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ZOOM IN TRADE

SHINHAN Customs Service Inc.

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Grace Chang
CEO/Customs Consultant

One of the 24 seasonal days of Korea, Dae-Sul, which means Major Snow, is the day when heavy snow comes. But last week, the skies were clear and days with above zero degree temperature continued. It did not last long. After a few days, heavy snow fell and the temperature dropped to 10 degrees below zero. How did our forefathers know to name these seasonal days? 24 seasonal days were named by subdividing the seasons according to the movement of the sun. [The timing for sowing, trimming, and harvesting were set according to the season.](#)

A few days later, when the Dong-Ji, Winter Solstice comes, the sun sets below the equator. The length of the night becomes the longest and even the running streams begin to freeze. In the past, when the winter of So-han(Minor Cold) and Dae-han(Major Cold) comes after the Winter Solstice, our forefathers had a time of rest and staying home (蟄居). [After the harvest, the farmers took a break and had an off season from the farming to prepare for the next year.](#) It was only 50 years ago.

When winter break came, I took a train to visit my grandmother in the countryside. From a small rural station, I ran to her place over the hill. I followed my hometown friends, turning the top with my frozen hand while riding a sled. After dinner, I snooped around with my friends at the local gathering room. I joined the young adults from the village who were twisting the straw into ropes and playing Hwatu, a Korean card game. I enjoyed a long winter night, eating roasted sweet potatoes, icy cold dongchimi(cold radish water kimchi), and makgeolli(Korean traditional rice wine).

The Cover Story for this month is 'Full-Fledged Rise of Spaghetti Bowl Effect'. FTA News covers 'Mongolia joins APTA as a 7th member country', and Inside Vietnam reports 'Enforcement of Penalty Regulation for Vietnam's Customs Violation 128/2020/ND-CP'. In addition, the Updates in Customs and Trade Related Laws is 'Partial amendments to the Enforcement Decree of the Foreign Exchange Transaction Act', and the Customs Case Study is 'Taxation Issues of Demurrage Charge incurred at the Port of Import'.

In 100 or 50 years, how will our children remember their winters as children? They can only leave their houses with masks on their small faces, wearing gloves on tiny hands, and holding their parent's hands. They hesitate to run towards their friends for warm embraces. It's not easy to see who the person is behind the mask.

We pushed ourselves endlessly, ever competing with others in order to rise to the top. We felt ashamed to rest and hesitated to play. Raking everything that could be pulled out, we have been running forward putting the whole earth upside down.

It is said 'When humans stopped, the earth became healthy.' China's industrial activities stopped due to Covid 19 in February. Clear skies are finally visible not only in China, but also in Korea. . For a while, China's carbon emissions have been reduced by more than 25%.

China alone should not be blamed for environmental problems. Already, people around the world, including Korea, have rapidly increased the mass on the planet. In the early 20th century, the mass of human-created waste was 35 billion tons across the globe. It is reported that this number has increased by 1.1 trillion tons in 2020, and is increasing by 30 billion tons every year.* Due to this, the "Great Acceleration", meaning sudden increases in carbon dioxide generation, the destruction of the ozone layer, increases in surface temperature, and decreases in biodiversity, is taking place.

The very powerful species of mankind is changing the entire global environment. Because our actions are so influential, there are unintended consequences. It is reported that the earth has entered into an urgent and desperate planetary crisis.

The Covid 19 outbreak is also a situation of natural consequence caused by the Anthropocene epoch. We should have known that clean water, air and nature should not be taken for granted... It seems that we have to lose something until we know its worth. We have to find a life with nature like our forefathers did. *Fortunately, we acknowledge that we have a problem. We created those problems. So we might be able to solve those problems.***

'Every exit is an entry somewhere else.' (Tom Stoppard).

Looking back at the year 2020 as we end the year. Can we forgive our selfish actions? Can we find a new entrance? May we find a beautiful world that we can pass on to our descendants before it is too late? Wishing that with our best and with a humble heart.

