



AUSTRALIAN CUSTOMS AND BORDER PROTECTION NOTICE NO. 2014/65

Korea - Australia Free Trade Agreement – Rules of Origin

The Korea - Australia Free Trade Agreement (KAFTA) was signed on 8 April 2014 in Seoul, South Korea.

KAFTA will enter into force on 12 December 2014. On entry into force importers will be entitled to duty-free entry for most goods imported from the Republic of Korea (Korea), provided that the goods meet the KAFTA rules of origin (ROOs).

This Notice summarises the rules for determining whether a good originates in Korea for the purposes of KAFTA.

‘Free’ rates of customs duty

The *Customs Tariff Act 1995* (Customs Tariff), as amended by the *Customs Tariff Amendment (Korea-Australia Free Trade Agreement Implementation) Act 2014*, will allow duty free entry of most Korean originating goods when KAFTA is implemented. Preferential treatment will apply to Korean originating goods that are imported on or after the day KAFTA enters into force, or goods imported before that day and entered for home consumption on or after that day.

Other duties and taxes

While most Korean originating goods will be eligible for ‘free’ rates of customs duty, other duties and taxes such as excise-equivalent duties, goods and services tax, dumping duties and other taxes and levies, including cost recovery charges, if relevant, will still be payable.

Rules of origin

Goods will be Korean originating goods if they satisfy the requirements of:

- the new Division 1J of Part VIII of the *Customs Act 1901* (Customs Act), as inserted by the *Customs Amendment (Korea-Australia Free Trade Agreement Implementation) Act 2014*; and
- the *Customs (Korean Rules of Origin) Regulation 2014* (KAFTA Regulations).

Division 1J sets out the ROOs 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.

1. Goods wholly obtained in Korea, or in Korea and Australia

Under Subdivision B of Division 1J, goods are Korean originating goods if they are wholly obtained in Korea, or in Korea and Australia and the importer of the goods has, at the time the goods are imported, a Certificate of Origin (COO), or a copy of such certificate, for the goods.

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.

2. Goods produced in Korea, or in Korea and Australia, from originating materials

Under Subdivision C of Division 1J, goods are Korean originating goods if they are produced entirely in Korea, or in Korea and Australia, from originating materials only; and the importer of the goods has, at the time the goods are imported, a COO, or a copy of such certificate, for the goods.

“Originating materials” means:

- (a) Korean originating goods that are used in the production of other goods; or
- (b) Australian originating goods that are used in the production of other goods; or
- (c) indirect materials.

An “Australian originating good” is a good that is considered as an Australian originating good under a law of Korea that implements KAFTA.

The definition of “indirect materials” is contained in Division 1J.

3. Goods produced in Korea, or in Korea and Australia, from non-originating materials

Under Subdivision D of Division 1J, goods are Korean originating goods if they are produced entirely in Korea, or in Korea and Australia, from non-originating materials only or from non-originating materials and originating materials and satisfy the applicable product specific rules (PSR) of origin. The importer of the goods must have, at the time the goods are imported, a COO, or a copy of such certificate, for the goods.

The table in Schedule 1 to the KAFTA Regulations lists the PSR applicable for a good specified at the six-digit level of the Harmonized System (HS). 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.

Change in tariff classification (CTC)

A good satisfies the CTC rule if each non-originating material used in the production of the good undergoes the required change in tariff classification (the transformation test). The transformation test applies only to non-originating materials, and requires that the classification, under the HS, of a non-originating material is different from the classification of the final good produced using that non-originating material.

De Minimis rule

In the event that one or more non-originating materials fail to meet the required tariff classification change, the CTC rule can still be taken to be satisfied if the total value of the non-originating materials that do not meet the transformation test does not exceed 10 per cent of the customs value of the good.

Subsection 153ZM(5) sets out that the *de minimis* provision does not apply to goods classified under HS codes 0301 to 0303, 0305 to 0308, 0701 to 0710.10, 0713 to 0714, 0801 to 0810 and 0813.10 to 0813.40.

For goods that are classified in Chapters 50 to 63 of the HS, the *de minimis* provision also applies if the weight of all non-originating materials that do not meet the transformation test does not exceed 10 per cent of the total weight of the good.

Regional value content (RVC)

Goods in the table in Schedule 1 to the KAFTA Regulations may be required to meet an RVC rule. This rule can be met using either the “build-up method” or the “build-down method” of calculation. The calculation formulas are:

(a) build-down method

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

(b) build-up method

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

Where:

RVC is the regional value content, expressed as a percentage;

AV is the adjusted value of the good and is either:

- (a) the FOB value of the good determined in accordance with the Customs Valuation Agreement, inclusive of the cost of transport and insurance to the port or site of final shipment abroad; or
- (b) if there is no FOB value of the good or it is unknown and cannot be ascertained, the value determined in accordance with the Customs Valuation Agreement, *mutatis mutandis*.

VNM is the value of non-originating materials (including materials of undetermined origin) used in the production of the good, as determined in the KAFTA Regulations; and

VOM is the value of originating materials used in the production of the good, as determined in the KAFTA Regulations.

Part 3 of the KAFTA Regulations sets out how to determine the value of materials.

Processing rules

The table in Schedule 1 to the KAFTA Regulations may require that the non-originating materials undergo specified processing in either or both of Australia and Korea.

