

For Italian Producers/Exporters

EU-Korea FTA and its utilization



May 3, 2018.



CONTENTS

- I. Korea FTA Overview
- II. How to enjoy preferential tariff treatment
- III. Approved exporter and origin declaration
- IV. Advice for FTA Compliance

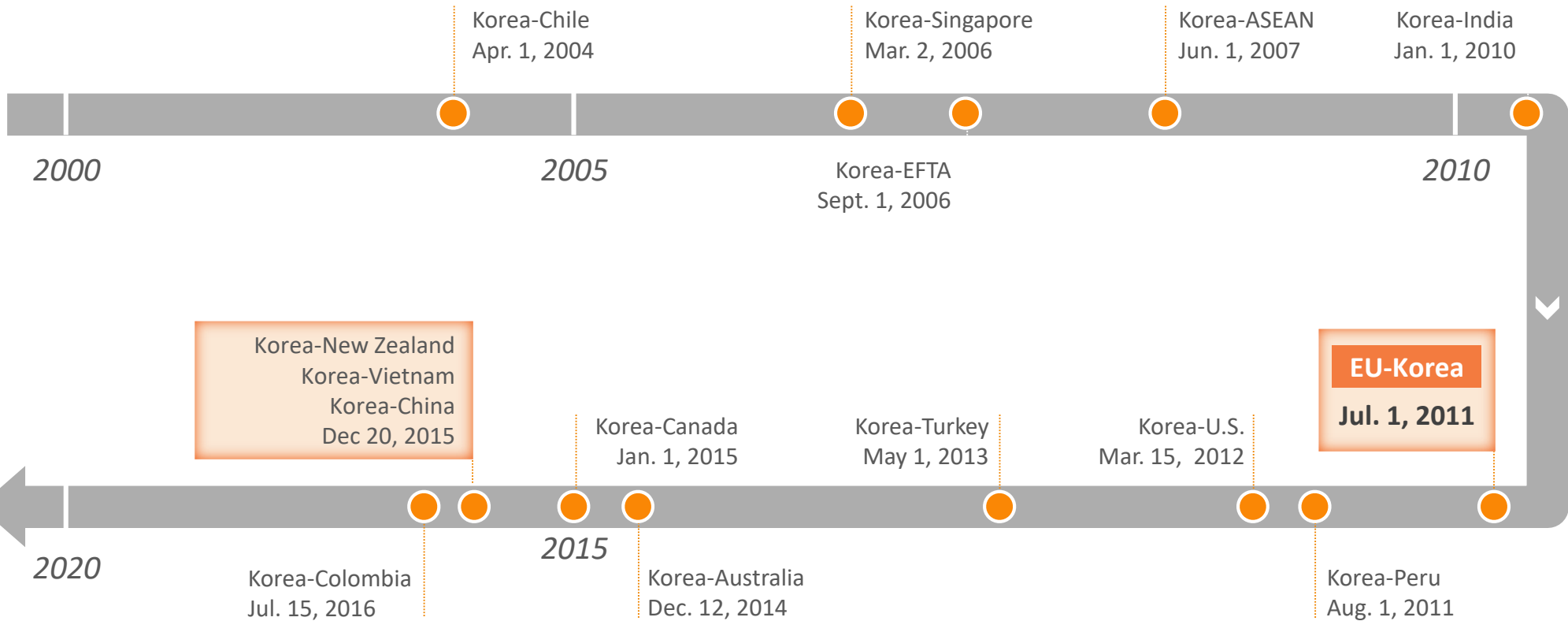


Korea FTA Overview

Current Status of Korea FTAs

15 FTAs in effect
(As of Apr. 10, 2017)

Americas	<i>U.S., Canada, Chile, Peru, Colombia</i>
Europe	EU , EFTA, Turkey
Asia	<i>CHINA, ASEAN (10), Vietnam, Singapore, India</i>
Oceania	Australia, New Zealand





