

ANNEX 3-B
EXEMPTION FROM THE PRINCIPLE OF TERRITORIALITY

1. *List of Goods*

- (a) Each Party shall apply Article 3.14 to goods listed in Appendix 3-B-1 attached hereto.
- (b) A Party may request amendment of the list referred to in subparagraph (a), which the other Party shall consider in good faith. Such amendment shall be adopted when mutually agreed by both Parties.

2. *Origin Conferring*

- (a) Goods referred to in paragraph 1(a) and any subsequent amendments, which are re-imported as the goods that do not undergo any process beyond operations within the territory of the re-importing Party for export as set out in Article 3.6 shall be deemed to be originating in the territory of that Party, provided that:
 - (i) the total value of non-originating input⁷ does not exceed 40 percent of the FOB price of the final good for which originating status is claimed; and
 - (ii) the value of originating materials exported from the Party is not less than 60 percent of the total value of materials used in manufacturing the re-imported material or good.
- (b) Except as otherwise provided for in this Annex, relevant Articles of this Chapter shall be applied *mutatis mutandis* to the origin conferring of the goods to which Article 3.14 applies.

3. *Specific Procedures for the Implementation of Article 3.14*

- (a) Certificate of Origin for goods covered by Article 3.14 shall be issued by the Issuing Authorities⁸ of the exporting Party in accordance with Chapter Four (Origin Procedures).
- (b) The issuing authority of the exporting Party shall indicate in the Certificate of Origin that the good is covered by Article 3.14.
- (c) Except as otherwise provided for in this Annex, the relevant Articles of Chapter Four (Origin Procedures) shall be applied *mutatis mutandis* to the goods to which Article 3.14 applies.
- (d) Each Party shall assist the customs authority of importing Party to conduct verification on goods covered by Article 3.14 in accordance with Articles 4.11 (Verification by competent authority of exporting Party), 4.12 (Verification by Customs Authority of Importing Party), 4.13 (Verification of Materials that are used in the Production of the Good), 4.15 (Confidentiality) and 4.18 (Uniform Regulations/Rules).

4. *Special Safeguard*

⁷ "**Total value of non-originating input**" shall mean the value of any non-originating materials added inside as well as any materials added and all other cost accumulated outside the Party concerned, including transport costs.

⁸ With regard to Korea, Issuing Authorities means the Korean customs authority.

- (a) When a Party determines that there is an increase of importation of a good covered by Article 3.14 into the territory of that Party in such quantities and under such conditions as to cause, or threaten to cause, serious injury to its domestic industry, that Party shall be free to suspend the application of Article 3.14 to such a good for such a period of time as it may consider necessary to prevent or remedy such injury or threat to cause injury to the domestic industry of the Party.
- (b) A Party that intends to suspend the application of Article 3.14 pursuant to subparagraph (a) shall notify to the other Party two months in advance of the start of the suspension period and afford the other Party an opportunity to exchange views with it in respect of the proposed suspension.
- (c) The period mentioned in subparagraph (a) may be extended provided that the Party which has taken the action of suspension, has determined that the suspension continues to be necessary to prevent or remedy injury.
- (d) In critical circumstances, where delay would cause damage which would be difficult to repair, the suspension of the application of Article 3.14 under subparagraph (a) may be taken provisionally without two months advance notification to the other Party, on the condition that notification shall be made before such suspension takes effect.
- (e) When a Party has made a determination mentioned in subparagraph (a) and the requirements set out in subparagraph (b) are fulfilled, the Party concerned may suspend the application of Article 3.14 unilaterally and unconditionally, including as follows:
 - (i) there shall be no obligation to prove that there is serious injury;
 - (ii) there shall be no obligation for advance consultation;
 - (iii) there shall be no limit to the duration or frequency of suspension;and
 - (iv) there shall be no obligation for compensation.

5. *Review*

- (a) Parties shall review the implementation and operation of Article 3.14 in accordance with the procedure set out in Article 15.2.2(c) (Joint Committee and Review). For the purposes:
 - (i) the exporting Party shall provide to the importing Party or Joint Committee a brief factual report on the operation of Article 3.14, including export statistics of each good listed in the attached lists referred to in paragraph 1(a) to the importing Party during the previous six month period; and
 - (ii) the importing Party shall provide upon the request of the exporting Party or Joint Committee information pertaining to denial of claims for preferential tariff treatment, if any, including the number of Certificates of Origin not accepted, and reasons for denial.
- (b) The importing Party or Joint Committee may request such additional

information as it may consider necessary for its review of the implementation and operation of Article 3.14 from the exporting Party.

- (c) Taking into account the result of the review provided for in subparagraph (a), the Parties or Joint Committee may make recommendations as they may consider necessary.

6. *Option of Rescinding*

Anytime five years after the date of entry into force of this Agreement, each Party will have an option of rescinding the application of this Annex when it determines, on the basis of a review and on its own discretion, that its interests have been seriously damaged as a consequence of the application of Article 3.14.

