

Overview of the Korean Classification Regime and Notable Matters (Part I)

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Classification refers to identification of the classification code of a certain imported/exported good in accordance with standards and system of harmonized system. Classification is used as a standard in determining the tariff rate/exemption/origin, and accuracy in classification is required. Six digit codes provided under the HS convention are commonly used world-wide. Korea uses ten digit codes in accordance with Korea's appendix to Customs Act and Harmonized System of Korea (HSK). For purposes of accurate classification, (1) possibility for error arising from amendment of HS to reflect development of new products and changes in the trade environment should be minimized, (2) appropriate response should be made to different classifications for the same goods due to differences in interpretations adopted by each country, and (3) grounds for classification should be prepared to secure accuracy in determination of origin for purposes of Free Trade Agreement (FTA) benefits. In addition, classification should be made in accordance with established standards, with no regard for customs rate applicable to a certain good. However, since Korea Customs Service tends to prefer classification yielding a high tariff rate due to its nature as a revenue agency, taxpayers should consider active response to customs audit.

Customs classification means classifying imports and exports into codes in accordance with the criteria and system set forth in the HS commodity description and coding system. HS codes are used as the criteria for tariff rate, reduction/exemption, and determination of the country of origin and also for statistics on export and import. Therefore, for purposes of export and import declaration and any other procedures relating to export and import, correct customs classification is basically required.

The HS code (Table 1), which is internationally used, consists of six-digits under the HS International Convention¹ and its protocol, HS Nomenclature.² In Korea, matters related to the HS codes are set forth in the Customs Act (Schedule: Tariff Schedules), and the HS codes are subdivided into ten-digit codes according to Harmonized System of Korea (HSK).

I MATTERS TO NOTE CONCERNING TARIFF CLASSIFICATION

I.1 Amendment of HS

The HS Nomenclature is amended in five-year intervals due to development of new products and change in trade environment. During the course of such amendment, addition, deletion, consolidation, and revision in the classification system, errors may occur in tracking the HS code before and after the amendment. Furthermore, what makes things worse in practice is that HSK (ten-digits), the sub-classification system of the HS Nomenclature (six-digits), must be revised according to such amendment. The HS Nomenclature has been amended on five occasions (1992, 1996, 2002, 2007, 2012) after it came into effect in 1988, and its sixth amendment is scheduled for 2017. HSK has been amended on twenty-five occasions after its establishment in 1987 until 2014.

Notes

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¹ The formal title is the International Convention on the Harmonized Commodity Description and Coding System.

² Harmonized Commodity Description and Coding System.

Table 1 Cases Where the HS Code Is Used

Where the HS Code Is Used	Applicable Provisions
Tariff Rate	Article 50(1) of the Customs Act (Priorities in Application of Tariff Rates) (1) Basic tariff rates and provisional tariff rates shall be governed by the Tariff Schedules and provisional tariff rates shall be applied in priority over the basic tariff rates.
Determination of Country of Origin	Article 62(1) of the Presidential Decree of the Foreign Trade Act Anyone who seeks determination of the origin of exported or imported goods shall file an application including information such as the item code of the goods under the Harmonized Tariff and Statistical Schedules, the item name (including the model name), the reason for application, the origin asserted by the applicant, etc., to the Ministry of Trade, Industry and Energy along with one sample and other materials necessary for the determination of the origin.
Restriction on Export and Import	Article 3 (Customs Classification) Export and Import Notice issued by the Ministry of Trade, Industry and Energy Customs classification in this notice shall be in conformity with the HS (Harmonized Commodity Description and Coding System) and its sub-classification shall be made in accordance with the HSK (Harmonized System of Korea).
Requirements for Export and Import	Article 5 (Customs Classification) Consolidated Public Notice issued by the Ministry of Trade, Industry and Energy In principle, items for which requirements need to be checked shall be classified in conformity with the HS (Harmonized Commodity Description and Coding System); however the HS may be sub-classified if it is necessary to achieve the purposes of the trade policy and of the relevant laws.
VAT	Article 24(2) of the Ministerial Decree of the VAT Act (Scope of Tax Exempt Raw Food Products and Beverages)

Where the HS Code Is Used	Applicable Provisions
	Classification of raw food products and beverages shall be based on the tariff schedules in the Schedule of the Customs Act.
FTA	Article 2.4 of the Korea-EU FTA (Classification of Goods) The classification of goods in trade between the Parties shall be that set out in each Party's respective tariff nomenclature interpreted in conformity with the Harmonized System of the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on 14 June 1983 (hereinafter referred to as the 'HS').

1.2 Difference Between Countries

Customs classification must follow the criteria set forth in the HS Nomenclature, such as General Rules, Notes of Section·Chapter·Heading, etc., and refer to the Harmonized Commodity Description and Coding System Explanatory Notes, Harmonized Commodity Description and Coding System Compendium of Classification Opinions of WCO³ and other global guidelines that are common to all nations. However, due to the difference in interpretation among the countries, in some cases, the identical goods may be classified into different HS codes (six-digits). Companies exporting the same goods to several countries may be confused about the code, if each importing country has different customs classification, and may face a problem in applying the FTA and determining the country of origin. Therefore, the difference in customs classification among the countries is one of the important custom issues.

Any international dispute in relation to customs classification must be resolved in accordance with the dispute resolution procedures prescribed in the HS Convention (Table 2).⁴ A dispute should first be settled by consultations between the relevant countries to the extent possible. However, if it is not possible to resolve a dispute through consultations, such dispute must be brought to the HS Committee and Council for settlement. Only the contracting states can bring agenda to the WCO, and thus, an individual or company cannot do so by itself but needs the help of the government of the relevant country.

Notes

³ World Customs Organization.

⁴ Art. 10 of the HS Convention.

Table 2 Difference in Customs Classification Between Countries (Cases)

<i>Item</i>	<i>Opinion by Country</i>	<i>Process</i>	<i>Result</i>
Smart Watch	Korea: HS 8517 Turkey, Thailand, India, etc.: HS 9102 or HS 8543	Brought agenda to WCO	Determined as HS 8517 as a result of review by WCO
Multifunction Components	Korea: HS 8443 Vietnam: HS 3926	Consultation between countries	Accepted as HS 8443
Fabric	Korea: HS 5907 USA: HS 5903	Consultation between countries	Accepted as HS 5907

1.3 Application of FTA

Under the FTA, goods to which the preferential tariff applies are classified according to the HS customs classification system, and the tariff rate and the rules of origin that apply to the goods vary depending on the respective HS codes. Accordingly, one of the most important thing in applying the FTA is correct classification, and if there exists any error in the classification, various issues may

occur. First of all, the tariff rate to the imported goods can be changed due to the change in the code of item and type of tariff concession (immediate elimination, phase out, etc.). In addition, the certificate of origin may be re-issued, and in some cases, the application of the FTA may be rejected due to the difference in the rules of origin.

As of January 2016, Korea has fourteen FTAs in effect, and additional FTAs are expected to be ratified in the future. Exporters and importers need to verify the correctness of the customs classification of the traded goods before applying for the benefits of the FTA.

2 ISSUES IN ASSESSMENTS RELATED TO CUSTOMS CLASSIFICATION

Customs classification follows the criteria set forth in the HS Nomenclature; thus, classification should be correctly made in accordance with the given criteria regardless of the level of the tariff rate of imported goods. However, from the perspective of the customs authority whose purpose is to secure tax revenue including customs duty, its position is not to review customs classification which may have no influence on customs duty. For this reason, customs audit is concentrated on the items whose tariff rate differs according to the customs classification.