How to enjoy preferential tariff treatment

Potential Benefits for Italian Producers/Exporters

EU-Korea FTA

	PSR	Basic Tariff	Preferential Tariff
Handbag (HS 4202.21)	CTH	8%	0%
Women's Coats (HS 6202.1)	Specific Process	13%	0%
Silk Scarves (HS 6214.10)	Specific Process	8%	0%
Neckties (HS 6215)	Specific Process	8%	0%
Belts (HS 6217.10)	Specific Process	13%	0%
Dress Shoes (HS 6403.99)	CTH except from HS 6406 or MC 50%	13%	0%
Perfumes (HS 3303.00)	CTH or MC 40%	6.5%	0%
Sun-glasses (HS 9004.10)	CTH or MC 45%	8%	0%

* PSR: Product Specific Rules

Requirements for FTA benefit

Issues	Requirements
Territory	Must be within FTA covered territory -- Italy
Items	Must be covered by preferential tariffs in FTA- EU-Korea FTA
Rules of Origin	Must be met and complied with
Origin Declaration	Must be valid (issuer, formalities , etc.)
Direct Transport	Must be directly transported to retain originating status
Record-keeping	Supporting documentation and evidence must be maintained for the statutory period

Requirements - Rules of Origin Generally

The Product Must Originate From One of the Parties to the FTA

Substantive Transformation Rule

If a non-originating material underwent substantive transformation in Country A's territory and became a product with different HS Code, it is recognized as originating from Country A.

Value-Added Rule

If a certain percentage of total value is added in the originating country, deemed originating in that country

- Build-Down Method
- Build-Up Method
- MC Method

Key Process Rule

Identify key manufacturing process for each product, and grant originating status if that process is undertaken in that country

- For example, for textiles, “yarn-forward” or “fabric-forward” rule

- Different rules of origin may apply to different types of products
- The rules of origin applicable to a single product may vary between FTAs

Proof of Origin Requirements of EU-Korea FTA



WHO

By “Approved Exporter” in EU specifically authorized by customs authorities in EU (**not Switzerland**) and with **customs authorization no.** issued by customs authorities in EU



HOW

- No prescribed form but on one of the following documents
 - **Invoice /delivery note/packing list**/other commercial documents
- With requisite certification language

Outline of Origin Determination Process

Step 1

Identify the **HS CODE** for the product



Step 2

Identify the **criteria for the determination of origin** applicable to the product HS Code under each FTA



Step 3

Identify the **HS Codes and countries of origin for the raw materials in the BOM** for the product



Step 4

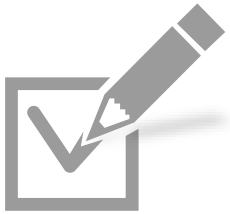
Confirm the **accounting information** (adjusted selling price and adjusted material cost) (applicable only to the value contents criterion)



Step 5

Determine whether the origin criteria are satisfied

Your FTA claims may be denied if:



1 Use of fraudulent/ invalid origin declaration

- Forgery, inconsistencies, inaccurate and/or missing information affecting the validity of origin

