

EUROPEAN UNION – KOREA FREE TRADE AGREEMENT

The European Union-Korea FTA was initiated on October 15, 2009; however, it has not been signed nor has it entered into force. The FTA still requires approval from both the South Korean Parliament and EU governments. The European Commission in early 2010 will present the text of the FTA to the EU Member States in the Council of the EU. The FTA is not expected to enter into force before the second half of 2010.

A. Tariff Reduction and Elimination Modality

The FTA's tariff reduction and elimination modality is classified into staging categories that range from immediate elimination to gradual elimination over 20 years. Upon entry into force of the Agreement, the EU will eliminate tariffs on 76.6% of tariff lines and will gradually reduce tariffs to zero percent on a further 19.2% of tariff lines by 2012. Korea will immediately eliminate tariffs on 69.4% of tariff lines on entry into force of the Agreement and will gradually reduce tariffs to zero percent on a further 30% of tariff lines by 2012. Thus, the EU and Korea will eliminate tariffs on 95.8% and 99.1% of tariff lines respectively, by 2012. Rice products and a limited number of agricultural products will be excluded from tariff elimination. The base rate, or starting point for duty reduction/elimination, is indicated for each item in each Party's schedule.

There are a total of 20 categories in the tariff reduction and elimination modality; however, several of these apply only to certain products, mainly agricultural products. The modality categories applicable to products under HS Chapters 84, 85 and 87 include:

Category 0

Items under this category are subject to zero duty upon entry into force of the Agreement, and include all traded products that are not listed in other categories.

Category 3

Tariffs on items in this category will be gradually reduced to zero in three equal annual stages as of the date of entry into force of the FTA. The total number of tariff lines under HS Chapters 84, 85 and 87 in Category 3 includes:

| HS | EU | Korea |
|------------|-----------|--------------|
| Chapter 84 | 14 | 106 |
| Chapter 85 | 8 | 29 |
| Chapter 87 | 32 | 7 |

Category 5

Tariffs on items in this category will be gradually reduced to zero in five equal annual stages as of the date of entry into force of the FTA. The total number of tariff lines under HS Chapters 84, 85 and 87 in Category 5 includes:

| HS | EU | Korea |
|------------|-----------|--------------|
| Chapter 84 | 0 | 32 |
| Chapter 85 | 23 | 0 |
| Chapter 87 | 16 | 12 |

Category 7

Tariffs on items in this category will be gradually reduced to zero in seven equal annual stages as of the date of entry into force of the FTA. The total number of tariff lines under HS Chapters 84, 85 and 87 in Category 7 includes:

| HS | EU | Korea |
|------------|----|-------|
| Chapter 84 | 0 | 12 |
| Chapter 85 | 0 | 0 |
| Chapter 87 | 0 | 0 |

Category 10

Tariffs on items in this category will be gradually reduced to zero in ten equal annual stages as of the date of entry into force of the FTA. The total number of tariff lines under HS Chapters 84, 85 and 87 in Category 10 includes:

| HS | EU | Korea |
|------------|----|-------|
| Chapter 84 | 0 | 1 |
| Chapter 85 | 0 | 0 |
| Chapter 87 | 0 | 0 |

B. Rules of Origin

General Rules

A product has originating status: (i) if it is wholly obtained in the territory of the exporting Party or produced entirely from originating materials, or (ii) if it satisfies the product specific rules (PSR) set out in Annex II to the Origin Protocol. Depending on the product, these PSRs are based on:

- a change-in-tariff heading (CTH) rule requiring the final product to be classified in another (4-digit tariff) heading than any of the non-originating materials used (*i.e.* the use of non-originating materials of any heading except the heading of the final product is allowed)
- a rule requiring that a certain level of local value content is achieved (a “value-added” rule, expressed in a maximum value for non-originating materials)
- a rule under which a specific process has to be carried out in the exporting country (a “process” rule); or
- a combination of the above.

The PSRs applicable to products under HS Chapters 84, 85 and 87 for most headings offer a choice between a change-in-tariff heading or value-added on an ex-works basis. For some headings, only a value-added rule is available (requiring a minimum local value of 50% or 55%, depending on the heading). For certain subheadings (monolithic integrated circuits), a process rule applies.

A summary of the rules of origin under the FTA is as follows:

| Method of Determining Origin | Unique Origin Criteria |
|---|---|
| 1. Wholly obtained; or 2. Produced entirely from originating materials; or 3. Sufficient working or processing of non-originating materials in the country of export (CTH, value-added rule, process rule or combination) | Process rules for some products (<i>e.g.</i> “yarn forward” rule for textiles) A requirement that some materials used have to be wholly obtained (<i>e.g.</i> for certain processed agricultural goods) Duty drawback |

Rules on Accumulation of Inputs

Materials originating in either party to the Agreement all count as “originating materials” under the bilateral cumulation clause.

De Minimis

The use of non-originating materials is allowed provided their value does not exceed 10% of the ex-works price of the product (except those of HS Chapters 50 to 63 - textiles and clothing).

