

Rotterdam School of Management - Erasmus University

Executive Master in Customs and Supply Chain Compliance

# **Analyzing the Conditions on Transport Rule Under the Korea-US FTA**

**Name : Hyun-Kyoung Choi**

**Student # : 573114**

**Phone # : +82-10-3202-0791**

**E-Mail : hyun-kyoung.choi@asml.com**

**Supervisors: Ruud Tusveld, Albert Veenstra**

## Preface

I would like to express my deepest gratitude to all those who have supported me in completing this research.

Firstly, I would like to thank my supervisors, Ruud Tusveld and Albert Veenstra, for their invaluable guidance, feedback, and supporting throughout this research journey. Their expertise and encouragement have been instrumental in shaping my research project and methodology.

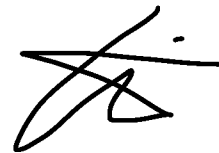
I would also like to extend my appreciation to my manager, Frank Gommers, for his assistance in providing me with the necessary resources, data, and information for this research. His help has been invaluable in enabling me to carry out this research.

Furthermore, I would like to express my gratitude to Team 5, Loes van Kan, Sina Klautke, Bart Heerkens, for their support and inspiration during our past collaborations have provided me with valuable insight and motivated me to initiate my own research.

Lastly, I would like to express my heartfelt gratitude to my family and friends for their unwavering supporting and encouragement throughout this research journey. Their love, understanding, and patience have been crucial in keeping me motivated and focused on completing this research.

Thank you all for your contribution and support.

Hyun-Kyoung Choi  
Apr.20, 2023



## Executive Summary

ASML currently does not apply for preferential duty treatment for the goods that are shipped from the US, via the central customs warehouse in The Netherlands to Korea.

In this study the legal requirements and procedures for claiming preferential tariff treatment under the KR-US FTA when goods are transported through non-FTA countries has been examined, with a focus on how to prove the conditions of the KR-US FTA on such a transport, and based upon the findings, what steps are required to implement a duty-saving program to apply for preferential duty treatment under this FTA.

Hence, the main research question is as follows :

“How to design a duty-saving program to be able to apply preferential duty treatment under the KR-US FTA when US-originating goods are transported to Korea via the Netherlands?”

In this study a multistep approach has been used to analyze the implementation of transport rule under KR-US FTA.

The main finding show that, where the KR-US FTA does not define direct transport explicitly, goods originating in the United States can still be considered to be of US preferential origin under the KR-US FTA when transported from the United States via the Netherlands if certain conditions are met and appropriate documentation is provided.

These conditions include customs supervision while the goods are in transit or transshipped and the prove of non-manipulation of goods, conditions that can be met in the case of ASML.

In designing a duty-saving program to apply the preferential duty treatment, the three main steps will need to be made.

First, a process needs to be designed and implemented in the US to determine whether and secure that the US origin under the KR-US FTA is in place. Next to this analysis that may also require educating the US suppliers, the classification team must make sure the required supplier declarations are in place and maintain a blanket certificate of US-origin items under the KR-US FTA.

Second, as ASML uses the customs warehouse in the Netherlands as an hub when transporting US originating goods to Korea, it will need to provide the documentations to prove that the transport and non-manipulation conditions are met. Based on the research made, this set of documentation will need to include the original shipping invoice, the air way bill, and the TAD

(hard copy document to prove the use of the EU transit procedure). The Korean Customs services will have to approve the document set as the required proof of meeting the transport conditions. Finally, the Korea Customs team will need to update the system to validate KR-US FTA requirements and notify the customs brokers of the new working instructions and guidelines for claiming preferential tariff on import.

TALBE OF CONTENTS

- List of figures ..... 7
- Abbreviations ..... 8
- 1. Introduction ..... 9
- 2. Problem Definition .....11
  - 2.1 Business Overview .....11
  - 2.2 Operation Model .....11
    - 2.2.1 Organizational structure .....11
    - 2.2.2 Sourcing ..... 13
    - 2.2.3 Process taxonomy .....14
    - 2.2.4 People .....15
    - 2.2.5 Data and technology .....16
  - 2.3 Designed Supply Chain Network .....18
  - 2.4 Research Questions .....19
  - 2.5 Research Methodology .....23
- 3. Legal Requirements Review under the KR-US FTA and Korean Legislation .....25
  - 3.1 Literature Review and Findings .....25
  - 3.2 Review of the Legal Framework .....26
    - 3.2.1. Review of the KR-US FTA .....26
    - 3.2.2. Review of the Korean Customs Legislation on Applying FTA's .....27
- 4. Legal Analysis of Transport Rule .....29
  - 4.1 Transport Rules Under the KR-US FTA .....29
  - 4.2 Transport Rule Under Korea Local Legislations .....32
  - 4.3 Legal Hierarchy .....35
- 5. Case Study .....36
- 6. Legal Requirements, Procedures And Documentation For Applying For Preferential Tariff Treatment Under the KR-US FTA .....40
  - 6.1 Customs formality .....40
  - 6.2 Certification of Origin .....42

6.3 Documentation to Support that the Requirements on Transit and Transshipment are Met .....44

7. The Design Process for Duty Saving Program.....46

7.1 Distribution Channel .....46

7.2 Customs Procedure .....50

7.3 System Enhancement .....51

8. Conclusion .....53

Reference .....56

Appendix.....57

## List of figures

FIGURE 1: SOURCING AND SUPPLY CHAIN ORGANIZATION CHART

FIGURE 2: IN-HOUSE ACTIVITIES AND OUTSOURCED ACTIVITIES

FIGURE 3: CUSTOMS SYSTEM DESIGN

FIGURE 4: ENTRY VERIFICATION DESIGN

FIGURE 5: SUPPLY CHAIN NETWORK

FIGURE 6: DUTY SAVING UNDER KOREA-EU FTA

FIGURE 7: PAID DUTIES FOR US ORIGINATING GOODS

FIGURE 8: SHIPMENT VOLUME OF US ORIGINATING GOODS

FIGURE 9 : DIRECT TRANSPORT IN FTAS

FIGURE 10: LEGAL FRAMEWORK FOR FTA APPLICATION

FIGURE 11: REQUIREMENT TO PROVE TRANSPORT RULE

FIGURE 12 : PROCEDURE FOR IMPORT

FIGURE 13 : T1 DOCUMENT AND SHIPPING INVOICE

FIGURE 14 : BILL OF LADING AND SHIPPING INVOICE

## Abbreviations

AEO	Authorized Economic Operator
APTA	Asia Pacific Trade Agreement
CoO	Country of Origin
CHW	Central Warehouse
ECCN	Export Control Classification Number
EDI	Electronic Data Interchange
EMEA	Europe, the Middle East and Africa
FTA	Free Trade Agreement
GDC	Global Distribution Center
GTS	Global Trade System
HS	Harmonized System
ICP	Internal Compliance Program
IP	Integration Point
KCS	Korea Customs Service
Korea	The Republic of Korea
KPI	Key Performance Indicator
KR-EU FTA	Free Trade Agreement between the Republic of Korea and European Union
KR-US FTA	Free Trade Agreement between the Republic of Korea and the United States
MFN	Most Favored Nation
NTCS	New Computerized Transit System
R&D	Research & Development
S&SC	Sourcing & Supply Chain
TAD	Transport Accompanying Document
WTO	World Trade Organization



## 1. Introduction

A Free Trade Agreement(FTA) is a bilateral agreement between two or more nations, which provides participating nations exclusive trade benefits by reducing or eliminating trade barriers for goods and services. FTAs have become a fundamental legal tool providing more favorable environments for economic relationship and variety of preferential rules for the economic cooperation between the parties<sup>1</sup>. It includes a wide range of provisions, such as tariff reductions on imported goods; elimination of trade restrictions on services; and provisions concerning investment, intellectual property, labor, and environmental standards.

Given the Doha Round's challenging objective of the global trade liberalization among WTO members, reaching a consensus among members was a difficult task. As a result, many developed countries began to negotiate regional or bilateral agreements to boost their economies. This trend influenced the global trade policy of the Republic of Korea(hereafter Korea), prompting the government to research FTAs. The first FTA was signed with Chile in 2003, and the government has since continued to negotiate FTAs with other developed countries. As a result, 21 FTAs have been signed in 59 countries,<sup>2</sup> including the Korea–EU FTA (2011) and the Korea–US FTA (2012).

KR–US FTA grants preferential tariff treatment to goods that meet the rules of origin criteria. However, when goods are transported through non-FTA countries, determining their origin and claiming preferential tariff treatment under KR-US FTA can be challenging.

As one of the world's leading manufacturers of lithography systems used in the semiconductor industry, ASML's supply chain network is highly complex, with multiple tiers of suppliers located around the world. As a result, cross-border activities are critical for material supply, and FTAs have a high potential to maximize cost benefits. However, using FTAs requires meeting specific conditions that vary depending on the agreement, with the transport rule playing a pivotal role because it is linked to the supply chain network.

This research, I examine the legal requirements and procedures for claiming preferential tariff treatment under the KR-US FTA when goods are transported through non-FTA countries. This

---

<sup>1</sup> International Laws for the Korea-EU cooperation(2016), Bongchul Kim

<sup>2</sup> Korea Customs Service FTA Website.

study will establish a legal framework for FTA application and identify the criteria and procedures for determining the origin of goods by analyzing relevant sources, including the text of the KR-US FTA, Korean local regulations, and guidelines. Additionally, this study explores how this legal framework applies to the ASML business, in which goods from the United States are transported to Korea via the Netherlands.

## **2. Problem Definition**

### **2.1 Business Overview**

ASML is the world's leading supplier of lithography systems for the semiconductor industry, manufacturing complex machines critical to the production of integrated circuits or chips.

ASML employs over 32,000 people from 122 different nationalities, and its operations are spread across Europe, Asia and the United States (over 60 location worldwide)

ASML obtains raw materials from global suppliers and transports them to factories in the Netherlands, the United States, and Taiwan. Following that, ASML systems are assembled in the Netherlands and it is shipped to customers around the world. Sparts and other materials are distributed from a central warehouse in the Netherlands to local warehouses in Korea, Taiwan, Japan, China and the United States for machine installation and maintenance.

As a result, ASML relies on cross-border activities and duty savings through preferential tariffs under FTAs to reduce costs and improve competitiveness. At the same time, in order to capitalize such opportunities, it is important to ensure that all applicable legal and regulatory requirements are met.

The operation model of ASML will be elaborated in the following paragraph to understand the challenges under the KR-US FTA.