2 Failure to meet applicable rules of origin

- Tariff Shift and/or Regional Value Content requirements

3 Failure to meet the Direct Transport Rule

4 Importer/ exporter's failure to submit data and information to support the origin certificate

Direct Transport Rule of the EU-Korea FTA

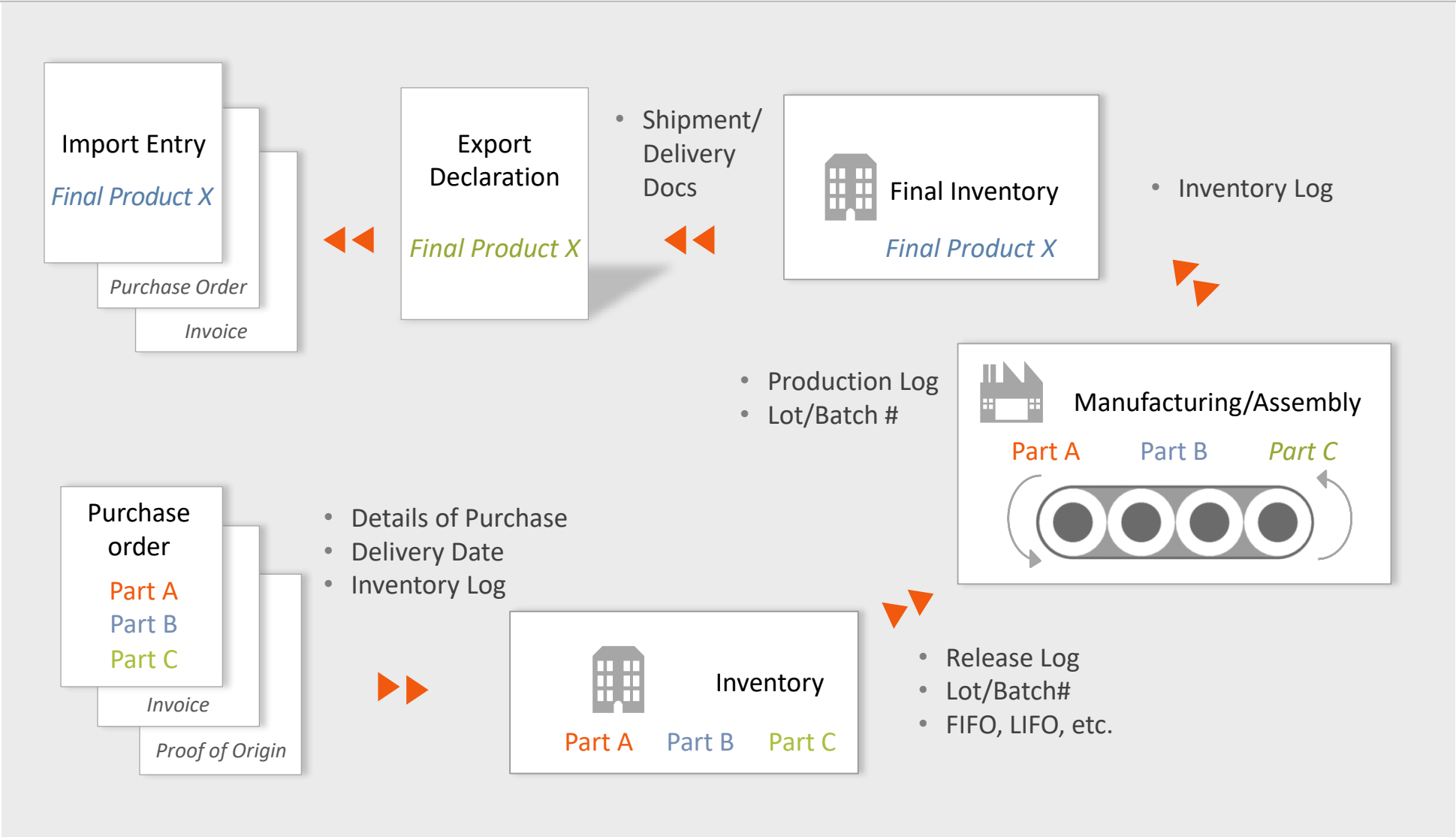
General Rule

The preferential treatment under the EU-Korea FTA applies only to products which are transported directly between the Parties (e.g., **Italy -> Korea**).

Exception

- Products constituting **one single consignment** may be transported through other territories (e.g., Switzerland) with **transshipment or temporary warehousing**, provided that:
 - The products are not released for free circulation in the country of transit or warehousing; and
 - The products do not undergo operations other than unloading, reloading or any operation designed to preserve them in good condition.
- Single Consignment:
 - Products which are sent simultaneously;
 - Products which are covered by a single transport documents; or
 - Products which are covered by a single invoice

Traceability Issue



Preservation of Documentary Evidence of Origin, etc.