We can make our plans, but the Lord determines our steps. (Proverbs 16:9)

*Nationalgeographic, 2020,

<<https://www.nationalgeographic.com/environment/2020/12/human-made-materials-now-equal-weight-of-all-life-on-earth/>>

**Pyeongsoon Choi, documentary Prime production team. 2020, 「Anthropocene: The Age of Man」. Sun tree





Cover Story

Full-Fledged Rise of Spaghetti Bowl Effect

Significance of the spaghetti ball effect

On the 15th of last month, President Moon Jae-in and the leaders of each country signed the Regional Comprehensive Economic Partnership Agreement (RCEP). Excluding India, which left the negotiation table at the end of last year, a total of 15 countries including three countries of Korea, China, and Japan, 10 ASEAN countries, and Australia and New Zealand participated in RCEP. As a result, we are about to see the birth of the world's largest MEGA FTA, which encompasses 1/3 of the world's GDP.



Young Soo Yoon

Licensed Customs Consultant
ysyoon@shcs.kr

[PROFILE]

- SHINHAN Customs Service Inc.
- Item Classification
- Customs Clearance for Import and Export
- FTA Consulting

The next day the news that the RCEP was signed broke out, customs and trade managers at each company were pressed for time. They asked around and made inquiries to confirm the RCEP agreement news, and the agreement that was released by one of the signatories of the RCEP spread quickly. This would have been used for a variety of purposes, such as checking each signatory country's RCEP tariff concession and level of concession, establishing the criteria for determining the country of origin (PSR) for each item, and preemptively reflecting it when receiving a comprehensive certificate of origin for the upcoming year from partners.

In the middle of this, the term 'Spaghetti Bowl Effect' suddenly came to my mind. This means, 'If FTAs are signed with several countries at the same time, it takes more time and manpower to check different rules of origin for each country, and the expected effect of reducing transaction costs would be cut by half.¹ The rules of origin of each of the various FTAs are viewed as spaghetti noodles, and having FTAs with several countries at the same time called the spaghetti ball effect, as if the spaghetti noodles in a plate are intricately entangled with each other.

What causes the spaghetti ball effect

To a single product, not only one rule of origin applies sometimes but two or more rules of origin apply. For example, when suppliers issue a comprehensive confirmation of origin to the client, as of 2020, the country of origin determination for 16 FTA agreements is usually preceded. If you add other preferential and non-preferential rules of origin according to the APTA agreement or foreign trade laws, you can imagine how many rules of origin are entangled in one product.

Practical problems arise from the operation of different rules of origin for

¹ Current Affairs Economic Glossary

different countries and agreements between countries. Even within the same regulations or agreement, the criteria for determining the place of origin (PSR) are different for each item. Eventually, the party who wants to prove the country of origin and the party who wants to obtain the verification of the country of origin must understand the rules of origin, respectively, based on the rules of origin to be used and the HS Code of each individual item, and perform the determination of the country of origin. It is the spaghetti ball effect that arises from this problem.

The WTO was also aware of the inefficiency of the rules of origin, and immediately negotiated to establish an internationally unified criteria for determining the country of origin during the first three years of the launch. However, a point of agreement could not be found due to sharp differences in positions between countries, and negotiations are still in a stalemate state. Considering from the mid-2000s to the present, simultaneous and multiple FTAs have been signed around the world, it seems that the establishment of a unified rule of origin is already too far to happen.

RCEP and spaghetti ball effect

Only one more FTA was added, and the reason for mentioning the spaghetti ball effect can be seen in the table below.

<Table 1. Number of FTA agreements (entrance, signature, settlement) between RCEP signatories and Korea>

Agreements	1	2	3
Country	Japan	China, Australia, New Zealand, Myanmar, Malaysia, Philippines, Brunei, Laos, Cambodia, Thailand	Singapore, Vietnam, Indonesia
Remarks		Philippines, Cambodia, and Malaysia In the process of individual FTA negotiations with Korea	Korea-Indonesia CEPA reached

Apart from APTA, when looking only at the FTA, Japan is the only country with a new FTA with Korea. FTAs have already been signed with other countries, and even two FTAs have already been signed with Singapore, Vietnam and Indonesia.

