

APR 2023. Issue 173

ZOOM IN TRADE

SHINHAN Customs Service Inc.



Where Is Grace Chang?

03 ... Have you seen the gorilla?*



Ideal and Reality

6 ... A different eye looking at the smartphone - let's straighten out the tilted playing field of HS lawsuit



Analysis on Recent Customs Judicial Precedent

10 ... Denial of Application for Penalty Tax Exemption Where Raw Materials for Munitions Produced in Bonded Factories Are Omitted from assists and a Revised Report Was Made



HS case solved by logic

15 ... Item classification of eco-friendly vehicles



Global Customs Insight

20 ... Reinforcing industrial carbon regulations following the EU's carbon border tax imposition



FTA and import/export practical business guide

23 ... Guidelines for Preparing and Issuing Certificates of Origin for Goods Stored in Free Trade Zone



Contents and Opinion of Customs Trade Amendment

27 ... Partial amendment of the「Customs Act」

Have you seen the gorilla?*

Grace Chang

CEO/Customs consultant

“
One must grow into an adult who
looks to the left and also to the right,
not a person who only
knows oneself.
”



In the video, students are throwing basketballs and playing a game. Teams of 3 players in white shirts and 3 players in black shirts pass the ball. Students watching the 1-minute video are required to observe how many times the students in white shirts pass the basketball to each other and to submit the number to the professor.

After receiving the students' answers, the professor asks a question. 'Did you see the gorilla?' A female student dressed as a gorilla appeared at the center of the stage, pounded her chest for nine seconds, and then exited. However, 50% of the students did not see the gorilla. The students, who were concentrating on their assignment and counting passes of the students in white shirts, failed to recognize the gorilla that appeared in the middle of the video.

Ideal and Reality for this month is 'A different eye looking at the smartphone - let's straighten out the tilted playing field of HS lawsuit', Analysis on Recent Customs Judicial Precedent covers 'Denial of Application for Penalty Tax Exemption Where Raw Materials for Munitions Produced in Bonded Factories Are Omitted from assists Support Costs and a Revised Report Was Made', and HS case solved by logic reports 'Item classification of eco-friendly vehicles' and Global Customs Insight is 'Reinforcing industrial carbon regulations following the EU's carbon border tax imposition', and FTA and import/export practical business guide is 'Guidelines for Preparing and Issuing Certificates of Origin for Goods Stored in Free Trade Zone', Contents and Opinion of Customs Trade amendment Covers 'Partial amendment of the 「Customs Act」'

[左顧右盼](#) is an idiom that means “look to the left and look sideways to the right”. This is a phrase from a letter sent by Jo Shik, the third son of Jojo, the founder of China's Wei Dynasty, to a general. It means ‘even if you look to the left and look to the right, it is as if there is no one to compare with’. It was a poem written in praise of the general Oh Jill’s elated and confident appearance.

As the years passed by, the meaning of [左顧右盼](#) (look to the left and look sideways to the right) has changed because the word 'looking sideways' has been recognized as negative on future generations who aim for uprightness. Therefore, the dictionary of standard Korean language explains it as [‘Looking left and right, a word that refers to hesitation measuring many things’](#).

The word looking left and right has been in the media for a while. There was a person who self-commented, “I went straight ahead without looking sideways and reaping the desired results.” There was another person who said, “I will not look around and measure back and forth, I will do it according to the principle.” [It is important to act according to the law and principles without looking sideways and measuring back and forth](#). Moreover, for those who promote the stability and improvement of 50 million people’s welfare, [unbiased fairness is required](#).

[A characteristic of Koreans is that they make quick decisions and execute them without hesitation](#). Thanks to these characteristics, Korea is leaping forward to become the world's first-class nation beyond the Miracle on the Han River. K-POP, K-MOVIE, K-FOOD, K-CLASSIC, K, K, K... A country that used to receive aid as the poorest country has gone beyond a developing country and has become a developed country. Looking around the countries that need help, in addition to national aid, now we are sending individual sponsorships and missionaries to those countries. It's something I'm really grateful for.

However, [the tendency to focus only on me and our side is spreading in some cases](#). People who are driven into one side turn their backs on the people of the other side and become hostile. Both sides claim that only they are just and superior because they do not consider other sides.



Less than 50% of people who don't see gorillas are raising their voices as if they represent people of the entire nation.

The "invisible gorilla" experiment was conducted in 1999 at the Department of Psychology at Harvard University. When the video was played after the professor's explanation, all the students naturally found the gorilla. The 50% of students who did not see the gorilla at first are perplexed. "How did I not see it??" It was an experiment that showed that there is a limit to human cognitive ability. It shows how our perceptions are distorted about ourselves and the world. Concentrating on our own interests, we do not even recognize what we did not expect. It proves that to humans there is a tendency to perceive only what matches one's expectations, that is, what one wants to see.

