



Ottawa, March 27, 2015

# Memorandum D11-4-31

## Uniform Regulations – Chapter Four of the Canada-Korea Free Trade Agreement (CKFTA)

### In Brief

This memorandum is issued to publish the Memorandum of Understanding between Canada and the Republic of Korea concerning uniform regulations for the interpretation, application and administration of Chapter Four of the Free Trade Agreement between Canada and the Republic of Korea.

This memorandum contains the Memorandum of Understanding between Canada and the Republic of Korea concerning Uniform Regulations of Chapter Four of the [Canada-Korea Free Trade Agreement \(CKFTA\)](#).

### Guidelines and General Information

1. The Uniform Regulations elaborate in detail how CKFTA Parties will interpret, apply and administer the obligations regarding customs procedures under Chapter Four. They are designed to ensure consistent and uniform treatment of, and greater certainty for, importers, exporters and producers in Canada and Korea.

#### Additional Information

2. For more information, within Canada call the Border Information Service at **1-800-461-9999**. From outside Canada call 204-983-3500 or 506-636-5064. Long distance charges will apply. Agents are available Monday to Friday (08:00 – 16:00 local time / except holidays). TTY is also available within Canada: **1-866-335-3237**.

### Appendix

#### Memorandum of Understanding Between Canada and the Republic of Korea Concerning Uniform Regulations for the Interpretation, Application and Administration of Chapter Four of the Free Trade Agreement Between Canada and the Republic of Korea

**Canada and Korea** (hereinafter referred to as the “Participants”),

**Pursuant** to Article 4.12 (Uniform Regulations) of the Origin Procedures and Trade Facilitation Chapter of the Free Trade Agreement between Canada and the Republic of Korea (hereinafter referred to as “the Agreement”);

**Establishing** Uniform Regulations for the interpretation, application, and administration of Chapter Four (Origin Procedures and Trade Facilitation) of the Agreement;

**Have come** to the following understanding:

#### Certificate of Origin

1. Each Participant will provide that the Certificate of Origin referred to in Article 4.1.1 of the Agreement is:
  - (a) equivalent in substance to the Certificate of Origin set out in Annex A;
  - (b) in a printed format or in another medium, including electronic format, approved by the customs administration of the Participant into whose territory the good is imported; and

(c) completed by the exporter or producer in accordance with this Memorandum of Understanding (hereinafter referred to as “MOU”) and in accordance with any instructions contained in the Certificate of Origin set out in Annex A.

2. For the purposes of Article 4.1.2 of the Agreement the importer will, at the request of the customs administration of the Participant into whose territory the good is imported (hereinafter referred to as the “Participant of import”), provide a written translation of the Certificate of Origin in a language of that Participant.
3. The Participants understand that for the purposes of Article 4.1.5 of the Agreement, a single Certificate of Origin may be used for:
  - (a) a single shipment of goods that results in the filing of one or more entries on the importation of the goods into the territory of a Participant; or
  - (b) more than one shipment of goods that results in the filing of one entry on the importation of the goods into the territory of a Participant.

### **Importations**

4. The Participants understand that for the purposes of Article 4.2.1(d) of the Agreement, the customs administration of the Participant into whose territory the good is imported will provide the importer with not less than five working days to provide the customs administration with a copy of the corrected Certificate of Origin if the customs administration:
  - (a) determines that a Certificate of Origin is illegible, defective on its face, or has not been completed in accordance with paragraph 1 of this MOU; or
  - (b) discovers that discrepancies exist between the Certificate of Origin and the written declaration referred to in Article 4.2.1(b) of the Agreement.
5. If an importer makes a corrected declaration of origin and pays any duties owed pursuant to Article 4.2.1(e) of the Agreement, a Participant, pursuant to Article 4.2.2(b) of the Agreement, will not impose a penalty if:
  - (a) for Canada, the importer presents a corrected declaration of origin within 90 days of the date on which the importer has reason to believe that the declaration is incorrect; and
  - (b) for Korea, the importer presents a corrected declaration of origin within 30 days of the date on which the importer has reason to believe that the declaration is incorrect.
6. The Participants understand that if, as a result of an origin verification conducted under Article 4.6 (Origin Verifications) of the Agreement, the customs administration of a Participant determines that a good, covered by a Certificate of Origin that applies to multiple importations of identical goods pursuant to Article 4.1.5(b) of the Agreement, is not an originating good, that Certificate of Origin should not be used to claim preferential tariff treatment for identical goods imported after the date that the written determination is provided to the exporter or producer pursuant to Article 4.6.10 of the Agreement.
7. Pursuant to Article 4.2.1(d) of the Agreement, the importer, at the request of the customs administration of the Participant of import, will demonstrate that the good was shipped in accordance with Article 3.16 (Transit and Transshipment) of the Agreement by providing that Participant’s customs administration with:
  - (a) bill(s) of lading or waybill(s) indicating the shipping route and all points of shipment and transshipment prior to the importation of the good; and
  - (b) if the good is transported through the territory of a non-participant, a copy of the customs control documents indicating to that customs administration that the good remained under customs control while in that non- participant territory.