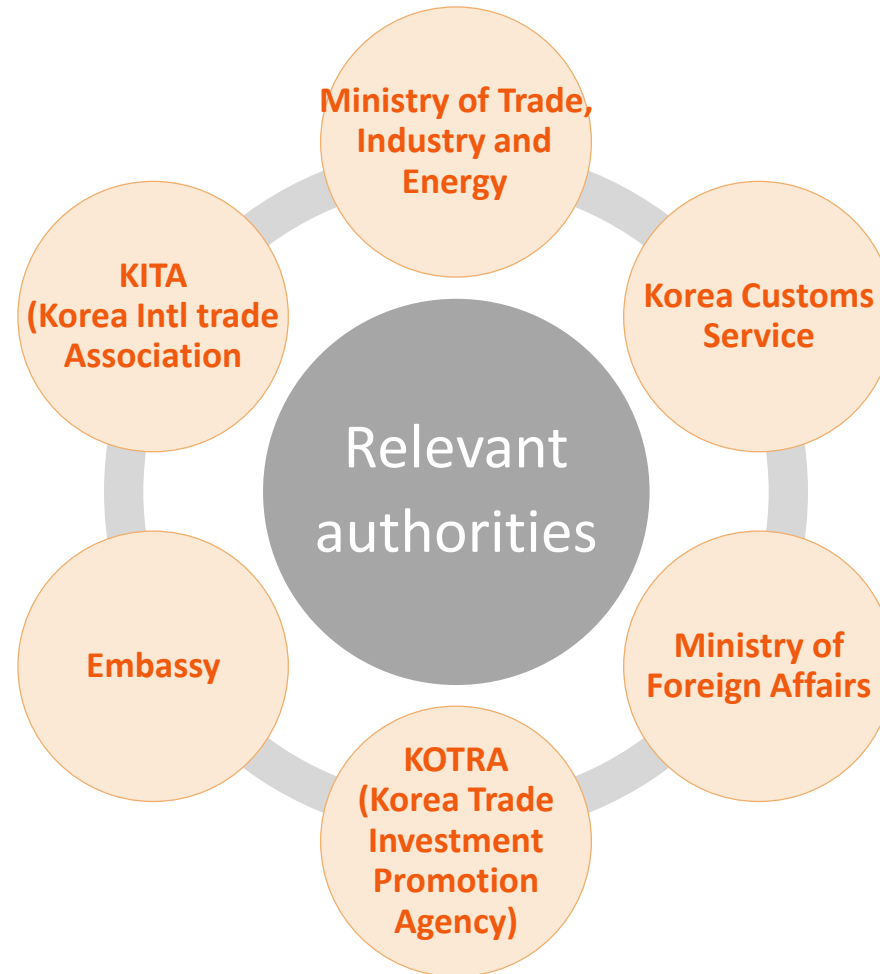
Materials Subject to Preservation

Preserver	Importer	Exporter	Producer
Preserved Materials	<ul style="list-style-type: none"> ① Certificate of import declaration ② Certificate of Origin ③ Agreement for import transaction ④ Dutiable value determination materials ⑤ Transportation documents for imported goods ⑥ Documents relating to intellectual property right ⑦ Other documentary evidence 	<ul style="list-style-type: none"> ① Certificate of origin ② Declaration of origin ③ Application for issuance of declaration of origin ④ Exported goods ledger ⑤ Purchase agreement for exported goods ⑥ Other documentary evidence 	<ul style="list-style-type: none"> ① Declaration of origin ② Self-issued declaration of origin ③ Materials relating to HS CODE (item description, specification / material / function, production process chart, etc.) ④ Cost statement, purchase/sales ledger, raw material ledger, etc. ⑤ Supply contract of exported goods ⑥ Other documentary evidence

Preservation Period

Agreement	EU-Korea, Chile, Singapore, EFTA, India, US-Korea FTAs
Preservation Period	5 yrs from the date of import declaration acceptance

