

INDIA - KOREA COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA)

The IK CEPA was signed on August 7, 2009 and entered into force on January 1, 2010.

A. Tariff Reduction and Elimination Modality

Under the Agreement, tariffs will be reduced or eliminated on 93% of Korea's tariff lines and 85% of India's tariff lines. Goods are placed under staging categories, which determine the pace of duty reduction or elimination to which the goods are subject. The base rate for the start of tariff reduction or elimination is the MFN customs duty rate applied on April 1, 2006. The staging categories listed below apply to the reduction or elimination of customs duties by each Party to the Agreement, except as otherwise provided in a Party's tariff schedule:

Duty Elimination

Category E-0: duties eliminated upon entry into force of the Agreement, i.e. January 1, 2010;

Category E-5: duties eliminated to 0% in 5 equal annual stages beginning on the date the Agreement enters into force; such goods shall be duty free from January 1 of year four;

Category E-8: duties eliminated to 0% in 8 equal annual stages beginning on the date the Agreement enters into force; such goods shall be duty free from January 1 of year seven.

The total number of tariff lines under HS Chapters 84, 85 and 87 eligible for duty elimination include:

HS	India			Korea		
	E - 0	E - 5	E - 8	E - 0	E - 5	E - 8
Chapter 84	113	54	638	927	214	17
Chapter 85	224	17	252	574	135	11
Chapter 87	1	0	36	116	89	2

Duty Reduction

Category RED: duties will be reduced to 1-5% from the base rate in 8 equal annual stages beginning on the date the Agreement enters into force; duties remain at 1-5% effective January 1 of Year 7;

Category SEN: for India, duties will be reduced by 50% of the base rate in 10 equal annual stages; duties remain at 50% of the base rate effective January 1 of Year 9;

for Korea, duties will be reduced by 50% of the base rate in 8 equal annual stages; duties remain at 50% of the base rate effective January 1 of Year 7.

The total number of tariff lines under HS Chapters 84, 85 and 87 eligible for duty reduction include:

HS	India		Korea	
	Category RED	Category SEN	Category RED	Category SEN
Chapter 84	163	17	0	0
Chapter 85	65	21	0	1
Chapter 87	2	9	0	0

Exclusion List

Category EXC: duties are exempt from the obligation of tariff reduction or elimination.

The total number of tariff lines under HS Chapters 84, 85 and 87 under the exclusion list include:

HS	India	Korea
Chapter 84	91	0
Chapter 85	91	0
Chapter 87	130	0

Under the IK-CEPA, tariff reduction or elimination will be conducted according to the timeline below:

Percentages of Annual Tariff Reduction for Korea

Category	Entry into force	Year 1 ¹	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
E - 0	100%							
E - 5	20%	40%	60%	80%	100%			
E - 8	12.5%	25%	37.5%	50%	62.5%	75%	87.5%	100%
RED ²	12.5% of [Base Rate (in %s) minus 1~5%]	25% of [Base Rate (in %s) minus 1~5%]	37.5% of [Base Rate (in %s) minus 1~5%]	50% of [Base Rate (in %s) minus 1~5%]	62.5% of [Base Rate (in %s) minus 1~5%]	75% of [Base Rate (in %s) minus 1~5%]	87.5% of [Base Rate (in %s) minus 1~5%]	100% of [Base Rate (in %s) minus 1~5%]
SEN.	6.3%	12.5%	18.8%	25%	31.3%	37.5%	43.8%	50%

Percentages of Annual Tariff Reduction for India

Category	Entry into Force	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
E - 0	100%									
E - 5	20%	40%	60%	80%	100%					
E - 8	12.5%	25%	37.5%	50%	62.5%	75%	87.5%	100%		
RED	12.5% of [Base Rate (in %s) minus 1~5%]	25% of [Base Rate (in %s) minus 1~5%]	37.5% of [Base Rate (in %s) minus 1~5%]	50% of [Base Rate (in %s) minus 1~5%]	62.5% of [Base Rate (in %s) minus 1~5%]	75% of [Base Rate (in %s) minus 1~5%]	87.5% of [Base Rate (in %s) minus 1~5%]	100% of [Base Rate (in %s) minus 1~5%]		
SEN.	5%	10%	15%	20%	25%	30%	35%	40%	45%	50%

¹ 'Year 1' means the subsequent year after the Agreement enters into force. Reductions commence on January 1 of each year.

² For greater certainty, 1~5% referred to in category RED shall be decided at the discretion of each Party by the date the Agreement enters into force.

B. Rules of Origin

General Rules

The IK-CEPA requires that goods satisfy both a change in tariff subheading (CTSH) and regional value content (RVC) of 35% to qualify as originating goods, unless otherwise specified in the product specific rules (PSR). The PSRs for certain products under HS Chapters 84, 85 and 87 mainly require a CTSH along with an RVC of 40% or 50%. A summary of the rules of origin under IK-CEPA is as follows:

Method of Determining Origin

1. Wholly obtained or produced
2. Goods not wholly produced or obtained in the exporting party:
 - a. where the regional value content is not less than 35% of the FOB value and the goods have undergone a change in tariff classification in a subheading at the six digit level (35% + CTSH); or
 - b. which satisfy the PSR as stipulated in the Agreementprovided that the final process of manufacturing is performed within the territory of the exporting Party.