We need to raise our children who see left and right. The demand to focus only on studying without looking elsewhere can make children blind. I heard that there are parents who tell their children to focus on the 'medical school entrance exam' from elementary school. It means that one should not lose focus because of the sight of gorillas for 10 years until one enters college. Being pushed by the greed of adults, one focuses only on one's own needs. They become indifferent to the pain of their friends and eventually become unable to recognize it. Can a doctor who cannot recognize the patient's pain heal a patient? One must grow into an adult who looks to the left and also to the right, not a person who only knows oneself.

How many adults only focus on their own desires and own greed? Even we who have already grown old must look to the left and to the right. We must grow up to be an adult who is considerate of our neighbors. Not the adults who recognize only what they want to see, but true adults who can see and feel the pain of their neighbors and try to heal together.

I pray we'll all grow into a true adult.

*Kyunghee Lee, "The Invisible Gorilla", JoongAng Ilbo, Opinion Feb. 08, 2022



Ideal and Reality

A different eye looking at the smartphone – let's straighten out the tilted playing field of HS lawsuit

We use our smartphones day and night.

Although everyone can talk about what a smartphone is from their own perspective, import and export companies and customs brokers integrate the product name, component, function, and use of goods to determine the subject of tariffs and import and export regulations, and explain from the perspective of the interpretation of the HS tariff rate table and the number.

First of all, a smartphone has a display (HS 8528) to see, a speaker (HS 8518) to hear, and a voice player (HS 8519) to make music sound better. Also, a phone (HS 8517) is required to make a call. For such communication, there are modules consisting of an antenna (HS 8517), a frequency processing unit (HS 8517), and a digital processing unit (HS 8517). In addition, it has the functions of a computer (HS 8471) as it can view the Internet, process data, and write documents.



Seo Young Jin

Managing Director/
Licensed Customs agent
wedin8@shcs.kr

[PROFILE]

- SHINHAN Customs
- Corporate Audit
- Foreign Exchange
- FTA Consulting

In addition, a smartphone is a telephone, a display device, a computer, and a digital sound device, and it can also be seen as a device with multiple functions because it has a WIFI function and a Bluetooth function. Since the HS classification of smartphones has already been determined, there is no need to find it here, but this view can be best seen by customs officials and customs brokers with various experiences and knowledge in terms of HS classification.

HS classification of all goods in the world is still a task that companies and customs brokers are doing. The technology of giving HS CODE to all items becomes a specialized and detailed area that is impossible without product knowledge and HS knowledge, especially in the field of parts and materials. The HS classifications for highly specialized and detailed areas such as secondary battery cathode materials, ginseng extract, health functional food raw material, copper foil for secondary batteries, power generation sets and turbines for combined cycle power generation, PCR testers, industrial and computer power supplies, vehicle displays, etc. are done by customs brokers. That is not what lawyers or judges do.

Since HS classification is the biggest factor affecting the amount of customs duties, disputes arise not only in Korea but also in many countries. However, the HS litigation process in Korea puts the corporate in the disadvantage.

In HS litigation, customs officers with expertise in HS conduct the lawsuit directly, but since only lawyers can act on behalf of companies, customs brokers are often excluded from HS litigation after tax adjudication. Lawyers have more knowledge and experience in law and litigation than customs brokers, but custom brokers do not participate in litigation at all, even though customs brokers have more knowledge and experience in HS

classification. Since judges also do not have expertise in HS classification, customs are in a better position to persuade judges with less expertise in HS. When a customs broker is excluded in a HS lawsuit, if a customs officer with expertise in HS hides key issues using flamboyant technology and does not explain the principle of HS, it is easy to win over judges or lawyers with no or little expertise in HS. Regarding HS, the current HS lawsuit is like a customs official, who is a national team member, plays a soccer game against judges who are club-level players.

Regarding HS, whether it is a tax trial or administrative litigation, the participation of customs brokers must be carried out in any form, and the current administrative litigation system, in which HS litigation is dealt with by lawyers alone, must be reformed.

Through the revision of the Customs Act and the Administrative Litigation Act, a procedure for hearing the opinions of customs brokers in HS lawsuits and tax trials should be included, and the National Assembly Judiciary Committee, which is composed of lawyers, should seek ways to cooperate with lawyers and customs brokers in consideration of the special characteristics of HS litigation.

