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**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**DEPARTMENT OF THE TREASURY**

**19 CFR PARTS 10, 24, 162, 163, and 178**

**USCBP-2012-0007**

**CBP Dec. 13-08**

**RIN 1515-AD86**

**United States-Korea Free Trade Agreement**

**AGENCIES:** U.S. Customs and Border Protection, Department of Homeland Security;  
Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, with two changes, interim amendments to the U.S. Customs and Border Protection (“CBP”) regulations which were published in the **Federal Register** on March 19, 2012, as CBP Dec. 12-03, to implement the preferential tariff treatment and other customs-related provisions of the United States-Korea Free Trade Agreement entered into by the United States and the Republic of Korea.

**DATES:** Effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**FOR FURTHER INFORMATION CONTACT:**

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## **SUPPLEMENTARY INFORMATION:**

### **Background**

On June 30, 2007, the United States and the Republic of Korea (hereinafter “Korea”) signed the United States-Korea Free Trade Agreement (hereinafter “UKFTA” or the “Agreement”). On December 3, 2010, the United States and Korea concluded new agreements, reflected in letters signed on February 10, 2011, that provide new market access and level the playing field for U.S. auto manufacturers and workers. The provisions of the FTA were adopted by the United States with the enactment of the United States-Korea Free Trade Agreement Implementation Act (the “Act”), Pub. L. 112-41, 125 Stat. 428 (19 U.S.C. § 3805 note), on October 21, 2011. Sections 103(b) and 208 of the Act require that regulations be prescribed as necessary to implement the provisions of the UKFTA.

Following Presidential Proclamation 8783, CBP published on March 19, 2012, CBP Dec. 12-03 in the **Federal Register** (77 FR 15943), setting forth interim amendments to implement the preferential tariff treatment and customs-related provisions of the UKFTA. In order to provide transparency and facilitate their use, the majority of the UKFTA implementing regulations set forth in CBP Dec. 12-03 were included within new subpart R in part 10 of the CBP regulations (19 CFR part 10). However, in those cases in which UKFTA implementation was more appropriate in the context of an existing regulatory provision, the UKFTA regulatory text was incorporated in an existing part within the CBP regulations. For a detailed description

of the pertinent provisions of the Agreement and of the UKFTA implementing regulations, please see CBP Dec. 12-03.

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on March 15, 2012, CBP Dec. 12-03 provided for the submission of public comments that would be considered before the adoption of the interim regulations as a final rule. The prescribed public comment period closed on May 18, 2012.

### **Discussion of Comments**

Two responses were received to the solicitation of comments on the interim rule set forth in CBP Dec. 12-03. The comments are discussed below.

#### **A. Certification**

##### **Comment**

A commenter cited four subjects of CBP's interim regulations which it found favorable, namely: (1) the flexibility for certifications to be issued by the producer, exporter, or importer who possesses the required origin information; (2) the consistent application of the rules of origin to UKFTA; (3) clear regulatory procedures regarding actions that CBP will take with respect to inquiries, audits, and enforcement actions; and (4) the exemption from the ad valorem merchandise processing fees for goods that qualify as originating under the UKFTA. In addition, the commenter praised the implementation instructions issued by CBP on March 12, 2012.

The commenter, however, requested clarification concerning the period of validity for blanket certification issued for a twelve-month period for multiple shipments of identical goods from a manufacturer under 19 CFR 10.1004(a)(3)(vii) with respect to the four-year period of a properly executed certificate provided for in 19 CFR 10.1004(f). For example, a U.S. importer

receives a blanket certificate from a Korean supplier (producer) for a one-year period (1/1/2013 through 12/31/2013). Based on the validity of the four-year period for the certificate (1/1/2013 through 12/31/2016) as permitted under 19 CFR 10.1004(f), the commenter asks whether the certificate is valid for use to make a duty free claim after the expiration of the one-year period from the supplier (producer), that is, whether the one-year blanket for multiple shipments of identical goods could be extended for another three years.

#### CBP Response

Section 10.1004 of the CBP regulations concerning certification implements, among other provisions, Article 6.15.5 of the UKFTA and requires that a certification be valid for four years after the date it was issued. CBP will not accept a certification that is more than four years old. The time period that a blanket certification may cover is limited to a one-year period. In the example above, the blanket certification issued on 1/1/2013 applies to the one-year period of time during which the identical goods were produced (1/1/2013 – 12/31/2013). The producer would need to have a new blanket certification for another year's production. Please note that the four-year certification period (through 12/31/2016) would continue to cover only the goods that were produced during the blanket one-year period from 1/1/2013 to 12/31/2013 if these goods were imported into the United States three years after they were produced. The producer would need an amended blanket certification to cover further production of identical goods beyond the initial one-year period, such as 1/1/2014 to 12/31/2014.

