

United States International Trade Commission

Effect of Adding References to HS 6104.32 to Correct the U.S.-Korea FTA Product-Specific Rules of Origin

Investigation No. Korea FTA-103-026

USITC Publication 4324

May 2012



U.S. International Trade Commission

COMMISSIONERS

Deanna Tanner Okun, Chairman
Irving A. Williamson, Vice Chairman
Daniel R. Pearson
Shara L. Aranoff
Dean A. Pinkert
David S. Johanson

Robert B. Koopman
Acting Director, Office of Operations

Karen Laney
Director, Office of Industries

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436
www.usitc.gov

Effect of Adding References to HS 6104.32 to Correct the U.S.-Korea FTA Product-Specific Rules of Origin

Investigation No. Korea FTA-103-026



This report was prepared principally by the Office of Industries

Co-Project Leaders

Heidi Colby-Oizumi

heidi.colby@usitc.gov

Kimberlie Freund

kimberlie.freund@usitc.gov

Content Reviewers

Janis Summers and Kyle Johnson

Editorial Reviewer

Peg Hausman

Administrative Support

Brenda Carroll

Office of Publishing

Under the direction of

Dennis Rapkins, Chief
Chemicals and Textiles Division

CONTENTS

	<i>Page</i>
Executive Summary	iii

The Effect of Adding References to HS 6104.32 to Correct the Product-Specific Rules of Origin	1
--	---

Background and introduction.....	1
Addition of references to HS 6104.32 to correct the relevant PSR	2
Overview of current U.S. trade.....	4
Probable effect on U.S. trade under the FTA and total U.S. trade.....	5

Appendices

A. Request letter from the U.S. Trade Representative and correction to request letter.....	A-1
B. <i>Federal Register</i> notice	B-1

Executive Summary

This report provides the Commission's advice on the probable effect on U.S. trade under the U.S.-Korea Free Trade Agreement (FTA) and total U.S. trade of adding references to HS 6104.32 to correct the relevant product-specific rule of origin (PSR) under the FTA. According to the request letter from the U.S. Trade Representative (USTR), a reference to Harmonized System (HS) 6104.32, covering women's or girls' knitted suit-type jackets and blazers of cotton, was inadvertently omitted from the PSRs for textiles and apparel in both the English and Korean language versions of the FTA through a clerical error.

Under the corrected PSR, a woman's or girl's suit-type jacket or blazer of knitted fabrics of cotton must generally be made from the yarn and fabric made in one or both parties to the FTA to qualify for FTA treatment. Because the rule for HS 6104.32 was inadvertently omitted from the PSRs for textiles and apparel, only jackets made entirely from materials from, and produced fully in, one or both of the FTA partner countries can currently receive preferential tariff treatment under the FTA.

The Commission's analysis indicates that adding the reference to HS 6104.32 to the relevant PSR in Annex 4-A of the FTA could result in some increase in U.S. imports and exports of the affected articles under the FTA but would have little or no effect on total U.S. trade. The small size of the effect is largely because U.S.-Korea trade in the affected articles is minimal and accounts for a relatively small share of total trade between the two countries under HS 6104.32.

The Effect of Adding References to HS 6104.32 to Correct the Product-Specific Rules of Origin

Background and Introduction

The United States-Korea Free Trade Agreement (FTA), which entered into force on March 15, 2012, contains extensive rules of origin that define the circumstances under which an imported product is considered an “originating good” and therefore entitled to preferential tariff treatment under the FTA. The general rules of origin of the FTA apply to all goods, but most shipments qualify for benefits under product-specific rules of origin (PSRs), such as the FTA’s detailed textile and apparel rules. The PSRs lay out the distinct criteria that apply to particular headings or subheadings of the International Harmonized System (HS). The PSRs for textiles and apparel are contained in Annex 4-A of the U.S.-Korea FTA and stipulate the raw material inputs and garment parts that must be sourced in FTA partner countries in order for the goods to receive preferential treatment under the FTA.¹