### **2.2 Operation Model**

#### **2.2.1 Organizational structure**

ASML's various functions are classified as R&D, manufacturing, customer support, sourcing and supply chain, and other support functions.

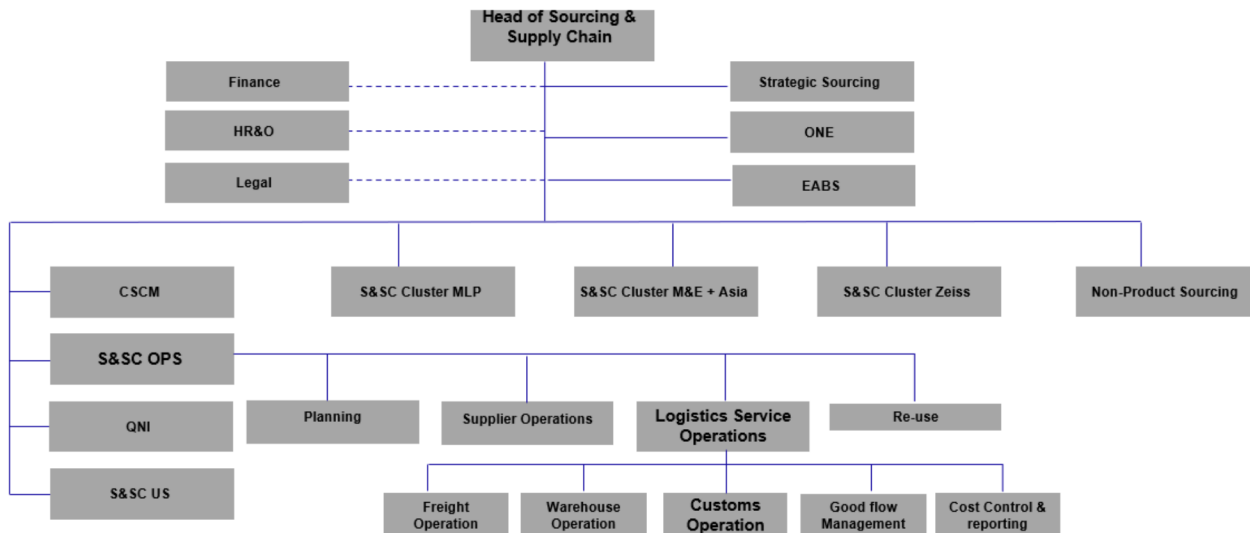
For this research, I will focus on the sourcing and supply chain department (hereafter "S&SC"), which is concerned with material distribution and cross-border operations.

According to the 2021 figures, S&SC employs over 2,300 people and has 4,750 suppliers worldwide.

S&SC teams are involved throughout ASML's entire business and around the world. All the way from idea to end product, the job of S&SC is to find the right suppliers and work closely with them and get materials to customers on time - all while working to reduce our environmental impact

and minimize waste. The S&SC department is in charge of a wide variety of roles, from operational to strategic, from collaborative to more independent, and from PhD-level to vocational.

**[Figure 1 : Sourcing and Supply Chain Organization Chart]**



Around 85% of the parts in ASML machines are manufactured by global suppliers, and ASML is committed to long-term relationships with these suppliers. This means that suppliers participate in product development from the early stages, allowing the company to deliver the most effective solutions for our customers who actually manufacture chips. The majority of our suppliers are based in the Netherlands and EMEA, but we rely on a large and expanding network in North America and Asia. The majority of our supply chain investment is focused on approximately 200 critical suppliers. Furthermore, S&SC teams collaborate with people from nearly every department at ASML, aligning closely with R&D to ensure design manufacturability and collaborating with a customer support team to ensure customers have the materials they need on time.

In terms of material distribution, the Logistics Service Operation (LSO) teams are in charge of warehouse, freight, and customs operations. Because of cross-border activities and local legislation, teams are decentralized in each country, with each local team responsible for daily local customs operations, including import and export requirements regulated by local regulations and policies, while the global head of customs is in charge of managing customs operations and customs compliance on a global scale, as well as making strategic decisions in the field of customs for business.

Meanwhile, there are separate departments, Tax and Customs Affairs, which are part of the tax and finance team. This team is responsible for managing customs risks, such as customs value, transfer pricing, classification, as well as determining the global compliance policies such as maintaining an AEO and organizing regular customs audits. There is no direct or indirect reporting line to the LSO customs team, but the LSO customs teams work together with Tax & Customs Affairs team for local customs operations and license maintenance by sharing open issues and challenges from local customs authorities and resolving it together.

Given the complexity of our organizational structure, we will need to hold additional discussions with stakeholders to successfully implement the saving program under the KR-US FTA. This will require support from various departments, including sourcing, tax, and the global classification team, both internally and in collaboration with third parties such as the customs brokers who file entries during the import process.

### **2.2.2 Sourcing**

Companies strive to reduce operational costs in order to increase margins and profitability. One solution is to outsource some activities to third-party service providers such as freight forwarders, local truckers, and warehouse operators.

In this context, ASML also collaborates with numerous third-party service providers, and in the day-to-day import and export flows, local customs brokers and/or freight forwarders are responsible for conducting import declaration and export declaration based on agreed work instruction.

Customs brokers are responsible for the required import and export declarations of all ASML shipments to and from Korea, and they act as a first-line contact window for the Korean customs authorities when there are additional requirements or questions at the time of importation or exportation. Aside from day-to-day operations, all further customs-related activities, such as license management and customs compliance, are performed and managed by LSO customs teams (in-house activities).

The primary reason for outsourcing day-to-day customs operations is that customs brokers have extensive practical experience and knowledge of these customs operations. Furthermore, customs brokers are valuable partners because they have their own network of government officials, including customs officers, as well as a system linked to KCS for filing import and export entries.

As a consequence, because day-to-day customs operations are outsourced to customs brokers, one of the priorities of the LSO customs team is to manage broker performance by providing clear work instructions and monitoring and evaluating agreed-upon KPIs.

If we have any questions or concerns while implementing a new business model or making process changes, we discuss with customs brokers to mitigate the risk for future operations. We can manage our daily operations in such a way that we can be compliant while also contributing to on-time delivery of materials by reducing customs screening by collaborating with the external parties involved.

As a consequence, when implementing the use of preferential duty rates under the KR-US FTA, alignment with third parties will be critical.

**[Figure 2 : In-house activities and Outsourced activities]**

In-House(ASML LSO Customs Ops)	Outsource(customs broker)
<ul style="list-style-type: none"> <li>• 2<sup>nd</sup> line operation(interface with internal stakeholders and customers)</li> <li>• Set-up business process</li> <li>• 2<sup>nd</sup> line interfaced toward governments including Customs authority</li> <li>• Cost control(duty saving programs and billing accuracy)</li> <li>• Optimize operation process</li> <li>• Risk management</li> <li>• Maintain operation license(AEO/ICP)</li> <li>• Manage broker performance(regular performance review, guide work instruction)</li> </ul>	<ul style="list-style-type: none"> <li>• Day to day operation(Import declaration, export declaration)</li> <li>• 1<sup>st</sup> line issue handling</li> <li>• 1<sup>st</sup> line government interface for daily operation</li> <li>• Manage agreed operation KPIs</li> <li>• Inform updated regulations and issue for overall customs activities</li> </ul>

### 2.2.3 Process taxonomy

Customs procedures must adhere to the local customs legislation and relevant regulations governing goods import and export. It is crucial that all related activities are conducted in accordance with these regulations and that specific import and export requirements are thoroughly reviewed.

The ASML customs process have been established and improved in accordance with these regulations and requirement, and based on these, we manage defined risks by implementing

specific control processes. We assess and analyze risks that could impact our compliance and establish controlled processes to monitor and mitigate these risks in real time by developing our operation system for customs daily operation, which is called the Integration Point (IP), and monitor whether the customs data and information reported to customs authority is correct. Furthermore, following the monthly closing of the records, we validate by comparing the final record with the initial data in order to screen for any discrepancy or incorrect information that may trigger future operational issues as a result of noncompliance.

## 2.2.4 People

Each function and job level at ASML has a job profile. For instance, in the case of a customs analyst, we have a job profile below.

- Manage daily customs operation(Import & Export) for our shipments in compliance with local regulation
- Coordinate with broker and admin functions to deliver the products on time to the warehouse and customers
- Manage broker performance and enhance customs system
- Identification and management of import requirements for other government agencies as necessary
- Ensure daily customs operation and export control compliance and resolve the operation issues on time
- Timely response to internal and external stakeholders' inquires on shipment and support them
- Initiate local customs project to improve the current process and save the operational cost
- Support global projects as an LSME(local subject matter expertise)

Meanwhile, there are several departments are involved in customs related challenges. In order to perform our missions and goals by managing day-to-day operation, we should work closely with our key stakeholders within ASML , depending upon the topics, such as :

- Tax and Customs Affairs : Accountable for customs value, classification and strategic approach toward government(centralized function but now to be restructured, becoming a decentralized function)
- Classification team : Accountable for the global classification for products(HS code and ECCN) as well as FTA original determination

- Legal and Export Control : Accountable for export control and managing the related licenses

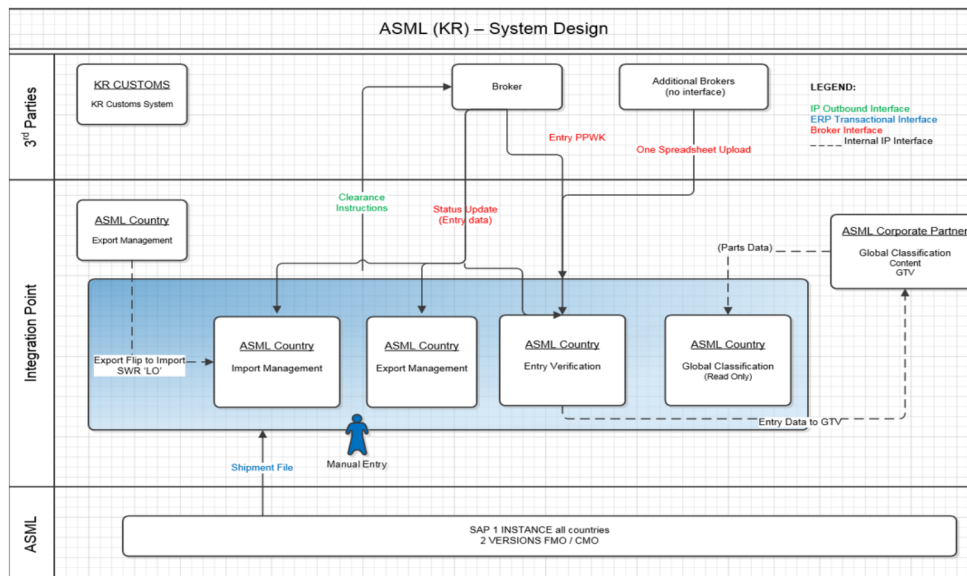
In case of export control, the actual day-to-day handling is by the customs operational team in each country as the legal and export control teams are unable to handle these operation steps due to its centralized function.