This is only summarized from the perspective of Korea. Considering FTAs concluded between RCEP countries excluding Korea (ATIGA, China-ASEAN FTA, etc.) and FTAs with third countries (CPTPP, etc.) when exported from these countries to third countries (CPTPP, etc.) , then the rules of origin will be extremely intricate.

Ways to overcome the spaghetti ball effect

There are some exceptions, but we have been using the FTA with an emphasis on the two-way tariff benefits(one-to-one, many-to-one). However, from now on, additional considerations arise when using the FTA.

The first is a tariff benefit. In the past, if the importing country's MFN tax rate and the concession schedule of a single FTA have been used to determine whether the FTA will be beneficial or not, now it is necessary to identify the concession schedule of multiple FTAs, including RCEP. If there are items that the customs duty will be equally removed, a tax rate reversal may occur in which FTAs with less benefits at the present time benefit more from a certain point. Therefore, it is necessary to closely compare the MFN tax rate and concession schedules for multiple FTAs, and to use the appropriate FTA for each time.

The second is the use of accumulation. In the case of Korean manufacturing enterprises, there are many production subsidiaries in China and Southeast Asian countries. Like other FTAs, in the RCEP agreement, when determining the country of origin, materials originating from RCEP member countries are recognized as domestically produced.² If the accumulation is utilized, it becomes easier to meet the criteria for determining the country of origin such as an increase in the value-added ratio for the final products in the region. This is the most powerful weapon RCEP has.

² RCEP Article 3.4: Cumulation

<Table 2. Example of origin determination when Australian raw materials are put in and exported to Thailand>

	Supply of Raw Materials	Determined FTA	Recognition of Raw Materials as Domestic
Case 1	Australia's (Korea-Australia FTA utilization)	Korea-ASEAN FTA	Disapproval
Case 2	Australia (utilize RCEP)	RCEP	Recognized

To utilize the accumulation, the exporter must issue an RCEP certificate of origin at the time of export. However, in terms of tariff benefits, sometimes it is better to use an FTA other than RCEP at the time of export. In this case, Korea permits the issuance of two or more certificates of origin for one export product to allow both tariff benefits and cumulative use. However, if the actual practices related to the issuance of certificates of origin by signatories including 10 ASEAN countries that are likely to adopt the institutional issuance system are not improved, the cumulative utilization will be hindered.

Thirdly, the design of the process must have the consideration of the final exporting country. In the case of a multinational manufacturing company that exports the final product to a third country by performing a linkage process between Korea and RCEP countries, the process must be designed in consideration of the FTA's country of origin regulations to be used between the final exporting country and the final importing country.

Conclusion

With the acceleration of regionalism, MEGA FTAs such as RCEP and CPTPP are emerging one after another. As we have seen above, the economic interests of companies will also vary depending on how the tangled rules of origin are strategically utilized. Just like the pleasure of unraveling something tangled, I hope that our companies also understand and utilize the tangled rules of origin and experience the economic benefit. The advice of an FTA expert can be used in the process to solve this problem more efficiently and effectively.



FTA News

Mongolia joins APTA as a 7th member country

Mongolia joined the Asia-Pacific Trade Agreement (APTA) as the 7th member country, and from January 1, 2021, the APTA agreement tax rate will be applied to some items.

What is APTA

- This is the oldest regional trade agreement in the Asia-Pacific region, signed in 1976 to improve the economic development of member countries and the living standard of people through trade liberalization and trade expansion between Asia-Pacific developing countries.
 - Currently, the member countries are Korea, China, India, Sri Lanka, Laos, and Bangladesh.
 - Through 3 rounds of preferential tariff negotiations, an average of 26.8% of preferential range for a total of 4,270 items has been granted. It started with tariff reduction on goods between member countries as an agreement, and from 2009, the field expanded with the conclusion of the basic agreements for facilitating services, investment, and trade.



