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ZOOM IN TRADE

SHINHAN Customs Service Inc.

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“
We all dream and wait for tomorrow,
but we can open the door to tomorrow
only when we gather our steps today.
”



Grace Chang

CEO/Customs consultant

Ephemera are insects that belong to the insect class Mayflies. Its name means " [wing lasting for a day](#)". The life of a small insect that soars with beautiful wings, lives fully, and dies even in a short period of time is mysterious.

However, if you actually look at the life of a mayfly, there is a larval period and an adult period. Visible mayflies are passing through the adult stage, which lasts from a few hours to a week. On the other hand, before they are visible to human eyes, they live in water for 1 to 2 years during the larval stage. It takes a long time to prepare, but it is only about a day that they fly around the world with beautiful wings.

The New Customs Study for this month is 'The discrepancy Between On-Site Inspection and One's Perception', Analysis on Recent Customs Judicial Precedent covers 'The imposition of Customs Duties (No. 2022-0037) by Classifying the Item at Issue As a Machine With Its Own Function Under HSK No. 8479.89-9099', and HS case solved by logic reports 'Notice of Change for EMI Filter Item Classification' and Global Customs Insight is 'Introducing OECD Guidelines on Transfer Pricing During the COVID-19 Pandemic- 2. Allocation and Losses of COVID-19 Specific Costs', and FTA and import/export practical business guide is 'WTO Concessional Tariff under ITA (Information Technology Agreement)'. In addition Contents and Opinion of Customs Trade Revision is 'Enforcement Rules of Value-Added Tax Act.'

When people are described as living like a mayfly, it reminds those who live from day to day, or those who live from hand to mouth. It's called 'life lasting a day'. It has a negative connotation that metaphorically refers to a way of living, life, or regime that lasted for a very short period of time. We perceive tomorrow

or the future as in unpredictable darkness. So, we live even today's life gloomy and negative. However, aren't we living day by day after all? No one can live two days, or a month, or a year at once. In order for tomorrow's sun to rise, today's sun needs to set. [We all dream and wait for tomorrow, but we can open the door to tomorrow only when we gather our steps today.](#)

A welfare foundation Kkottongnae, which operates shelters for the homeless, [started from](#) a beggar. Mr. Choi Gwi-dong was forcibly taken overseas for forced labor during the Japanese occupation period and became a wreck. After going through all kinds of hardships, he returned to his hometown, but the house he lived in was gone, and his family was scattered and could not be found. After suffering through painful days with a sick body, he decided to commit suicide and went under a bridge. But there, [he met beggars who were lying there unable to move.](#) The beggars said "You can walk. We can't even walk. Get some food for us. We are hungry."

Since then, for more than 30 years, Mr. Choi Gwi-dong had been walking every day. "Give me any leftover rice." He went from house to house in a nearby village to gather rice and feed it to beggars lying down. When anyone he cared for died, he buried them in a sunny place. [Even though he himself was sick, he quietly did what he had to do every day.](#) The priest also recognized what Choi Gwi-dong had been doing when he saw Choi Gwi-dong passing by the Catholic church. The priest was moved by [his daily dedication of walking for others while carrying his sick body.](#) 'If I have the strength to eat even if I beg food, it is the grace of the Lord.'*

Living diligently on a given day today is what every living creature should do. The mayflies, escaping from the larval stage in the water and flying out into the world, do their best for breeding activities. They cannot feed themselves since their functions have deteriorated and can only drink water through their mouths. The dedication they have to make is an active breeding activity. That is their purpose in life and the task of the day. [They don't live for their lives, but they live diligently to achieve their purpose in life.](#)

The life of mayflies, sticking to the task of breeding while drinking only water, and finishing the day leaves a big lesson for us too. Where is my life heading? Before looking to tomorrow, I look at my life today. Do I recognize the needs of others before satisfying my own greed? [What have I been doing to live a life of letting the love flow to others? A lifetime is built as each day of life accumulates.](#)



'Today, which I spent in vain, is the day that the person who died yesterday desperately longed to see.' I hope you have a rewarding day spreading your beautiful wings while giving thanks for today.

Thank you.

* Kkottongnae Maintenance Foundation [Kkottongnae \(kkot.or.kr\)](http://kkot.or.kr)



The New Customs Study

The discrepancy Between On-Site Inspection and One's Perception

A story about the discrepancy between on-site inspection and what different human eyes perceive differently

Even in the same space, there is a discrepancy in what each sees.

In popular TV programs these days, young men and women react differently. Sometimes they show their likings to what the other person says, or sometimes they are greatly disappointed by the same words. Through conversation, the intention of the speaker is expressed and the feelings of the person hearing are conveyed. Sometimes they agree to some extent, but there are many cases where they are perceived differently.



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As for the individual's perception, when we enter a building, some people see the outside view from the inside, while others see the inside of the building. Even when sitting in the same coffee shop, there is a difference in how people perceive things even in the same space, like people looking inside and people looking outside

Although the eye is a sensory organ that receives external light, shape, and color, and is not an organ that emits something on its own, some say that it seems like a laser came out of the eyes of a person standing on a photo line. Some say a particular person has humble eyes because that person does good deeds and not many people can do what he does.