On March 22, 2012, the Commission received a letter from the United States Trade Representative (USTR) explaining that HS 6104.32 had been inadvertently omitted from the PSRs for textiles and apparel in both the English- and Korean-language versions of the FTA through a clerical error. The letter said that the United States and Korea have amended the relevant PSR to include references to HS 6104.32, and the amendment will go into effect once the United States and Korea exchange written notification that they have completed their respective applicable legal requirements and procedures. As part of this process, the USTR asked that the Commission provide advice on the probable effect on U.S. trade under the FTA and total U.S. trade of adding references to HS 6104.32 to correct the relevant PSR. The USTR requested the advice under authority delegated by the President and pursuant to section 104 of the United States-Korea Free Trade Agreement Implementation Act (Implementation Act).² The Commission instituted investigation No. Korea FTA-103-026, *Effect of Adding References to HS 6104.32 to Correct the U.S.-Korea FTA Product-Specific Rules of Origin*, for the purpose of providing the requested advice.

HS 6104.32 covers women’s or girls’ suit-type jackets and blazers that are knitted and wholly or predominantly made of cotton. The jackets and blazers are imported under subheading 6104.32.00 of the Harmonized Tariff Schedule of the United States (HTS)

¹ The PSRs for products other than textiles and apparel are contained in Annex 6-A, of Chapter 6 of the U.S.-Korea FTA and were incorporated into the Harmonized Tariff Schedule (HTS) in general note 33. See USITC, *Modifications to Harmonized Tariff Schedule of the United States to Implement the U.S.-Korea FTA*, USITC Publication 4308, February 2012.

² See 19 U.S.C. 3805 note. The letter from USTR also noted that, pursuant to section 202 (o)(2)(B)(ii) of the Implementation Act, before the one-year period beginning on the date on which the FTA enters into force, the President is authorized, subject to the consultation and layover provisions of the Implementation Act, to proclaim modifications to the HTS to correct any typographical, clerical, or nonsubstantive technical error regarding the provisions of chapters 50–63 (as included in Annex 4-A of the FTA). One of the requirements set out in section 104 of the Implementation Act is that the President obtain advice from the Commission.

and are subject to a normal trade relations duty rate of 14.9 percent ad valorem.³ The FTA rate of duty is zero.

In formulating the requested advice, the Commission used publicly available data and information. In particular, the Commission considered the current rule of origin under the FTA and examined how U.S. imports under the FTA and total U.S. imports of certain jackets might be affected under the corrected rule of origin for HS 6104.32.⁴ The Commission did not hold a public hearing in connection with the investigation, but invited interested parties to file written submissions. No submissions were received.

Addition of References to HS 6104.32 to Correct the Relevant PSR

As noted above, references to 6104.32 were inadvertently omitted in the relevant PSR in Annex 4-A of the FTA. According to the request letter from USTR, the reference to HS 6104.32 should have been included in the rule applicable to HS 6104.31, as shown below.⁵ The corrected text is shown in bold.

- 6104.31–**6104.32** A change to subheading 6104.31 **through 6104.32** from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, or 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20,⁶ 5403.33 through 5403.39, 5403.42 through heading 54.08, or heading 55.08 through 55.16, or 60.01 through 60.06, provided that:
- (a) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or both of the Parties, and
 - (b) any visible lining material used in the apparel article satisfies the requirements of Chapter Rule 1 for Chapter 61.

In order to qualify for benefits of the FTA, each subject apparel article that contains yarns, sewing thread, fabrics, or component parts made outside the FTA region must comply with the requirements of general note 33(d)(i)(A) to the HTS.⁷ Under the rule as corrected, a woman's or girl's suit-type jacket or blazer of knitted fabrics of wool or fine animal hair (HS 6104.31)⁸ or knitted fabrics of cotton (HS 6104.32) must generally be made from sewing thread, yarn, and fabric that is produced in one or both parties to the FTA (with the exception of flax yarn, woven fabrics of flax, and viscose rayon filament

³ HTS 6104.32.00 reflects HS 6104.32 without further legal subdivisions.

⁴ There are no trade data available for U.S. imports under the FTA for the purposes of this report, since the FTA entered into force on March 15, 2012.

⁵ As directed by USTR, the rule has been corrected from that which is shown in the original request letter. See appendix A for a copy of the request letter and the corrected text.