Some of the recent court rulings against HS are disappointingly wrong. The judgment of the court is the final decision in the HS lawsuit, and the damage suffered by the Korea Customs Service or companies due to the wrong judgment is enormous. If you follow the lawsuit, it doesn't match reality, and if you follow reality, consistency collapses. The reality is that the Korea Customs Service imposes taxes regardless, companies have no choice but to file lawsuits, and it is difficult to correct due to previous precedents.

In tax trials involving HS disputes, the participation of non-HS experts should be reduced as much as possible. In administrative litigation, the participation of customs brokers should be mandatory to obtain the written opinions, or a hearing procedure should be introduced.

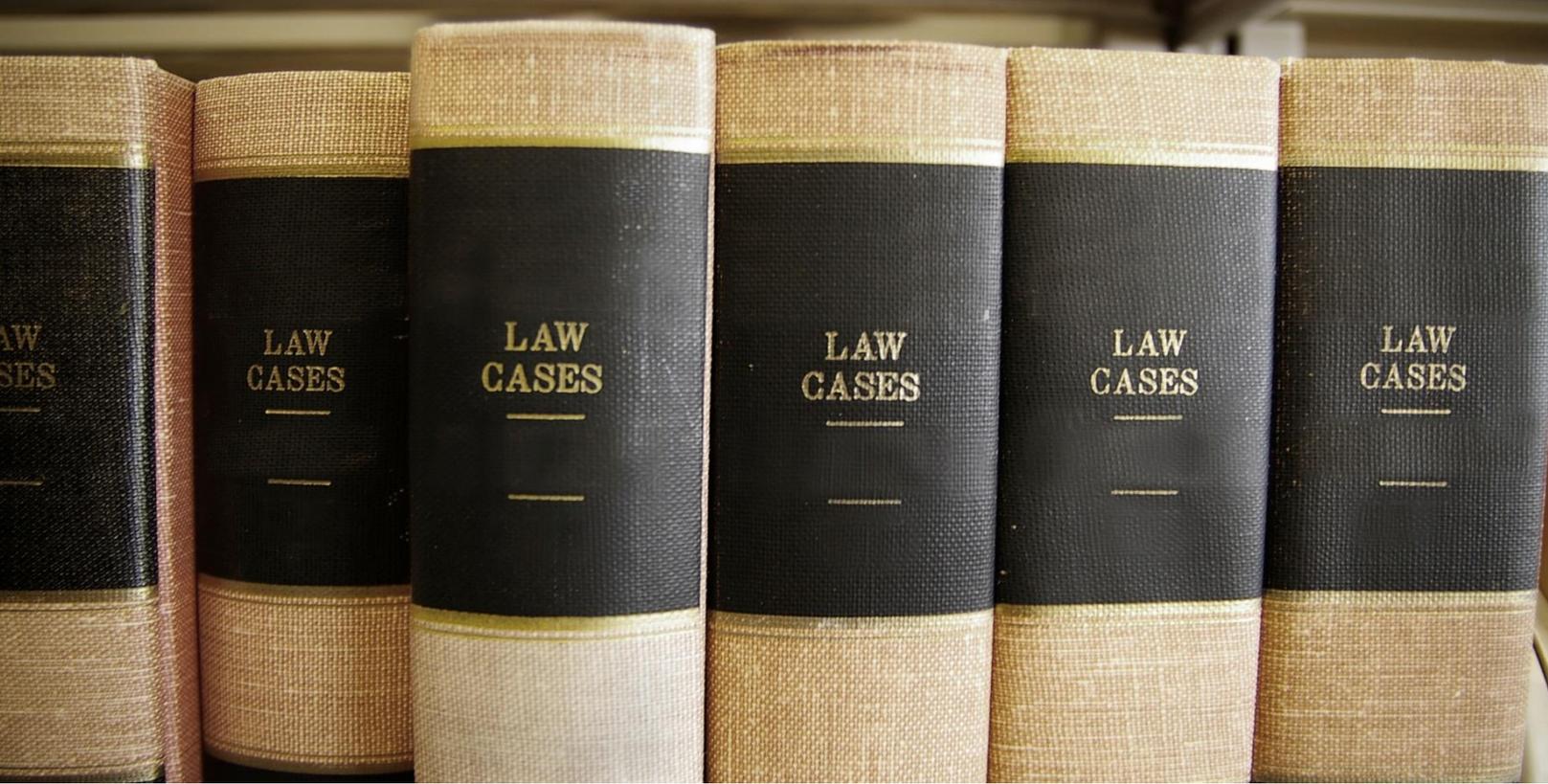
In addition, although the mouth of the National Assembly member cannot be silenced during the parliamentary inspection, the Korea Customs Service should not be severely reprimanded for its



HS lawsuit failure rate. This is because there are many disputes over HS in foreign countries, and it is not easy to determine HS for a single product.