Duty Drawback

Drawback is allowed under the Agreement, although a special monitoring mechanism is introduced for certain products of Chapters 84, 85 and 87 that could in future trigger discussion on a limitation of drawback. The Parties will exchange detailed import statistics on a reciprocal basis at the 8/10 digit level starting from one year after the entry into force of the Agreement for imports under HS 2007 headings 8407, 8408, 8522,8527, 8529, 8706, 8707 and 8708 as well as export statistics for 8703, 8519, 8521 and 8525 through 8528.

Outward Processing

The processing required to obtain originating status must normally be carried out without interruption in the territories of the Parties, but the Origin Protocol envisages that some form of outward processing outside Korea may be allowed in certain geographical areas to be specially designated for this purpose in due course.

C. Certification Rules

General Description

The FTA adopts an approved exporter system. An invoice declaration by the approved-exporter constitutes the valid certificate of origin. For consignments with a value that exceeds € 6,000, the customs authorities of the exporting Party must first approve and authorize exporters to make out an invoice declaration. An exporter seeking such authorization must offer to the satisfaction of the customs authorities all guarantees necessary to verify the originating status of the products as well as the fulfillment of the other requirements of the Protocol. The customs authorities of the exporting Party may authorize any exporter to make out invoice declarations irrespective of the value of the products concerned in accordance with appropriate conditions in the respective laws and regulations of the exporting Party. If the customs authorities decide to grant the status of approved exporter, they shall grant a customs authorization number which shall appear on the invoice declaration. An invoice declaration will be valid for 12 months from the date of issuance in the exporting Party. The language of the declaration is identified in Annex III to the Origin Protocol of the FTA.

Back-to-Back Certificate of Origin

Not applicable to the EU-Korea FTA.

Third-party Invoicing

For purposes of origin rules and certification, third party invoicing is not directly addressed as it does not necessarily conflict with ensuring that the relevant rules of the EU-Korea FTA are followed. This is because Article 15(1) of the Origin Protocol allows the origin certification,

i.e. “invoice declaration,” to be “given by the exporter on an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified.” Accordingly, the exporter could allow a third non-party to issue and forward the invoice to the importer, but still issue and submit the required origin declaration on another related commercial document under the EU-Korea FTA origin and certification rules (presuming the exporter and importer would in that case be located in the EU and Korea). In other words, as long as the exporter issues the required origin declaration on some form of commercial document identifying the goods, it is irrelevant for purposes of origin declaration where the invoice is coming from.

Advance Rulings

Upon request from traders, each Party must provide in writing advance rulings regarding tariff classification, origin or any other such matters as the Party may decide. Each Party shall publish advance rulings as stipulated in Article 6.6 of Chapter 6 of the Agreement.

Authorized Bodies

The customs authorities of the Parties shall provide each other, through the Commission of the European Communities, with the addresses of the customs authorities responsible for verifying proof of origin. This list is not yet available.

Post-Exportation Examination

The customs authorities in each Party agree to work together in checking the authenticity of the proof of origin and the correctness of the information provided in such documents. Subsequent verifications will be carried out at random or whenever customs authorities have reasonable doubts as to the authenticity of such documents, origin of the product or the fulfillment of other requirements under the Origin Protocol. The customs authority in importing Party shall provide proofs of origin or copies of related supporting documents to the customs authority in the Exporting Party. The exporting Party will carry out the verification. If there is no reply within ten months of the date of the verification request or if the reply does not contain sufficient information to determine the authenticity of the document in question of the real origin of the product, the requesting customs authority may refuse preferential treatment of the good in exceptional circumstances.

Document Retention Requirements

An exporter making out an invoice declaration must be prepared to submit, at the request of the customs authorities of the exporting Party, all appropriate documents proving the originating status of the products concerned. If required by the laws and regulations of the importing Party, proof of origin shall also be submitted to the customs authorities of the importing Party. Such supporting documents include, *inter alia*,

- direct evidence of the processes carried out by the exporter, supplier or producer to obtain the goods concerned;
- documents proving the originating status of materials used, issued, or made out in a Party where these documents are used as provided for in its domestic law;
- documents proving the working or processing of materials in a Party, issued or made out in a Party where these documents are used as provided for in its domestic law;
- proofs of origin proving the originating status of materials used issued or made out in a Party; and

- appropriate evidence concerning working or processing undergone outside territories of the Parties.

Exporters making out an invoice declaration should keep for five years a copy of this invoice declaration and of the mentioned supporting documents.

D. Relevant FTA Provisions

- Legal Text:
<http://trade.ec.europa.eu/doclib/press/index.cfm?id=443&serie=273&langId=en>
- Tariff Reduction Modality:
http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145143.pdf
- Tariff Schedules:
http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145132.pdf (EC)
http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145133.pdf (Korea)
- Rules of Origin:
http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145192.pdf
- Sample Invoice Declaration:
http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145192.pdf