Relevant authorities regarding FTA



- Access the Korea Customs Service website (<http://fta.customs.go.kr>) to check criteria for determination of origin
- <http://www.customs.go.kr/kcshome/site/index.do?layoutSiteId=engportal>



Approved Exporter and Origin Declaration

Concept and Type of Approved Exporters

Concept

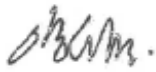
- Approved Exporter System is a system granting benefits to exporters who are approved to be capable of certifying origins by the customs authority by simplifying the c/o issuance procedure and exempting submission of some attachments

**Self-issued C/O
only available for
approved
exporters in the
Korea-EU FTA**

[EU-Korea FTA] For export goods that are valued at above EUR 6,000, a self-issued C/O is available to only those who are designated as an approved exporter

※ Reference: For export goods that are valued at EUR 6,000 or less, a self-issued C/O is also available to those who are not designated as an approved exporter. However, origin determination is also conducted in this case.

COMMERCIAL INVOICE

SELLER		INVOICE NO. AND DATE		
		L/C NO. AND DATE		
CONSIGNEE		BUYER(IF OTHER THAN CONSIGNEE)		
		OTHER REFERENCES COUNTRY OF ORIGIN: SOUTH KOREA		
DEPARTURE DATE		TERMS OF DELIVERY AND PAYMENT EXW SEOUL		
VESSEL/FLIGHT	FROM INCHEON AIRPORT			
TO : GERMANY		P.O.2014-10113 / UDP-PI-140408-R1		
SHIPPING MARKS	GOODS DESCRIPTION	QUANTITY	UNIT PRICE	AMOUNT
MODEL [PC based DVR Card]				
Meye8200HE	HP3000EX	50PCS	€ 189.05	€ 9,452.50
[Extension Card]				
MULTIEYE II I/O	ConExt0802	50PCS	€ 16.50	€ 825.00
TOTAL		100PCS		
		Signed by		
		Senior Manager 		

The exporter of the products covered by this document 010-13-10I
except where otherwise clearly indicated, these products are of **KR**

L'exportateur des produits couverts par le présent document (autorisation douanière n° ...⁽¹⁾) déclare que, sauf indication claire du contraire, ces produits ont l'origine préférentielle ...⁽²⁾.

Origin Declaration

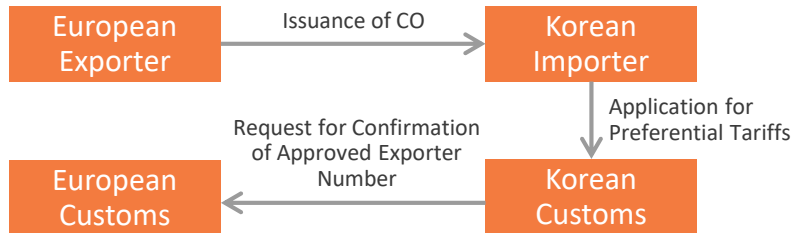
The exporter of the products covered by this document (**customs authorization No ...⁽¹⁾**) declares that, except where otherwise clearly indicated, these products are of ...⁽²⁾ preferential origin.



Case. Errors in Approved Exporter Numbers

Case

- Investigation into **error in approved exporter numbers in the origin declaration** under the EU-Korea FTA



Risk

- If the origin declaration is found to have formal defects, custom duties can be imposed without a request for origin verification to an exporting country.

Issue

- Whether VAT numbers, business entity registration numbers or customs ID numbers were used**, instead of approved exporter numbers, in the certificate of origin.
- Whether approved exporter numbers do not include a country code** under the EU-Korea FTA or the HS code of exported items

Implications

- In the case of European imported goods, it is often the case that there are errors in the approved exporter numbers of the origin declaration. Thus, extra attention is required. It should be noted that, even if there are formal errors, this does not necessarily lead to the imposition of customs duties but is likely to lead to indirect verification by the European Customs.