In order to win the HS lawsuit, customs officials should not only speak in favor of the judge, but also truthfully disclose data that companies cannot see in the lawsuit. This is because it is the duty of the tax authorities to accurately levy taxes on taxpayers, but winning in lawsuits, unlike the civil lawsuits, is not the best solution.

In HS litigation, companies and customs brokers are having a hard time because customs officials present the lawsuit case to the judge with the litigation lawyers, who have no professional knowledge about the HS, and they only try to win the lawsuit by using item classification expertise and vast internal data.



Analysis on Recent Customs Judicial Precedent

Denial of Application for Penalty Tax Exemption Where Raw Materials for Munitions Produced in Bonded Factories Are Omitted from Assists and a Revised Report Was Made

1. facts

- On December 19th, 2013, the claiming corporation signed a contract with AAA (government agency) in Korea and produced in the bonded factory of the claiming corporation using raw materials directly purchased by the claiming corporation and government-supplied goods such as engines provided free of charge by AAA (hereinafter referred to as "issued government-supply goods"). As it supplied military munitions (hereinafter referred to as "goods at issue") to AAA, the claiming corporation imported the goods at issue from April 6, 2016 to December 21, 2016, and applied product taxation under Article 188 of the 「Customs Act」. The customs value of the goods at issue was reported as the value of the sales price (hereinafter referred to as "contract price") plus the technical cost separately paid by the claiming corporation directly to the foreign transaction company, and the head of the customs office accepted it.



Hong Hye Ri

Customs Attorney
hrhong@shcs.kr

[PROFILE]

- Shinhan Customs
- Corporate audit
And investigation
- Foreign exchange
- Trade transaction
advisory

- The disposition agency conducted the settlement of the account of the 2019 import tax amount of the claimant corporation, which is an AEO certified company and an import tax settlement company and found that the price of the goods supplied by the government at issue was not included in the contract amount or the customs value, even though the goods fall under the assist for the goods at issue. On December 16, 2020, the disposition agency decided that the assists that were not reported were subject to taxation. On February 19th, 2021, the claiming corporation was provided with 'data for self-inspection of customs clearance legality' along with the above decision in accordance with Article 21 of the 「Announcement on Recognition and Operation of Excellent Enterprises in Import and Export Safety Management」.

- On March 29th, 2021, The claiming corporation recalculated the customs value by adding the above assists to the declared import price of the goods at issue, and the value-added tax and additional tax were corrected and paid. The claiming corporation asked for value-added tax exemption but the disposition agency rejected this on April 5th, 2021.

- The claiming corporation objected to the disposition agency's decision of above penalty tax exemption refusal, and on May 25th, 2021, filed a claim for adjudication.

2. Claimant's Argument and Disposition Office's Opinion (claimant claim)

- In a disputed transaction, it is difficult to expect that the claiming corporation, the "seller," accurately reports the price that only AAA, the "buyer," can confirm.

- The import price of government-supplied goods is a reference price for cargo management at the time of import, and an inaccurate import

price cannot be the customs value of the goods under the 「Customs Act」.

- The price of the government-supplied product at issue cannot be confirmed by the claiming corporation, and the undecided price is not confirmed later, so a “provisional price declaration” cannot be made.
- The goods at issue are military supplies imported by the government (AAA) and used for national interests, and there is no reason to consider the actual benefit of the tax burden on value-added tax.

(Opinion of the disposition office)

- The claiming corporation is a taxpayer obliged to accurately report the customs value of the goods at issue by confirming the price of the government-supplied goods at issue.
- The claiming corporation was in a position to know the price of the government-supply goods at issue, and the claiming corporation was able to confirm the price of the government-supply goods at issue on its own through consultation with AAA.
- The claiming corporation was already aware of the supply price of the government-supplied goods at issue at the time of bringing them into the bonded factory, and was able to report the provisional price.
- Penalty tax imposition or penalty tax exemption refusal has nothing to do with considering the actual profit for tax purposes.

3. Hearing and Judgment

Considering the following reasons, imposing an additional tax simply on the fact that part of the assists was omitted seems harsh on the claiming corporation. Since the claiming corporation has a legitimate reason for exempting the additional tax, The disposition of rejecting the application for penalty tax exemption is judged to be wrong.