Jung Hwa Hong

Licensed Customs Consultant

jhhong@shcs.kr

[PROFILE]

- SHINHAN Customs Service Inc.
- Import/Export Customs Clearance
- Customs Inspection/Item Requirement
- HS Code Classification

How to apply

- From the date of import declaration on January 1, 2021, tariffs under mutual APTA agreement with Mongolia will be applied to items subject to concession*.
 - * Goods imported into Korea: Concession tariff regulations by WTO agreement
(Presidential Decree) according to the Attached Tables 3A and 3B
 - * Goods exported to Mongolia: APTA Mongolia Concession

- Concession width
 - An APTA agreement tax rates apply in which tariffs in Mongolia were reduced for heavy construction equipment (excavators), automobiles (for diesel transportation), and canned foods (seafood products) exported from Korea, and tariffs were reduced for imports of Mongolian clothing and minerals.
 - Korea : average 33.4% tariff cuts on 2,797 items, which is 28% of all items
 - Mongolia : average 24.2% tariff cuts on 366 items, which is 6.5% of all items

The significance of Mongolia's APTA membership

This year, the 30th anniversary of diplomatic relations with Mongolia (1990. 3. 26.), Mongolia's accession to APTA was confirmed, and the first trade agreement granting mutual preferential treatment between the two countries will come into effect next year.

As Mongolia is the only country that has signed an FTA* with Japan, we expect that through APTA, we can expand into the Mongolian market and strengthen cooperation with Mongolia.



The Korean government is preparing for the tariffs* of the APTA agreement with Mongolia to be applied from the import declaration on January 1, 2021 by consulting with Mongolia on issuing a certificate of origin procedures.

In the future, through negotiations for further improvement of APTA, Korean government plans to expand tariff cut items and continue to make efforts to open additional markets for APTA member countries such as Mongolia.



Inside Vietnam

Enforcement of Penalty Regulation for Vietnam's Customs Violation 128/2020/ND-CP

In Vietnam, the Decree 128/2020/ND-CP on 'Administrative Penalties for Violations related to Customs' was announced and took effect on October 19, 2020. Please refer to the main penalty rules for violations in each field below to avoid disadvantages.

1. Administrative punishment for violation of customs procedures

1) Violation of the deadline for customs clearance procedures(Article 7, paragraph 1)

Failure to perform the following actions by the deadline: VND 500,000 to VND 1,000,000 fine

- a) Filling out, submitting, and completing customs documents within the given time, or providing information on customs documents (except for violations specified in Article 7 paragraphs 3,4,5,6 and 11 paragraph 3b)
- b) Notifying the change if the container number, port of shipment, export checkpoint or mode of transport for exports is changed



Sung Hyun Park

Licensed Customs Consultant

sh.park@shcs.kr

[PROFILE]

- SHINHAN Customs Service Inc.
- FTA Consulting
- FTA Academy
- Duty Drawback
- HS Code Classification

- c) Re-exporting of means of transport passing through border checkpoints for delivery and receipt of goods
- d) Reporting additional information on the taxable price If there is no official price at the time of customs declaration, or if the actual price paid of the amount of the surcharge is unknown.

- 2) In the case of customs declaration is made before moving the exported goods to the place declared at customs (Article 7 Paragraph 3 a)
: VND 2,000,000 ~ VND 5,000,000 fine
- 3) Other violations related to the processing activities of the processing export enterprise (*Article 7 Paragraph 3*)
Fine of 2,000,000 VND ~ 5,000,000 VND in the following cases
 - e) Failure to timely process excess materials, scrap, defective products, machinery, leased machinery and equipment, and processed products at the end or expiration of the processing contract
 - f) Failure to notify the additional information in time when there is a change in the processing/manufacturing facility of exported goods (raw materials, machinery and equipment, storage location for exported products, etc.)
 - g) If the contract and its annexes are not reported in time
 - h) If items are not re-exported or re-imported by the deadline registered with the customs authorities

2. Administrative penalties for violation of inventory settlement

- 1) Non-submission of the use of tax-free goods by the due date (within 90 days from the end of the fiscal year) (Article 7 Paragraph 3 b)
: Fine of VND 2,000,000 ~ VND 5,000,000

