 2 – Contingent amendments
 - Schedule 10

- *Customs Act 1901*
 - Division 1J of Part VIII – Korean originating goods
 - Division 4G of Part VI – Verification powers – Exportation of goods to Korea
- *Customs Regulations 1926* (the Customs Regulations)
 - Regulation 126DB
- *Customs (Korean Rules of Origin) Regulation 2014* (the KAFTA Regulations)

2.2. Operation of the legislation

- 2.2.1. The following legislation implements Chapter 3 (Rules of Origin) of KAFTA:
- 2.2.2. *Customs Amendment (Korea-Australia Free Trade Agreement Implementation) Act 2014*:
- Part 1 Korean originating goods (incorporated into the Customs Act) - sections 153ZMA-153ZMI
 - Part 2 Verification powers (incorporated into the Customs Act) - sections 126AMA-126AMD
 - Part 3 Application provisions
- 2.2.3. *Customs (Korean Rules of Origin) Regulation 2014*
- Including Schedule 1 – Product-specific rules of origin
- 2.2.4. *Customs Regulations 1926* (the Customs Regulations)
- Regulation 126DB – refund circumstance

3. Definitions

- 3.1.1. This part sets out the important definitions (sourced from Chapter 3 of the Agreement and section 153ZMB of the Customs Act) that are relevant in determining whether goods are Korean originating goods.

3.2. The Agreement

- 3.2.1. **Aquaculture** means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding, or protection from predators.
- 3.2.2. **CIF** value means the value of a good at the time of importation, inclusive of freight, insurance, packing, and all other costs incurred in transporting the good to the importation port;
- 3.2.3. **exporter** means a person located in the territory of a Party from where a good is exported by that person;
- 3.2.4. **FOB** means the free-on-board value of a good, inclusive of the cost of transport and insurance to the port or site of final shipment abroad;
- 3.2.5. **Generally Accepted Accounting Principles** means recognised consensus or substantial authoritative support given in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities, the disclosure of information, and the preparation of financial statements. Generally Accepted Accounting Principles may encompass broad guidelines for general application, as well as detailed standards, practices and procedures;

- 3.2.6. **Material** means a good that is used or consumed in the production of another good, and physically incorporated into or classified with that good.
- 3.2.7. **non-originating good** or **non-originating material** means a good or material that does not qualify as originating under this Chapter;
- 3.2.8. **producer** means a person who engages in the production of a good in the territory of a Party;
- 3.2.9. **value** means the value of a good or material for the purposes of calculating customs duties or for the purposes of applying this Chapter.

3.3. The Customs Act 1901 (the Customs Act)

- 3.3.1. **Agreement** means the Korea-Australia Free Trade Agreement, done at Seoul on 8 April 2014, as amended from time to time.

Note: In 2014, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

- 3.3.2. **Aquaculture** has the meaning given by Article 3.30 of the Agreement.
- 3.3.3. **Australian originating goods** means goods that are Australian originating goods under a law of Korea that implements the Agreement.
- 3.3.4. **Certificate of Origin** means a certificate that is in force and that complies with the requirements of Article 3.15, 3.16 and Annex 3-C to Chapter 3, of the Agreement.
- 3.3.5. **Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30 [1988] ATS 30. In 2014, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

- 3.3.6. **Customs value** of goods has the meaning given by section 159 of the Customs Act.
- 3.3.7. **Harmonized System** means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention
- 3.3.8. **Indirect Materials** means articles used in the production of a good which are not physically incorporated into it, nor form part of it, including:
- fuel and energy
 - tools, dies and moulds
 - spare parts and materials used in the maintenance of equipment and buildings
 - lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings
 - gloves, glasses, footwear, clothing, safety equipment and supplies
 - equipment, devices and supplies used for testing or inspecting the good
 - catalysts and solvents, and
 - any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.

- 3.3.9. **Interpretation Rules** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.
- 3.3.10. **Korean originating goods** means goods that, under Division 1J of Part VIII of the Customs Act are Korean originating goods.
- 3.3.11. **non-originating material** means a good or material that does not qualify as originating under Chapter 3 of the Agreement.
- 3.3.12. **Originating materials** means:
- Korean originating goods that are used in the production of other goods, or
 - Australian originating goods that are used in the production of other goods, or
 - Indirect materials.
- 3.3.13. **Production** means any kind of working or processing, including growing, mining, harvesting, fishing, breeding, raising, trapping, hunting, manufacturing, assembling or disassembling a good.
- 3.3.14. **Territory of Australia** means territory within the meaning, so far as it relates to Australia, of Article 1.4 of the Agreement which reads as follows:
- excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory, and
 - including Australia's territorial sea, contiguous zone, exclusive economic zone and continental shelf over which Australia exercises sovereign rights or jurisdiction in accordance with international law.
- 3.3.15. **Territory of Korea** means territory within the meaning, so far as it relates to Korea, of Article 1.4 of the Agreement which reads as follows:
- the land, maritime, and air space under its sovereignty, and those maritime areas, including the seabed and subsoil adjacent to and beyond the outer limit of the territorial seas over which it may exercise sovereign rights or jurisdiction in accordance with international law and its law.

4. Overview of KAFTA

4.1. Geographical area covered by the Agreement

- 4.1.1. The Agreement covers the territories of Australia and Korea.

4.2. Goods covered by KAFTA

- 4.2.1. All goods imported into Australia from Korea are covered by KAFTA.
- 4.2.2. Section 16 of the Customs Tariff Act provides that the rates of customs duty for Korean originating goods are free unless the goods are classified to a heading or subheading in Schedule 3 that is specified in column 2 of an item in the table in Schedule 10.

5. Principles of the KAFTA Rules of Origin

5.1. Explanation of concept of Korean originating goods

- 5.1.1. ROO are essential for determining whether imported goods are eligible for claiming the preferential rates of duty available under KAFTA. ROO are defined methods for ascertaining whether a good has undergone sufficient work or processing, or substantial transformation in its production, in the territories of Australia and Korea. ROO preclude goods made in other countries from obtaining such benefits by merely transiting through Australia or Korea.
- 5.1.2. Korean originating goods are those that satisfy the requirements of:
- Division 1J of Part VIII of the Customs Act, and
 - the KAFTA Regulations.
- 5.1.3. In summary, the following requirements must be met:
- the goods are Korean originating,
 - the importer claiming preferential treatment satisfies the documentary requirements, and
 - the goods meet the consignment provision.
- 5.1.4. Division 1J of Part VIII of the Customs Act sets out the rules of origin for the following categories of goods:
- goods that are wholly obtained,
 - goods that are produced entirely from originating materials only, and
 - goods produced from non-originating materials only or from non-originating materials and originating materials.

For goods that fall within the third category, such goods must satisfy the applicable product-specific rules (PSRs) of origin as listed in Schedule 1 of the KAFTA Regulations, as a result of processes performed entirely in the territory of Korea, or the territories of Korea and Australia by one or more producers.