- In the case of production support costs added to the customs value of imported goods, it applies to cases where the buyer directly or indirectly supplies goods or services to the seller free of charge or at a reduced price. As such, even though the claiming corporation is the importer of the goods at issue, it is difficult to say that the claiming corporation was aware of the price of the government-supplied goods provided free of charge by AAA because, in actuality, the claiming corporation is the export seller of the goods at issue.
- Since the item at issue is military supplies, it seems difficult to disclose important information such as the manufacturer and supply price of the item at issue used in the manufacture of the government-supplied item at issue. It seems that the buyer AAA does not have the responsibility to make the information known to the claiming corporation, so it is not easy to ascertain the price of government-supplied goods.
- The item at issue is a military helicopter, which has no tariff rate and the government exempts not only value-added tax but also additional tax for items directly purchased by the government. So there is no reason or motive for the claiming corporation to omit the price of government-supplied goods at issue for reporting.
- The claiming corporation has delivered the goods at issue to AAA under the same contract as the contract at issue from December 19, 2013 to the present. The customs authorities including the disposition office investigated the omission of customs duties on 11 occasions for about 8 years but no matters were found that the report on the government-supplied goods was omitted. It can be seen that it was also difficult for the claiming corporation to confirm the duty to report on the government-supplied goods at issue.
- The claiming corporation appears to have been faithfully fulfilling its tax obligations as an AEO-certified company with a high degree of legal compliance and an import tax settlement company.



HS case solved by logic **Item classification of eco-friendly vehicles**

1. Expansion of eco-friendly vehicles

The US government has decided to strengthen vehicle carbon emission regulations to increase the spread of electric vehicles. The plan is to increase the proportion of electric vehicles to nearly 70% of the total market by 2023. Following the subsidy policy under the IRA (Inflation Reduction Act), this time, regulations are driving the expansion of electric vehicles.

In the 6th HS amendment (2017), by reflecting the development trend of electric and hybrid vehicles, subheadings for electric and hybrid vehicles were newly established in significantly large numbers in HS 8702 (vehicles with more than 10 seats), HS 8703 (passenger cars with less than 10 seats), and HS 8711 (motorcycles, etc.).



Ahn Jeong Ho

Customs Attorney
jhahn@shcs.kr

[PROFILE]

- Shinhan Customs
- Quarantine/Requirement
- FTA Consulting
- Duty Drawback

In addition, through the 7th HS amendment (year 2022), subheadings for eco-friendly vehicles were newly established for cars and motorcycles as well as HS 8701 (tractor) and HS 8704 (lorry) to distinguish them from existing vehicles with internal combustion engines.

2. Item classification by eco-friendly vehicle type

[Types of eco-friendly vehicles]

division	Electric vehicle (EV)	Hybrid Vehicle (HEV)	Plug-in Hybrid Vehicle (PHEV)	Hydrogen fuel cell electrical vehicle (FCEV)
power generator	motor	engine + motor	Motor, engine (when discharged)	motor
energy (fuel)	electricity	fossil fuel, electricity	electricity, Fossil fuel (when discharged)	electricity (from hydrogen)
driving type	Powered by pure electric energy (no engine)	High-capacity battery charging/discharging while driving	Power supply from an external power source	Electricity production/drive by hydrogen/oxygen electrochemical reaction in fuel cell
characteristic	zero-emission vehicle	Improving fuel efficiency by properly operating the internal combustion engine/motor	Electric for short distances, engine for long distances	zero-emission vehicle
main vehicle	Ioniq 5 (Hyundai) Model S (Tesla) iX3(BMW)	Niro (KIA) Prius (Toyota) Civic (Honda)	Volt (GM) F3DM(WORLD) Kama(Fisher)	Nexo (Hyundai) Equinox(GM) Mirai (Toyota)

(Source: Ministry of Environment)

1) Electric vehicle (EV) Unlike a vehicle equipped with an internal combustion engine such as a diesel engine or a gasoline engine, or a hybrid vehicle equipped with an electric motor and an internal combustion engine, it is a vehicle driven purely by electricity. As it is an electric vehicle

that moves by driving an electric motor with a secondary battery as a power source, it does not generate exhaust gas and has the advantage of low noise.

Classification – Electric Vehicle (EV)	HS CODE
Passenger vehicles with 9 or less seats	8703.80
Vehicles with 10 or more passengers	8702.40
Lorries (dump trucks designed for off-highway use)	8704.10
Freight car (general truck)	8704.60
Freight cars (other trucks; refrigerated cars, freezer cars, tank cars, etc.)	8704.60
tractor	8701.24

2) Hybrid Vehicle (HEV)

Hybrid vehicle is a car with two hearts, powered by a combination of an internal combustion engine and an electric motor. When starting and driving at low speeds, it is possible to drive with motor power without starting the engine. The electric motor is powered by a high-voltage battery mounted inside the vehicle, and the battery is charged as the vehicle moves. It is a car that maximizes efficiency by properly controlling the power of the engine and motor according to vehicle speed or driving conditions.