## Waiver of Certificate of Origin

8. The Participants understand that for the purposes of Article 4.3 (Waiver of Certificate of Origin) of the Agreement, “series of importations” means:

- (a) for Canada, two or more importations of a good accounted for separately but covered by one commercial invoice issued by the seller of the good to the purchaser of the good; and
- (b) for Korea, two or more import declarations covering the same goods arriving on the same day or covered by one invoice or one bill of lading.

## Exportations

9. The Participants understand if the customs administration of a Participant provides an exporter or producer of a good with a written determination pursuant to Article 4.6.10 of the Agreement that the good is a non-originating good, then pursuant to Article 4.4.1(b) of the Agreement, the exporter or producer will notify all persons to whom it gave a Certificate of Origin in respect of the good affected by the determination.

## Record Keeping Requirements

10. Each Participant will ensure that the records required to be maintained under Article 4.5 (Record Keeping Requirements) of the Agreement will be kept in such a manner as to enable an officer of the customs administration of a Participant, in conducting a verification of origin under Article 4.6 (Origin Verifications) of the Agreement, to perform detailed verifications of the records to verify the information on the basis of which:

- (a) in the case of an importer, a claim for preferential tariff treatment was made for a good imported into that Participant’s territory; and
- (b) in the case of an exporter or producer, a Certificate of Origin was completed for a good exported to the territory of the other Participant.

11. Each Participant will ensure that importers, exporters, and producers in the territory of a Participant that are required to maintain records under Article 4.5 (Record Keeping Requirements) of the Agreement are permitted to maintain those records in any medium, in accordance with that Participant’s domestic law, provided that the records can be retrieved and printed.

12. Each Participant will ensure that exporters and producers that are required to maintain records pursuant to Article 4.5(a) of the Agreement will, subject to the notification and consent requirements in Article 4.6.2 of the Agreement, make those records available for inspection by an officer of the customs administration of the Participant conducting a verification visit and provide facilities for that inspection.

13. A Participant may deny preferential tariff treatment to a good that is the subject of an origin verification if the exporter, producer, or importer of the good that is required to maintain records under Article 4.5 (Record Keeping Requirements) of the Agreement:

- (a) fails to maintain records relevant to determining the origin of the good in accordance with the requirements of the Agreement and this MOU, subject to paragraph 11; or
- (b) denies access to the records.

## Origin Verifications

14. The Participants understand that for the purposes of Article 4.6.1(c) of the Agreement, the customs administration of a Participant may, in addition to conducting a verification of origin by means of written questionnaires and verification visits pursuant to Article 4.6.1(a) and (b) of the Agreement, conduct a verification of origin with respect to a good that is imported into that Participant’s territory by means of:

- (a) a verification letter that requests information from the exporter or producer of the good in the territory of the other Participant, provided that it contains specific reference to the good that is the subject of the verification; or

(b) any other method customarily used by the customs administration of the Participant conducting the verification.

15. Subject to paragraph 16, if the customs administration of a Participant conducts a verification under paragraph 14(b), it may, on the basis of a response from an exporter or producer, issue a determination pursuant to Article 4.6.10 of the Agreement that:

(a) the good does not qualify as an originating good, provided that the response is in writing and is signed by that exporter or producer; or

(b) the good qualifies as an originating good.

16. The Participants understand that if the producer of a good calculates the net cost of the good as set out in Chapter Three (Rules of Origin) of the Agreement, the customs administration of the Participant into whose territory the good was imported will not, during the time period over which the net cost has been calculated, verify whether the good satisfies the value test.

17. The Participants understand that the written questionnaire pursuant to Article 4.6.1(a) of the Agreement or the verification letter referred to in paragraph 14(a), will indicate that the amount of time the exporter or producer has to complete and return the questionnaire or the information and documentation required is not less than 30 days from the date of its receipt.