- 5.1.5. A PSR sets out the following criteria that apply either solely or in conjunction to a good:
- wholly obtained;
 - change of tariff classification (CTC)
 - regional value content (RVC), or
 - processing rules.
- 5.1.6. Non-originating goods or materials are those that originate from outside Australia or Korea, or those that are produced in Australia or Korea but fail to meet the ROO due to high level of offshore input into their production.

5.2. Harmonized System of tariff classification

- 5.2.1. The KAFTA PSRs, as most of the FTAs to which Australia is a party, are based on tariff classifications under the internationally accepted Harmonized System (HS). The HS organises products according to the degree of production and assigns them numbers known as tariff classifications. The HS (2012 version) is arranged into 97 chapters, covering all products in international trade. Chapters are further divided into headings. Headings can also be subdivided into subheadings.

Example: Harmonized System of Tariff Classification

Chapter 62.....Articles of apparel and clothing accessories, not knitted or crocheted

Heading 6209.....Babies' garments and clothing accessories

Subheading 6209.20.....Of cotton

- 5.2.2. As shown above, chapters are identified by a two-digit number. A heading is identified with a four-digit number and subheadings by a six-digit number.
- 5.2.3. Subheadings provide more specific descriptions than headings, and tariff classifications provide more specific descriptions than subheadings.
- 5.2.4. Under the HS, the chapter, heading, and subheading numbers for any good are identical in all countries that have adopted the HS.
- 5.2.5. Importers need to determine the HS classification of the imported good (up to the six-digit level) and use that classification to find the specific PSR in Schedule 1 of the KAFTA Regulations. If the good meets the PSR requirement and all other relevant requirements (such as the consignment provision), it is an originating good.

5.3. Other concepts in ROO

- 5.3.1. This Instruction and Guideline also explains the following ROO concepts which must be taken into consideration when importing a good, where applicable, in determining the origin of a good:
- Accumulation
 - *De minimis* provision
 - Packaging materials and containers
 - Accessories, spare parts and tools
 - Non-qualifying operations
 - Consignment provisions
 - Fungible goods and materials

6. Wholly obtained or produced goods

6.1. Statutory Provision

- 6.1.1. Section 153ZMC of the Customs Act contains provisions relating to goods that are wholly obtained or produced in Korea or in Korea and Australia:

153ZMC Goods wholly obtained in Korea or in Korea and Australia

(1) Goods are ***Korean originating goods*** if:

- (a) they are wholly obtained in Korea or in Korea and Australia; and
 - (b) either:
 - (i) the importer of the goods has, at the time for working out the rate of import duty on the goods, a Certificate of Origin, or a copy of one, for the goods; or
 - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.
- (2) Goods are ***wholly obtained in Korea or in Korea and Australia*** if, and only if, the goods are:
- (a) minerals, or other natural resources, taken or extracted from the territory of Korea; or
 - (b) vegetable goods grown, harvested, picked or gathered in the territory of Korea, or in the territory of Korea and the territory of Australia; or
 - (c) live animals born and raised in the territory of Korea, or in the territory of Korea and the territory of Australia; or
 - (d) goods obtained from live animals referred to in paragraph (c); or
 - (e) goods obtained from hunting, trapping, gathering, capturing, aquaculture or fishing conducted in Korea or the territorial sea of Korea; or
 - (f) fish, shellfish or other marine life taken from the sea, seabed, ocean floor or subsoil outside the territorial sea of Korea by ships that are registered or recorded in Korea and are entitled to fly the flag of Korea; or
 - (g) goods produced, from goods referred to in paragraph (f), on board factory ships that are registered or recorded in Korea and are entitled to fly the flag of Korea; or
 - (h) goods, other than fish, shellfish or other marine life, taken or extracted from the seabed, ocean floor or subsoil outside the territory of Korea by Korea, or a person of Korea, but only if Korea, or the person of Korea, has the right to exploit that part of the seabed, ocean floor or subsoil; or
 - (i) goods taken from outer space by Korea, or a person of Korea, and that are not processed in a country other than Korea or Australia; or
 - (j) waste and scrap that:
 - (i) has been derived from production in the territory of Korea; or
 - (ii) has been derived from used goods that are collected in the territory of Korea and that are fit only for the recovery of raw materials; or
 - (k) goods that are collected in the territory of Korea, that can no longer perform their original purpose and that are fit only for the recovery of raw materials; or
 - (l) goods produced entirely in the territory of Korea, or entirely in the territory of Korea and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (k) or from their derivatives.

6.2. Policy and Practice

6.2.1. Section 153ZMC provides that goods are Korean originating goods if they fall into any category of goods in the specified list as outlined in 6.1.1 above. For example:

- coal extracted in Korea
- fish caught in Korean waters

- plant products produced in Korea from plants that are initially grown in Australia and subsequently exported to Korea.
- 6.2.2. In order for a good to be considered as Korean originating, the importer must have the correct supporting documentation at the time preferential treatment is sought. Refer to Section 11 of this Instruction and Guideline for information on record keeping obligations.
- 6.2.3. Waste and scrap can qualify as “goods wholly obtained” under section 153ZMC of the Customs Act if derived from either production or collection in Korea and is fit only for the recovery of raw materials.

Example: Waste and Scrap

Steel pipes imported into Korea from China are used in the production of steel frames. In making the frames, the pipe is cut to the required length and the off-cuts of the pipe are fit only for the recovery of raw materials.

Since the pipe off-cuts are waste and scrap that have resulted from a production process in Korea and are fit only for the recovery of raw materials, they are considered to be “wholly obtained” goods under 153ZMC(2)(j). Thus, they are Korean originating goods.

7. Goods produced from originating materials

7.1. Statutory Provision

- 7.1.1. Section 153ZMD of the Customs Act sets out the ROO that apply to goods produced entirely in Korea, or in Korea and Australia, from originating materials:

153ZMD Goods produced in Korea, or in Korea and Australia, from originating materials

Goods are ***Korean originating goods*** if:

- a) they are produced entirely in the territory of Korea, or entirely in the territory of Korea and the territory of Australia, from originating materials only; and
- b) the importer of the goods has, at the time the goods are imported, Certificate of Origin, or a copy of one, for the goods.

7.2. Korean originating materials

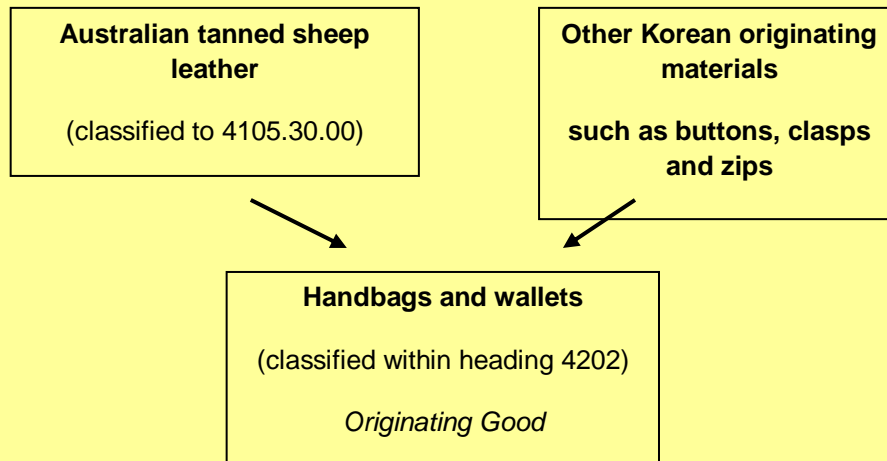
- 7.2.1. Section 153ZMD stipulates that goods produced entirely in Korea, or in Korea and Australia, from originating materials are Korean originating goods.