Case. Risks of Origin Declaration Issued by an Importer

Case

- Origin verification and criminal investigation where an importer stated the details of the origin certificate in an invoice under the EU-Korea FTA

Risk

- Under the FTA, **only approved exporters can issue origin declaration**. Thus, if an importer prepares the origin declaration, additional customs duties can be imposed and further, criminal investigation can be also conducted.

Issue

- **Whether the importer under the EU-Korea FTA was authorized by the exporter to state the details of the origin declaration in the invoice**. If so, whether the certificate of origin is valid and effective. If not, whether this constitutes an evasion of customs duties

Implications

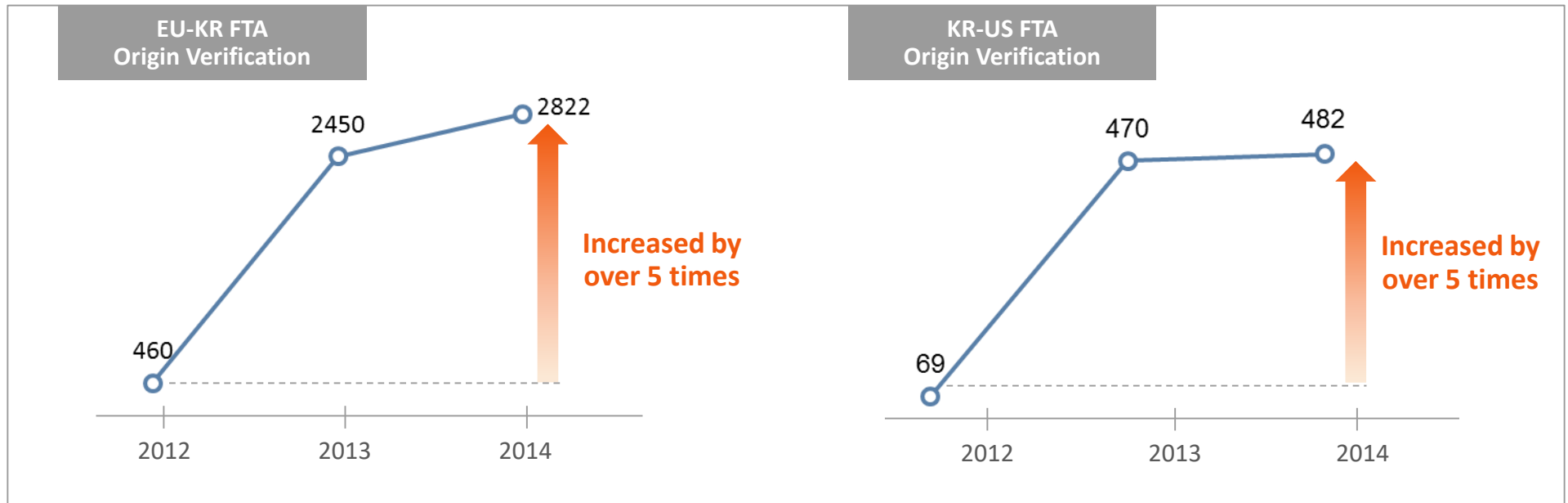
- It should be noted that the origin declaration issued by an importer under the EU-Korea FTA is likely to be subject to criminal investigation.



Advice for FTA Compliance

Drastic Increase in FTA Origin Verifications

During 2012 to 2014, the amount of customs duties imposed on imported goods in breach of FTA origin regulations by Korean Customs Service (KCS) went up fivefold. Revenue from customs duties has been declining due to expansion of FTA. Thus, KCS has taken stricter views and made more challenges regarding claims for preferential tariff treatment



Confirming whether the Requirements for the Preferential Tariff Treatment are satisfied



- **(Check Point 1)** If the value of the goods traded exceeds 6,000 euro, **only the approved exporter** under the EU-KR FTA may make out the origin declaration **on the commercial document**
- **(Check Point 2)** The approved exporter number specified in the origin declaration must match that specified in the approved exporter license issued by the Italian Customs Office.
 - **VAT number or EORI number** instead of the approved exporter number in the origin declaration. → **error!!**