Cast a gaze, threaten with eyes, pop out eyes, sparkling eyes, or looks, there are many expressions in which the way that eye is looking at things as if something is pouring out of the eyes. However, even though if we cover our eyes with a cloth, we are not able to tell what the other person's feelings are, we interpret the situation or emotion and express it as if our consciousness or mind is contained in the other person's eyes based on the interpretation.

In the end, I would like to say that even if people see the same thing in the same space, there is a difference in the perception of the situation. This is a peculiar case.

Unable to file liquidation report due to not receiving proceeds from corporate sale

A Korean manufacturing company that entered Tianjin, China six years ago sold its local manufacturing subsidiary to a Chinese company and planned to file a liquidation report for its overseas subsidiary once the payment was completed.

According to the Foreign Exchange Transactions Act of Korea at the time, foreign direct investors were required to directly collect the investment principal and gains or losses to Korea and file a liquidation report with a foreign exchange

bank when liquidating an investment business was done. However, the Korean company was not able to complete the liquidation report because they could not collect the balance payment from the corporate sale.

In 2016, in accordance with Articles 1-3 of the Foreign Exchange Transactions Regulations of Korea, if the uncollected balance per case exceeds 500,000 USD, there is an obligation to collect the receivables. However, if failed to collect within the set time period, less than a year of imprisonment and a fine of less than 100 million won can be imposed. the provision of the proviso, also if three times the value of the object of violation exceeds 100 million won, a fine of less than three times the value of the object of violation can be imposed.

At the time, the uncollected amount was 1 billion won. The Korean head office held several meetings directly between the local subsidiary and the Chinese acquiring company, and instructed the representative of the local subsidiary to make various efforts to collect the sale proceeds, but the receivables could not be collected

Of course, it was an unfortunate situation where they had to be punished for failing to comply with the foreign exchange transaction law debt collection order. If the state of not being collected continues for more than 1 year and 6 months, a company ends up committing an illegal act that has to be punished in itself because the law was implied very strictly and did not give any consideration for the circumstances of the company.

As the resolution of the situation continued to get delayed, the Korean head office requested consulting with the customs agent and lawyer to find a way to avoid punishment for violating the Foreign Exchange Transactions Act.

According to the review of the law, it was impossible to find a way to avoid punishment no matter how the circumstances were explained under the Foreign Exchange Transactions Act at the time, and the only way was to persuade the Chinese buyer and collect the payment.

The customs officer and lawyer decided to go on a business trip to China and negotiate for the collection. At a hotel conference room in Tianjin, China, the discussions for negotiation with the Chinese buying company went on through morning and afternoon sessions for three days. However, the representative of

the Chinese purchasing company gave an absurd reply saying that they had no intention of paying the balance, and if the Korean company gives up receiving the balance, they can write a confirmation letter.

The Chinese company was saying confidently that civil lawsuits would be useless because the Chinese courts tended to rule in favor of their own citizens, and the Korean company would not be refunded. No progress was made until the morning of the last day.

My mind was set that I should take a look at the factory.

I received an answer from the Chinese buying company that they had no intention of paying the balance until the last day of the business trip. Dealing with a Chinese merchant was really difficult in a situation where debt collection and violations of the Foreign Exchange Transactions Act were not resolved. But for some reason, I wanted to see the manufacturing plant.

The manufacturing plant of the local subsidiary in China was on very large land and had two buildings on a site of 15,000 pyeong. It was located near the port of Binhai New District, Tianjin, China, where a chemical explosion occurred in August 2015, which caused 85 casualties and enormous property damage. That place could still be dangerous to go according to the Chinese buying company.

At the time, the factory was a place where all the windows were broken and there were traces of chemical explosions, so I was hesitant to visit the site. But I decided to visit with the mask on thinking the image I had in my head and the actual state would definitely be different. I had a bigger desire to go.

The Chinese buying company explained the damage to the building and windows caused by the explosion at the manufacturing plant and wanted to show the damaged building with the hopes that the Korean company would give up the balance after seeing the scene of the accident because the factory needed to be repaired additionally. However, the twist was that in my eyes, the manufacturing facilities left by the manufacturing company have already been sold and not used as a manufacturing plant.

The land and the inside of the building were used as storage warehouses for luxury cars such as Lexus, Mercedes, and BMW imported from Tianjin Port. It was not used as a manufacturing plant, but it was still being used well for profit

During a business trip to China, the head of the local corporation, dispatched by the headquarters, was present for all three days, but he did not explain at all that the Chinese buyer had sold the manufacturing facility and that it was being used as a storage warehouse for imported cars

Having a different eye for field check solves the problem.

It is necessary to remember that there is a difference in one's perception of accepting the situation even when they see the same thing in the same place.

To my eyes, it was visible that manufacturing facilities were being sold and used for other purposes to store imported cars, and to the Chinese buying company only shattered windows and buildings damaged by chemical explosion were visible. The old memory flashed in my mind that in China, the land is owned by the state and the state rent differs depending on the use.

If it is a high-tech product manufacturing company, a monthly rent of 1,000 won per pyeong is charged, but it has been confirmed that if it is used for other general purposes, the difference in rent can be about 10 times.