7.3. Policy and Practice

Accumulation:

- 7.3.1. If Australian goods that meet the KAFTA rules of origin are imported into Korea and subsequently used in the production of a good in Korea that also incorporates other Korean originating materials, the good produced in Korea is Korean originating in accordance with paragraph (a) of the definition of “originating materials” above (see 3.3.12).

Example: Goods produced in Korea using a combination of Australian and Korean originating materials



A Korean producer imports Australian tanned sheep leather (classified to 4105.30.00) from Australia. This leather is an Australian originating material.

The leather is used in Korea to produce handbags and wallets using a number of Korean originating materials (metal clasps, plastic zippers, cotton thread, etc).

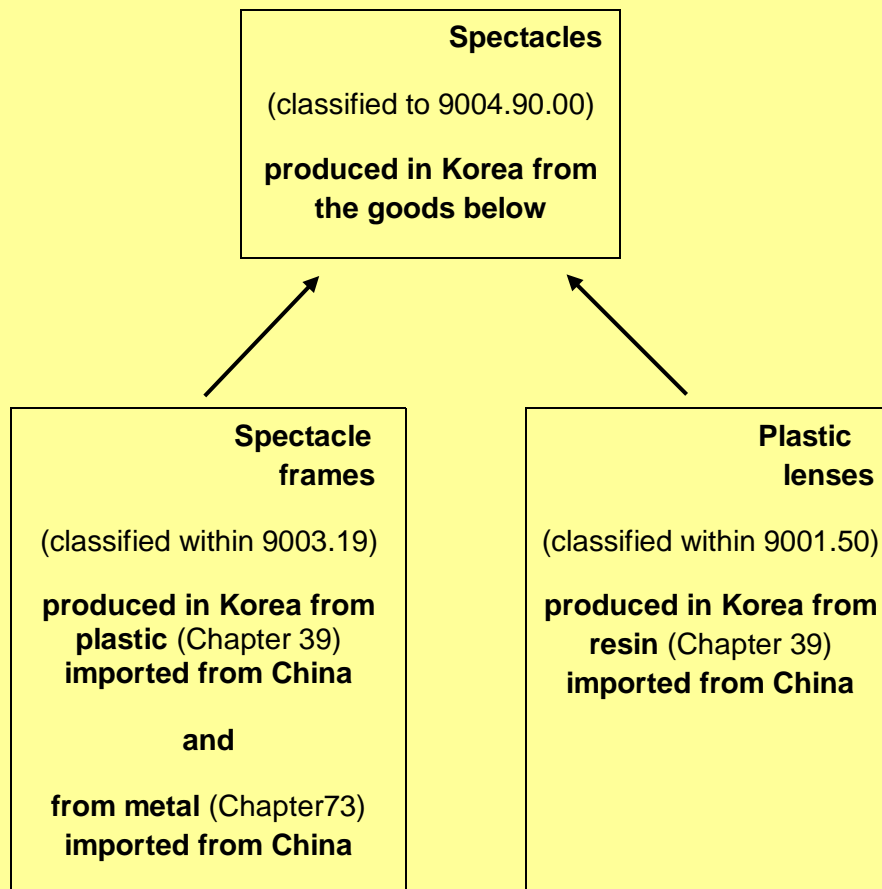
The finished handbags and wallets (classified within heading 4202) are Korean originating goods because they are produced from originating materials.

- 7.3.2. At the time the goods are imported, the importer must also have the correct supporting document in relation to the goods. Refer to Section 11 of this Instruction and Guideline for further information.

7.4. Goods produced in Korea using a combination of originating materials

- 7.4.1. Section 153ZMD also allows for the production of goods to occur from materials that are originating materials because they have met the requirements of the table in Schedule 1 to the KAFTA Regulations.

Example: Goods produced in Korea using a combination of originating materials



In this example, the spectacle frames and the plastic lenses are originating materials as they meet the PSRs specified in the KAFTA Regulations.

As the materials used in the production of the spectacles are originating materials, the spectacles are Korean originating goods in accordance with section 153ZMD.

7.5. Indirect materials

- 7.5.1. All indirect materials used in the production of Korean originating goods/materials are treated as originating materials regardless of their origin.
- 7.5.2. Indirect materials as defined above.

Example: Indirect materials

Tools and safety equipment, produced in China, are used by workers in Korea during the operation of equipment used to produce the spectacles in the above example. Such tools and safety equipment meet the terms of paragraph (b) of the definition of “indirect materials” and are thereby considered to be originating materials by the definition of “originating materials”.

8. Goods produced from non-originating materials

8.1. Statutory Provisions

- 8.1.1. Section 153ZME of the Customs Act contains provisions that apply to goods produced in Korea, or Korea and Australia, that incorporate non-originating materials:

153ZME Goods produced in Korea, or in Korea and Australia, from non-originating materials

- (1) Goods are ***Korean originating goods*** if:
- a) they are classified to a heading or subheading of the Harmonized System specified in column 1 or 2 of the table in Schedule 1 to the *Customs (Korean Rules of Origin) Regulation 2014*; and
 - b) they are produced entirely in the territory of Korea, or entirely in the territory of Korea and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and
 - c) each requirement that is prescribed by the regulations to apply in relation to the goods is satisfied, and
 - d) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

Change in tariff classification

- (2) The regulations may prescribe that each non-originating material used in the production of the goods is required to satisfy a prescribed change in tariff classification.
- (3) The regulations may also prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.
- (4) If:
- a) the requirement referred to in subsection (2) applies in relation to the goods; and
 - b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement referred to in subsection (2) is taken to be satisfied if the total value of those non-originating materials does not exceed 10% of the customs value of the goods.
- (5) Subsection (4) above does not apply in relation to goods that are classified to a heading or subheading of the Harmonized System falling within the following:
- a) heading 0301 to 0303 or 0305 to 0308 of Chapter 3;
 - b) heading 0701 to subheading 0710.10 or heading 0713 to 0714 of Chapter 7;
 - c) heading 0801 to 0810 or subheading 0813.10 to 0813.40 of Chapter 8.
- (6) If:
- a) the requirement referred to in subsection (2) applies in relation to the goods; and
 - b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System, and

- c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement referred to in subsection (2) is taken to be satisfied if the total weight of those non-originating materials does not exceed 10% of the total weight of the goods.