⁶ The FTA was negotiated in terms of the HS provisions in effect in 2002. Subheading 5403.20 was deleted from the HS in 2007 (for the United States, as of February 3, 2007, pursuant to Presidential Proclamation 8097 of December 29, 2006; see annex I to such proclamation in USITC Publication 3898 of December 2006, item 190(a)). The subject yarns were reclassified into subheading 5403.39 (single yarns) or 5403.49 (multiple [folded] yarns). These two subheadings are already listed in the note as set forth in USTR's request letter.

⁷ General note 33(d)(i)(A) specifies that each of the third-country materials used in the finished good must undergo the change in tariff classification specified in the product-specific rule for that good as a result of production occurring entirely in the territory of Korea or of the United States, or both.

⁸ There is no change in the rule with respect to this subheading.

yarn).⁹ Also, the fabric used in any visible lining of the jacket generally must originate in Korea or the United States. Finally, the jacket must be cut or knit to shape, and sewn or otherwise assembled, in one or both of the parties to the FTA.

Because no rule is currently included for HS 6104.32 in FTA Annex 4-A, imported products classified in this HS subheading must be “wholly obtained or produced” in Korea and/or the United States in order to receive preferential treatment under the FTA, under the terms of article 6.1(a) to the FTA. Thus, in the absence of the correction, the jacket must be made entirely from materials from, and produced fully in, one or both of the FTA partner countries. For HS 6104.32, every component of the finished jacket, from the fibers through the finished product, must be grown and produced in the United States and/or Korea for it to qualify under the FTA. For example, if U.S.-grown cotton is exported to Korea and then spun into yarn, such yarn is knitted into fabric, and that fabric is then cut and sewn with U.S.- or Korean-made sewing thread into a jacket covered by that HS subheading, all in Korea, the jacket should qualify for FTA tariff benefits, if all buttons or other components also originated in one of the FTA partner countries. The proposed correction to the rule is liberalizing because it would allow the subject jackets to be made with certain third-country inputs and still be considered originating under the FTA, and thus qualify for FTA duty preferences.¹⁰

Overview of Current U.S. Trade¹¹

U.S. imports of women’s and girls’ knitted suit-type jackets and blazers of cotton from Korea are small. The value of U.S. imports of these jackets totaled \$37.6 million in 2011, of which Korea supplied only \$24,737, or less than 0.1 percent of total U.S. imports of these products. China was by far the largest supplier of these jackets, with imports totaling \$22.8 million, or 61 percent of the total imports under HTS subheading 6104.32.00 in 2011. The next largest suppliers of these jackets were Indonesia (\$4.3 million or 12 percent) and Vietnam (\$3.7 million or 10 percent).

U.S. global exports of the subject jackets and blazers totaled \$792,894 in 2011, of which over 80 percent was exported to Canada. Although small, Korea was the second-largest market for exports of these jackets in 2011, with exports valued at \$65,268 or 8 percent of total U.S. exports of subject articles, and more than twice the level of U.S. imports of such jackets from Korea in 2011.

⁹ These materials-related criteria arise from the HS provisions enumerated after the words “except from,” which in all PSRs based on changes in tariff classification denote provisions covering components that must be made in a partner country. Fibers used in the subject jackets and other inputs such as leather trims or fasteners can come from non-FTA sources.

¹⁰ Specifically, under the rule as modified, materials (other than visible lining fabrics) that are classified in other HS chapters, but not in the HS provisions listed after the words “except from” in the rule set out above, and that come from third countries could be used to make the garment, if all other requirements of the FTA are met.

¹¹ All trade data in this section are based on U.S. International Trade Commission International Tariff and Trade DataWeb/U.S. Department of Commerce, <http://www.usitc.gov> (accessed April 2, 2012). Trade data for “certain jackets” are applicable to HS 6104.32 (HTS subheading 6104.32.00 for imports and Schedule B 6104.32.0000 for exports).