18. If the customs administration of a Participant has received the completed questionnaire or the information and documentation required by a verification letter pursuant to Articles 4.6.1(a) and (c) of the Agreement and paragraph 14(a), and considers that it needs more information to determine the origin of the goods subject to verification, it may request additional information from the exporter or producer, through a questionnaire, note, or any further means of verification, subject to paragraph 17.

19. The Participants understand that if an exporter or producer fails to return a duly completed questionnaire or fails to provide the information and documentation required by a verification letter within the amount of time referred to in paragraph 17, the Participant of import may deny preferential tariff treatment to the good in question following the procedures in paragraph 20.

20. If the customs administration of a Participant determines, as a result of an origin verification, that the good that is the subject of the verification does not qualify as an originating good, the written determination provided for under Article 4.6.10 of the Agreement will include a written notice of intent to deny preferential tariff treatment for that good, which specifies the date after which preferential tariff treatment will be denied, and not less than 30 days during which the exporter or producer of the good may provide written comments or additional information regarding that determination that will be taken into account prior to completing the verification.

21. The Participants understand that for the purposes of Article 4.6 (Origin Verifications) of the Agreement, all communication to the exporter or producer and to the customs administration of the Participant of export will be sent by any means that can produce a confirmation of receipt. The specified time periods will begin from the date of such receipt.

22. The Participants understand that for the purposes of Article 4.6.5 and Article 4.6.6 of the Agreement, a notice or request for postponement of a verification visit will be made in writing and sent to the address of the office of the customs administration of the Participant that sent the notice of intent to conduct a verification visit.

23. The Participants understand that, for the purposes of Article 4.6.8 of the Agreement, an exporter or producer of a good will identify, to the customs administration conducting a verification visit, any observers designated to be present during such visit.

24. The common standards for the written questionnaires referred to in Article 4.6.1(a) of the Agreement are set out in Annex B.

25. The Participants understand that the customs administration of a Participant may, for the purposes of verifying the origin of a good, request that the importer of the good voluntarily obtain and supply written information voluntarily provided by the exporter or producer of the good in the territory of the other Participant, provided that

the failure or refusal of the importer to obtain and supply such information will not be considered as a failure of the exporter or producer to supply the information, or as a ground for denying preferential tariff treatment.

26. This MOU does not limit a right provided, under Chapter Four (Origin Procedures and Trade Facilitation) of the Agreement, to the exporter or producer of a good in the territory of a Participant on the basis that the exporter or producer is also the importer of the good in the territory of the Participant in which preferential tariff treatment is claimed.

27. The Participants understand that for the purposes of Article 4.6.11 of the Agreement, “pattern of conduct” means at least two instances of false or unsupported representations by an exporter or producer of a good resulting in at least two written determinations being sent to that exporter or producer pursuant to Article 4.6.10 of the Agreement that conclude, as a finding of fact, that Certificates of Origin completed by that exporter or producer with respect to identical goods contain false or unsupported representations.

28. The Participants understand that when the customs administration of a Participant, in conducting a verification of origin of a good imported into its territory pursuant to Article 4.6 (Origin Verifications) of the Agreement, conducts a verification of the origin of a material that is used in the production of the good, the verification of the material will be conducted in accordance with the procedures set out in:

(a) paragraphs 1, 2, 3, 5, 7, and 8 of Article 4.6 (Origin Verifications) of the Agreement; and

(b) paragraphs 14 through 17, 21, 22, 23, 25 and 26.

29. The Participants understand that the customs administration of a Participant, pursuant to paragraph 28, may consider the material to be non-originating in determining whether the good is an originating good where the producer or supplier of that material does not allow the customs administration access to information, required to make a determination of whether the material is an originating material, by the following or other means:

(a) denial of access to its records;

(b) failure to respond to a verification questionnaire or letter; or

(c) refusal to consent to a verification visit within 30 days of receipt of notification pursuant to Article 4.6.4 of the Agreement as applied pursuant to paragraph 28.

30. A Participant will not consider a material that is used in the production of a good to be a non-originating material solely on the basis of a postponement of a verification visit under Article 4.6.5 and 4.6.6 of the Agreement as applied pursuant to paragraph 28 of this MOU.