Regional value content

- (7) The regulations may prescribe that the goods are required to have a regional value content of at least a prescribed percentage.
- (8) If:
- a) the goods are required to have a regional value content of at least a particular percentage; and
 - b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
 - c) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and
 - d) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

then the regulations must require the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations.

No limit on regulations

- (9) Subsections (2) and (6) do not limit paragraph (1)(c).

8.1.2. In determining whether goods are produced in Korea, or in Korea and Australia, subsections 153ZMB (2), (3), and (4) should also be considered, as stated below:

- *Regional value content of goods*

(2) The regional value content of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different regional value content rules for different kinds of goods.
- *Value of goods*

(3) The value of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.
- *Tariff classifications*

(4) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

8.1.3. The KAFTA Regulations prescribes matters for the purposes of section 153ZME and subsections 153ZMB(2), (3) and (4).

8.2. Policy and practice

- 8.2.1. Section 153ZME of the Customs Act sets out the rules for determining whether a good is Korean originating if the good incorporates non-originating materials in its production process in Korea, or in both Korea and Australia.
- 8.2.2. Goods are Korean originating goods if all the requirements of subsection 153ZME(1) have been met. The requirements of this subsection are that:
- the tariff classification of the goods as entered on a Customs import declaration corresponds with a heading or subheading in Column 1 of the table in Schedule 1 of the KAFTA Regulations
 - production of the final good occurred entirely in Korea or in Korea and Australia, from non-originating materials only or from non-originating materials and originating materials
 - each requirement that is prescribed in the KAFTA Regulations that apply in relation to the goods is satisfied, and
 - the importer of the goods has the correct supporting documentation in relation to the goods at the time for working out the rate of import duty on the goods (unless Australia has waived the requirement for a Certificate of Origin as stated in subparagraph 153ZME(d)(ii)).
- 8.2.3. The table in Schedule 1 of the KAFTA Regulations lists the PSRs that specify the origin criteria (i.e. CTC, RVC, or processing requirement) for determining whether the goods have undergone substantial transformation. Column 1 of the Table lists the tariff classifications of goods at the heading or subheading level based on the HS 2012 version. Column 2 provides for the product description for the goods corresponding to the classifications in Column 1. Column 3 sets out the product specific rules relevant to the tariff classifications in Column 1.

Some examples to illustrate the different types of rules appearing in the Schedule 1 table are:

PSR = CTC only

The rule will be set at either the heading or subheading level and it may require that the change in tariff classification from input materials to the final good at chapter, heading or subheading level.

Column 1	Column 2	Column 3
Tariff classification	Description of Products	Product-Specific Rule
0811.10	Strawberries	A change to subheading 0811.10 from any other chapter

PSR = CTC except from certain classifications

Column 1	Column 2	Column 3
Tariff classification	Description of Products	Product-Specific Rule
1602.41	Hams and cuts thereof	A change to subheading 1602.41 from any other chapter, except from

		chapters 1 and 2
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PSR = CTC provided certain requirements have been met

Column 1	Column 2	Column 3
Tariff classification	Description of Products	Product-Specific Rule
3808.91	Insecticides	A change to subheading 3808.91 from any other subheading, provided that at least 50 per cent by weight of the active ingredient/s are originating

PSR = CTC or RVC

Column 1	Column 2	Column 3
Tariff classification	Description of Products	Product-Specific Rule
2009.90	Mixtures of juices	Either: (a) a change to subheading 2009.90 from any other heading; or (b) no change in tariff classification is required provided that there is a regional value content of at least 40%

8.3. Change in Tariff Classification Requirement (CTC)

- 8.3.1. Subsection 153ZME(2) of the Customs Act states that the Regulations may prescribe that each non-originating material used in the production of goods is required to satisfy a prescribed CTC. This requirement is set out in Part 2 of the KAFTA Regulations.
- 8.3.2. The CTC concept applies only to non-originating materials. This means that non-originating materials must not have the same classification under the HS as the final good into which they are incorporated. In other words, the tariff classification of the final good (after the production process) must be different to the tariff classification of each non-originating material (before the production process). This approach ensures that non-originating materials incorporated into a good have undergone sufficient transformation within the FTA area to justify the claim that the good is Korean originating.
- 8.3.3. Subsections 153ZME(2) and (3) directly address the CTC test.

Example : CTC requirement

Tropical fruit juice (HS 2009.90) are made in Korea from imported bananas (HS 0803) and pineapples (HS 0804.30), combined with oranges grown in Korea.

The PSR for a good that is classified to the subheading of 2009.90 states:

Either:

- (a) a change to subheading 2009.90 from any other heading; or
- (b) no change in tariff classification is required provided that there is a regional value content of at least 40%

In the case that the trader chooses to use the CTC rule in this PSR for determining the originating status of the tropical fruit juice, the CTC requires that all the materials that go into the making of the tropical fruit juice must fall within classifications that are outside of heading 2009. As the banana is classified to heading 0803 and the pineapple to heading 0804, these non-originating materials meet the CTC requirement. The oranges are the produce of Korea and are therefore an originating material, which is not required to undergo the CTC test. The tropical fruit juice is therefore Korean originating.

8.4. CTC requirement – Cumulation

- 8.4.1. If non-originating materials do not satisfy the prescribed CTC requirement for the final good, it is still possible for that requirement to be satisfied. This can only occur if the material was produced entirely in Korea, or entirely in Korea and Australia, from other non-originating materials and each of those materials satisfies the same CTC test as the final good. (Part 2 of the KAFTA Regulations sets out this provision.)

Example: CTC requirement (cumulation)

A producer of suits in Korea purchases wool fabric from Australia which was produced using non-originating materials. The wool fabric has met the rules of origin requirements for it to be determined as an originating good of Australia, therefore under the cumulation provisions it is also an originating good (for preferential duty and rules of origin purposes) of Korea.

8.5. *De minimis* provisions

- 8.5.1. The CTC requirement under subsection 153ZME(2) is also taken to be satisfied if the good meets the requirement of subsections 153ZME(4) or (6) – the *de minimis* provisions.
- 8.5.2. Although the CTC concept is simple and straightforward to apply, it requires that all non-originating materials undergo the prescribed tariff classification change. There are also cases where a very low percentage of the non-originating materials used to produce a good may not meet the required CTC. Because of that, the good would fail to qualify as Korean originating good if there was no *de minimis* provision. .

- 8.5.3. Under subsection 153ZME(4), the *de minimis* provision allows a good to qualify as Korean originating provided the total value of all non-originating materials used in the production of the good that do not satisfy the CTC does not exceed 10% of the customs value of the goods.
- 8.5.4. Subsection 153ZM(5) sets out that the *de minimis* provisions does not apply to goods classified under the HS codes 0301 to 0303, 0305 to 0308, 0701 to 0710.10, 0713 to 0714, 0801 to 0810 and 0813.10 to 0813.40.
- 8.5.5. For goods that are classified in Chapters 50 to 63 of the HS produced in the territory of Korea or the territories of Korea and Australia, subsection 153ZME(6) provides that the good shall be considered to be originating if the total weight of all non-originating fibre or yarns used in the production of the component that determines the tariff classification of that good, that do not undergo the applicable changes in tariff classification, does not exceed 10% of the weight of the good.