I sent an email saying that I would file a lawsuit in the Chinese court if they did not pay the balance after consultation with the idea that I could recover the payment. Now, there was no need to persuade the Chinese buying company that would not pay the balance of 1 billion won. They were using the relationship with the local government to pay the rent with the manufacturing plant rate, but if I filed a lawsuit in the Chinese court, the central government would find out the low rate and it would be difficult to apply the low rent anymore. The prediction was correct. After sending the e-mail, I received a call saying that they would send the balance within a day. I sent the account number and the foreign money was deposited right away.

Other people may see things differently, and it is always necessary to visit the site.

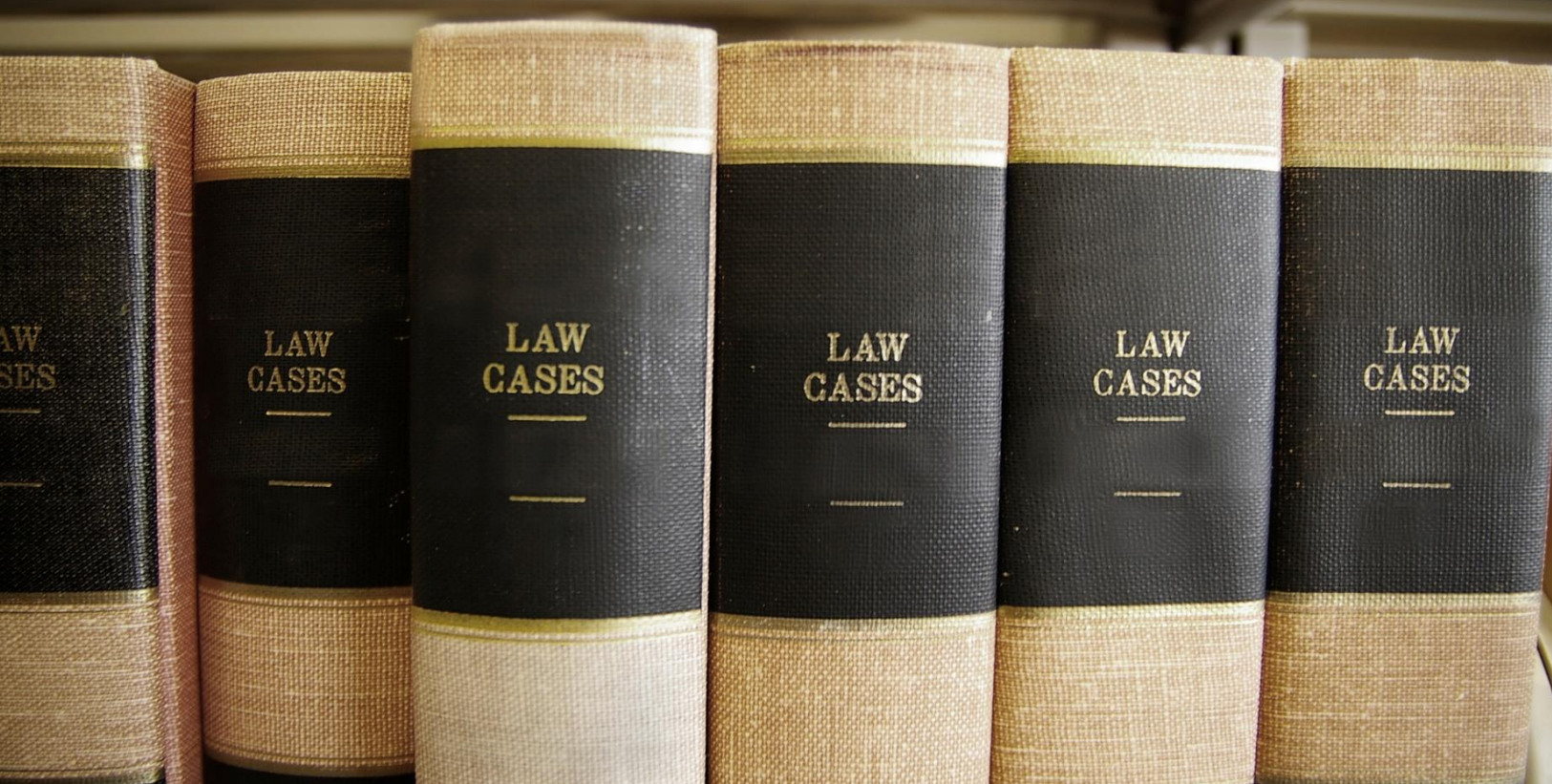
It is important to always keep in mind that what you imagine in your head and what you see with your own eyes are different, and what each viewer sees is different. It is necessary to visit the same site again

There is often a saying that a picture is worth a thousand words, and that there is an answer in the field. However, in many cases, we do not recognize that we have to visit the field. In many cases, we make decisions based on previous experiences.



It is necessary to make efforts to look at the site, visit the site, and consolidate other people's thoughts.

If I hadn't visited the manufacturing plant, how would I have collected the payment and how could I have avoided the punishment of the Foreign Exchange Transactions Act? I always recommend to the people around me to make an effort to find ideas to solve on the spot.