The calculation of RVC is as follows:

$$\text{RVC (\%)} = \frac{\text{FOB Value of Goods} - \text{CIF Value of Non-originating Materials}}{\text{FOB Value of Goods}} \times 100$$

The IK-CEPA provides that that the value of non-originating materials used in the production of a good shall either be the CIF Value (for imported materials) or the earliest price as ascertained in accordance with the WTO Customs Valuation Agreement (for materials of undetermined origin).

Rules on Accumulation of Inputs

Materials originating in the territory of one Party, incorporated in the production of a good in the territory of the other Party, may be considered as originating in the territory of the other Party.

De Minimis

The CEPA provides that if a good does not undergo CTC in accordance with the aforementioned rules of origin in the final process of production, it may be considered as originating if:

- for goods except for those falling within HS Chapters 1 through 14 and Chapters 50 through 63, the value of all non-originating materials used in its production, which do not undergo the required CTC, does not exceed 10% of the FOB value of the good;
- for goods falling within HS Chapters 50 through 63, the total weight of non-originating basic textile materials used in its production, which do not undergo the required CTC, does not exceed 7% of the total weight of all the basic textile materials used; and
- the good meets all other applicable criteria set forth for qualifying as an originating good.

The IK CEPA marks the first FTA for India under which India has accepted the *de minimis* principle.

C. Certification Rules

General Description

The IK-CEPA adopts a government-certification system only. The exporter or the producer of the goods qualified for preferential tariff treatment shall apply in writing or electronically, as the case may be, to the relevant Issuing Authorities requesting for pre-export verification of the origin of the goods. The Issuing Authorities also shall carry out proper examination upon each application for a certificate of origin (CO). Relevant provisions can be found in Article 4.2 (Issuing Authorities of a Certificate of Origin), Article 4.3 (Application for Certificate of Origin) and Article 4.4 (Issuance of Certificate of Origin) of the legal text. They provide that goods can receive a tariff preference only if they are accompanied by a CO issued by the authorities of the exporting Party. The CO confirms that the goods meet the rules of origin set out in Chapter 3 of the Agreement.

A single valid CO may be used for either a single shipment of goods that results in the filing of one or more entries on the importation of goods into the territory of a Party or more than one shipment of goods that results in the filing of one entry on the importation of goods into the territory of a Party.

Back-to-Back Certificate of Origin

Not applicable to CEPA.

Third-party Invoicing

The IK-CEPA permits third-party invoicing as long as the concerned good meets the rules of origin requirements under the Agreement.

Advance Rulings

The Agreement allows for each Party to provide in writing advance rulings regarding classification of goods, principles to be adopted for the purpose of valuation of goods, origin determination or any other such matters as the Party may decide. Each Party shall adopt or maintain procedures for the issuance of advance rulings and publish advance rulings as stipulated in Article 5.8 of Chapter 5 of the Agreement.

Authorized Bodies

In the case of India, the bodies authorized to register exporters and issue COs include the Export Inspection Council of India or any other agency authorized by the Government of India in accordance with its laws and regulations. In the case of Korea, the authorized bodies include the Korea Customs Service, Korea Chamber of Commerce and Industry or any other agency authorized by the Government of Korea in accordance with its laws and regulations.

Post-Exportation Examination

Where the customs authority of the importing country has reasonable grounds to believe that the goods are not originating from the Parties, or at random, it may request the Issuing Authority of the exporting Party to verify the eligibility of goods for preferential treatment through a retroactive check. The Issuing Authority of the exporting Party must reply within three months after receipt of the request, and must transmit the results of the verification within six months. The importing Party may suspend the provision of preferential tariff treatment while awaiting the result of verification.

If the customs authority of the importing Party is not satisfied with the results of the retroactive check by the exporting Party, it may under exceptional circumstances conduct a verification through: (i) written requests for information and documentation from the exporter or producer; (ii) written questionnaires to the exporter or producer; and/or (iii) verification visits to the premises of an exporter or producer in the exporting Party.

Each country has the right of appeal to the relevant government authorities in matters relating to eligibility for tariff preferences.

Document Retention Requirements

The Issuing Authorities, importers, exporters and producers are required to retain the application for the CO and all documents related to origin for not less than five years from the date of issuance of the certificate of origin.

D. Relevant FTA Provisions

- Legal Text:
http://www.fta.go.kr/pds/fta_korea/india/eng/ALL_OF_CEPA_E.pdf
- Tariff Schedules:
http://www.fta.go.kr/pds/fta_korea/india/eng/CEPA_CHAP2_ANNEXA1_E.PDF (Korea)
http://www.fta.go.kr/pds/fta_korea/india/eng/CEPA_CHAP2_ANNEXA2_E.PDF (India)
<http://www.cbec.gov.in/customs/cs-act/notifications/notfns-2k10/cs-tarr2k10/cs04-2k10.htm> (India)
(Notification amending certain clerical errors in the Schedule)
- Origin Procedures, Chapter 4:
http://www.fta.go.kr/pds/fta_korea/india/eng/CEPA_CHAP4_E.PDF
- Product-Specific Rules of Origin, Annex 3A:
http://www.fta.go.kr/pds/fta_korea/india/eng/CEPA_CHAP3_ANNEXA_E.PDF
- Sample Certificate of Origin:
http://www.fta.go.kr/pds/fta_korea/india/eng/CEPA_CHAP4_ANNEXB_E.PDF