#### B. Verification

##### Comment

A commenter stated that the use of denial of entry under 19 CFR 10.1027 could be a disproportionate measure and that any action against textile or apparel goods under the UKFTA

should be limited to denial of preferential treatment. The commenter requested that CBP consider revising section 10.1027 of part 10 to either (1) remove references to “denial of entry” to textile or apparel goods, or, (2) to further specify the conditions that would trigger a denial of entry requiring a CBP finding of either (a) repeated unlawful activity or (b) willful presentation of inaccurate origin information.

#### CBP Response

CBP believes the language in section 10.1027 of the interim regulations accurately reflects the text of the UKFTA and the Act. Article 4.3.10 of the UKFTA specifies that if the importing party is unable to make the determination described in either Article 4.3.3 (verification to determine that a claim of origin for a textile or apparel good is accurate) or Article 4.3.5 (verification to determine that a person is complying with applicable customs measures affecting trade in textile or apparel goods when the importing party has a reasonable suspicion that the person is engaging in unlawful activity relating to trade in textile and apparel goods) within 12 months after its request for a verification, or makes a negative determination, it may, consistent with its law, take appropriate action. Section 207(d)(2) of the Act specifically defines “appropriate action” to include denial of entry into the United States for goods subject to a verification under section 207(a)(1), namely textile or apparel goods.

With regard to country of origin determinations of textile or apparel goods in general, if the CBP port director is unable to determine the country of origin of a textile or apparel product, the importer must submit additional information as requested by the port director. Release of the product from CBP custody will be denied until a determination of the country of origin is made based upon the information provided or the best information available. See 19 CFR 102.23(b).

## **Conclusion**

CBP is making two technical corrections to the interim regulatory text as a result of its further review. The first is to correct a cross-reference in section 10.1009(c)(2) to paragraph (c)(1). The second is to the regulatory text of section 10.1027 to improve readability and logical flow by changing the order of paragraphs (c) and (d) concerning verifications of U.S. imports of textile and apparel goods in Korea. This change will move the provision on action by U.S. officials in conducting a verification abroad to appear before the provision on denial of permission to conduct a verification. Accordingly, after further review of the comments and further consideration, CBP has determined that the interim regulations published as CBP Dec. 12-03 should be adopted as a final rule with two technical corrections to 19 CFR §§ 10.1009 and 10.1027 as discussed above.

## **Executive Order 12866**

This document is not a regulation or a rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 4, 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866.

## **Regulatory Flexibility Act**

CBP Dec. 12-03 was issued as an interim rule rather than a notice of proposed rulemaking because CBP had determined that the interim regulations involve a foreign affairs function of the United States pursuant to section 553(a)(1) of the Administrative Procedure Act. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601*et seq.*), do not apply to this rulemaking. Accordingly,

this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

### **Paperwork Reduction Act**

The collections of information contained in these regulations have previously been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1651-0117, which covers many of the free trade agreements requirements that CBP administers. The collections of information in these regulations are in §§ 10.1003 and 10.1004. This information is required in connection with claims for preferential tariff treatment under the UKFTA and the Act and will be used by CBP to determine eligibility for tariff preference under the UKFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 0.2 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street NW, 5th Floor, Washington, DC 20229-1179. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number.

## **Signing Authority**

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

### **List of Subjects**

#### 19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

#### 19 CFR Part 24

Accounting, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

#### 19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Penalties, Trade agreements.

#### 19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

#### 19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

## **Amendments to the CBP Regulations**

Accordingly, the interim rule amending parts 10, 24, 162, 163, and 178 of the CBP regulations (19 CFR parts 10, 24, 162, 163, and 178), which was published at 77 FR 15943 on

March 19, 2012, is adopted as final with the following changes:

**PART 10 - ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE,  
ETC.**

1. The general authority citation for Part 10 and the specific authority citations for subpart R continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

\* \* \* \* \*

Sections 10.1001 through 10.1034 also issued under 19 U.S.C. 1202 (General Note 33, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 112-41 , 125 Stat. 428 (19 U.S.C. 3805 note).

**§ 10.1009 [Amended]**

2. Paragraph (c)(2) of section 10.1009 is amended by removing the words, “paragraph (c)” and adding in its place the words, “paragraph (c)(1)”.

**§ 10.1027 [Amended]**

3. Section 10.1027 is amended by redesignating paragraph (c) as paragraph (d) and paragraph (d) as paragraph (c), respectively.

Thomas S. Winkowski  
Deputy Commissioner of CBP,  
Performing Duties of the  
Commissioner of U.S. Customs  
and Border Protection

Approved: May 24, 2013

Timothy E. Skud  
Deputy Assistant Secretary of the Treasury

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