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Understanding the South Korea- United States FTA

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In order to have any meaningful discussion of KORUS, it must first be viewed within the context of the trade flows between South Korea and the United States (U.S.). Trade statistics show that South Korea is the seventh-largest trading partner of the U.S., and the U.S. is the third largest trading partner of South Korea. The Korea and U.S. Free Trade Agreement (KORUS), like all free trade agreements, provides unique opportunities, requirements and obligations for both U.S. and South Korean exporters and importers.

These opportunities include several elements such as an elimination of customs duties on qualifying goods that are staged over fifteen years, an elimination of over ninety five percent of tariffs on industrial and consumer goods within five years, along with the elimination and prevention of future merchandise processing fees on qualifying goods. By any measure, these are significant opportunities but, like all free trade agreements, duty free treatment must be understood within the context of the requirements that apply to this treatment. These requirements include the direct shipment of the qualifying goods between South Korea and the U.S., goods must qualify for the treatment according to rules of origin prescribed in the agreement, a written or electronic certification by the importer or exporter that the claimed good is originating, the records supporting a claim must be maintained for five years from the date of certification and both South Korea and the U.S. governments may conduct origin verifications on claimed goods eligibility.

These requirements fall on both the exporter and importer of goods and create very separate and distinct obligations. Exporters in both South Korea and the U.S. must provide a written or electronic certification and shall on request, provide a copy to its government. Any false certification by an exporter or a producer shall be subject to penalties equivalent to those that would apply to an importer that makes a false statement or representation in connection with an importation. Also, when an exporter or a producer has provided a certification

and has reason to believe that the certification contains or is based on incorrect information, the exporter or producer shall promptly notify in writing every person to whom the exporter or producer provided the certification of any change that could affect the accuracy or validity of the certification.

Importers in South Korea and the U.S. who claim preferential tariff treatment for goods imported into its territory must declare the goods as an originating good, provide the tariff rate and possess and when required, provide a copy of any certification on which they have based their claim. The importer must also be able to validate that the good is an originating good and satisfy all applicable requirements including the direct shipment requirement. Finally, an importer must make a claim for preferential tariff treatment and apply for a refund of any excess duties paid no later than one year after the date of importation.

Therefore, the questions that both exporters and importers face are: how to best take advantage of the opportunities, fulfill the requirements, and meet all their obligations. Past experiences have shown all this can be accomplished by breaking down and viewing them as best practices that occur in three segments; the first being, activities that must occur prior to export and import, secondly, activities that must take place at the time of export and import and finally, activities that take place after export and import.

Some of these best practices in each of the three segments include:

Prior to Export

- Review and Modify Supplier Contracts and Obtain commitments to provide FTA required data
- Understand the Rules of Origin and Identify Documents and Data sources
- Develop Systems and Process Flow Documentation
- Identify and Acquire Resources: People, Systems, Processes, Service Providers
- Train Staff: People, Suppliers, Service Providers
- Classify Goods, Materials and Request Origin Certifications
- Obtain Bills of Materials, Add Classification and Regional Value Content data



- Conduct Audit Certifications and Supplier Follow-up
- Complete the Bill of Material Processing

At Export and Import

- Completion of Certifications
- Communicate Certification Status to Necessary Parties
- Make Declarations

After Export and Import

- Keep and Maintain Electronic and Paper Records
- Respond to Information Request from Appropriate Authorities
- Respond to Government Audits

As mentioned, KORUS is very much like any other free trade agreement, it may provide tremendous benefits however, not without a fair amount of work and preparation. In all cases, properly preparing a KORUS claim for duty and fee benefits before export involves much less work and risk than playing catch up after the fact. All exporters and importers are advised to prepare ahead of time, to successfully participate in KORUS.

When thinking about KORUS it is important to keep these Ten Critical Factors in mind

1. Are there any special requirements for an importer making a KORUS claim?

Answer – Yes, the importer at the time of importation must claim KORUS treatment using a free form declaration that may be provided electronically or in writing.

2. Are there any waivers at the time of import for this declaration?

Answer – Yes, the declaration is waived on shipments valued at \$1,000 US dollars or less.

3. Are there any special shipping requirements related to originating goods?

Answer – Yes, goods must be shipped directly between the U.S. and South Korea¹. There are limited acceptations to this rule and logistics arrangements should be reviewed³ carefully before making a claim for KORUS treatment.

4. What are the basic rules of origin?

Answer – There are five basic rules²

- Goods that are Wholly Obtained or Produced in one or both of the parties
- Goods Produced in one of both the parties exclusively of Originating Materials
- Goods that meet the Tariff Shift Rules
- Goods that meet the Regional Value Content Requirement
- Goods that meet a Combination of the Tariff Shift Rules and the Regional Value Content

5. Are there any exceptions in the rules for small amounts of non-originating material?

Answer – Yes, there is a general de minimis rule for non-originating material of 10 percent³. This amount may vary for certain goods and the rules of origin should be carefully checked.

6. Can a claim for KORUS be made after goods are imported?

Answer – Yes, the importer can make a claim for a refund of duty and fees up to one year after importation.

7. Will an exporter or producer be subject to penalties if they make a mistake when they certify a good for KORUS?

Answer – Generally no. Provided the exporter or producer notifies in writing all persons who they have provided the certification, neither the U.S. nor South Korea may impose penalties on them. It is recommended that an exporter and producer who finds they have made a mistake seek advice from an appropriate representative if this situation occurs.

8. How does the government verify the correctness of KORUS claims?

Answer – The governments may send written questions or a questionnaire, or they may also conduct an on-site visit to the exporter or importer.

9. Can a written determination of origin from the government be obtained?

Answer – Yes, if requested by the importer or exporter, a written determination can be obtained.

10. Must the importer and exporter retain records and for how long?

Answer – Yes, records that support the claim and the determination of origin must be maintained for a period of five years.

Free trade agreements play a critical role in the success for all globally operating companies, whether they are trading between two countries or many. The U.S. currently has free trade agreements with twenty countries and while they all have much in common, none of them are simple to understand or to execute. This article is not intended to address or answer all questions related to KORUS, but to give the reader a sense of what it is and knowledge that when approached properly, KORUS provides real opportunities. □

1 One exception to the direct shipment rule is that merchandise can be unloaded and reloaded in the Customs control of a third country.

2 Depending on the goods, Special Processing Rules may also apply

3 For textiles and apparel the de minimis is 7 percent.

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