Example: CTC requirement – *de minimis* by value

A good uses two materials, A and B, and both are non-originating materials. As a result of its transformation into the finished good, A meets the required HS classification change, but B does not.

Because B does not make the required change, the finished good will not qualify unless the value of B is no more than 10% of the good's customs value.

The good is valued at \$100 and the value of material B is \$5. The value of B is 5% of the good's customs value, therefore the goods is considered Korean originating.

Example: CTC requirement – *de minimis* by weight

A good classified within chapters 50 to 63 incorporates three materials that are non-originating.

As a result of their transformation into the finished good, materials A and B meet the CTC, but material C does not.

Because C does not meet the required change, the finished good will not qualify as originating unless the weight of material C is no more than 10% of the good's total weight.

If the finished good weighs 50 grams and the weight of material C is 2 grams, the weight of C is 4% of the good's total weight. Therefore the finished good is considered to be Korean originating.

8.6. Regional Value Content requirement (RVC)

8.6.1. Section 153ZMB(2) of the Customs Act states that the regional value content of goods for the purposes of this Division is to be worked out in accordance with the Regulations. The Regulations may prescribe different regional value content rules for different kinds of goods.

8.6.2. Part 3 of the KAFTA Regulations sets out the rules for calculation of RVC, as follows:

- Build-down Method

$$\text{RVC} = \frac{V - \text{VNM}}{\text{AV}} \times 100$$

OR

- Build-up Method

$$\text{RVC} = \frac{\text{VOM}}{\text{AV}} \times 100$$

Where:

RVC is the regional value content of the good, expressed as a percentage.

AV means the customs value of the goods worked out under Division 2 of Part VIII of the Customs Act.

value of non-originating materials (VNM) means the value of the non-originating materials, including materials of undetermined origin, worked out under Part 4 of the KAFTA Regulations used in the production of the goods.

value of originating materials (VOM) means the value of originating materials used in the production of the goods as worked out under Part 4 of the KAFTA Regulations.

Example: RVC calculation - Build-down method

A Korean producer sells a good to an Australian importer for \$200 in an arm's-length sale. The value of non-originating materials used in the good is \$60. Using the build-down method, the producer calculates the RVC as follows:

$$\text{RVC} = \frac{V - \text{VNM}}{V} \times 100$$

$$70\% = \frac{\$200 - \$60}{\$200} \times 100$$

Therefore, using the build-down method, the RVC of the good is 70%.

8.7. Alternative or additional rules

- 8.7.1. For some goods, the PSRs in Schedule 1 of the KAFTA Regulations may specify:
- an RVC requirement as additional to the CTC requirement; or
 - an RVC requirement as alternative to a CTC requirement.
- 8.7.2. In cases where a RVC requirement is specified as additional to a CTC requirement, goods need to satisfy both the CTC requirement and the specified RVC requirement to qualify as Korean originating goods.
- 8.7.3. In cases where the PSR provides for options to determine origin, all the requirements of the option chosen (e.g. the CTC requirement only or an RVC requirement only) must be met for the good to qualify as a Korean originating good.

9. Other originating goods and provisions

9.1. Packaging materials and containers

- 9.1.1. Section 153ZMF of the Customs Act outlines the treatment to be given to packaging materials and containers in which imported goods are packaged for retail sale for the purposes of determining the origin of goods.
- 9.1.2. Subsection 153ZMF(1) states that if
- a) goods are packaged for retail sale in packaging material or a container; and
 - b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules
- then the packaging material or container is to be disregarded for the purposes of determining the origin of the goods.

Regional value content

- 9.1.3. However, subsection 153ZMF(2) adds that if the goods are required to have a regional value content of at least a particular percentage, the Regulations must require the value of the packaging material or container to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods.

Example: Packaging materials and containers

Dolls (9503) are made in Korea. The dolls are wrapped in tissue paper and packed in cardboard boxes described with the brand logo for retail sale. Both the tissue paper and the cardboard box are of Chinese origin.

The product specific ROO for 9503 is:

Either:

- a) a change to heading 9503 from any other heading; or
- b) no change in tariff classification is required provided that there is a regional value content of at least 40%

The tissue paper and cardboard box are disregarded for the purpose of the CTC requirement; however, their value must be counted as non-

originating in calculating the RVC, if RVC was used.

Note: The value of the packaging material or container is to be worked out in accordance with the Regulations: see subsection 153ZMB(3)

- 9.1.4. Part 4 of the KAFTA Regulations prescribes how to determine the value of the packaging materials or containers.

9.2. Accessories, spare parts and tools

- 9.2.1. Part 4 of the KAFTA Regulations sets out the treatment that applies to accessories, spare parts, tools or instructional or other information materials in respect of goods imported into Australia.
- 9.2.2. Where goods are imported into Australia together with accessories, spare parts or tools, those accessories, spare parts or tools shall be disregarded if the imported good is subject to a change in tariff classification requirement.
- 9.2.3. However, if the other goods must satisfy a RVC requirement to be a Korean originating good, the value of the accessories, spare parts or tools must be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the RVC.
- 9.2.4. Subsection 153ZME(8) states:

if:

- a) the goods are required to have a regional value content of at least a particular percentage; and
- b) the goods are imported into Australia with accessories, spare parts or tools; and
- c) the accessories, spare parts or tools are not invoiced separately from the goods; and
- d) the quantities and value of the accessories, spare parts or tools are customary for the goods;

then the regulations must require the value of the accessories, spare parts or tools to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information resources is to be worked out in accordance with the Regulations: see subsection 153ZMB(3).

- 9.2.5. Regulation 10 of the KAFTA Regulations states:

For subsection 153ZME(8) of the Act, if goods imported into Australia with accessories, spare parts or tools in the circumstances mentioned in that subsection, are required to have a regional value content of at least the percentage mentioned in Schedule 1 to this instrument:

- a) In working out the regional value content of the goods:
 - (i) the value of accessories, spare parts or tools that are imported with the goods and are Korean originating goods must be taken into account in the value of originating materials used in the production of the goods; and
 - (ii) the value of accessories, spare parts or tools that are imported with the goods and are not Korean originating goods must be taken into account in the value of non-originating materials used in the production of the goods; and

- b) The value of the accessories, spare parts, tools or instructions or other information materials must be worked out under section 9 of the KAFTA Regulations as if the accessories, spare parts or tools were materials used in the production of the goods.
- 9.2.6. If the above requirements have been met, then the spare parts, accessories, tools or instructional or other information materials do not have to undergo the CTC requirement that the originating goods must undergo, or any other CTC requirement. This is provided to the accessories, spare parts or tools are not invoiced separately from the good and are included in the price identified in the invoice itself. Further, the quantities and value of the accessories, spare parts or tools are customary for the good.
- 9.2.7. However, please note that where a good is required to satisfy the RVC requirement, then the value of spare parts, accessories, tools or instructional or other information materials must be taken into account as originating or non-originating materials, as the case may be, in working out the RVC for the good.