Packaging materials and containers

Where goods must satisfy a CTC rule and are packaged for retail sale in packaging materials or containers, and the packaging materials or containers are classified with the good in accordance with Rule 5 of the Interpretation Rules for the HS, Section 153ZMF of Division 1J provides for the packaging materials or containers to be disregarded when determining origin.

However, where the goods must meet an RVC rule to be Korean originating goods, the value of the packaging materials or containers 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 of the goods.

Part 4 of the KAFTA Regulations prescribes how the value of the non-originating packaging materials or containers is to be determined.

Accessories, spare parts or tools

Under the KAFTA Regulations, 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.

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.

Non-qualifying operations

Section 153ZMG of Division 1J provides that goods are not Korean originating goods merely because of the following operations or processes:

- (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).

Consignment rule

In addition to the rules specified above, section 153ZMH of Division 1J provides that goods are not Korean originating goods 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);
- (b) they do not remain under customs control at all times while they are in that country.

This rule applies despite any of the other rules that are set out above. Therefore, even if all of the other rules are satisfied, the goods are not Korean originating goods if the consignment rule is breached.

Certificate of origin

A COO is required to support a claim for KAFTA preferential treatment. For imports into Australia, the COO must be completed by the exporter or producer of the goods and must comply with the requirements set out in Article 3.15 and Annex 3-C of KAFTA. For exports to Korea a COO can be completed by an exporter or producer or can be issued by an authorised body.

A link to a sample of a valid KAFTA COO will be posted on the KAFTA webpage on the Australian Customs and Border Protection Service (ACBPS) website.

Under Article 3.19 of KAFTA, Australia may elect to waive the COO requirement for goods exported from Korea. ACBPS will advise if this requirement is waived.

ACBPS may also request other supporting information relating to a claim for KAFTA preference. A request for information to support a claim for a preferential duty rate under KAFTA may occur at the time of entry or at a time after the good has entered into home consumption.

Refund of customs duty

Where duty has been paid on Korean originating goods, or on goods that would have been Korean originating goods except for the fact that the importer did not have a valid COO or a copy of one, at the time the goods were imported, the importer will be able to claim a refund of customs duty paid on such goods under regulation 126DB of the *Customs Regulations 1926*. The importer must hold a valid COO or copy of one at the time of applying for the refund.

How to claim KAFTA preference on an import declaration

Before claiming preference, importers should take reasonable care to ensure that their goods meet the relevant rule of origin and ensure that the consignment and non-qualifying operations rules are met.

The country code "KR" should continue to be used for all goods from Korea.

For claiming Korean originating goods for the purposes of KAFTA, the preference scheme "KFTA" should be used on customs import declarations to access the preferential rate of duty. It will be necessary to also quote the relevant preference rule type on import declarations from one of the following:

- "WO" – wholly obtained goods;
- "PE" – goods produced entirely from originating materials; or
- "PSR" – goods produced from non-originating and/or originating materials and satisfy the applicable product specific rules of origin requirements as listed in the KAFTA Regulations.

The Republic of Korea is currently listed as a Developing Country under Division 1 of Parts 4 and 5 of Schedule 1 of the Customs Tariff. Goods imported from Korea are therefore subject to DCS and DCT rates of duty. When implemented, KAFTA will not affect these existing preferential arrangements with Korea.

- For goods of Korean origin, importers can continue to claim "DCS" or "DCT" rates under the Australian System of Tariff Preference. The preference scheme "DCS" or "DCT" should be quoted on import declarations.

If no preference scheme is quoted, the general rate of duty will apply.

Where preference is claimed and ACBPS finds that the imported goods do not meet the relevant rule of origin, or other requirements such as the consignment provision or non-qualifying operations rule, the ACBPS will demand the duty short-paid and may impose penalties. Additional action may be taken where fraud is indicated.

Origin advice service

KAFTA allows for Australian importers and Korean exporters and producers to obtain advance rulings from ACBPS regarding future importations of goods into Australia.

Upon application, ACBPS will provide written advice on origin matters through the provision of an origin advice (OA). The 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.

Additional information

The text of the relevant legislation for KAFTA is available on the ComLaw website and can be accessed from the KAFTA webpage on the ACBPS website, at:

<http://www.customs.gov.au/site/Korea-Australia-free-trade-agreement.asp>

The official KAFTA text is available on the [Department of Foreign Affairs and Trade's website](#).

Changes to the Customs Tariff to implement KAFTA

The *Customs Tariff Amendment (Korea-Australia Free Trade Agreement Implementation) Act 2014* (the Act) amended the Customs Tariff to implement the duty reductions contained in KAFTA.

The amendments to the Customs Tariff:

- provide free rates of customs duty for goods that are Korean originating goods in accordance with new Division 1J;
- amend Schedule 4 to the Customs Tariff to maintain customs duty rates for certain Korean originating goods in accordance with the applicable concessional item;
- phase the preferential rates of customs duty for certain goods to free by 2021; and
- insert a new Schedule 10 in the Customs Tariff to accommodate the preferential and phasing rates of duty and to maintain excise-equivalent rates of duty on certain alcohol, tobacco and petroleum products. These rates are equivalent to the rates of excise duty payable when locally manufactured.

The Act also provides that preferential rates for Korean originating goods will apply to goods imported before 12 December 2014 but are entered for home consumption on or after that date.

Any enquiries in relation to this Notice should be directed by email to origin@customs.gov.au, or by telephone on 1800 053 016 to the National Trade Advice Centre.

Anita Langford
A/g Assistant Secretary Trade
CANBERRA ACT

24 December 2014