Confirming whether the Requirements for the Preferential Tariff Treatment are satisfied



- **(Check Point 3)** The approved exporter number must be listed according to the Italian customs approved exporter number system
 - country code (2 digits)/approval number (3 digits)/province code(2~3 digits)/approval year(2 digits)
 - For example, IT in the number **IT/001/RM/17** stands for Italy, 001 for the approval number, RM for Rome, and 17 for the year 2017
- **(Check Point 4) The place and date must be identified** in the bottom of the text of the origin declaration unless they are identified in the Commercial Document on which the origin declaration is made out
- **(Check Point 5)** Origin declaration must be made out by the exporter by typing, stamping, or printing on the **invoice, the delivery note or another commercial document**

Confirming whether the Requirements for the Preferential Tariff Treatment are satisfied



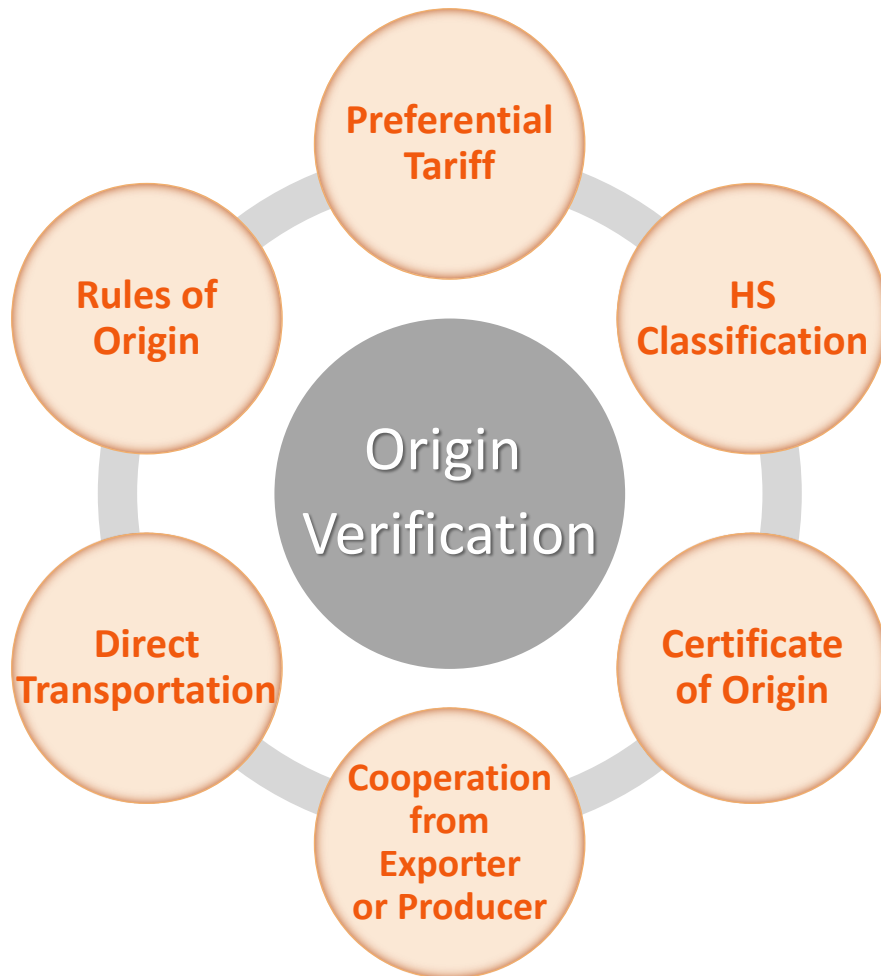
- **(Check Point 6)** If an approved exporter does not give the customs authorities of the exporting party a written undertaking that he accepts full responsibility for any origin declaration which identifies him as if it had been signed in manuscript by him, the origin declarations should bear the **original signature of the exporter**
- **(Check Point 7)** An EU exporter must **keep all the supporting documents** that can help prove that the goods for which an origin declaration is made out are originating pursuant to Article 23 of the Origin Protocol

Establishing an Internal Control System



- The KCS is operating a **post audit system**
- If the KCS conducts or requests for origin verification of the goods imported in the **past 5 years**, both the importers and the exporters have an obligation to prove that the goods for which the application is submitted are originating under the relevant FTA. However, some exporters and importers claim for preferential tariff treatment without thoroughly verifying their satisfaction of all the requirements for preferential tariff treatment
- In order to minimize such risks, an **internal control system whereby both the exporter and the importer can periodically monitor their compliance with the FTA requirements** may be necessary.