Given some of departments are centralized, some activities are handled by the local customs team, while others are handled by the global team. This can lead to conflicts if certain activities require additional work at the local level. To avoid such potential conflicts, clear roles and responsibilities should be discussed and confirmed before implementing any new processes.

### 2.2.5 Data and technology

The change in our business and the ramp-up highlighted the need for increased transparency and compliance risk controls. To address this, ASML developed a customized system to automate our control processes and manage our daily operations, enabling us to monitor and control real-time risk. The use of such a customized system provides numerous benefits to our daily customs operations globally.

**[Figure 3 : Customs System Design]**

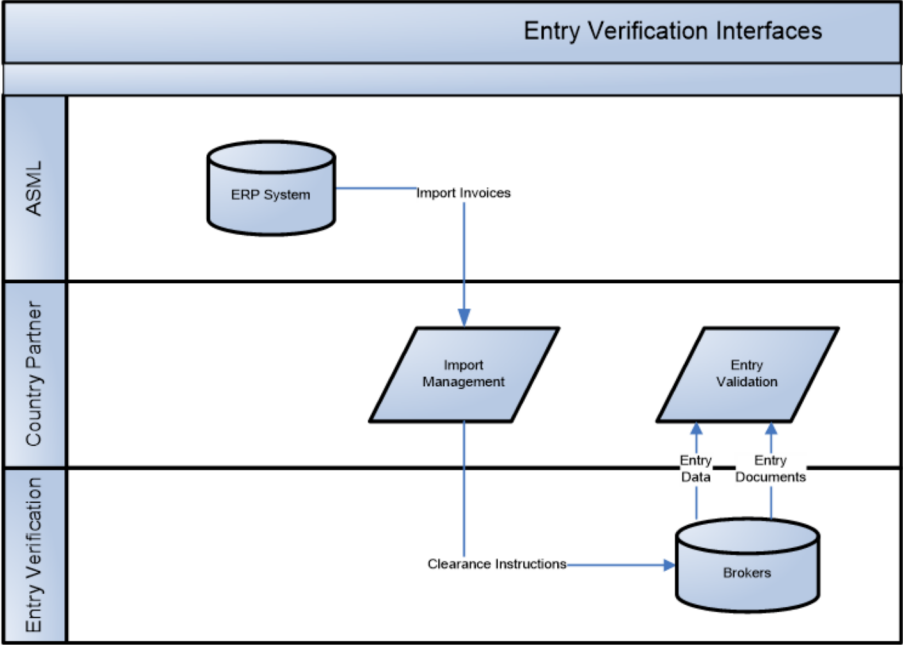




The central of ASML in the Netherlands is responsible for managing and maintaining all customs-related data and product information using systems such as SAP, GTS, and other internal tools. When the shipping invoice is generated in SAP, customs-related information is transmitted from SAP to IP, which is the main system for customs operations. The data are then validated in IP to determine whether the information is correct and/or whether any information is missing. If the data validation results in no errors, the data are transferred to the customs broker's system, which reports it to the customs authority while also adding the required shipping information, which SAP does not provide.

If everything is in order, the customs authority transmits the approved information back to IP via the broker's system. This information is then verified against the data stored in SAP by entry verification module. If any discrepancies are identified, the operation team analyzes the root cause of the issue and takes appropriate actions to prevent similar issues in the future. Additionally, entry corrections are required as necessary.

**[Figure 4 : Entry Verification Design]**



The central IT team in the Netherlands manages and maintains the SAP and GTS systems, whereas a third-party manages the IP system that provides services.

As a result, local customs teams collaborate with the external party and are in charge of improving the IP system if necessary.

As explained in section 2.2.4, our central classification team manages and updates the product classification in IP, which is then interfaced with the local system when a shipment is created through SAP. This ensures consistency and transparency with local customs authorities by reporting the same customs information, such as HS code, customs value, and CoO.

Furthermore, the IP is equipped with a specialized function that facilitates customs compliance by screening specific requirements. For instance, to ensure compliance with the KR–EU FTA, a dedicated logic based on the shipping country and the preferential origin requirements has been integrated into the system.

### **2.3 Designed Supply Chain Network**

ASML's supply chain is based on a build-to-order model, with most of the company's products being custom-built to meet the specific needs of individual customers. This requires a highly flexible and responsive supply chain that can be adjusted on short notice to changing customer demand. As a result, ASML collaborates closely with suppliers to ensure that they meet the company's strict quality and performance standards.

ASML works with approximately 4,750 global suppliers, and one of the key missions is to ensure that all required materials are delivered to customers on time.

Given that our customers operate their factories 24/7, lead time and material availability are crucial to meet their demands. Thus, last-mile delivery—which is the final leg of the supply chain in which goods are transported from a transportation hub or warehouse to their final destination, typically a residential or commercial address—is the best solution for the logistic flow. This stage is often considered the most important and expensive part of the delivery process.

Our factories are located in the Netherlands, the United States, and Taiwan, and global suppliers provide materials to these factories for the production of our systems and spare parts. Intermediate goods are first shipped to a customs warehouse in the Netherlands, which serves as a central hub.

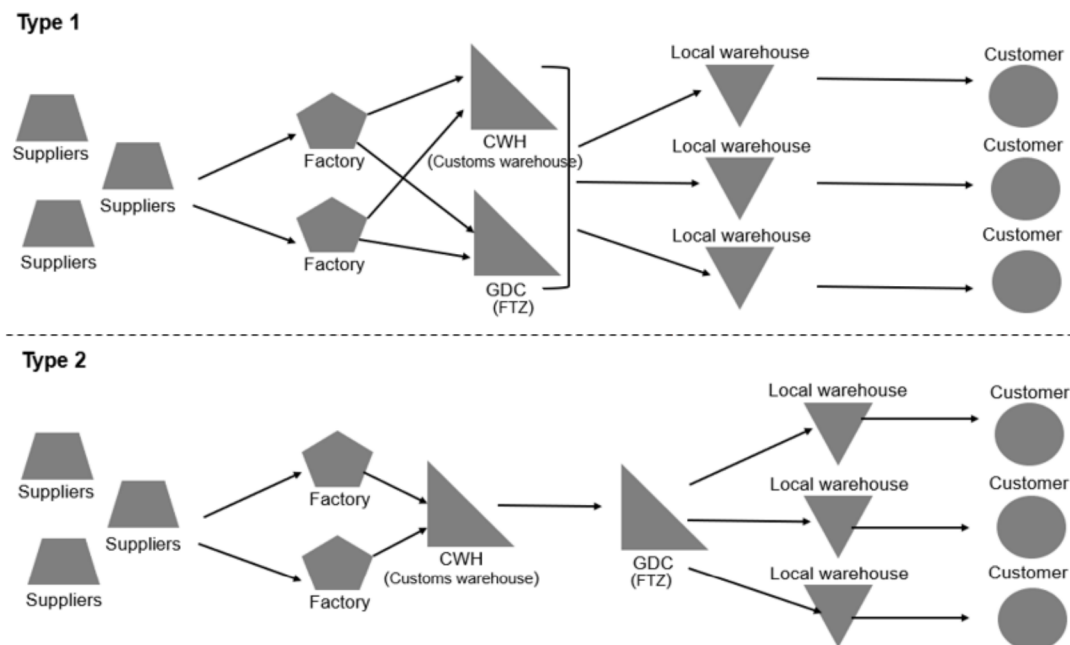
For materials distribution, there are two types of physical flows to distribute materials to local warehouses. The one is to distribute materials from the central warehouse in the Netherlands and

the other one is to distribute materials via Global Distribution Center(hereafter GDC) to local warehouses in each country.

GDC has established at Free Trade Zone in Korea under the certain conditions in order to minimize operational costs and reduce delivery time from the central warehouse to customers.

Based on the demand and planning, materials are then distributed to local warehouses from the central hub directly or distributed via GDC, which means materials are delivered to GDC first, then distributed to local warehouses including Korea.

**[Figure 5 : Supply Chain Network]**

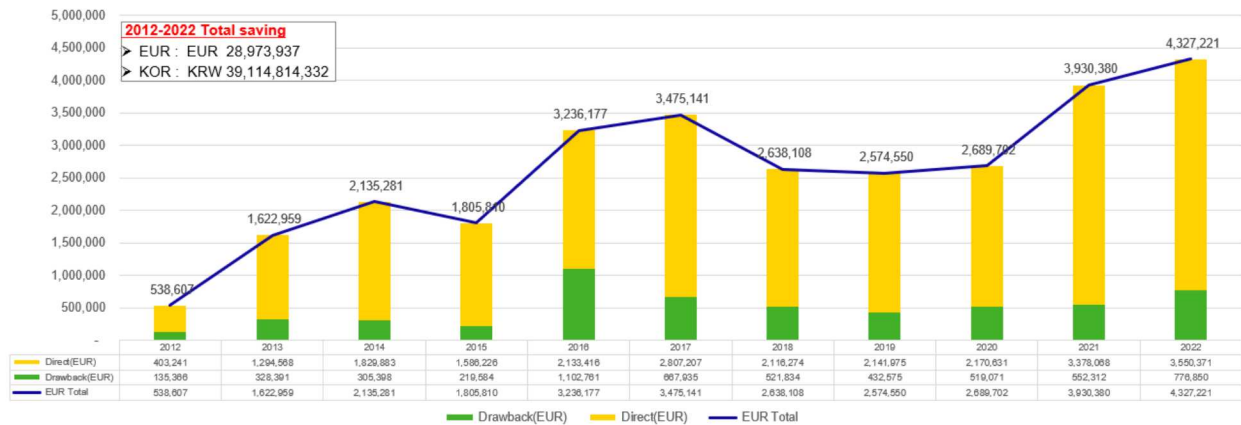


However, because of cross-border logistics and customs procedures, the current supply chain network can be challenging in the context of international trade. It is essential to ensure compliance with all applicable regulations and to have the necessary infrastructure in place to handle international shipments.

## 2.4 Research Questions

The KR–EU FTA has been in effect since July 1, 2011, and ASML has implemented an internal process to take advantage of the benefits of this agreement, specifically to apply the preferential tariff for goods with the required EU origin. This has resulted in approximately €28 million in import duty savings in ASML Korea since 2012.