### **Advance Rulings**

31. The Participants understand that for the purposes of Article 4.10 (Advance Rulings) of the Agreement, the customs administration of a Participant will issue an advance ruling to a producer in the territory of the other Participant with respect to a material used in the production of a good in the territory of that other Participant, provided that the good is to be subsequently imported into the territory of the Participant issuing the ruling concerning a matter covered by Article 4.10.1(a) through (d) and (g) of the Agreement with respect to that material.

32. The common standards regarding the information to be submitted in an application for an advance ruling are set out in Annex C.

33. The Participants understand that for the purposes of Article 4.10 (Advance Rulings) of the Agreement, an application to the customs administration of a Participant for an advance ruling will be completed in the language of that Participant, pursuant to Article 4.1.2 of the Agreement.

34. The Participants understand that subject to Article 4.10.3 of the Agreement and paragraph 35, the customs administration to which the application is made will issue an advance ruling within 90 days or a longer period as specified by the laws and regulations of the Participant of import, after it receives all information reasonably required to process the application, including any supplemental information that may be required.

35. The Participants understand that for the purposes of Article 4.10.2 of the Agreement, if the customs administration of a Participant determines that an application for an advance ruling is incomplete, it may decline to process the application provided that:

- (a) it has notified the applicant of any supplemental information required and of the amount of time within which to provide the information that will not be less than 30 days, within which the applicant will provide the information; and
- (b) the applicant has failed to provide the information within the amount of time specified.

36. The Participants understand that Article 4.10.3 of the Agreement and paragraph 35 are not to be construed to prevent a person from reapplying for an advance ruling.

37. For the purposes of Article 4.10.8 of the Agreement, “importations of a good” means:

- (a) for Canada, a good that has been released pursuant to Section 31 of the [Customs Act](#); and
- (b) for Korea, a good that has been released pursuant to Chapter 9 of the [Customs Act](#).

## **Review and Appeal**

38. The Participants understand that a denial of preferential tariff treatment to a good by the customs administration of a Participant under this MOU may be appealed under Article 4.11 (Review and Appeal) of the Agreement by the exporter or producer of the good who completed a Certificate of Origin for the good for which a claim for preferential tariff treatment was denied, including a denial of preferential tariff treatment under Article 4.6.4 and Article 4.7 (Denial of Preferential Tariff Treatment) of the Agreement and paragraph 19.

39. The Participants understand that if an advance ruling is issued under Article 4.10 (Advance Rulings) of the Agreement or paragraph 31, a modification or revocation of the advance ruling will be subject to review and appeal under Article 4.11 (Review and Appeal) of the Agreement.

## **Miscellaneous**

40. For the purposes of Chapter Four (Origin Procedures and Trade Facilitation) of the Agreement and this MOU, “completed” means completed, signed, and dated.

41. Each Participant will ensure that its customs procedures governed by the Agreement are in accordance with Chapter Four (Origin Procedures and Trade Facilitation) of the Agreement and this MOU.

## **Entry Into Effect, Modification and Termination**

42. This MOU will enter into effect on the date of the entry into force of the Agreement.

43. The Participants may modify this MOU in writing at any time by mutual consent.

44. This MOU will cease to have effect on termination of the Agreement.

## **Annex A – (BSF760) [Certificate of Origin - Canada-Korea Free Trade Agreement](#)**

### **Annex B - Common Standards for Written Questionnaires**

1. For the purposes of paragraph 24, the Participants endeavour to agree on uniform questions to be included in the general questionnaire.

2. Subject to paragraph 3 of this Annex, when the customs administration of a Participant conducts a verification under Article 4.6.1(a) of the Agreement, it will send the general questionnaire referred to in paragraph 1 of this Annex to the exporter or producer.

3. For the purposes of Article 4.6.1(a) of the Agreement, where the customs administration of a Participant requires specific information not reflected in the general questionnaire, it may send the exporter or producer a more specific questionnaire, based on the information required to determine whether the good subject to verification is an originating good.

4. For the purposes of paragraph 24, the questionnaires may, at the option of the exporter or producer, be completed in either the language of the Participant into whose territory the good is imported or the language of the Participant in the territory where the exporter or producer is located.

5. This Annex is not to be construed to prevent the customs administration of a Participant from requesting additional information in accordance with Article 4.6.1 of the Agreement and this MOU.