Classification - Hybrid Vehicle (HEV)		HS CODE
Passenger vehicles with 9 or less seats	Gasoline engine + electric motor	8703.40
	Diesel Engine + Electric Motor	8703.50
Vehicles with 10 or more passengers	Diesel Engine + Electric Motor	8702.20
	Gasoline engine + electric motor	8702.30
Lorries (dump trucks designed for off-highway use)		8704.10
lorry	Diesel Engine + Electric Motor	8704.41 (not more than 5 tons gross weight) 8704.42 (gross weight more than 5 tons and not more than 20 tons) 8704.43 (gross weight greater than 20 tons) 8704.51 (Gross weight less than 5 tons)
	Gasoline engine + electric motor	8704.52 (gross weight greater than 5 tons)
tractor	Diesel Engine + Electric Motor	8701.22
	Gasoline engine + electric motor	8701.23

3) Plug-in Hybrid Vehicle (PHEV)

It refers to a hybrid vehicle that draws and stores energy from an external power source to supply vehicle propulsion energy. It combines the advantages of a hybrid vehicle and an electric vehicle with the principle that the motor (main) and fuel engine (auxiliary) are combined to drive. A plug-in hybrid car differs from a hybrid car that stores and utilizes only electricity generated by its own engine and generator in that it uses an external power source. In particular, because it uses an external power source, it can drive longer sections than hybrid vehicles with the motor

Classification – Plug-in Hybrid Vehicle (PHEV)		HS CODE
Passenger vehicles with 9 or less seats	Gasoline engine + electric motor Diesel Engine + Electric Motor	8703.60 8703.70
Vehicles with 10 or more passengers	Diesel Engine + Electric Motor Gasoline engine + electric motor	8702.20 8702.30
Lorries (dump trucks designed for off-highway use)		8704.10
lorry	Diesel Engine + Electric Motor Gasoline engine + electric motor	8704.41 (not more than 5 tons gross weight) 8704.42 (gross weight more than 5 tons and not more than 20 tons) 8704.43 (gross weight greater than 20 tons) 8704.51 (Gross weight less than 5 tons) 8704.52 (gross weight greater than 5 tons)
tractor	Diesel Engine + Electric Motor Gasoline engine + electric motor	8701.22 8701.23

When water is electrolyzed, oxygen is produced at the positive (+) electrode and hydrogen is produced at the negative (-) electrode. When this is reversed and hydrogen is used to make water, electricity is generated in the process. A hydrogen car is a vehicle that operates by driving a motor using the generated electricity. A fuel cell, a motor, a battery, and a hydrogen tank are installed inside the vehicle.

4) Hydrogen Fuel Cell Electric Vehicle (FCEV)

Hydrogen fuel cell electric vehicles charge fuel by injecting hydrogen into a hydrogen tank, so the charging time is short, around 5 minutes, and the distance traveled after charging is long. However, it has the disadvantage of high production cost and lack of charging infrastructure compared to electric vehicles.

Classification – Hydrogen Fuel Cell Vehicle (FCEV)	HS CODE
Passenger vehicles with 9 or less seats	8703.80
Vehicles with 10 or more passengers	8702.40
Lorries (dump trucks designed for off-highway use)	8704.10
Freight car (general truck)	8704.60
Freight cars (other trucks; refrigerated cars, freezer cars, tank cars, etc.)	8704.60
tractor	8701.24



Global Customs Insight

Reinforcing industrial carbon regulations following the EU's carbon border tax imposition

The European Parliament, the legislative branch of the European Union (EU), passed the Carbon Border Adjustment System (CBAM) bill, which imposes a so-called "carbon border tax" on imported goods such as steel, aluminum and fertilizer on the 18th of this month.. The EU has decided to make it mandatory for offshore companies to report their carbon emissions from October of this year, which is the time that the law takes effect.

The European Parliament announced that the carbon border tax bill had been put to a vote on the 18th, and had been passed with 487 votes in favor, 81 against, and 75 abstentions. The carbon border tax is a bill that imposes a carbon border tax on the estimated amount of carbon emitted during the production of six items exported to the EU: steel, aluminum, fertilizer, electricity, cement, and hydrogen products.



Na Ji Won

Customs Attorney
jwna@shcs.kr

[PROFILE]

- Shinhan Customs
- Import/Export Customs Clearance
- FTA Consulting
- Duty Drawback
- Company Audit and Evaluation

The EU plans to impose a carbon border tax step by step from 2026 to 2034, and from October 1 of this year, which is the time the bill is enforced, until the end of 2025 before the imposition starts, only carbon emissions reporting has been obliged.

How will it affect Korea?

The EU's imposition of a carbon border tax is like an additional tariff increase for Korean export companies.