- 2) When a settlement report is inconsistent with the accounting books, accounting documents or customs declaration, and the taxpayer finds an error but corrects the settlement report after a given period (60 days from the date of submission of the report) (Article 11 (1) b)
: VND A fine of 1,000,000 to VND 2,000,000
(If the taxpayer finds an error on his own and corrects the error before the customs office makes the settlement report inspection decision, a penalty equivalent to 10% of the amount reported in shortage or excessive tax exemption, refund or cancellation is charged.)
- 3) In case of reporting inconsistent with accounting books, accounting documents, or customs declaration(Article 11 Paragraph 2 c)
: A fine of VND 2,000,000 ~ VND 4,000,000 (except for cases falling under the case 2)

3. Administrative penalties for reporting the incorrect HS CODE

- 1) In case of reporting the incorrect HS CODE but not affecting the taxable amount (*Article 8(1b)*)
: VND 1,000,000 ~ VND 2,000,000 fine
- 2) In case of occurrence of insufficient tax amount due or excessive tax-exemption/refund/cancellation amount by incorrectly reporting the HS CODE, and the taxpayer is aware of such an error (*Article 9 Paragraph 1, Paragraph 2*)
: A fine equal to 10% of insufficient tax amount or excessive tax exemption/refund/ cancellation amount
- 3) When reporting the HS code of goods different from the code that the Ministry of Finance or Customs indicates (*Article 9 paragraph 2, paragraph 3, Article 14 paragraph 1 b*)
: Fines equivalent to 1 to 3 times of the tax evasion amount



4. Administrative penalties for violation of import permits and requirements

In cases where import permits are needed but do not obtain permission, or in cases where requirements documents are not submitted (*Article 18, Paragraph 1*)

: A fine of VND 2,000,000 to VND 50,000,000

- ※ This information is constructed and rearranged by SHINHAN Customs Vietnam Co., Ltd. based on a released letter from Vietnam and has no legal effect.
- ※ For more information, please contact

SHINHAN Customs Vietnam Co., Ltd.

Eun Sil Park: +84-(0)24-7300-8630 [VN], +82-(0)70-5222-7280 [KR] / espark@shcs.kr, scv@shcs.kr

SHINHAN Customs Service Inc.

Dae Kyoo Choi: +82-(0)2-3448-1181 [KR] / dkchoi@shcs.kr

Sung Hyun Park: +82-(0)2-3448-1181 [KR] / sh.park@shcs.kr



Customs Trade Related Law Changes
**Partial amendments to the Enforcement Decree
of the Foreign Exchange Transaction Act**

Reason for revision

- The Korean government decided the partial amendment of the Decree of the Foreign Exchange Transaction Act, which to be enforced on November 3, 2020 in the 54th State Council meeting on Tuesday, Oct. 27th, 2020.
- This amendment of the Decree is to prepare the preliminary review procedure for the foreign exchange business registration requirements among "innovative measures for foreign exchange services through proliferation of convergence/ non-contact and the promotion of competition."
- The main content is to allow a person who intends to do a foreign exchange business to request a preliminary review of the registration requirements to the Minister of Strategy and Finance before applying for registration in order to speed up registration of foreign exchange business.



Ji Won Na

Licensed Customs Consultant
jwna@shcs.kr

[PROFILE]

- SHINHAN Customs Service Inc.
- FTA Consulting
- Corporate Audit
- HS Code Classification

Major revision contents

Existing registration procedure to the foreign

< Exchange business handling agency >

- ① Those who intend to engage in foreign exchange business must complete the registration requirements, such as capital scale, financial structure, computer equipment, and foreign exchange experts, and apply for registration with the Minister of Strategy and Finance.
- ② Upon receiving the registration application, the Minister of Strategy and Finance asks the Governor of the Financial Supervisory Service and the Bank of Korea to confirm whether the person who applied for registration meets the registration requirements.
- ③ The Minister of Strategy and Finance issues a registration certificate if all registration requirements are met.

- A person who intends to engage in foreign exchange business may request a preliminary review of some of the registration requirements with the Minister of Strategy and Finance even before all of the registration requirements are satisfied, and the review result will be notified within 20 days from the date of the request for preliminary review.
- This revision of the enforcement ordinance is expected to shorten the time required for registration as an agency handling foreign exchange business by using the preliminary review procedure for registration requirements.