Analysis on Recent Customs Judicial Precedent

The imposition of Customs Duties (No. 2022-0037) by Classifying the Item at Issue As a Machine With Its Own Function Under HSK No. 8479.89-9099

1. Facts

- The claiming corporation imported LIFT [LIFT (model name: OO, hereinafter referred to as "item at issue ①")] from AAA located in OO (hereinafter referred to as "exporter ①") and other lifts [OTHER LIFTING MACHINERY (model name: OO, hereinafter referred to as "item at issue ②", and item at issue ① and item at issue ② are collectively referred to as "items at issue")] respectively from BBB located in OO (hereinafter referred to as "exporter ②, and the exporter ① and the exporter ② are referred to as "exporter") from December 15, 2017 to June 25, 2021. The claiming corporation reported import declaration number OO and other OO cases as handling machinery for hoisting, handling, loading and unloading under Statistical Integrated Classification Table (hereinafter referred to as "HSK") No. 8428.10-1000 or HSK No. 8428.90-9000 (WTO concession tax rate 0%), and the disposal agency accepted it.



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- On April 29, 2020, The claiming corporation made a request for item classification preliminary review for the item at issue ① to the Customs Evaluation and Classification Board (hereinafter referred to as the "Classification Board"), and the Classification Board replied with the results of the item classification pre-examination as HSK No. 8479.89-9099 to the requesting corporation on July 24, 2020. Then on August 19, 2020, the claiming corporation applied for re-examination of item classification to the Classification Board, but on March 23, 2020, the Classification Board notified that the item number of the item at issue ① was decided as HSK No. 8479.89-9099 as before.

-With this result, on August 24, 2021, the disposition office instructed the claiming corporation to make revisions and corrections for errors in item classification of the items at issue, but the claiming corporations did not report revisions and corrections. On October 18, 2021, the claiming corporation was corrected and notified (hereinafter referred to as "disposition at issue") of customs duties OO won, value-added tax OO won, additional tax OO won, total OO won.

2. Judgment

(1) Claimant's argument

- Since the items at issue are exclusively used for furniture, etc., they must be classified under No. 9402 of the Tariff Schedule. The principle decision method of item classification is defined as the heading 1 of the rules on the interpretation of the Tariff Schedule (hereinafter referred to as the "Rules") is the 'overriding rule of classification', and the 'classification of items for legal purposes is decided by the terms of the heading and notes to related subclasses/categories.', so the items at issue should be classified under the tariff rate table No. 9402, which uses 'furniture and parts' as terms of heading.

- The item at issue cannot be regarded as 'having unique functions' as stipulated in the terms of No. 8479. The Commentary on Tariff Schedule 8479 defines a unique function as "(A) a machine whose functions can be operated separately and independently of any other machine or device (whether or not attached with

an electric motor or other driving device). (B) a machine capable of performing its function only when attached to another machine or device, or combined into a more complex machine, and which has the function of: (i) has the function that is separate from the function performed by the machine or device to which it is attached, or complex machine to which it is combined; and (ii) such function does not function as an integral part of the operation of such a machine/device or complex machine."

Regarding the definition of furniture it is defined as a movable article made to be placed on the ground and used in hospitals, etc. in the General Commentary on Chapter 94 of the Tariff Schedule.

Furniture in this Chapter is regarded as movable furniture even if it is made to be fixed to the ground with bolts, etc. In addition, considering the fact that medical furniture and chairs with mechanical functions under No. 9402 of the Tariff Schedule are classified according to their purpose and function, separate from chairs and parts thereof under No. 9401 and other furniture under No. 9403, the functions of ophthalmic furniture to which the item at issue is to be combined, can be regarded as 'specific functions for medical treatment' unlike the functions of general chairs and general furniture. Since ophthalmic furniture to which the item at issue is to be combined is intended for ophthalmic treatment, the accurate 'up and down height adjustment function' of the patient and treatment device is critical. Therefore, in that the item at issue to be combined with furniture for ophthalmology is an item that directly performs these functions, (i) it cannot be regarded as performing a function separate from the device to be combined, and (ii) the item at issue is the indispensable part to perform of 'top and bottom adjustment function' of the ophthalmic chair. Therefore, it cannot be regarded as having 'unique function' as stipulated in the commentary on Tariff Schedule No. 8479.

(2) Argument of the Disposition Agency

- The item at issue is a machine with a unique function and not classified in the other headings of Chapter 84, so it should be classified in HSK No. 8479.89-9099 according to Rules 1 and 6. The item at issue is an item that serves to adjust and support the height of the object mounted on the upper part according to the user's needs by utilizing the function of extending and overlapping its length while constituting the support of various objects. This function of the item at issue is a unique function that works independently of other devices, as it can be performed by itself without combining the object. In addition, even if it is considered that the above function can be performed only when the item in question is combined with the object, it is reasonable to see it as a machine with a unique function because it performs the height adjustment function independently, separate from the function of the object.