**[Figure 6 : Duty savings under KR – EU FTA (2012 - 2022)]**



However, ASML has not yet initiated an internal discussion about designing a similar process for the KR-US FTA. This is because of issues with our current business model and logistics flow and we have paid imported duties without any preferential treatment.

According to the import data from 2020 to 2022, we paid around €4 million for goods' CoO is the United States.

**[Figure 7 : Paid duties for US originating goods (2012 ~ 2022)]**

1EUR=1,350KRW

Export country	Paid duties		
	Y2020	Y2021	Y2022
Korea(GDC)	€209,571	€286,032	€482,168
Netherlands	€614,280	€804,743	€1,343,106
United States	€173,773	€107,267	€148,087
Grand Total	€997,624	€1,198,042	€1,973,362

The three main challenges that have prevented us from taking advantage of duty-saving opportunities are as follows:

- Identifying the US origin as required under the KR-US FTA;
- Fulfilling the transport/non-manipulation rule of the KR-US FTA;
- Setting up the operational process to support the application of preferential duty treatment in daily routine.

First, determining the origin of materials used in manufacturing at the US factory is difficult. To apply for preferential tariff treatment under FTAs, preferential US origin must be determined based on the requirements listed in the KR-US FTA for the specific HS codes of the materials.

Although the CoO of material is available in the system for origin marking purposes, it is insufficient for verifying preferential origin under the KR-US FTA because this FTA sets specific rules of origin that must be followed in order to apply preferential duty treatment. ASML is currently unable to confirm and verify this US origin for the KR-US FTA purpose due to resource constraints and system issues.

Second, materials are shipped to the central (customs) warehouse in the Netherlands after being manufactured in the United States, and then they are distributed to local warehouses via the implemented global distribution channel and logistical flow. According to the customs entry data (import period: Jan 2020 to Dec 2022), 17% of total imported goods are of US origin, with 50% shipped from the Netherlands to Korea. Based on the KR-US FTA conditions relating to indirect transport via another jurisdiction, it is important to carefully verify how these conditions can be met now that the materials are transported to Korea through the Netherlands, enabling ASML to claim preferential tariff treatment under the KR-US FTA.

**[Figure 8 : shipment volume of US originating goods : 2020 ~ 2022]**

Export country	Number of shipments	%
Netherlands(CWH)	4,832	49%
South Korea(GDC)	3,092	32%
US	1,863	19%
Total	9,787	

Third, the actual operational process required to support the preferential origin status of the goods is difficult. When determining preferential origin, suppliers must provide an origin declaration to verify the origin of basic materials to determine whether the KR-US agreement's origin requirements are met after manufacturing. However, many US suppliers are unable to provide the required origin declaration due to a lack of awareness and limited information on FTA requirements.

As a result, proving the preferential origin status of the goods is difficult, preventing the application of the preferential tariff rate.

Therefore, to be able to design and implement a new preferential duty-saving program under KR-US FTA, the mentioned three challenges are to be resolved as a precondition.

In this research, I will examine how to resolve the second challenge of meeting the transport/non-manipulation conditions under the KR-US FTA when goods are shipped from the United States via the Netherlands to Korea.

For that purpose, I will analyze the legal requirements that will enable ASML to claim preferential duty treatment. Within the scope of this research, it is assumed that we will eventually be able to prove the US origin of goods shipped under the KR-US FTA (in the chapter on design and implementation, this issue will be addressed). The research will mainly focus on how the requirements arising from the KR-US FTA's transport rule, as a result of the logistics flow from the United States via the Netherlands, can be met when imported into Korea.

Therefore, to ensure KR-US FTA compliance, we must carefully verify and confirm whether the transport rule for our materials, which are transported from the United States via the central warehouse in the Netherlands to warehouses in Korea after processing or manufacturing in US factory, can be met.

Hence, the main research question is as follows :

***“How to design a duty-saving program to be able to apply preferential duty treatment under the KR-US FTA when US-originating goods are transported to Korea via the Netherlands?”***

Then main research question will be examined with the help of the following sub-questions :

1. Examine the conditions as set under the direct transport and/or non-manipulation rules that are applicable when goods are transported through the third country under KR-US FTA?
2. What are the requirements to be able to prove that the transport/non-manipulation rules has been met?
3. How to design the process to be able to implement the duty saving program under KR-US FTA?

The purpose of this study is to investigate the potential benefits of implementing the KR-US FTA to reduce import duties in ASML. The research questions presented in this chapter will guide the

investigation and will be addressed using the legal research method, which will be discussed in the following chapter.

## **2.5 Research Methodology**

This legal research will consist of a multistep approach to analyze the implementation of transport rule under the KR-US FTA and design a duty-saving program for US origin goods imported via a non-FTA country.

The methodology involves qualitative content analysis of legal text, doctrinal legal analysis, and qualitative case study analysis, which will enable an in-depth examination of the legal requirements and practical considerations for the specific scenario being examined.

In the first step, a literature and legal text review of the relevant legal sources will be conducted to establish the legal framework and requirements for claiming preferential tariffs under the KR-US FTA. This review will provide an overview of the legal landscape and relevant regulations related to the KR-US FTA, including any relevant amendments or updates to the agreement, and will be presented in Chapter 3 of the research report.

The second step involves a legal analysis of the specific transport rules to understand the requirements under applicable regulations and the implications for importers. This analysis will focus on the transport rule under the KR-US FTA and will be presented in Chapter 4 of the research report.

In the third step, a case study analysis will be performed to gain insight how Korea customs authority interpret the transport rule in situations where FTA originating goods are transported through a third country. This analysis will provide practical examples of the implementation of the transport rule and will be presented in Chapter 5 of the research report.

This research methodology aims to provide a comprehensive understanding of the legal requirements and practical considerations for ASML when aiming for a duty-saving program to benefit from preferential duty treatment under the KR-US FTA and to be able to design an effective duty saving program. Therefore, as explained above, first the legal requirements for KR-US FTA will be scrutinized as well as the related Korean Customs legislation. Next to that, a more in-depth analysis will be made with a particular focus on the specific transport rules. Additionally, a case study will be conducted to gain insights into how Korea customs authority interprets the transport rule in situations where FTA originating goods are transported through a third country.

After that, the feasibility of ASML claiming preferential tariff under KR-US FTA will be assessed, given that the company's US-originating materials are distributed to Korea from a central customs warehouse in the Netherlands.

Finally, the steps required to facilitate the claiming of preferential tariff under the KR-US FTA by validating the US origin under this FTA, ensuring adherence to the transport rule and by assuring that the required supporting documentation and evidence is in place.



### 3. Legal Requirements Review under the KR-US FTA and Korean Legislation

#### 3.1 Literature Review and Findings

Although there is a plethora of research and reports on cost-effectiveness and origin determination under FTAs, there is a notable lack of information on transport rules and their relationship to determining preferential origin. Nonetheless, a few studies have addressed this issue and explained the significance of transportation rules in the FTA process.

Previous research<sup>3</sup> has identified two types of origin rules: the PANEURO model and the NAFTA model. In terms of transportation rules, the PANEURO model typically requires that goods be transported directly between the parties to the agreement to be considered as originating goods. This means that goods cannot be shipped through a third country without losing their preferential status. On the other hand, the NAFTA model allows goods to be transported through a third country as long as certain conditions are met, such as the goods not undergoing any further processing or manipulation in that country.

In the case of KR-US FTA, it allows for certain types of indirect transport through non-FTA countries, provided that goods are not further processed or manipulated in the third country, similar to the NAFTA model

In this regards, 2013 research<sup>4</sup> investigated the transport rules for major countries, such as the EU, the United States, China and Korea and their FTAs. According to the research, when examining the direct transportation principles of major countries, they can broadly divided into PANEURO and NAFTA. The EU and China belong to the PANEURO grope and stipulate both direct transportation requirements and restrictions on transit through non-FTA countries.

In contrast, the United States, excluding some FTAs, has more relaxed transport rule requirements than the PANEURO model by only stipulating transit requirements.

However, both types generally require that goods be under customs control and prohibit any processing or operation other than reloading, unloading or operations to maintain the condition of the goods.

---

<sup>3</sup> Policy References 04-11: Rules of Origin in Free Trade Agreements and their implications, 2004, Ho Kyung Bang.

<sup>4</sup> Investigation of Direct Transportation Principles under Free Tade Agreements of Major countries,2013,Korea Institute of Public Finance

## **3.2 Review of the Legal Framework**

### **3.2.1. Review of the KR-US FTA**

The KR-US FTA is a comprehensive bilateral trade agreement which was implemented on Mar 15<sup>th</sup>, 2012 and encompasses multiple facets of trade and investment. Its aim is to promote free and fair trade between Korea and the United States, while safeguarding the interests of business and consumers in both countries.

The legal framework of KR-US FTA is a comprehensive agreement that covers a broad range of trade-related issues, including the trade of goods. One of the primary advantages of the KR-US FTA is the elimination or reduction of tariffs on a wide array of products originating in the two countries in the bilateral trade between them, which benefits businesses by reducing their cost and improving their competitiveness in the global market.

To be eligible for preferential tariff treatment under KR-US FTA, the imported goods must satisfy specific criteria as laid down in the FTA related to preferential origin, specific transport conditions to secure the preferential origin and the related customs procedures.

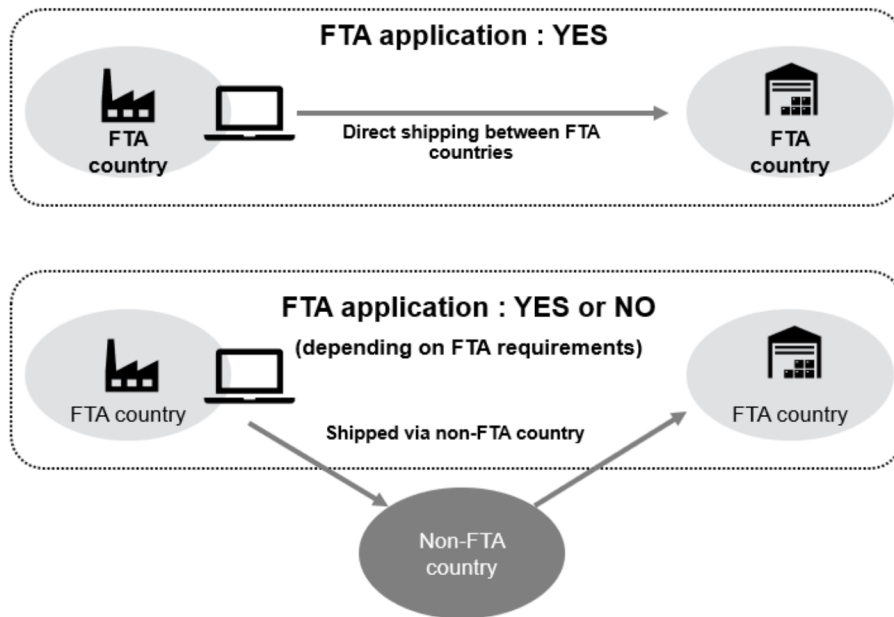
The rules of origin for goods trade between the two countries are established in Session A of Chapter 6 of the KR-US FTA. The section established the criteria and procedures to determine whether goods are eligible for preferential tariff treatment under the agreement. To acquire the preferential origin status, the goods must meet certain minimum requirements regarding their production, materials and/or value-added in the United States or Korea.