Matters Subject to Origin Verification



- Verification of origin under FTAs requires confirmation of all rules of origin specified by the FTA
- Origin Verification Questionnaire and Supporting Documents
- Documents showing “traceability”
- Typically, it takes a few months (sometimes more than 1 year) to complete FTA origin verification by Korean Customs

Maximizing Potential Benefits & Minimizing Risks

Global Sourcing: Harmonize with Direct Transport Rule

- If the **Direct Transport Rule** is violated, no FTA benefits!
- **Very narrow exceptions**

Minimize Risks for FTA Origin Verifications

- Verify origin management system
- Enhance exporters' awareness of importance of origin certificate and procedures
- Make record-keeping mandatory for all exporters who are providing origin certificates

Apply for Administrative Rulings from Korean Customs

- Acceptability of origin certificate form
- Customs classification of imported merchandise

Advice for FTA Compliance



- Review and ensure contract provisions for responsibility in origin disputes
- Establish origin management process or system
- Check FTA compliance and conduct mock audit internally and/or by outside expert
- Check supply chain and logistics for satisfying direct transportation under FTA
- Prevent disputes related with HS classification issue through advance rulings in importing countries

Your Trusted Counsel in Korea

Kim & Chang is Korea's most trusted law firm and one of Asia's leading law firms. We are committed to providing legal counsel of the highest quality to our clients around the globe.

Top Tier Rankings in All Practices

CHAMBERS ASIA-PACIFIC 2018
THE LEGAL 500 ASIA PACIFIC 2018
IFLR1000 2018



Korea Law Firm of the Year

CHAMBERS ASIA-PACIFIC AWARDS 2018
WHO'S WHO LEGAL AWARDS 2017
IFLR ASIA AWARDS 2018



Asian Law Firm of the Year

ALM ASIA LEGAL AWARDS 2015
INTERNATIONAL LEGAL ALLIANCE SUMMIT & AWARDS 2017
ASIALAW ASIA-PACIFIC LEGAL PRACTICE AWARDS 2017



Presenter



Joo Hyung LEE

822-3703-4530
joohyoung.lee@kimchang.com

Education

Graduate Institute of International and Development Studies (LL.M., International Law, 2017)

Judicial Research and Training Institute of the Supreme Court of Korea (2007)

Ewha Womans University (B.A., French Language & Literature, 1997)

Experience

Kim & Chang (2012-Present)

Ministry of Foreign Affairs and Trade

- Energy, Climate Change and Environment Div. (2011-2012)
- Treaty Div. (2009-2010)
- FTA Implementation Div. (2008)

FTA Goods Div. (2007)

Samsung Fire and Marine Insurance Company (1997-1998)

Thank you

These materials are provided for general informational purposes only and should not be considered reflecting legal opinions of the firm nor relied upon in lieu of specific advice. Recipients of these materials, whether clients or otherwise, should not act or refrain from acting on the basis of any information included in this material without seeking appropriate legal or professional advice. These materials are property of Kim & Chang, and therefore, while recipients may view the materials recipients may not otherwise distribute, disclose or provide to third parties without Kim & Chang's prior written consent.

KIM & CHANG

39, Sajik-ro 8-gil, Jongno-gu, Seoul 03170, Korea

Tel: +82-2-3703-1114 Fax: +82-2-737-9091 / 9092 E-mail: lawkim@kimchang.com www.kimchang.com