Korea has a trade structure centered on manufacturing with high trade dependence and high carbon emissions and is classified as a net exporter of carbon dioxide. Its carbon exports are high enough to account for about 1.5% of the world. Therefore, if the EU's carbon border tax is implemented, there is a high risk that additional tariffs will be imposed on Korean exporters, which will have a negative impact.

In particular, it is expected that there will be a direct impact on domestic steelmakers, whose carbon emissions are unavoidable due to the nature of the production process. In the case of steel, Korea's exports to the EU are relatively large, and carbon emissions are higher than those of other countries.

Domestic steelmakers, such as POSCO and Hyundai Steel, are trying to introduce eco-friendly production technologies that can reduce carbon in order to respond to the imposition of the carbon border tax, but it is anticipated that it will take a considerable amount of time, so timely response is expected to be difficult.

As carbon regulation is directly related to the export competitiveness of Korean exporting companies, policy support for carbon emission



inspection and certification, facility investment and technology development has been requested. The Ministry of Industry and Commerce is trying to act upon carbon regulation proactively by launching the 'Domestic Task Force Team on Carbon Regulation in the Steel Industry'.

With the introduction of the EU's carbon border tax imminent, the government and related companies should closely examine the impact on Korea's industry and economy and prepare effective countermeasures to respond in a timely manner.

Related article: <https://www.donga.com/news/article/all/20230119/117514627/1>
<https://n.news.naver.com/mnews/article/081/0003325885?s04>



FTA and import/export practical business guide

Guidelines for Preparing and Issuing Certificates of Origin for Goods Stored in Free Trade Zone

A free trade zone refers to an area where unimpeded manufacturing of goods, logistics distribution and trade activities are guaranteed by applying special cases to the Customs Act and Foreign Trade Act for the purpose of attracting foreign investment, promoting trade, and facilitating international logistics.

In the case of taking goods stored in free trade zones out of the country, even though the goods were domestic, there was a limitation in utilizing the free trade agreement because the documents necessary for issuing the certificate of origin could not be prepared.

Through these guidelines, Korean certificates of origin can be applied to goods taken out of the free trade zone.



Lee Ha Na

Customs Attorney
hnlee@shcs.kr

[PROFILE]

- Shinhan Customs
- Import/Export Customs Clearance
- Foreign exchange
- Trade transaction advisory

I. purpose

- The purpose of these guidelines is to clarify the procedures for preparing and issuing certificates of origin for goods taken out of the free trade zone.

II. Subject for application

- According to Article 29 Paragraph 1 Subparagraph 3 of the 「Act on Designation and Management of Free Trade Area」, these guidelines apply when preparing and issuing a Certificate of Origin in accordance with Article 11 for the goods that the zero tax rate on the value added tax is applied that the non-resident keeps in the free trade zone with the purpose of taking out of country.

III. Procedures for preparing and issuing certificates of origin

1. Institutional issuance application/examination
 - A. Enterprises in the Free Trade Zone* or the producer may apply for issuance of a certificate of origin to the head of the certificate-of-origin issuing agency (hereinafter referred to as "head of the issuing agency") for goods subject to these guidelines.
 - B. When a company or producer in a free trade zone applies for issuance of a certificate of origin, that company needs to submit the following supporting documents to the head of the issuing agency along with the documents under Article 10, Paragraph 1 and Paragraph 2 of the Rules.
 - 1) Report on entry of domestic goods into the free trade zone (「Announcement on the management of goods brought into and out of the free trade zone」 Form No. 3-3)
 - 2) Transaction proof documents such as invoices and transaction contracts between producers and non-residents

- 3) Documents proving that the company in the free trade zone has the right to store, take out of the country for non-residents goods.
- 4) Documents that the head of the issuing agency requested to submit in order to confirm the uniformity of goods brought in and out of the free trade zone, such as inventory records in accordance with Article 21 (2) Items 1 (Details of Import) and 2 (Details of Export) of the 「Notice on the Management of Imported and Exported Goods in Free Trade Zones」

C. If the documents from the above III, #1, B, 1) to 3) are used repeatedly, the documents need to be submitted when applying for issuance for the first time, and then the submission of the documents can be omitted by writing the first certificate of origin issuance number and the name and serial number of the previously submitted documents in the "Remarks" column.

<Examples of documents for proof used repeatedly>

- ① In the case of dividing the goods brought into the free trade zone and applying for issuance of certificates of origin sequentially ⇨ III. 1. B. 1) Documents
- ② In case of applying for issuance of certificate of origin sequentially by dividing goods for which a single transaction contract was concluded between producers and non-residents, etc. ⇨ III. 1. B. 2) Documents
- ③ In the case of non-residents, etc., who have the right to handle all goods, and continue to apply for issuance of certificates of origin ⇨ III. 1. B. 3) Documents

D. The head of the issuing agency checks whether the goods reported in and out of the free trade zone are identical* by checking the documents submitted in accordance with the guidelines III, 1, B in addition to the examination in accordance with Article 32 Paragraph 1 of the Notice.