Section A also provides provisions for determining origin in cases where the goods are processed in multiple countries. Additionally, further specific rules for goods based on their HS code are laid down in Annex 6-A of the KR-US FTA.

Following confirming that the goods are originating, they must be transported between the Parties of the FTA (i.e. the US and Korea) meeting the conditions for transport as laid down in the FTA. This in order to secure the preferential origin status of the goods, which is required to be able to claim preferential tariff treatment at the time of importation.

Therefore, in case the goods are shipped via a non-FTA country, it must be proven that there that the goods remain unaltered and no additional processing is in place while in the non-FTA country (the so-called non-manipulation rule).

**[Figure 9 : Transport rules in FTAs]**



This transport rule is not laid down in a separate Chapter but is part of Session A of Chapter 6 of the KR-US FTA. Article 6.13 of section A outlines the provisions for transit and transshipment of goods. It provides specific conditions that must be met for goods to still be considered as originating from Korea or the United States in case of transit or transshipment movements. It allows goods to be transported through the third country, provided that the goods remain under customs supervision and do not undergo any handling other than unloading, reloading, or any other treatment than that necessary to keep the goods in good condition.

Therefore, proving the origin of goods exported from the United States or Korea and then in to Korea or the United States while being shipped via a non-FTA country presents a challenge when applying for preferential duty treatment under the KR-US FTA.

### **3.2.2. Review of the Korean Customs Legislation on Applying FTA's**

Under a free trade agreement, Korea is bound to grant preferential tariff treatment to goods originating from its FTA partner and the Korean customs authority determines whether a product is “originating” from a FTA partner under a given FTA in order to determine whether or not it can levy preferential tariffs on the import.<sup>5</sup>

<sup>5</sup> Korea's Institutional Framework for FTA Negotiations and Administration: Tariffs and Rules of Origin, 2008, Jong-Bum Kim

The KR-US FTA is enacted through variety of domestic laws and regulations in Korea. These laws and regulations serve as the legal foundation for the FTA's provisions to be enforced in Korea. The import of goods in general falls under the scope of the Customs Act. Separate regulations, however, have been developed in order to incorporate FTA requirements into local customs operations.

The main Korean law that implement KR-US FTA is the Special Customs Act for FTA implementation and it was enacted in 2006 to regulated the implementation of FTAs in Korea. It sets out various measures to implement the provision of the FTAs and it is revised any time new FTA is approved to add its specific requirements. But in case the Special Customs Act for FTA does not provide specific provisions, the Customs Act is applicable.

**[Figure 10 Legal Framework for KR-US FTA application]**

Framework for FTA application				
KORUS FTA			Korea Local Regulations	
Chapter 6	Section A (Rules of Origin)	Article 6.1 Originating goods	Special Customs Act for FTA implementation	Customs Act
		Article 6.13 Transit and transshipment		
	Section B (Origin Procedures)		Article 6 (Requirement to claim conventional tariff)	Article 229 (Criteria for confirmation of Origin)
	Annex 6-A (Specific Rules of Origin)		Article 7 (Criteria for determining origin)	Enforcement rule Article 76 (Direct transport rule)
		Article 8 (Requests for Application of Conventional Tariffs)	Guideline for Preferential treatment Article 12 (Direct transport rule)	

In Chapter 2 of the Special Customs Act for FTA implementation, the basic requirements and rules of origin to claim preferential treatment under FTAs are laid down, including the provisions on the application process. Then Chapter 3 contains the provisions on how to prove of the origin of the goods.

According to Article 2 of Chapter 2, goods must be transported directly to Korea in order to be able to claim preferential tariff treatment under the FTAs but it also contains rules for transit and transshipment allowing it under certain conditions. These Korean rules provide more detailed guidance than the main rules in the KR-US FTA do. In chapter 4, we will discuss in more detail how to interpret these provisions and how to apply them in the event that the goods are transported through a non-FTA country.

## 4. Legal Analysis of Transport Rule

### 4.1 Transport Rules Under the KR-US FTA

Transport rules are a critical component of FTAs because they facilitate trade. Companies in a global market may have complex supply chains and global sourcing partners to maximize profits, resulting in a variety of transportation options, not just from FTA countries but also from other third countries.<sup>6</sup> As a result, there may be exceptional conditions for goods to be considered directly transported due to geographical or transportation route reasons.

In such case, depending on the specific rules under a FTA, importers must provide evidence and documents, and related rules or required documents are defined and described differently than in FTAs.

Given these differences, in the case of ASML, it is critical to comprehend the specific requirements and how to meet them in order to demonstrate the transport rule in case goods are transported a third country under the KR-US FTA. Understanding these requirements requires research into the agreement and local regulations that implement KR-US FTA.

Through the literature review of paragraph , it was highlighted that the KR-US FTA (a NAFTA model FTA) does not provide a clear definition of the direct transport rule, but rather allows goods to be transported via a non-FTA country while still being considered as originating from the exporting FTA country. This provided that certain conditions are met, otherwise goods cannot be considered as originating from the FTA country from where the goods are shipped. As explained these rules are mainly based upon non-manipulation requirements.

On the other hand, KR-EU FTA uses the PANEUO model which defines “ Direct Transport” in Article 13 of the agreement. In general, this clause mandates that commodities be delivered directly between the EU and Korea, although it allows exceptions for goods that are transported via non-parties under specific circumstances. In such case, there’s additional conditions, which is one single consignment. According to KR-EU FTA, consignment means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice. Therefore, in case goods are traded while storing at bonded

---

<sup>6</sup> Analysis of the Supply Chain Network by Rules of Origin in FTA Environment, 2014, Taesang Byun, Jisoo Oh, and Bong Ju Jeong

warehouse and some of them are transported via non-FTA country, it doesn't allow to apply for preferential tariff treatment under the KR-EU FTA.

**[KR-EU FTA : ARTICLE 13 DIRECT TRANSPORT]**

1. *The preferential treatment provided for under this Agreement applies only to products, satisfying the requirements of this Protocol, which are transported directly between the Parties. However, products constituting one single consignment may be transported through other territories with, should the occasion arise, trans-shipment or temporary warehousing in such territories, provided that they are not released for free circulation in the country of transit or warehousing and do not undergo operations other than unloading, reloading or any operation designed to preserve them in good condition.*

The PANEUO model can therefore be inferred to be more severe than NAFTA, and as a result, there are better odds of persuading Korea customs authority to prove the transport rule with various means when goods are transported from a third country under KR-US FTA. That means, in case goods are exported from a third country while it is stored at the bonded warehouse after exporting from the United State, it may be subject to preferential duty treatment under the KR-US FTA, which is not allowed under the KR-EU FTA as PANEURO due to single consignment conditions under the agreement.

**[Figure 11 Requirements to prove transport rule]**

FTAs	Principle	Requirements for transit/transshipment		
		Transport Document	Customs Control	Non-manipulation
KR-EU FTA (PANEURO)	Direct Transport	Single Transport Documents	Document issued by customs authority	Evidence of the circumstances connected with trans-shipment or the storage
KR-US FTA (NAFTA)	Transit & Transshipment	No provision	No provision	No provision

In the case of KR-US FTA, Article 6.13 of Chapter 6 addresses the issue of “transit and transshipment” in relation to the origin of goods traded between the two countries. Generally speaking, transshipment refers to the movement of goods from one mode of transportation to another while they are traveling, whereas transit refers to the passage of products through a country without any change in their state. Therefore, under the KR-US FTA, goods may still be eligible for preferential duty treatment even if they are traded while traveling to a third country from either the United States or Korea. In contrast to the KR-EU FTA, the transport rule under the KR-US FTA allows for more latitude in interpretation and greater flexibility when goods are transported through a third country. This means that even if the goods are stored in a bonded warehouse in a third country after being exported from the United States, they may still be eligible for preferential duty treatment under the KR-US FTA, whereas this would not be allowed under the KR-EU FTA.

As a result, under the KR-US FTA, products that are in transit or being transshipped through a non-FTA country will not be regarded as having undergone a non-originating process and may claim preferential duty treatment. Nonetheless, in this situation, the goods shall continue to be under the jurisdiction of the non-FTA party’s customs authority and must only be subjected to unloading, reloading, or any other procedure required to keep them in good condition during transportation as per Article 6.13.

**[KR-US FTA : ARTICLE 6.13 TRANSIT AND TRANSSHIPMENT]**

*Each Party shall provide that a good shall not be considered to be an originating good if the good;*

- (a) Undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good conditions or to transport the good to the territory of a Party : or*
- (b) Does not remain under the control of customs authorities in the territory of a non-Party.*

Looking at Article 6.13., the main requirement is that the goods must be under customs supervision in a non-FTA country, and only limited production or operations are permitted in order to prevent the good’s origin status from changing, with the exception of unloading, reloading, and any other operations required to keep the goods in good condition or transport them to South Korea or the US. Thus no other handling is allowed than unloading, reloading or any other operation necessary to preserve goods in good condition or to transport them to Korea or the US.

Hence, products may be regarded as US or Korea-originating goods if they meet those requirements when they are carried through a non-FTA country.

But there are no provisions in place on how to prove that the transport rule has been met, there are no documentary requirements laid down in the KR-US FTA. Thus, for detailed conditions and required documents, the local legislation and standards will specify the specific requirements and documentation that are needed, which will be examined in the next subsection.

## **4.2 Transport Rule Under Korea Local Legislations**

The Korean government has passed new local regulations and established specific terms and guidelines for requesting preferential tariff treatment in order to implement the KR-US FTA. By examining pertinent legal materials, such as local regulations and recommendations, this subsection seeks to investigate the legal requirements for requesting preferential tariffs under the KR-US FTA. The Korean legislation plays an important role in determining whether goods qualify for preferential treatment under KR-US FTA when looking at the question whether they meet the transport rule criteria. Therefore, it is crucial to understand these requirements and procedures as outlined in this national legislation.