- The item number must be determined according to the tariff rate table at the time of import declaration, and item classification is not determined by the actual use that the taxpayer intends to use after import. Article 16 of the 「Customs Act」 stipulates that customs duties are imposed according to the nature and quantity of goods at the time of import declaration, and Article 17 of the same Act stipulates that customs duties are imposed according to the laws and regulations at the time of import declaration. Item classification of goods must be classified according to the nature of the goods presented at the time of import declaration and the laws and regulations applicable at the time. The explanatory note to heading 9402 applies only to furniture of a type specifically designed for use in medical, surgical, dental or veterinary applications, therefore general-purpose furniture that does not have these characteristics is excluded from heading 9402. The explanatory note further explains if it can be recognized as a part of this heading, the part is to be classified in heading 9402. However, as it has been confirmed that the item at issue can be used in various industries that require height adjustment, the use of the item at issue cannot be limited to parts of ophthalmic furniture at the time of import declaration.

If, as claimed by the claimant, the items at issue are manufactured according to the specifications desired by the user and classified according to the user's actual use after import, a contradiction arises from being classified into various item numbers due to the differences in the maximum unfolding height, load that can be supported, top and bottom control speed, etc.

3. Conclusion

The item at issue is a column-shaped item that is mounted on an object and allows the height of the object to be adjusted by moving up and down. It can be applied to various fields such as medical and ergonomics fields or home appliance attachments, etc, where the vertical movement is required. It has its unique functions that operate independently from other devices in adjusting and supporting the height of the object mounted on the upper part according to the user needs by utilizing the function of extending and overlapping its length while configuring the support of various objects. It is difficult to accept the claim that the items at issue should be classified under the Tariff Schedule No. 9402.

4. Implications

In the case above, inappropriate item classification was made as a result of misunderstanding and arbitrary judgment regarding the terms of headings and the contents of the commentary. It is necessary to give careful attention not to determine the item number based on the actual use after importation in compliance with the principle that the item number must be in accordance with the tariff rate table at the time of



import declaration. Also making of item classification errors should be prevented in advance through careful study of relevant regulations and sufficient understanding of imported goods and the relevant industry.



HS case solved by logic

Notice of Change for EMI Filter Item Classification

1. Overview

EMI refers to noise to electromagnetic interference and signals. In order to filter out EMI mainly generated from digital devices, reactance elements such as inductors and capacitors are used to attenuate unnecessary electromagnetic waves and pass only necessary signal components.

Basically, the EMI filter removes noise from commercial power by using various topologies to remove electrical noise and supply normal power to terminal devices.

In partial revision of notice of change in item classification for imported and exported goods, etc. that took effect from November 11, 2022, the item classification for EMI Filter was changed and announced, and exporters and importers handling EMI filters are informed that they must report according to the revised item classification.



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2. Determination of item classification of EMI Filter

1) Item Classification before the revised notice (No. 8548.90-9000)

○ Product description: installed at the power input terminal of electronic devices, and blocks, absorbs, and grounds unnecessary electromagnetic waves emitted from devices and exits through power lines, and prevents external noise from being conducted to AC lines and affecting washing machines, etc.

○ Base of item classification

The note 2, item c of section 16 of the tariff rate table states that "Other various parts may be classified under subparagraphs 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 and 8538 as the case may be. The cases not classified as above, will be classified under No. 8487 or 8548."

- No. 8548 of the Tariff Schedule classifies "electrical parts of appliances (limited to those not classified in this Chapter)" and
- In the Explanatory Note to the same heading, "This heading includes all electrical parts of appliances except where they fall under the following two conditions: (a) Suitable for use exclusively or principally in a particular appliance; (b) Parts covered by the preceding headings of this Chapter or articles excluded by Note 1 of Section 16. Therefore, in this heading the items that are considered as electronic parts of machines not for particular machines and electrical connectors, insulation parts, coil, connectors, or other specified components are included."
- This product filters unwanted electromagnetic waves by using the characteristics of a capacitor and an inductor and corresponds to electrical components not separately classified in Chapter 85, so it is classified under the heading 8548.90-9000 in accordance with General Rules 1 and 6 on the Interpretation of the Tariff Schedule.

2) Item classification after notification of change (No. 8543.70-9000)

○ Reason for change: Classified under No. 8543.70-9090 as it performs a unique function of filtering out a specific frequency apart from the power supply or conversion function (Decisions made by the 8th Tariff Classification Committee in 2022)