Probable Effect on U.S. Trade under the FTA and Total U.S. Trade

The Commission's analysis indicates that adding the reference to HS 6104.32 to the relevant PSR in Annex 4-A of the FTA could result in some increase in U.S. imports and exports of women's and girls' knitted suit-type jackets and blazers of cotton under the FTA, but would have little to no effect on total U.S. trade. U.S. imports under HS 6104.32 already qualify for duty-free treatment under the FTA if they are wholly produced or obtained in one or both of the FTA countries (and the same is true for qualifying U.S. exports to Korea under the FTA). Therefore, the effect of the corrected rule would apply only to any increase in imports or exports under HS 6104.32 for goods that had not qualified under the FTA as wholly originating and would now qualify as a result of the correction to the PSR. Further, any increases would be from small import and export bases (less than \$100,000). As noted above, Korea's share of total U.S. trade under HS 6104.32 is small. In 2011, U.S. imports from Korea under HS 6104.32 accounted for less than 0.1 percent of total U.S. imports of such articles, while U.S. exports under HS 6104.32 to Korea accounted for only 8 percent of total U.S. exports of the subject articles. Finally, any increase in trade with Korea under HS 6104.32 resulting from the correction to the PSR under the FTA would likely partially offset trade with other non-FTA partner countries. Thus, even though U.S. imports and exports may increase under the FTA as result of the correction to the PSR, such increases would have little effect on total trade in the affected articles.

APPENDIX A

Request Letter from the United States Trade Representative and Correction to Request Letter

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

MAR 22 2012

The Honorable Deanna Tanner Okun
Chairman
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Dear Chairman Okun:

On March 15, 2012, the United States-Korea Free Trade Agreement (FTA) entered into force, providing new market opportunities for U.S. exporters of goods and services to Korea, greater transparency in our trade with Korea, stronger protection and enforcement of intellectual property rights, and a wide range of other benefits to U.S. companies, workers, farmers, ranchers and consumers. The U.S. International Trade Commission (Commission) made an important contribution to the Administration's efforts to bring the FTA into force quickly, so that the United States and Korea could begin to reap the benefits of this historic agreement. The Commission's continuing efforts in support of achieving U.S. trade policy objectives are greatly appreciated.

Having reviewed the text of the FTA and the relevant negotiating documents, and having discussed the relevant negotiating history, the United States and Korea have confirmed that a reference to HS 6104.32 was inadvertently omitted through a clerical error from the relevant PSR in Annex 4-A (*Specific rules of origin for textile or apparel goods*) of both the English and Korean language versions of the final agreement. HS 6104.32 was the subject of negotiations and is included in the corresponding PSRs in other U.S. free trade agreements. In order to correct this clerical error, on March 5, 2012, the United States and Korea amended the relevant PSR in Annex 4-A of the FTA to include references to HS 6104.32. This amendment will go into effect after the United States and Korea exchange written notification that they have completed their respective applicable legal requirements and procedures.

Pursuant to section 202(o)(2)(B)(ii), of the United States-Korea Free Trade Agreement Implementation Act (Implementation Act), before the end of the 1-year period beginning on the date on which the FTA enters into force, the President is authorized, subject to the consultation and layover provisions of the Implementation Act, to proclaim modifications to the HTS to correct any typographical, clerical, or non-substantive technical error regarding the provisions of chapters 50-63 (as included in Annex 4-A of the FTA).

Under authority delegated by the President, and pursuant to section 104 of the Implementation Act, I request that the Commission provide advice on the probable effect on U.S. trade under the FTA and total U.S. trade of adding references to HS 6104.32 to correct the relevant PSR to read as follows:

The Honorable Deanna Tanner Okun
Page Two

6104.31-6104.32

A change to subheading 6104.31 through 6104.32 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, or 53.10 through 53.11, 54.01 through 54.02 subheading 5403.20, 5403.33 through 5403.39, 5403.42 through heading 54.08, or heading 55.08 through 55.16, or 60.01 provided that:

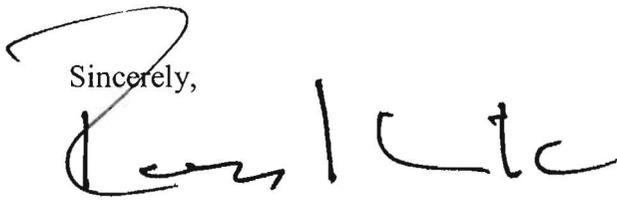
(a) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or both of the Parties, and

(b) any visible lining material used in the apparel article satisfies the requirements of Chapter Rule 1 for Chapter 61.