Examining the pertinent legal sources, such as the Korean Customs Act and related regulations, is important in order to comprehend the legal structure of the transport rule under Korea local rules. By confirming that the conditions outlined in the transport regulation are met, the legal sources are crucial in evaluating whether or not products are eligible for preferential treatment under the KR-US FTA. Hence, in order to properly assert preferential tariff treatment, it is essential to comprehend the prerequisites and steps described in these legal sources.

In principle the transport rule is the need that commodities be transported directly from the country of origin to the country of destination in order to be eligible for preferential tariff treatment, according to Korean customs regulations. However, it allows for exceptions to the direct transport requirement, which are known as “special case for direct transport”.

These exceptions allow goods to be transported through a third country and still be considered directly transported, as long as certain conditions are met. These conditions include the following:

1. The goods are not further processed or manipulated in the third country(non-manipulation)
2. The goods remain under customs supervision while in the third country(customs control)
3. The goods are transported without any unreasonable delay(temporary storage)



These exceptions and requirements are similar to the US-Korea FTA's rules, which in principle allow shipping through non-FTA countries.

The Korean Customs Act also stipulates that certain documentation must be shown to demonstrate that the items fit the criteria for special situations of direct transit in addition to these conditions. This documentation includes a certificate of origin, a bill of lading, and other relevant documents.

It is significant to note that in order to benefit from the agreement, companies must comply with both sets of standards, even if the requirements for claiming preferential tariff treatment under the KR-US FTA and Korean customs regulations are not exactly the same. Hence, companies that are importing or exporting goods under the KR-US FTA should carefully review both sets of regulations to ensure compliance with all applicable requirements

The legal sources related to the transport rule under Korea customs regulations are mainly found in the Customs Act, the Enforcement Decree of the Customs Act, the Presidential Decree of the Customs Act, and Special Customs Act for FTA implementation.

Moreover, KCS has provided additional guidelines on the transport rule under the KR-US FTA. These guidelines provide more detailed requirements and procedures for claiming preferential tariff treatment under the agreement.

In order to provide direct transport under the KR-US FTA, for instance, KCS has published a guidance document on the transport rule. The following records must be provided, per the guidance, to prove direct transport:

1. Transport documents(e.g. bill of lading, air waybill, or other transport document)
2. Commercial invoice
3. Packing list
4. Certificate of Origin under the KR-US FTA
5. Other relevant documents, such as customs declaration, export permit or inspection report

The guidance also states that the transport document must show the entire route of the goods, including the origin, destination, and transit points. In case the goods are transported through a third country, the transport document must indicate that the goods remain under customs control and are not manipulated or modified in any way in the third country. Such case, importer can claim preferential duty treatment by presenting through bill of lading and non-manipulation certificate to customs authority. The through bill of lading includes the departure country, destine country and transit country.

Meanwhile, as discussed in paragraph 3.2.2, in order to implement international agreement such as FTAs at the local level, it is necessary to establish relevant local laws and regulations. As indicated, as an additional legal framework for facilitating FTAs, the South Korean government established the Special Customs Act for FTA Implementation, which regulates the cross border activities alongside the existing Customs Act.

The Customs Act stipulates the general conditions for rules of origin under Article 229, while additional requirements for direct transport rules are described in Article 76 of the Enforcement Rule of the Customs Act and Article 12 of the Guidelines for Preferential Treatment.

Particularly, Article 68 of the Customs Act provides regulations on the origin of imported goods, including rules on the transport of goods. Article 120-3 of the Enforcement Decree of the Customs Act stipulates the documentation required to prove the direct transport of goods, while Article 127-2 of the Presidential Decree of the Customs Act sets out the conditions under which goods can be considered as having undergone direct transport.

Especially for FTAs, the Special Customs Act for FTA implementation set out the requirements under Article 6, Article 7, and Article 8.

Article 76 of the Enforcement Act of the Customs Act stipulates the direct transport to determine the good's origin but allows goods transported via a third country to be considered originating goods when the following conditions are met :

1. Goods that pass through a third country solely for geographical or transportation reasons
2. Goods placed under customs control in a bonded area by the supervision of the customs authority in a third country
3. Goods that have not undergone any additional operations other than those required to maintain their original condition while in a third country

According to the Enforcement rule of the Customs Act, one condition for determining the origin of goods is direct transport from the origin country without any additional processing, except for reloading, unloading, or operations necessary to preserve goods in good conditions. However, exceptional cases are defined with additional conditions to meet origin requirements, which are not clearly stipulated in the KR-US FTA, as they are certain activities that are prohibited in the countries, rather than simply prohibiting transport from third countries.

The Special Customs Act for the FTA implementation Act takes precedence over the Customs Act, as per Article 3 (Relationship with Other States), and any conflicts with any agreement, such

as the FTA, are resolved in favor of the agreement. Even if the wording is unclear, Article 7 of the Special Customs Act for FTA implementation outlines the criteria for determining origin and transport conditions as direct transport. Furthermore, exceptional cases are defined, and regulations explain how to prove compliance with transportation requirements.

### **4.3 Legal Hierarchy**

Interpreting the legal relationship between KR-US FTA and Korean customs regulations requires a thorough analysis of both legal sources. In terms of legal hierarchy, KR-US FTA is an international agreement that has been ratified by the Korean government. As such, it holds a higher legal status than Korean customs regulations, which are domestic regulations enacted by the Korean government to implement the FTA.

However, Korean customs regulations play a crucial role in implementing the FTA in practice, particularly in relation to the transport rule. The regulations provide detailed requirements and procedures for claiming preferential tariff treatment under FTAs, including the transport rule. They also set out the penalties for non-compliance with the FTA rules.

When interpreting the legal relationship between the two sources, it is important to note that the Korea customs regulations must be consistent with the FTA requirements. This means that any interpretation of the regulations that contradict the FTA would be invalid.

KR-US FTA would generally be considered superior to Korea customs regulations in terms of the legal hierarchy, as the FTA is an international agreement between the two countries that supersedes domestic laws and regulations. This means that if there is a conflict between the two, the FTA provisions would take precedence over the Korea customs regulations. However, it is important to note that Korea customs regulations are still important in implementing the FTAs because they provide the specific procedures and requirements for claiming preferential tariff treatment under FTAs. Therefore, the two legal sources should be read in conjunction with each other to ensure compliance with both FTA and domestic law and regulations.

In terms of the transport rule, the KR-US FTA allows transit and transshipment without restriction, while the Korean Customs Act permits transit via a third country only for geographical or transportation reasons. Therefore, in the case of ASML, goods transported from the United States via the Netherlands for logistical reasons (rather than geographical or transportation reasons) may still be eligible for preferential duty treatment under the KR-US FTA, provided that appropriate evidence is provided.

## 5. Case Study

Although there is no direct transport provision in the KR-US FTA, for “transit and transshipment” is specified with certain conditions to make sure the goods remain the same as the ones shipped from FTA country of origin.

As indicated before, analysis is required to interpret and apply these requirements and conditions in cases where US originating goods are transported via non-FTA countries under the KR-US FTA.

We did so in the earlier chapters based upon literature and the legal texts in place. As a final step, to better understand the requirements and conditions for goods to still qualify as originating goods under the KR-US FTA when shipped via a third country, I will discuss a number of cases that provide further insight on the policy and interpretation of the legal requirements and the view of Korean Customs.

### **[Case 1] Goods are shipped via Singapore warehouse**

Commercial transaction	US exporter => Singapore Agency => South Korea importer
Goods movement	US => Singapore warehouse(Bonded) => Korea
Documents	Licensed Warehouse from Customs
Certification of Origin	Issued by US exporter

### **Facts & Circumstances**

The goods in question were of US origin exported from the United States and had been stored in a Singapore bonded warehouse. Under the KR-US FTA, the US exporter issued a certificate of origin as well as other commercial documents. When the goods were imported into South Korea from Singapore, the importer submitted the shipping documents, which included proof on the storage in the licensed warehouse, to the customs authority and requested confirmation of whether the preferential tariff treatment could be applied.

### **Questions involved**

A few questions arise in the aforementioned case. First and foremost, the validity of the certificate of origin issued by the original exporter must be confirmed. Furthermore, it must be determined whether the document titled “ Licensed warehouse from Customs” is sufficient to demonstrate the transport rule outlined in Article 6.13 (transit and transshipment) and consider the goods to be of the US origin.

Because the purpose of this research is to examine the transport rules, I will focus on addressing the validity acceptability of the document titled “Licensed warehouse from Customs” as proof that, under Article 6.13(transit and transshipment) of KR-US FTA, the US origin still can be deemed to be in place for the imported goods.

**Findings**

According to the feedback of KCS, the aforementioned documents, including those presumed to be licensed by the Singapore customs authority for the bonded warehouse in Singapore, can be submitted to prove that the goods remained under customs supervision and thus to support preferential tariff treatment under the KR-US FTA if it is confirmed that the same goods without additional processing were exported from Singapore are imported into Korea, including the certificate of origin, licensed warehouse document and the exporter declaration for the bonded warehouse. This, if that document is there together with the named supporting documentation, KCS considers that proof is in place that the goods have been under the customs supervision while staying in the non-FTA country (Singapore). Thus, the preferential tariff treatment can be applied with additional document to prove the transport rule.

**[Case 2] When goods are transported through Canada**

Commercial transaction	US exporter => Korea importer
Goods movement	US => Canada => Korea
Documents	A8A form issued by Canada Customs
Certification of Origin	Issued by US exporter

**Facts & Circumstances**

The goods under consideration were of US origin and had been transported through Canada. Under the KR-US FTA, the US exporter had provided a certification of origin, as well as other relevant commercial documents. Upon arrival in Canada from the United States, the importer submitted the A8A document to pass through Canada and sought confirmation by KCS on whether this way of transit and documentation used would fulfill the transport rule and thus secure preferential tariff treatment.

**Questions involved**

On this, the importer in Korea supported his request with the statement that , due to geographical constraints, the goods were shipped from the Canada port after being trucked from the US, and

the A8A form was required to be presented to the customs authority in order to pass through. Appendix D of Canada customs' D3-1-1 contains information about in-transit, US port of exit.

### **Findings**

According to the feedback of KCS, this documentation may suffice as evidence that the goods are under customs supervision and are transiting through a third country without further processing in Canada. Therefore, if the importer presents the evidence issued by exporting customs authority proving the transport rule, a preferential tariff will be accepted by the customs authority.