- Product description: EMI (Electromagnetic Interference) filter that is connected to the power supply (converter) input and passes commercial power and attenuates unnecessary high-frequency (150kHz or more) current
- Basis of classification
 - The subparagraph (a) of Note 2, Section 16 of the Tariff Schedule states, "any parts of the goods that are included in specific subparagraph of Chapter 84 or Chapter 85 (No. 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538, and 8548 excluded) are classified under the corresponding heading respectively."
 - In No. 8543 of the Tariff Schedule, "Other electrical equipment (limited to those with specific functions not separately classified in this Chapter)" is classified
 - The Explanatory Note to the same heading states that most of the appliances of this heading consist of appliances operated entirely electrically, or parts that need to be assembled (vacuum tubes, transformers, capacitors, chokes, resistors, etc.)."
 - The product in this case consists of an inductor (No. 8504), a capacitor (No. 8532), and an electric terminal (No. 8536) that operate by electrical effects (reactance that resists changes in current) as in subparagraph 2 of note 2 of section 16, there is no dispute that it is classified in Chapter 85.
 - However, since items (EMI filters) with a function of filtering out unnecessary frequencies, etc. in the tariff rate table are not specifically listed in Chapter 85, it is reasonable to classify it into "Other electrical equipment (limited to not separately classified in this Chapter and having a unique function)" under subheading No. 8543
 - Looking at whether the item in this case can be regarded as "having a unique function", the unique function is to apply the provisions of the commentary No. 8479 mutatis mutandis,
 - In order to be regarded as having "individual functions" in the Explanatory Note to heading 8479, it should satisfy the following: (A) a machine whose functions can be operated separately or independently of any other machine or appliance; and (B) a machine whose functions can be performed only when attached to or connected to a more complex machine, and which has the following functions: (i) the functions performed by the machine or appliance to which it is attached and the complex machine to which it is connected; is a separate function, and (ii) such a function does not act as an indispensable part.
 - This product is coupled to a 'power supply (No. 8504)', a device that converts alternating current (AC) into direct current (DC) and has the function of removing (attenuating) a specific frequency apart from performing the function of "conversion". with individual functions of heading 85.43 as it Performs the function of "transformation" and does not act as an indispensable element.

- The product in this case can be regarded as an electronic device for “other electrical equipment having a function of its own not classified in this Chapter” and classified in subheading 8543.70-9090 in accordance with Rules 1 and 6 on the Interpretation of the Tariff Schedule.

3. Application date and matters to be noted

For partial revision of notification of change in item classification for export and import goods, etc., the changed item classification shall be applied from the date (change date) between the date of notification of the change and the date of notification or announcement, whichever comes first

If it is advantageous for the importer to apply the tariff classification prior to the change to the goods shipped before 30 days pass from the date of change Export to Korea, the tariff classification prior to the change may be applied.



Introducing OECD Guidelines on Transfer Pricing During the COVID-19 Pandemic– 2. Allocation and Losses of COVID-19 Specific Costs

Since February 2020, the COVID-19 has hit the world, drastically changing our common senses and lifestyles as well as trade and customs. The OECD (Organization for Economic Co-operation and Development) collected the agreed views of 137 member countries. In the 'Transfer Pricing Guidelines in the COVID-19 Pandemic Situation (2020.12)', OECD explains the arm's length principle and application of the OECD Transfer Pricing Guidelines on specific facts and issues that may arise in the COVID-19 situation, and a comprehensive framework related to BEPS (Erosion of Tax Sources through Income Transfers). Even in the COVID-19 pandemic situation, in principle, the 2017 OECD Transfer Pricing Guidelines (OECD TPG) for multinational companies and tax authorities should be applied, and the following should be considered: **1) comparability analysis, 2) losses and the allocation of COVID-19 specific costs, 3) government assistance programs and 4) ("APA")**. The application of guidelines for each situation will be sequentially introduced, and in this issue, **losses and the allocation of COVID-19 specific costs** will be introduced.



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The following circumstances should be taken into account in matters relating to the allocation and losses of specific costs incurred under COVID-19:

1) impacting profit or loss distribution

It is important to emphasize that the risk distribution on the agreement among the related parties affects how the profit or loss resulting from the transaction is allocated through the transaction price. Existing guidelines for risk analysis in commercial or financial relationships will therefore be particularly relevant for the purpose of determining how losses are to be distributed among related parties.

2) allocation method of exception costs

It would be necessary to consider how exceptional and non-recurring operating costs arising from COVID-19 should be allocated among the parties involved. These costs should be allocated on the basis of the assessment of independent companies in the comparable operating conditions. Separately, temporary expenses can be recognized as operating expenses and non-operating items, so comparability adjustments may be required. In the pandemic situation, the 'exceptional', 'non-recurring' and 'temporary' costs of transfer pricing analysis should be distinguished. As for a comparable basis, the risk analysis of business-to-business transactions, and how independent companies reflect such costs in normal pricing, and, ultimately, how those costs can affect the price charged in a transaction between the parties involved need to be understood. Financial Accounting Standards contain relevant and potentially useful concepts for identifying the nature of expenses and should be considered in comparability studies. However, it should be noted that even under such financial accounting concepts, there may be uncertainty about whether specific costs are considered as exceptional or are adequately characterized as exceptional costs.

COVID-19 operational or exceptional expenses incurred by the parties involved will not be considered exceptional or non-recurring operating expenses in the context of long-term and permanent changes in the way the business operates, and furthermore it can be recognized as a reduction or elimination of certain typical costs incurred prior to the Covid-19 pandemic.



3) Force Majeure Clauses

The COVID-19 pandemic has created conditions for the parties involved to consider whether they have the option to enforce force majeure clauses, or to cancel or amend intercompany agreements. In the current economic environment, among the parties involved, the COVID-19 will affect the allocation of special costs and losses and is a circumstance that requires special consideration. The COVID-19 has forced independent parties to renegotiate certain terms in existing contracts.

This means that in the current economic environment, independent parties do not strictly uphold their contractual obligations, especially where both parties benefit from a renegotiation of the contract or wish to amend some view of their conduct. Such changes are necessary when considering the potential benefits to the parties in the long-term.