7. Any dispute concerning the interpretation, implementation or application of this Annex shall not be subject to the procedures and mechanism set out in Chapter Fourteen (Dispute Settlement).

8. Nothing in this Annex shall affect the rights and obligations of the Parties under this Agreement, including Section B-2 (Safeguard Measures) of Chapter Two (Trade in Goods).

APPENDIX 3-B-1

PRODUCT LIST SUBJECT TO EXEMPTION FROM THE PRINCIPLE OF TERRITORIALITY

Chapter 20	Preparations of vegetables, fruit, nuts or other parts of plants
200892	
Chapter 43	Furskins and artificial fur; manufactures thereof
430400	
Chapter 48	Paper and paperboard; articles of paper pulp, of paper or of paperboard
480439	
Chapter 55	Man-made staple fibers
550962, 550969	
Chapter 58	Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery
581099	
Chapter 61	Articles of apparel and clothing accessories, knitted or crocheted
610120, 610130, 610190, 610210, 610220, 610230, 610290, 610322, 610323, 610329, 610331, 610332, 610333, 610339, 610341, 610342, 610343, 610349, 610413, 610419, 610422, 610423, 610429, 610431, 610439, 610441, 610449, 610451, 610459, 610461, 610469, 610590, 610712, 610719, 610721, 610722, 610729, 610791, 610811, 610829, 610832, 611019, 611211, 611212, 611219, 611220, 611231, 611239, 611241, 611249, 611420, 611490	
Chapter 62	Articles of apparel and clothing accessories, not knitted or crocheted
620111, 620112, 620113, 620119, 620192, 620219, 620291, 620292, 620299, 620312, 620322, 620323, 620329, 620339, 620349, 620412, 620419, 620421, 620422, 620423, 620429, 620441, 620444, 620590, 620610, 620620, 620721, 620722, 620791, 620799, 620811, 620819, 620821, 620822, 620829, 620891, 620899, 620920, 620930, 620990, 621040, 621120, 621132, 621139, 621141, 621142, 621230, 621390, 621420	
Chapter 63	Other made up textile articles; sets; worn clothing and worn textile articles; rags
630130	

August 7, 2009

The Honorable Rahul Khullar
Commerce Secretary
Ministry of Commerce and Industry
Republic of India

Dear Secretary Khullar,

I have the honour to confirm that the following understandings has been reached between the Republic of Korea and the Republic of India (hereinafter referred to as “Parties”) regarding Chapter Three (Rules of Origin) of the Comprehensive Economic Partnership Agreement(CEPA).

Recognizing that the method of calculating the value of non-originating materials used in the production of intermediate materials has not been fully agreed, the Parties shall undertake consultations immediately after the date of entry into force of the CEPA with a view to arriving at mutually satisfactory solution on this issue through the Customs Committee established pursuant to Article 5.10. The Committee shall endeavour to reach an agreement no later than the second anniversary of the effective date of the Agreement. If an agreement is not reached within this timeframe to the mutual satisfaction of the Parties, the issue will be considered closed and the language of the Agreement text will continue to prevail.

The Parties confirm that in interpreting and applying the Agreement, it is not the normal practice of either Party to oblige exporters or producers to provide a proof of origin with a view to tracing the value of non-originating materials used in the production of intermediate materials unless there is a reasonable doubt.

I have the honour to propose that this letter and your letter in reply confirming that your Government shares these understandings shall constitute an integral part of the Comprehensive Economic Partnership Agreement.

Sincerely,

Hye-Min LEE
Deputy Minister for Trade &
Chief FTA negotiator

August 7, 2009

H.E. Mr. Hye-Min LEE,
Deputy Minister for Trade & Chief FTA negotiator,
Republic of Korea

Dear Mr. Hye-Min LEE,

I have the honour to acknowledge the receipt of your letter of this date, which reads as follows:

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I have the further honour to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the Comprehensive Economic Partnership Agreement.

Sincerely,

Rahul Khullar
Commerce Secretary

August 7, 2009

The Honorable Rahul Khullar
Commerce Secretary
Ministry of Commerce and Industry
Republic of India

Dear Secretary Khullar,

I have the honour to confirm the following understanding reached between the delegations of the Republic of Korea and the Republic of India during the course of negotiations regarding Chapter Three (Rules of Origin) of the Comprehensive Economic Partnership Agreement between our two Governments signed this day:

The application of Article 3.14 (Exemption from the Principle of Territoriality) shall be limited to goods which undergo working or processing in an area of 9.9 Km² of the Gaeseong Industrial Complex in North Korea as identified in the map, which is authenticated and attached to this letter, and the Government of the Republic of Korea ensures that its Issuing Authorities shall issue certificates of origin only to such goods in accordance with Article 3.14 (Exemption from the Principle of Territoriality) and the Annex 3-B (Exemption from the Principle of Territoriality).

I have the honour to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Comprehensive Economic Partnership Agreement.

Sincerely,

Hye-Min LEE
Deputy Minister for Trade &
Chief FTA negotiator

August 7, 2009

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Commerce Secretary