9.3. Fungible goods and materials

- 9.3.1. Fungible goods or materials are goods or materials that are identical or interchangeable as a result of being of the same kind and commercial quality, possessing essentially the same technical and physical characteristics.
- 9.3.2. The treatment of fungible goods and materials is covered by Article 3.7 of Chapter 3 of the Agreement, which states:

Article 3.7 Fungible Goods and Materials

1. An importer claiming preferential tariff treatment for a good may claim that a fungible good or material is originating where the importer, exporter, or producer has:
 - (a) physically segregated each fungible good or material; or
 - (b) used any inventory management method, such as averaging, last-in-first-out (LIFO) or first-in-first-out (FIFO), recognised in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.
 2. The inventory management method selected in accordance with paragraph 1 for a particular fungible good or material shall continue to be used for that good or material throughout the fiscal year of the person that selected the inventory management method.
- 9.3.3. Many materials involved in production processes are interchangeable for commercial purposes, in that they are of the same kind and commercial quality (e.g. ball bearings, nuts, bolts, screws etc). These materials are considered to be fungible materials.
- 9.3.4. A producer may choose to physically separate in different containers the fungible materials obtained from different countries. However, in many cases this may not be practical and the producer stores all the fungible materials in one container.
- 9.3.5. When a producer mixes originating and non-originating fungible materials, which means physical identification of the actual materials used is not

possible, the producer may determine the origin of the materials used based on one of the standard inventory management methods (e.g. last-in first-out, or first-in first-out) allowed under generally accepted accounting principles.

- 9.3.6. It is important to note that once a party has decided on an inventory management method for a particular fungible good or material, that method must continue to be used throughout the whole of the financial year.

Example 1: Fungible goods and materials

Amongst the materials used by a Korean producer of machinery parts are ball bearings. Depending on pricing and supply availability, the producer may source the ball bearings, from Korea, or from China. All of the ball bearings are of identical size and construction.

On 1 January, the producer buys 1 tonne of ball bearings of Korean origin, and on 3 January buys 1 tonne of ball bearings of Chinese origin.

The ball bearings have been stored in the one container at the producer's factory. The form of storage of the intermingled ball bearings makes those of Korean origin indistinguishable from those sourced from China.

An Australian company places an order with the Korean producer for machinery parts, which require the use of 800 kg of ball bearings.

If the producer elects "first-in first-out" inventory procedures, the 800 kg of ball bearings used to fill the Australian order are considered to be Korean originating, regardless of their actual origin.

Example 2: Fungible goods and materials

Continuing with the above scenario, a second Australian company places an order with the same Korean producer for machinery parts, which requires the use of 500 kg of the same ball bearings.

The producer, same as in the above scenario, has elected to adopt a "first-in first-out" inventory procedure.

In this example there now remains 1200 kg of the original 2000 kg, the first 200 kg of ball bearings used are considered to be Korean originating materials. The remaining quantity of ball bearings used to fulfil the order (300 kg) are considered to be non-originating materials and the ball bearings must undergo the CTC requirement specified in the PSR for the final good.

- 9.3.7. In considering the origin of fungible materials, if such materials are originating materials for the purposes of KAFTA, they are not subject to the PSRs.

- 9.3.8. Alternatively, if the fungible materials used in a production process are non-originating for the purposes of KAFTA, those fungible materials must undergo the PSR requirement that is applicable to the good being produced.

9.4. Non-qualifying operations

- 9.4.1. Section 153ZMG of Subdivision D of the Customs Act sets out the non-qualifying operations that disallow goods to claim Korean origin merely by reason of having undergone one or more of the following operations or processes:

153ZMG Non-qualifying operations

- (1) Goods are not Korean originating goods under this Subdivision merely because of the following:
- (a) operations to preserve goods in good condition for the purpose of transport or storage of the goods;
 - (b) changing of packaging or the breaking up or assembly of packages;
 - (c) washing, cleaning or removal of dust, oxide, oil, paint or other coverings;
 - (d) sharpening or simple processes of grinding, crushing or cutting;
 - (e) simple placing in bottles, cans, flasks, bags, cases or boxes, fixing on cards or boards or other simple packaging operations;
 - (f) affixing or printing marks, labels, logos or other distinguishing signs on goods or on their packaging;
 - (g) disassembly of goods;
 - (h) the reclassification of goods without any physical change in the goods;
 - (i) any combination of things referred to in paragraphs (a) to (h).

9.5. Consignment provision

- 9.5.1. Section 153ZMH of Division 1J of the Customs Act sets out the consignment provisions that apply to Korean originating goods imported into Australia, and states:

153ZMH Consignment

- (1) Goods are not Korean originating goods under this Division if they are transported through a country other than Korea or Australia and either or both of the following apply:
- a. they undergo subsequent production or any other operation in that country (other than unloading, reloading, storing, repacking, relabelling, splitting up of loads for transport or any operation that is necessary to preserve them in good condition or to transport them to Australia); or
 - b. they do not remain under customs control at all time while they are in that country.
- (2) This section applies despite any other provision of this Division.

- 9.5.2. The consignment provision is a mandatory direct shipment provision with exceptions to better accommodate the realities of modern goods transport practices. The provision aims to ensure that only goods that originate within the FTA area are entitled to the benefits granted under KAFTA.
- 9.5.3. A good will lose its status as a Korean originating good if it undergoes any process of production or other operation en route from Korea to Australia, other than those listed in paragraph 153ZMH(1)(a).

Example: Consignment provisions

Surgical instruments, cotton gowns and bandages, made in Korea from Korean originating materials, are sent to Singapore where they are packaged together in a set and then sterilized for use in operating rooms. They are then sent to Australia.

Upon their arrival in Australia, the medical sets are not eligible for preferential treatment because they underwent operations in Singapore that are not covered by the exceptions in section 153ZMH.

Example: Consignment provisions

Cars manufactured in Korea are sent by ship to Australia. Before departure, they are coated with a protective veneer to inhibit damage to painted surfaces during transit on the vessel.

Due to severe weather conditions encountered during the voyage, the ship is required to stop in Singapore so that the protective veneer can be reapplied to ensure that the vehicles are preserved in good condition for the remainder of the voyage to Australia.

This process would not affect the origin status of the vehicles as it fits within the exceptions to section 153ZMH.

10. Certificate of Origin

10.1. Certificate of Origin

- 10.1.1. To claim Korean originating goods for the purposes of KAFTA, the provisions in Division 1J of Part VIII of the Customs Act also require that the importer of goods must have at the time of the working out of the rate of import duty, a Certificate of Origin, or a copy of one, in relation to the goods.
- 10.1.2. Upon entry into force of KAFTA, a Certificate of Origin (COO) is required to support the claim for KAFTA preferential treatment. The COO must be completed by the exporter or producer.
- 10.1.3. A link to a sample of a valid KAFTA COO is available on the KAFTA webpage on the Australian Customs and Border Protection Service website.
- 10.1.4. Under Article 3.19 of KAFTA, Australia will not require the presentation of a certificate where the customs value of goods does not exceed \$1,000.