- In particular, if a new corporation intends to conduct foreign exchange business because of the division or merger of an existing foreign exchange business, the registration process of the foreign exchange business handling agency can be initiated even before the establishment of the corporation. It is expected to maintain the continuity in foreign exchange business and prevent the damage to foreign exchange customers.

Revision details (new)

Article 13 of the Enforcement Decree of the Foreign Exchange Transactions Act Chapter 2 Foreign Exchange Business Handling Agency, etc. (Registration of Foreign Exchange Business)

③ A person who intends to conduct a foreign exchange business pursuant to the main body of Article 8 (1) of the Act may request the Minister of Strategy and Finance to review some or all of the requirements under paragraph (2) before applying for registration pursuant to paragraph (1). **<Newly established on November 3, 2020>**

④ A person who intends to request a preliminary review pursuant to Paragraph 3 must submit a request with details to the Minister of Strategy and Finance along with documents determined and notified by the Minister of Strategy and Finance **<Newly established on November 3, 2020>**

⑥ When the Minister of Strategy and Finance receives a request for a preliminary review pursuant to Paragraph 3, the Minister of Strategy and Finance shall notify the result of the review to the person requesting the preliminary review within 20 days from the date of receiving the request (Saturdays and public holidays are not included in the period). However, if the person who requested the preliminary review has made an application for registration pursuant to Paragraph 1 before notifying the review results, the notification of the result of the preliminary review request may be replaced by notification of the review result of the registration application. . **<Newly inserted November 3, 2020>**



Customs Case

Taxation Issues of Demurrage Charge incurred at the Port of Import

Background

In the 2020 national audit, an annual import carrier demurrage charge of nearly 100 billion won from five power generation companies, including KEPCO, became the object of criticism. Import port demurrage charges are paid because imported goods cannot be unloaded in time at the ports of the importing country, and have a direct impact on the oil refineries and power generation companies that sign charter contracts. According to the current Korean customs law, the fare to the port of import is included in the taxable price, but the fare after arrival at the port of import is deducted from the taxable price. The following court case shows the judgment on the demurrage charge at the port of import.



Ga Ram Kang

Licensed Customs Consultant
grkang@shcs.kr

[PROFILE]

- SHINHAN Customs Service Inc.
- FTA Consulting
- Corporate Audit
- HS Code Classification

Facts and issues

While importing bituminous coal from China, the plaintiff paid the demurrage charge to the shipowner after the captain's notification of unloading preparation completion at the port of import. A lawsuit has been filed as to whether the demurrage charge is included in the "fare to the port of import, insurance premiums and other transport". As the relevant notice stipulates the standard of arrival at the port of import as "the point at which preparations for loading and unloading on board are completed," the actual issue is when to consider the time of completion of preparation for unloading on board.

Decision point

Demurrage charges in this case are included in the "fare to the port of import, insurance premiums, and other transportation cost" (additional factors) of Article 30, Paragraph 1, Item 6 of the Customs Act, and is based on the following.

① The plaintiff owns a dedicated pier at the port of import, and when the vessel is difficult to dock, the notification of completion of loading and unloading is made after completing quarantine outside the port of the import. ② The place of notification of completion of loading and unloading in this case is approximately 37km away from the dedicated pier, and it takes about 3 days from that place to the berth of the dedicated pier. ③ The completion of the preparation for loading and unloading of the main ship should be considered upon the arrival of the import port ④ In the case of berthing unloading as in this case, the transporter is responsible for delivery to the owner to the dock where disembarkation is done.

Implication

The legal interpretation of “the point of completion of preparation for unloading of the main ship” after this case is based on the above judgment. However, Japan, which adopts CIF in the same way as Korea, maintains a non-taxable policy for import port demurrage charges, and in terms of voyage transport contracts, the demurrage charge is an expense incurred after arrival at the port of import. The tax issue for the “import port demurrage charge” appears to continue to exist.

(Refer to Gwangju District Court 2009-4050 for details)

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