* Product name, standard, quantity, weight, item number, etc.

E. In addition, procedures related to the issuance of certificates of origin, such as issuance deadline, retroactive issuance, amendment, on-site confirmation, reissuance and correction

issuance, etc., follow Article 10 Paragraphs 3 through 12 of the Rules.

2. Self-certification procedure

- A. In the case where a free trade zone resident company or producer voluntarily prepares a certificate of origin for goods subject to this guideline in accordance with Article 14 of the Rules, supporting documents of this guideline III. 1. B must be based.
- B. Other procedures related to the preparation of certificates of origin, such as the management of the certificate of origin preparation register, should follow Article 14 of the Rules.

3. Precautions

- Enterprises or producers in free trade zones who have applied for and prepared for the issuance of certificates of origin must keep and submit documentary evidence of origin in accordance with Articles 15 and 16 of the Act and are the subject for verification of origin in accordance with Chapter 4 and the subject to punishment in accordance with Article 44 of the Act.

IV. effective date

- This guideline applies to certificates of origin that are prepared and issued from April 3, 2023.



Contents and Opinion of Customs Trade Amendment **Partial amendment of the 「Customs Act」**

1. Reason for amendment

In order to enhance the convenience of applying for trade finance when supporting import and export companies such as trade finance, the scope of tax information provided to taxpayers has been expanded, and some deficiencies in the operation of the current system have been improved and supplemented.



Kim Tae Kyung

Customs Attorney
tkkim@shcs.kr

[PROFILE]

- Shinhan Customs
- Corporate audit
And investigation
- Foreign exchange
- Trade transaction
advisory

2. Major amendments

A. Expansion of provision of tax information based on the consent of the taxpayer (Article 116)

1) When national administrative agencies or local governments verify and examine eligibility for benefits and support, or when banks request necessary tax information with the consent of the parties in order to block illegal foreign exchange transfers, customs officials are allowed to provide tax information directly to administrative agencies and local governments, or the Commissioner of the Korea Customs Service is allowed to request an agency to provide tax information.

2) To prevent leakage of tax information and to protect the rights and interests of taxpayers, those who know tax information should take measures to secure the safety of tax information, such as establishing a system.

B. Preparation of grounds for provision of customs and trade data for research purposes (newly established in Article 322 (10) through (12))

If the National Assembly, government, local governments, and government-funded research institutes, etc. want to directly analyze the basic data used for statistics production and the data produced, processed, and analyzed by the Commissioner of the Korea Customs Service for use in customs policy evaluation and research, the Korea Customs Service to make the data available within the installed facility.

3. Comments on the amendment

From 2023, the Customs Act was amended to specify customs procedures exclusively for e-commerce goods, extend the patent period for bonded stores, expand the scope of tax information provision to taxpayers, and restrict government permitted business to delinquent taxpayers.

The amended statute of the expansion of the scope of tax information provision to taxpayers will come into effect from April 1.

Article 116 of the Customs Act before the amendment stipulates the obligation of customs officials to keep tax information confidential. It was regulated that tax information can be provided only for purposes of the customs duties imposition between state agencies (in case of litigation or prosecution of customs offenders), to courts (submission orders and warrants issued by judges), and mutual customs officials, to the Commissioner of the National Statistical Office (for the purpose of preparing national statistics), and for the cases stipulated by other laws. According to the amendment, tax information can be requested by national administrative agencies and local governments, public institutions and banks as prescribed by the Presidential Decree if there is consent from the parties, and tax information can be requested even when confirming transactions, payments, receipts, etc. of traders in accordance with the Foreign Trade Act.

Although the convenience of applying for trade finance has increased as the reason for providing tax information has been expanded, the risk of leakage of tax information has increased. Therefore, measures must be taken to secure the safety of tax information for those who have become aware of tax information in accordance with Article 116, Paragraph 7 of the Customs Act. Article 277-3 of the Customs Act was newly established to impose and collect a fine of up to KRW 20 million in case of violation of confidentiality obligations.

Meanwhile, a new provision was established in Article 322 of the Customs Act to establish a basis for providing customs and trade data, etc. to the National Assembly for research purposes only. It seems to be a desirable revision that facilitates the use of tax information and customs trade data.

4. effective date

Effective from April 1, 2023 (Customs Act Article 116, Article 277-3, Article 322)

THE BEST CUSTOMS ADVISOR

We make the difference for your successful business!