- 10.1.5. The COO must comply with the requirements of Article 3.15 and Annex 3-C. The Annex contains the data elements. For further information, also see Annex 3-D which contains a Certificate of Origin model format.
- 10.1.6. Where duty has been paid on Korean originating goods because a valid COO or copy of one was not available at the time the goods were imported, the importer is able to claim a refund of customs duty paid on those goods provided the importer holds a valid COO or copy of one at the time the refund is sought under regulation 126DB of *Customs Regulations 1926*.

10.2. Procedures

- 10.2.1. ACBPS may seek further evidence of preference entitlement for a specific reason or a simple intuitive selection, irrespective of the existence of a COO.
- 10.2.2. Where a customs declaration states that a preference rate of duty applies, this will be taken to indicate that the owner of the goods possesses evidence that the stated facts are correct. The criteria for eligibility for Korean preference rates of duty are set out in Division 1J of Part VIII of the Customs Act.
- 10.2.3. Each shipment must be accompanied by a COO. An importer may be required to produce this either at the time of entering the goods or at some later date.
- 10.2.4. If the ACBPS finds that preference is inapplicable or that there is insufficient evidence to justify the claim for preferential rates of duty, the general rate of duty is payable and there will be a liability for the payment of any customs duty and GST that has been short-paid. In these circumstances, an offence may have been committed against subsections 243T(1) or 243U(1) of the Customs Act and an administrative penalty under the *Taxation Administration Act 1953* (Taxation Administration Act) may also apply where there is a shortfall amount of GST. It should be noted that an infringement notice may be served in lieu of prosecution for an offence against subsections 243T(1) or 243U(1) of the Customs Act.
- 10.2.5. If, after the time of the customs declaration, evidence becomes available to the owner that the goods are ineligible for preferential rates of duty, the owner should, as soon as practicable after becoming aware of the error, amend the import declaration and tender to the ACBPS any short-paid customs duty and GST. This action may protect a person against any liability for an offence under subsections 243T(1) or 243U(1) of the Customs Act if the amendment is considered a voluntary disclosure as explained in ACN 2004/05. Furthermore, this action may result in the reduction or remission of an administrative penalty that may apply under the Taxation Administration Act.

10.3. Minimum requirements

- 10.3.1. The minimum requirements required on the Certificate of Origin are:
- Issuing number
 - Exporter, including contact details
 - Blanket period for multiple shipments
 - Producer, including contact details (optional)
 - Importer, including contact details (optional)
 - Description of good(s)
 - Harmonized System code (six digits)

- Preference criterion
- Observations (optional)
- Declaration, and
- Name, signature, company or authorised body and contact details of person completing the Certificate of Origin; and date of issue.

10.4. Validity

10.4.1. Under Article 3.15 of the Agreement, the Certificate of Origin shall remain valid for a period of at least two (2) years after the date on which the Certificate of Origin was signed.

10.4.2. A COO is not required for imports when:

- the total customs value of the originating goods does not exceed \$1,000,

provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purposes of avoiding the requirements of the Agreement.

Note: For custom clearance purposes the importer will still be required to complete either:

- a self-assessed clearance declaration when the customs value does not exceed \$1,000 and a COO is not required or
- an import declaration if the customs value exceeds \$1,000.

11. Record keeping obligations

11.1. Importers

11.1.1. Australian importers must maintain, for five years after the date of importation of the goods, documentation, including a copy of the COO, relating to the importation of the goods.

11.2. Exporters

11.2.1. Australian exporters or producers who complete and sign – or apply for a COO – shall maintain, for five years after exportation, all records necessary to demonstrate that the goods for which the producer or exporter provided the COO, was an originating good.

12. Origin advice rulings

12.1. Provision of Origin Advice Rulings

12.1.1. KAFTA allows for Australian importers, Korean exporters and Korean producers of goods to obtain advance rulings (see Article 4.7 of the Customs Administration and Trade Facilitation chapter) from ACBPS regarding future importations of goods into Australia.

12.2. Policy and Practice

12.2.1. Upon application, the ACBPS will provide written advice on origin matters through the provision of an Origin Advice (OA). OA exists to advise the applicant on specific issues relating to the origin of their goods for the

purposes of determining eligibility for preferential duty rates for goods imported into Australia.

- 12.2.2. Assessments of the origin of a good, to the extent that it is administratively feasible, will be no later than 30 days after a request for such advice provided that all necessary documentation has been submitted.
- 12.2.3. Requests for a Ruling will be accepted before trade in the good concerned begins.

12.3. Adequate applications

12.3.1. A Ruling will only be given where:

- evidence is presented of a commitment or firm intent to import or export
- the application contains adequate and correct information, and
- supporting evidence of the facts of the application is provided with the application.

12.3.2. Inadequate applications will be rejected.

12.4. How to lodge an application

General

12.4.1. Applications (with supporting documentation) should be forwarded to:

National Trade Advice Centre
Trade Services and Implementation Branch
Australian Customs and Border Protection Service
GPO Box 2809 MELBOURNE VIC 3001

or

origin@customs.gov.au

12.4.2. At the time an application is made for a Ruling, the ACBPS will register the application with a unique Origin Advice Number and the applicant will be advised of this number.

Applications with more than one origin issue

12.4.3. Each application must be for a single origin issue. Where there is more than one issue, separate applications must be lodged for each.

Supporting information and documentation

12.4.4. It is unrealistic to expect a correct and binding origin advice ruling if inadequate or incomplete information is provided to the ACBPS. The essential principle to be followed is that all information that is relevant to the request for advice should be supplied with the application.

12.4.5. Section 12.5 below sets out the supporting documentation required to accompany an application for Korean origin rulings. The list is not exhaustive; if there are any other relevant documents and information, it must also be supplied with the application.

Advice conditional on data provided

12.4.6. The ACBPS's decision will be made only on the basis of the statements and supporting documentation provided, and accordingly, the validity of the advice is conditional upon correct and complete information being provided.

- 12.4.7. In the course of processing an application, ACBPS may request, at any time, additional information necessary to evaluate the application.

Penalty action – false or misleading statements

- 12.4.8. From the time of registering an application until the decision of ACBPS, the applicant is not subject to penalty provisions under subsection 243T(1) in respect of any duty short paid on any import declaration.
- 12.4.9. If an applicant is uncertain about a claim of preference made on any import declaration, and considers that including that information may be false or misleading, then that person should lodge that declaration “amberline”.
- 12.4.10. Subsection 243T(1) may not apply where, in lodging the declaration “amberline”, a person specifies the information included in the import declaration that might be false or misleading in a particular. Further, that person must also set out the reasons why there is uncertainty about the information.
- 12.4.11. Whilst quoting an origin advice number on an import declaration is optional, if there is any doubt about a claim for preference a person should follow the above guidelines.