### **[Case 3] Supreme Court Decision on Proof of Direct Transport under APTA(2019.1.17)**

**Issue:** Whether or not a bill of lading is required for APTA application.

**Legal source (Relevant Law)** : Article 8 of the “Regulations on the Rules of Origin Determination for the Asia-Pacific Trade Agreement” lists “a bill of lading issued by an exporting participating country” (1st), “a certificate of origin issued by the issuing authority of the exporting participant country” (2nd), “the origin commercial invoice related to the goods” (3rd), and “supplementary documents providing compliance with paragraph 2” (4th) as proof of direct transport.

**Court Decision:** Article 8 of the aforementioned regulation specifies representative evidentiary documents that, in general, have high credibility as proof of direct transport. If submitting these documents is difficult due to unforeseen circumstances, other credible materials may be submitted as evidence to meet the requirement for direct transport. Thus, the mere inability to obtain a bill of lading for any formal reason does not necessarily imply that the conditions for direct transport were not met and that the preferential tariff under APTA should be denied.

**Implications:** APTA stands for the “Asia-Pacific Trade Agreement,” which is a regional trade agreement between several countries in the Asia-Pacific region, including Korea. The agreement aims to promote economic cooperation and trade liberalization among its member countries through the reduction of tariffs and non-tariff barriers to trade.

Although this decision is specific to the APTA, it is applicable to other FTA agreement as well, it points out that in order to prove that the transport rule has been met, also other documents/evidence than that specially listed can be submitted.

This case thus provide some further, be it indirect, guidance on the prove of direct transport under the KR-US FTA, especially in interpreting the requirements of presenting a through bill of lading as proof of direct transport as set out in the Korean legislation.

This case clarifies the issue of direct transport under the KR-US FTA, particularly the requirement to present a through bill of lading as proof of direct transport.

If obtaining a through bill of lading is difficult, the court held that other reliable evidence may be submitted to prove that the direct transport requirement has been met, and the absence of a through bill of lading alone should not be the sole basis for denying the application of preferential tariff rates.

This interpretation may be relevant to the KR-US FTA, as it is also a free trade agreement that requires proof of direct transport in order to qualify for preferential tariff treatment. This implies that even if a special document, such as a bill of lading, are unavailable or difficult to obtain, alternative evidence can be provided to demonstrate compliance with the direct transport requirement.

Now that we have discussed the formal structure, legal structure and related local customs legislation on the KR-US FTA as well as the specific rules on maintaining the preferential origin for goods in transit or being transshipped, the next chapter will discuss the procedures and documentation required in order to be able to apply for the preferential duty treatment under the KR-US FTA and also indicate the steps ASML may have to make to fulfil these requirements.

## **6. Legal Requirements, Procedures And Documentation For Applying For Preferential Tariff Treatment Under the KR-US FTA**

Conformance with these legal requirements and procedures is indispensable to qualify for the benefits under KR-US FTA. Because this can be a complex issue with criteria to be met, this chapter will focus on the essential requirements, procedures and documentation to be able to apply preferential tariff treatment. In light of the flows discussed in this thesis, specific focus will be given to the situation in which the goods are transported via non-FTA countries, being a more complex situation in which specific criteria have to be met to preserve the preferential origin. It is crucial to comply with the specific requirements as set in the legal framework of KR-US FTA as well as in the Korea customs regulations. Such, as they provide different sets of requirements and procedures.

Furthermore, South Korean customs authorities have issued additional guidelines to ensure the proper implementation of the transport rule, including documentation and evidence required for providing direct transport through non-FTA country was in place (see chapter 4.)

### **6.1 Customs formality**

With the term Customs formalities we refer to the procedures that must be followed and the documentation that must be filed to comply with customs regulations when goods are imported or exported, in the case of the KR-US FTA the formalities related to the preferential origin of the goods and claiming the preferential duty treatment under this FTA .

Customs formalities for KR-US FTA application involve several steps, including the submission of the appropriate documentation, such as the certification of origin, to the customs authorities of the importing country. The customs authorities will, for the goods imported from the other party under the FTA, verify the authenticity of the certificate of origin and whether the rules and conditions to be eligible for the preferential duty treatment have been met. The certificate of origin is an important document that verifies the origin of the goods and must be issued by parties as defined in the legal framework.

In Korea, the customs clearance process generally involves the submission of import or export declarations to KCS by EDI, as well as the payment of any applicable duties on imported goods. The declaration must contain relevant information about the goods being imported or exported, such as their commercial value, quantity and HS code.

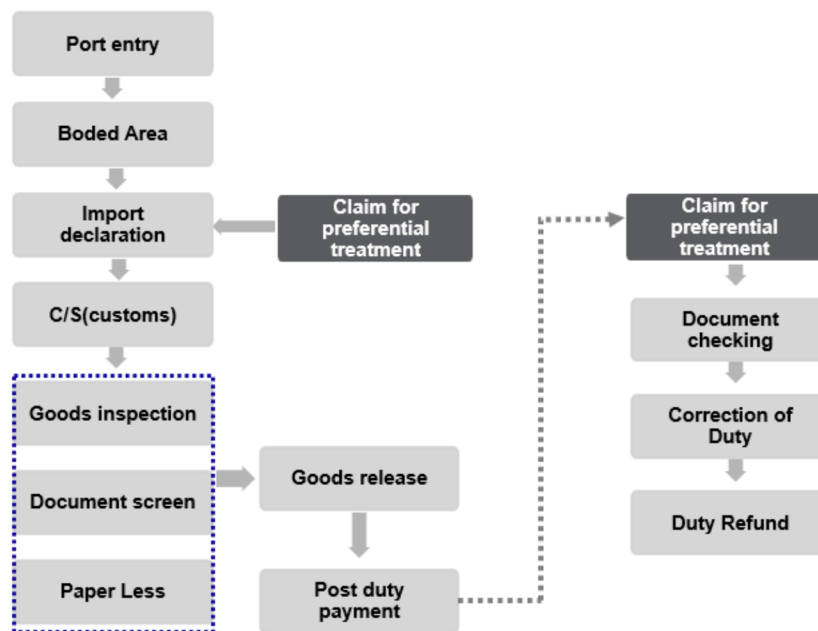


When seeking preferential duty treatment under FTAs, additional information as stipulated in the relevant agreement, such as the country of origin and the determination of origin, must be provided. Importers are required to submit the application form(application for FTA tariff treatment) along with the import declaration to apply for such treatment.

In principle, importers are required to claim preferential tariff treatment at the time of importation into Korea. Nevertheless, if they lack adequate information or documentation, they may retroactively apply for preferential tariff treatment within one year after the customs authority accepts the import declaration. In such cases, the necessary documents, including certificate of origin, must be made available to customs authority at the time the application is filed.

Hence, ASML must claim preferential tariff treatment at the time of importation with adequate proof of origin to avoid being subject to MFN tariffs when goods are cleared for in free circulation. In such cases, the imported goods, eligible for preferential tariff treatment, should be recorded and monitored for the applicable period, and their compliance with other requirements should be verified before submitting the retroactive application.

**[Figure 11 : Import process for FTA application]**



## 6.2 Certification of Origin

As indicated, the goods must comply with the origin requirements specified in the KR-US FTA, and a valid certificate of origin proving the good's originating status must be presented.

The KR-US FTA only grants a preferential duty treatment if goods have acquired the origin of either South-Korea or the US. Therefore, the origin needs to be determined, in the case discussed in this thesis, the US origin under the rules and specific conditions for the goods as laid down under the KR-US FTA (see Chapter 3).

To determine the US origin of goods for the goods produced in the US not only data on the production process, the bill of materials and value added is needed (exact requirements may differ per product and the specific conditions in place to acquire the origin), but also information on the origin of base materials or intermediate products that are used to produce the final product that is being exported from the US. Thus, the US manufacturer will need a certificate of origin or suppliers declaration for these materials is required. These certificates/declaration in combination with the required data should validate the final product's origin and ensure that the claimed origin is in line with the requirements of KR-US FTA.

Because ASML works with global suppliers, it therefore is necessary to identify which suppliers are involved in the production of materials of US origin. The supplier should provide the certificate of origin or suppliers declaration to ASML when they ship the materials to ASML.

Based on this information, in combination with the other data, we can determine the origin of the final goods under KR-US FTA.

As previously stated, the US suppliers of ASML only have a limited understanding of and information on the KR-US FTA. Therefore, acquiring the documents needed/certificates and suppliers declarations) is an issue that needs to be resolved to secure that claims of the US origin under the KR-US FTA can be substantiated. Thus, to improve the awareness and knowledge level at ASML's suppliers, additional training or discussion will be necessary. Therefore, the LSO Customs team should have a separate discussion with the sourcing team that in charge of supplier management.

After the origin under the KR-US FTA is confirmed, the exporter may issue the certificate of origin.

Unlike some other FTAs, the KR-US FTA has no specific format or template for the certificate of origin, but the legal requirements for the certificate of origin are stipulated in the Article 6.15 of Chapter 6 as follows.

**[KR-US FTA : ARTICLE 6.15 CLAIMS FOR PREFERENTIAL TARIFF TREATMENT]**

*Each Party shall provide that a certification need not be made in a prescribed format, provided that the certification is in written or electronic form, including but not limited to the following elements:*

- (1) The signatory's name, identification and contact details(if necessary)*
- (2) The importer of the good in question(if know)*
- (3) The exporter of the good in question(if different from the producer)*
- (4) The producer of the good in question(if known)*
- (5) Product description and HS code of the good in question*
- (6) Proof of Origin on a documentary basis*
- (7) The date of certification*
- (8) The blanket period(where applicable)*

In the absence of a specific document or format for the CoO, the elements described above can be included in other documents such as the commercial invoice. Hence, if a certain document is sufficient to verify that information, it can be used as the CoO for the KR-US FTA application. Given that there is no specific format under this agreement, the KCS revised the Enforcement rule of the Special Customs Act on FTA implementation in 2011 by adding a certain format of the certificate applied for KR-US FTA. As a result, ASML has two options to issue the required certificate of origin.

The first option is to use the current shipping invoice, which is used for the customs import declaration. This invoice contains most of the commercial information on the imported goods, including the HS code, commercial price, seller and buyer. However, other specific information as required under the KR-US FTA, such as contact details, signature and proof of origin, is missing from the shipping invoice. In such cases, the shipping invoice can still be used if the missing information is added. This would require designing a new output from our SAP system.

The second option is to use the blanket certificate of origin that KCS had enacted to reduce the argument between importers and customs officers. This may also help to avoid discussion

between the customs agents(importer) and customs officers. This format for the certificate of origin will contain, once fill in, all information required under the KR-US FTA. Where necessary, this can be used for one year after issuance whenever listed goods on the certification are imported into Korea.