### **Annex C - Common Standards for Information Required in the Application for an Advance Ruling**

1. For the purposes of Article 4.10.2 of the Agreement, each Participant endeavours to provide that a request for an advance ruling contains:

- (a) the name and address of the exporter, producer, or importer of the good requesting the issuance of the ruling, hereinafter referred to as the applicant;
- (b) when the applicant is:
  - (i) the exporter of the good, the name and address of the producer and importer of the good, if known;
  - (ii) the producer of the good, the name and address of the exporter and importer of the good, if known; or
  - (iii) the importer of the good, the name and address of the exporter and, if known, the producer of the good;
- (c) when the request is made on behalf of an applicant, the name and address of the person requesting the issuance of the advance ruling and either:
  - (i) a written statement from the person requesting the issuance of the advance ruling; or
  - (ii) at the request of the customs administration of that Participant, the person must provide, in accordance with applicable domestic law, evidence from the applicant on whose behalf the ruling is being requested, that indicates that the person is duly authorised to transact business as the agent of the applicant;
- (d) a statement, based on the applicant's knowledge, regarding whether the issue that is the subject of the request for an advance ruling is, or has been the subject of:
  - (i) a verification of origin;
  - (ii) an administrative review or appeal;
  - (iii) a judicial or quasi-judicial review; or
  - (iv) a request for an advance ruling in the territory of either Participant, and if so, a brief statement setting forth the status or disposition of the matter;
- (e) a statement, based on the applicant's knowledge, regarding whether the good that is the subject of the request for an advance ruling has previously been imported into the territory of the Participant to which the request for the advance ruling has been made;
- (f) a statement that the information presented is accurate and complete; and
- (g) a complete description of all relevant facts and circumstances relating to the issue that is the subject of the request for the advance ruling, including:
  - (i) a concise statement, within the scope of Article 4.10.1 of the Agreement, setting forth the issue on which the advance ruling is sought; and
  - (ii) a general description of the good.

2. If relevant to the issue that is the subject of the request for an advance ruling and in addition to the information referred to in paragraph 1 of this Annex, the request should include:

- (a) a copy of an advance ruling or other ruling with respect to the tariff classification of the good that has been issued to the applicant by the Participant to whom the request for an advance ruling is made; and

(b) if no previous advance ruling or other ruling with respect to the tariff classification of the good has been issued by the Participant to whom the request for the advance ruling is made, sufficient information to enable the customs administration of that Participant to classify the good, including:

(i) a full description of the good, including, if 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, product literature, drawings, photographs, or schematics; and

(ii) when practical and useful, a sample of the good.

3. If the request for the advance ruling involves the application of a rule of origin that requires an assessment of whether materials used in the production of the goods undergo an applicable change in tariff classification, the request will need to include:

(a) a listing of each material that is used in the production of the good;

(b) with respect to each material referred to in paragraph (a) that is claimed to be an originating material, a complete description of the material, including the basis on which it is considered that the material originates;

(c) with respect to each material referred to in paragraph (a) that is a non-originating material or the origin of which is unknown, a complete description of the material, including its tariff classification; and

(d) a description of all processing operations employed in the production of the good, the location of each operation, and the sequence in which the operation occur.

4. When the request for an advance ruling involves a value test, the applicant will need to indicate whether the request is based on the use of:

(a) the transaction value or ex-works price;

(b) the net cost; or

(c) both.

5. When the request for an advance ruling involves the use of the transaction value or ex-works price, the request will need to include information sufficient to calculate the transaction value or ex-works price of the good with respect to the transaction of the producer or exporter of the good, in accordance with Article 3.4 (Value Test) of the Agreement.

6. When the request for an advance ruling involves the net cost of the good, the request will need to include:

(a) information sufficient to calculate the net cost of the good in accordance with Article 3.4 (Value Test) of the Agreement; and

(b) the period over which the net cost calculation is to be made.

7. When the request for an advance ruling is limited to the calculation of value test, in addition to the information required under paragraph 1 of this Annex, only that information set out under paragraphs 4, 5, and 6 of this Annex that is relevant to the issue that is the subject of the request for an advance ruling should be contained in the request.

8. When the request for an advance ruling is limited to the origin of a material that is used in the production of a good in accordance with paragraph 31, in addition to the information required under paragraph 1 of this Annex, only that information, set out under paragraphs 2 and 3 of this Annex, that is relevant to the issue that is the subject of the advance ruling should be contained in the request.



<b>References</b>	
<b>Issuing Office</b>	Trade and Anti-dumping Programs Directorate
<b>Headquarters File</b>	
<b>Legislative References</b>	<u><a href="#">Customs Act</a></u>
<b>Other References</b>	
<b>Superseded Memorandum D</b>	N/A