Withdrawal of application

- 12.4.12. An owner may withdraw an application by advising ACBPS at any time between registration of the application and the decision by Customs and Border Protection on the application. Withdrawal of the application has the effect of cancelling the application.

Payment of duty following ruling

- 12.4.13. When ACBPS has finalised an application and notified the applicant of the Ruling and the reasons for that decision, any duty or GST short paid on declarations becomes payable.

Validity of advice

- 12.4.14. Rulings are valid for all ports in Australia for five (5) years from the date of notification of the advice. After that time the Ruling will be cancelled. If a Ruling is still required a new application must be made.
- 12.4.15. ACBPS may cancel or amend a Ruling within its five-year life, where particular circumstances warrant. Such circumstances include, but are not limited to situations in which:
- an amendment is made to the legislation which has relevance to the advice
 - incorrect information was provided to ACBPS or relevant information was withheld
 - ACBPS’s decision is changed as a result of legal precedent
 - the facts and conditions of the origin application have changed
 - ACBPS has issued conflicting advices.

Cancelled or amended advice

- 12.4.16. Where ACBPS cancels or amends a Ruling, in-transit provisions will be applied at the discretion of ACBPS.

In-transit provisions

- 12.4.17. Where in-transit provisions apply, the cancelled or amended Ruling continues to apply in relation to goods that:
- were imported into Australia on or before the date on which the cancellation or amendment came into effect and were entered for home consumption before, on, or within 30 days after that date, or
 - had left the place of export on or after that date and were entered for home consumption before, on, or within 30 days after the date on which they were imported into Australia.

ACBPS to honour advice

- 12.4.18. A Ruling is not legally binding on ACBPS. However, ACBPS will honour a Ruling unless it was provided on the basis of false or misleading information or where the applicant failed to provide all the relevant information and documentation that was available.

Conflicting rulings

- 12.4.19. Should an applicant hold or be aware of any conflicting Rulings from ACBPS for an origin issue, they are to be treated as being void and Customs and Border Protection is to be notified immediately.

Appeals against ACBPS rulings

- 12.4.20. Where an ACBPS decision in a Ruling is disputed, it should first be discussed with the decision maker. If the advice is still disputed, a further appeal to the Director National Services, Trade Branch, Melbourne may be requested.
- 12.4.21. This appeal mechanism does not preclude the right to external review – for example, to the Administrative Appeals Tribunal (AAT), after there has been a payment under protest. It should be noted that a Ruling in itself is not a decision which is reviewable by the AAT or the Federal Court.

12.5. Origin Advice Rulings – information requirements**Application**

- 12.5.1. An Origin Advice Ruling will be issued to importers, exporters or any other person who requires a Ruling on goods imported into Australia under the KAFTA ROO provisions.

Subject matter of rulings

- 12.5.2. Rulings may be sought on various KAFTA issues including, but not limited to:
- whether a good qualifies as an originating good being wholly obtained or produced in Korea
 - whether a good qualifies as an originating good produced entirely in Korea or in Korea and Australia

- whether non-originating materials used in the production of a good imported into Australia undergo the applicable CTC
- whether a good satisfies a RVC requirement under the build-down or build-up methods
- the appropriate basis for determining the value of originating and non-originating materials, and
- the application of de minimis provisions.

Content of application

12.5.3. The following relevant information should be included in the application:

- the specific subject matter to which the request relates
- a complete statement of all relevant facts relating to the KAFTA transaction which must state that the information presented is accurate and complete
- the names, addresses and other identifying information of all interested parties, and
- copies of any other origin advice, tariff classification advice or valuation advice that has been issued in relation to the imported good.

12.6. Special application provisions

12.6.1. Where a good has been wholly obtained or produced entirely in Korea a complete description of the good shall be supplied, including:

- a description of how the good was obtained
- details of all processing operations employed in the production of the good
- the location where each operation was undertaken
- the sequence in which the operations occurred
- a list of all materials used in the production of the good, and
- evidence of the origin of materials used in the production of the good.

12.6.2. Where the request for a Ruling involves the application of a PSR that requires an assessment of whether the materials used in the production of the imported good undergo an applicable CTC, the advice must list each material used in the production of the good and must:

- identify each material which is claimed to be an originating material, providing a complete description of each such material including the basis for claiming origin status
- identify each material which is a non-originating material, or for which the origin is unknown, providing a complete description of each such material, including its tariff classification, and
- describe all processing operations employed in the production of the good, the location of each operation and the sequence in which the operations occur.

12.6.3. Where the origin advice involves the issue of whether a good satisfies a RVC requirement the advice must:

- provide information sufficient to determine the customs value of the goods in accordance with Division 2 of Part VIII of the Customs Act

- provide information which is sufficient to identify and calculate the value of each non-originating material, or material the origin of which is unknown, used in production of the good.

12.6.4. If a *de minimis* exception to a HS classification is claimed, the advice must:

- provide information sufficient to determine the customs value of the goods in accordance with Division 2 of Part VIII of the Customs Act
- identify each material which is claimed to be an originating material and provide a complete description of each such material
- identify each material which is a non-originating material, or for which the origin is unknown, and provide a complete description of each such material, including its tariff classification and value.

12.6.5. Where no tariff ruling has been made by ACBPS in relation to the goods, sufficient information must be supplied to enable tariff classification of the goods. Such information includes a full description of the good, including, where relevant, the composition of the good, a description of the process by which the good is manufactured, a description of the packaging in which the good is contained, the anticipated use of the good and its commercial, common or technical designation. Where product literature, drawings, photographs or other material are available they should accompany the application.

13. Related Policies and References

13.1. Practice Statements:

- Free Trade Agreement Rules of Origin

13.2. Other Instructions & Guidelines

- B_INT02/3 Australia-New Zealand Closer Economic Relations Trade Agreement
- B_INT02/5 Australia-United States Free Trade Agreement
- B_INT02/6 Preferential Rules of Origin (General)
- B_INT02/2 Singapore-Australia Free Trade Agreement
- B_INT02/8 Thailand-Australia Free Trade Agreement
- ASEAN-Australia-New Zealand Free Trade Agreement
- B_INT02/1 Malaysia-Australia Free Trade Agreement

13.3. Associated Documents

This Instruction and Guideline has no 'Related Associated Documents'.

13.4. Related References

- Customs Tariff Act 1995
- Customs Act 1901
- Customs Regulations 1926
- Customs (Korean Rules of Origin) Regulation 2014

14. Consultation

14.1. Internal

14.1.1. The following internal stakeholders have been consulted in the development of this Instruction and Guideline.

- Legal Services Branch
- Strategic Border Command Division
- Integrity and Professional Standards

14.2. External

14.2.1. No external consultation was undertaken during development of this Practice Statement

Endorsement

Endorsed on	13 November 2014	
By	Geoff Johannes National Manager Trade	

Approval

Approved on	17 November 2014		
By	Jeff Buckpitt National Director Trade and Customs		
Period of Effect	Nov 2014- 2017	Review Date	Nov 2015