*Source: GUIDANCE ON THE TRANSFER PRICING IMPLICATIONS OF THE COVID-19 PANDEMIC © OECD 2020
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FTA and import/export practical business guide
**WTO Concessional Tariff under ITA (Information
Technology Agreement)**

1. WTO Information Technology Agreement

WTO ITA is a sector-by-sector liberalization agreement that multiple WTO member countries promised to eliminate tariffs on 203 IT items in 1096. Since the conclusion of the agreement in 1996, global IT exports have tripled. Currently ITA member countries account for more than 96% of global IT item trade. ITA is credited to have contributed to global economic growth and job creation by invigorating IT products trade as well as world trade and economy in general.



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- FTA Consulting

2. Tariff Concession under ITA

ITA was concluded as a result of free negotiations by sector among WTO members. ITA member countries have amended the schedule of concessions in accordance with the ITA agreement and have eliminated tariffs on items stipulated by the ITA. Unlike the WTO negotiations in which all member countries participate, ITA is a negotiation in which only some member countries participate. However, as a result of the agreement, MFN tariffs for applicable items on the schedule of concessions were abolished, resulting in promoting trade liberalization of IT products around the world.

Korea also stipulates concessional tariff rates for items conceded in accordance with the ITA Agreement on the concession table in Annex 1 of the 「Tariff Concession Regulations under the WTO Agreement, etc.」 (hereinafter referred to as the WTO Tariff Concession Table)

3. The category of “information and communications device”

Looking at the WTO Agreement Tariff concession schedule, among some of the items for which tariffs have been abolished under the ITA Agreement, only “automatic data processing machines (Nos. 8471, 8443.31, 8443.32, 8528.42, 8528.52, 8528.62) and their units and telecommunications apparatus” is subject to a tariff rate of 0%. In the process of customs clearance, there is no disagreement about “automatic data processing machine and its unit equipment” because the HS code is listed, but in the case of “telecommunication apparatus,” there is often disagreement about whether the goods to be imported fall into the above category.

Looking at the concession schedule below, battery chargers for “automatic data processing machines and their unit devices (Nos. 8471, 8443.31, 8443.32, 8528.42, 8528.52, 8528.62) and for telecommunications apparatus.” are classified as No. 8504.40-3010 and are subject to a 0% tariff rate, but other battery chargers are classified as No. 8504.40-3090 and subject to a tariff rate of 1.6%.

「Concessional tariffs on industrial products, marine products and on agricultural, forestry and livestock products with simple concessions(related to Article 2)」				
Item No.			Product	Tax rate (%)
				2022
8504	40	30	Battery charger	
8504	40	3010	Of automatic data processing machines and units thereof (subheadings 8471, 8443.31, 8443.32, 8528.42, 8528.52, 8528.62) and of telecommunications apparatus	0.0
8504	40	3090	Other	1.6

“Telecommunication Apparatus” is defined as “a device that transmits or receives codes, words, sound or images by wire, wireless, light or other electromagnetic methods.” in Article 2 of the 「Framework Act on Telecommunications」. In other words, it is a device that transmits and receives data such as codes and images through wired and wireless communication technology

For HS No. 8504.40-3010 “Battery chargers for automatic data processing machines and units thereof, and telecommunication apparatus”, tariff rate is conceded at 0% on the concession Schedule under the ITA Agreement.

Products to which a 0% tariff rate is applied are "automatic data processing machines, their unit devices, and Telecommunication Apparatus". Household electrical devices or other electrical devices other than devices that transmit and receive data, the 0% tariff rate does not apply.

The Korea Customs Service has a limited interpretation of the category of “things for telecommunication apparatus”. Only when it is proven that the battery charger in the example above is dedicated to a specific information and communication device, the product is recognized as an item of subparagraph 8504.40-3010, and if it is used universally for other devices as well as a specific device, it is considered as an item of subparagraph 8504.40-3090.

4. Customs Service Item Classification Example (Battery Charger)

Looking at the item classification example below, the Customs Service classified a charger with a high-speed charging function as No.8504.40-3010 since it is used for specific smartphones or tablets with high speed charging function. However, in the case of a charger that does not support high-speed charging,

it is classified as No. 8504.40-3090 because it can be used universally for auxiliary batteries or portable humidifiers that use the same charging terminal standard in addition to telecommunication apparatus such as smartphones.

Reference No.	Item Classification Division 3-801	Item Classification Division 3-19682
Determination Tariff No.	8504.40-3010	8504.40-3090
Product Name	HIGH SPEED CHARGER; SPE-N8PD1P18	BATTERY CHARGER ; SPE-N8TU2P210Y(8P) ;
Product Description	<p>- A charger equipped with one PD (Power Delivery) 3.0 charging port and capable of high-speed charging. A device that changes voltage and current so that it can be charged to specific smartphones, tablets, laptops, etc. (only the main body is present)</p> <p>- <u>When connected to a specific model smartphone, the high-speed charge control integrated circuit (IC) installed inside the product recognize recognizes it and performs high-speed charging.</u></p> <p>- Receives 220V AC power, rectifies it to DC power, and supplies charging power of up to 18W to the connected device</p> <p>- Specifications</p> <ul style="list-style-type: none"> · Input : AC 220V, 50~60Hz, 0.25A · Output : 5V, 3A or 9V, 2A or 12V / 1,5A 	<p>- Charger body with 2 USB charging ports and charging cable are packaged as a set for retail sale</p> <p>-Receives 220V AC power, rectifies it to 5V DC power, and supplies charging power up to 2.1 A to <u>various connected devices. It does not include a high-speed charging function.</u></p>
Determination reason	- Tariff Schedule No. 8504 classifies 'transformers, stationary converters	- Tariff Schedule No. 8504 classifies 'transformers, stationary converters and inductors', and subheading No. 8504.40 classifies