I request that the Commission provide this advice at the earliest possible date, but not later than two months after the date of receipt of this request.

The Commission's assistance in this matter is greatly appreciated.

Sincerely,



Ambassador Ron Kirk

On April 2, 2012, Ambassador Kirk directed that the following corrections be made to his request letter of March 22, 2012, to address clerical errors. The full text appears below, with the two corrections (the addition of a comma and the phrase “through 60.06”) underlined.

6104.31-6104.32 A change to subheading 6104.31 through 6104.32 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, or 53.10 through 53.11, 54.01 through 54.02, subheading 5403.20_5403.33 through 5403.39, 5403.42 through heading 54.08, or heading 55.08 through 55.16, or 60.01 through 60.06, provided that:

(a) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or both of the Parties, and

(b) any visible lining material used in the apparel article satisfies the requirements of Chapter Rule 1 for Chapter 61.

APPENDIX B

***Federal Register* Notice**

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

Investigation No. Korea FTA-103-026
*Effect of Adding References to HS 6104.32 to Correct the U.S.-Korea FTA
Product-Specific Rules of Origin*

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and notice of opportunity to provide written comments.

SUMMARY: Following receipt of a request on March 22, 2012, from the U.S. Trade Representative (USTR) under authority delegated by the President and pursuant to section 104 of the United States-Korea Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), the Commission instituted investigation No. Korea FTA-103-026, *Effect of Adding References to HS 6104.32 to Correct the U.S.-Korea FTA Product-Specific Rules of Origin*.

DATES:

April 18, 2012: Deadline for filing written submissions.

On or before May 22, 2012: Transmittal of report to USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://www.usitc.gov/secretary/edis.htm>.

FOR FURTHER INFORMATION CONTACT: Co-project Leaders Heidi Colby-Oizumi (202-205-3391 or heidi.colby@usitc.gov) or Kimberlie Freund (202-708-5402 or kimberlie.freund@usitc.gov) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202-205-3091 or william.gearhart@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819 or margaret.olaughlin@usitc.gov). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

BACKGROUND: In his request letter (dated March 22, 2012), the USTR asked that the Commission provide advice on the probable effect on U.S. trade under the United States-Korea Free Trade Agreement (FTA) and total U.S. trade of adding references to HS 6104.32 to correct the relevant product-specific rules of origin. He stated that the United States and Korea have confirmed that a reference to HS 6104.32 was inadvertently omitted through a clerical error from the relevant product-specific rules of origin in Annex 4-A (specific rules of origin for textile or apparel goods) of both the English and Korean language versions of the final text of the FTA. He said that HS 6104.32 was the subject of negotiations and is included in the corresponding product-specific rules of origin in other U.S. FTAs. He further stated that, in order to correct this clerical error, on March 5, 2012, the United States and Korea amended the relevant product-specific rules of origin in Annex 4-A to include references to HS 6104.32 and that this amendment will go into effect after the United States and Korea exchange written notification that they

have completed their respective applicable legal requirements and procedures. The USTR also noted that, pursuant to section 202 (o)(2)(B)(ii) of the United-States-Korea Free Trade Agreement Implementation Act (Implementation Act), before the 1-year period beginning on the date on which the FTA enters into force, the President is authorized, subject to the consultation and layover provisions of the Implementation Act, to proclaim modifications to the HTS to correct any typographical, clerical, or non-substantive technical error regarding the provisions of chapters 50–63 (as included in Annex 4-A of the FTA).

WRITTEN SUBMISSIONS: No public hearing is planned. However, interested parties are invited to file written submissions and other information concerning the matters to be addressed in this investigation. All written submissions should be addressed to the Secretary. To be assured of consideration by the Commission, written submissions relating to the Commission’s advice should be submitted at the earliest possible date, and should be received not later than 5:15 p.m., April 18, 2012. All written submissions must conform to the provisions of section 201.8 of the Commission’s *Rules of Practice and Procedure* (19 C.F.R. 201.8). Section 201.8 and the Commission’s Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 noon eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202-205-2000).

Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission’s *Rules of Practice and Procedure* (19 C.F.R. 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the “confidential” or “non-confidential” version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR and the President.

By order of the Commission.



James R. Holbein
Secretary to the Commission

Issued: March 26, 2012