<p>Determination reason</p>	<p>and inductors', subheading No. 8504.40 classifies 'stationary converters'.</p> <p>- in the commentary of the same issue '(II) stationary converters' group, "Apparatus of this group is used to convert electrical energy for more useful applications. ...the principle of operation is that the transforming elements work as a conductor and an insulator. As an example, "(2) Converters for the supply of electricity: e.g. chargers for accumulators (mainly transformer s and rectifiers combined with current regulator)"</p> <p>- This product has a built-in integrated circuit (IC) dedicated to <u>high-speed charging, and recognizes specific smartphones, tablets, laptops, etc. that can be rapidly charged, and charges corresponding devices fast.</u></p> <p>- This product is regarded <u>as "automatic data processing machine and its unit equipment, and telecommunication apparatus"</u> and is <u>classified in subheading No. 8504.40-3010</u> according to General Rules No. 1 and No. 6 regarding the interpretation of tariff rates.</p>	<p>'stationary converters'.</p> <p>- in the commentary on the same issue, '(II) About stationary converters "Apparatus in this group is used to convert electrical energy for more useful applications. They are incorporating different types of converters, and may also incorporate several auxiliary devices".</p> <p>- "(2) Converters for the supply of electricity: e.g., chargers for accumulators (mainly transformers and rectifiers combined with current control devices)</p> <p>-This product receives battery power, rectifies it to 5V DC power, and then <u>supplies and charges various devices connected to it.</u></p> <p>- Therefore, this product is a <u>battery charger, considered to be of automatic data processing machine and its unit equipment, and of 'other', not of equipment for telecommunications; Classified in subheading No. 8504.40-3090</u> in accordance with General Rules No. 1 and No. 6 concerning the Interpretation of Tariff Rates.</p>
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5. Precautions

At the import customs clearance stage, if a 0% tariff rate is applied even though it is not "telecommunication apparatus," you may be subject to penalties such as additional tariffs later, so accurate item classification must precede customs clearance. In addition, it should be noted that the 0% tariff rate applied to "automatic data processing machines and their unit equipment and telecommunications apparatus" may be a use tax rate that requires follow-up management of the use of the product after import. If the use tax rate is applicable, application for the use tax rate application is required during customs clearance, and appropriate follow-up management is required after customs clearance.



Contents and Opinion of Customs Trade Revision **「Enforcement Rules of Value-Added Tax Act」**

1. Reasons for revision

This is to clarify that assistive devices for sports are included in imported goods for persons with disabilities that are exempted from VAT, to change the term 'handicapped' which could insinuate the inequality to 'Persons with disabilities', and to replace difficult terms into easy-to-understand terms.



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[PROFILE]

- Shinhan Customs
- Corporate review and investigation
- Foreign exchange Transaction advisory
- Trade transaction advisory

2. Major Revision

[In an attached table 2 of 2, in the subparagraph 1- A (6), the term "devices" is changed into "devices and assistive devices for sports" and in the subparagraph 2- A (5) of the same table, "raw and subsidiary materials" are changed to "raw materials and subsidiary materials". In subparagraph B (1) of the same table, "Patients with Gaucher's disease" are replaced with "Patients with Gaucher's disease", In the same subparagraph (2), "adrenal dystrophy patient" is changed to "adrenoleukodystrophy patient", and in the same subparagraph (5) and (6), "mentally and physically handicapped" is respectively changed to "mentally and physically disabled". "Lymphocyte hyperplasia" in (8) was changed to "Lymphocyte hyperplasia", and "leveraged bell" in Table No. 3 (1) is amended to "chime bell". (Note: Some Korean terms for diseases were revised but in English, they are the same.)

3. Opinion on the revised content

Among the above revised contents, I would like to pay attention to the part where 'handicapped person' was revised to 'persons with disabilities'. With the recommendation of the United Nations, Korea enacted the 'Welfare Act for Persons with Physical and Physical Disabilities (1981)', a law concerning persons with disabilities, and at this time, the term 'persons with disabilities' was used. The term was changed with the amendment to the 'Disabled Persons Welfare Act (1987)'.

As a result, the legal term was also changed to 'persons with disabilities' in many laws including the Customs Act. However, the expression 'handicapped person' still remained in the Enforcement Regulations of the Value Added Tax Act, so this time it was revised to 'persons with disabilities'. Changes in legal terminology often do not reflect that terminology in other statutes. Legal terms should be unified through the suggestions of citizens as well as government officials.

4. Effective date

September 6, 2022

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