However, it may require additional administrative work to verify the validity of the certificate and to retain them appropriately. On the other side, this option may make it easier fulfil the requirements with respect to the certificate of origin and to verify whether all required elements are in place. As a result, it should be discussed further internally to determine which way forward suits ASML business.

### **6.3 Documentation to Support that the Requirements on Transit and Transshipment are Met**

As previously stated, in the case of ASML shipments from the US via The Netherlands to Korea fulfilling the non-manipulation rule as set in the Under KR-US FTA is key. Thus it has to be demonstrated that the goods during transit or transshipments remain under customs supervision and have not undergone any additional processing except for some very basic handling. To claim preferential tariff treatment, next to the bill of lading, importers in Korea must provide documentation that proves compliance with this transport rule. However, the specific documents required may vary depending on the customs authority in charge of controlling the customs territory of transit or transshipment (in this case the Dutch authorities) , which can create challenges for importers when trying to establish which document/evidence is sufficient for KCS.

While Korea Incheon Customs has released some sample documents issued by customs authorities in countries where transit commonly occurs, such as China, Hong Kong and Singapore , these local documents likely are not the usual documentation that is implemented and applied in cases where the central warehouse is located in a different country, such as Netherlands where ASML's central warehouse is located. Therefore, it is important to determine the specific documents required when non-EU goods are stored in a customs warehouse in the Netherlands to prove the condition of customs supervision and thus maintain the FTA origin and claim preferential tariff treatment.

In the case of ASML, we therefore need to analyze how to establish a set of documentation acceptable for Korean customs authority. These prerequisites are as follows:

1. Transport and logistics documentation : The shipping documents should include the entire transport itinerary, including the names and addresses of all carriers involved, as well as the dates and location of loading and unloading. A bill of lading or airway bill, as well as any other documentation proving that the goods were transported "directly" from the exporting FTA country to the importing FTA country, should be used to support this claim. In case goods are imported via a non-FTA country, additional document proving non-manipulation and customs control should be presented together.
2. Customs documentation : Customs authorities may require additional documentation, such as evidence that the goods were not subjected to any operations other than unloading, reloading, or other activities necessary to preserve the goods in good condition or to transport them to their final destination. Such evidence may include a certificate issued by the customs authorities of non-FTA country through which the goods were transited. T1 documents are required when non-EU goods are moved to a customs warehouse in the Netherlands. This may prove non-manipulation and customs supervision under the KR-US FTA.
3. Commercial documentation : a commercial invoice, packing list and any other relevant commercial documentation should be consistent with the transportation and customs documentation and how that the goods were not processed or manipulated in the non-FTA country, in this case The Netherlands.

In summary, it will be essential to maintain a complete and accurate documentation to prove that the goods were transported via the non-FTA country to the import FTA country while remaining under customs supervision did not undergo any processing or non-allowed manipulations in the non-FTA country.

## **7. The Design Process for Duty Saving Program**

As stated previously (Chapter 2.4), ASML has a number of specific challenges to design a duty-saving program under the KR-US FTA.

First, due to the lack of resources, data and information, it is difficult for ASML to determine and support the preferential US origin of goods under the KR-US FTA. This should be addressed to responsible department, such as the Classification team and the Sourcing team jointly and requirements should be discussed to set-up clear process in order to comply with KR-US FTA requirements and to ensure timely communication with and information gathering from global suppliers.

Next to that, the current distribution channel and logistic flow makes it difficult for ASML to fulfil the transport rules under the KR-US FTA in case US originating goods are transported to Korea via the central customs warehouse in the Netherlands. This will be discuss further in this chapter to order to examine possible solutions for proving the transport rules and the non-manipulation conditions.

Finally, basic outline to design a duty-saving program will be discussed through enhancing the internal operational system, while complying with the required customs processes on that.

I will further elaborate on how ASML can resolve these challenges and design the process to save import duties under KR-US FTA.

### **7.1 Distribution Channel**

In the goods flow as discussed in this thesis, goods of US origin are transported from the United States to the central customs warehouse in the Netherlands and from there, distributed to a local warehouses in Korea based on forecasted demand. As discussed in the previous chapters, in such case, adherence to specific transport rules must be proved in order to preserve the US origin and based upon that, claim the preferential tariff treatment under the KR-US FTA. Furthermore, the required documentation to prove this should be presented to the Korea customs authorities when goods are imported into South Korea.

In this regards, there are two main options to meet the transport rule under the KR-US FTA.

The first option is to change the logistics flow and ship the goods directly from the United States to Korea. In this case, the airway bill or bill of lading would be sufficient to prove the transport rule and related documentary requirements. However, this would require further discussion with and

buy-in of the other stakeholders in ASML, including the Tax team and the Sourcing team, to analyze the impact of such change on the business model and physical flow.

Another option is to keep the current distribution model (flow) and establish sufficient documentary evidence to be able to prove that the conditions of the transport rule were met while the goods were transshipped via and stored in The Netherlands. Based upon my research on the demands of Korea Customs, then official Dutch documentation would be needed to prove that the goods while in transit and storage in The Netherlands remained under customs supervision and no processing or non-allowed handling was in place. As indicated, at present, storage takes place in ASML's customs warehouse in the Netherlands.

A customs warehouse is a facility authorized by Dutch customs authority to be able to store goods that are not in free circulation of the EU (under customs supervision). Such a customs warehouse is operated by a private company, e.g. a company, logistical operator or customs agent.

Given that the goods come from the United States and, while in The Netherlands, are transported under customs supervision to and from the customs warehouse for storage only, in principle the conditions on transport as laid down in the KR-US FTA, can be met. Question now is what kind of documentation can be used to support that. Dutch Customs may issue related document that can prove customs supervision.

It is possible to prove that goods are under customs control and have not been manipulated by using that document. When goods are imported from the Netherlands, official documentation issued by Dutch Customs must be provided to prove this.

The central warehouse in the Netherlands receives all goods from outside EU under NCTS under suspension of duties. The goods are accompanied by a TAD. Upon shipment from ASML we produce a EX-A document (for re-export) and a new NCTS transit document for the shipment. A printed TAD accompanies the goods when shipped. On this TAD one can see if goods that are re-exported are manipulated or not. If the declaration line mentions AVS goederen on the example(see figure 12), goods are processed by ASML, which means it is manipulated in the Netherlands and cannot meet the requirements(non-manipulation) under KR-US FTA. However, if that is not mentioned, the goods are only stored in ASML bonded warehouse and subsequently re-exported without manipulation.

Therefore, the first item on the example is not process while the send item is process in the Netherlands.

It may be sufficient to prove customs supervision and non-manipulation at customs warehouse in the Netherlands by comparing the TAD and shipping invoice.

For instance, item SERV. SERV.502.17161 was reexported from the ASML customs warehouse and it is described in the TAD. At the same time, for exporting from a customs warehouse to Korea, the shipping invoice contains items information including product number and document number which are included in the TAD. It proves item SERV. SERV.502.17161 is reexported from the customs warehouse in the Netherlands to a non-EU country.

**[Figure 12 : TAD document and Shipping invoice]**

**T1 document**

Artikel Nr (32)	Merken/nummers (33)	Aantal/soort (31.2)	Container nr (31.3)	Omschrijving van de goederen (31.4)
1	INVOICE	3 Kartonnen doos (carton)		SERV.502.17161 - NXE RTC KIT-DUAL-POD
	70060090			Z-EX 23NLLFKVUBAQKWD59 1
		37,597	4,902	005139314
2	INVOICE	0 Kartonnen doos (carton)		SERV.483.49181 - SPM ADM FIBER LAUNCH ADJUST
	82041100			Z-EX 23NLLFKVUBAQKWD59 1
		2,124	0,277	AVS goederen 0051392900

**Shipping invoice**

**ASML**

Seller: ASML Netherlands B.V., De Run 6501, 5504 DR Veldhoven, The Netherlands, VAT NL007051104B01

Invoice: 113881011, Invoice date: 23 Mar 2023, ASML SD: 11264454

Sold to: ASML Hong Kong Ltd. - Branch Korea, 25, Samsung 1-ro, 5-gil, HWASEONG-SI, 19453, South Korea. Customer: KR01

Delivery: Ship to ASML Hong Kong Ltd. - Branch Korea, KR02 WH - TE Logistics center 3F, 3F 56-22, Ineopdaecheo-ro 308beon-icheon-si, 17395, South Korea. Ship from ASML Netherlands B.V., c/o DHL Supply Chain Eindhoven 3, Flight Forum 3590, 5657 DW EINDHOVEN, The Netherlands. Incoterms: DAP KR, Destination WH, ASML Trade Reg. 17052456, Airwaybill: 1167000036, Document: 51393147

Item	Part number	Description	Qty	Unit	Unit Price	Total Amount
00	SERV.502.17161	NXE RTC KIT-DUAL-POD	1	PC	12,862.78	12,862.78

Based upon the research done, in view of the strict policies of Korea Customs, ASML then should request confirmation from the Korea customs authority as to whether such set of documentation(TAD, shipping invoice to export to Korea, original shipping invoice to export to the Netherlands from the United States) suffices as evidence for transport rule compliance under the KR-US FTA( transit and transshipment Article 6.13),which is under customs supervision and has not been subject to any operations other than unloading, reloading, or any other process necessary to preserve them in good condition.

As reviewed in the case study, there is some room to review additional documents that can prove direct transport, next to the samples as shared by KCS. Therefore, in case if the Korea customs



authority accepts the sample set of customs and commercial documentation as evidence for non-manipulation, ASML will be in a position to apply for preferential tariff treatment under the KR-US FTA. If not, as discussed in the first option, ASML may need to change the logistics flow for US originating goods in order to be able to claim preferential tariff treatment under KR-US FTA.

When goods are transported directly from the United States to Korea, no additional documentation is required other than the air way bill or bill of lading to prove transport rule. However, current ASML's logistic flow and business model are designed for global sourcing to maximize competitiveness. Therefore, redesigning a distribution channel to meet the conditions under the KR-US FTA requires careful consideration of several factors, such as transportation cost, customs procedures and legal requirements.

Meanwhile, there's another logistic flow from the United States to GDC. Some of the US originating goods are exported directly from the United States to the GDC first, and it is stored at a bonded warehouse controlled by the Korea Incheon Customs. When goods arrive at a bonded warehouse, a special document called usage and consumption declaration is filed to the Korea customs authority to store the goods under customs supervision and duty suspension. It contains product information such as shipping country and original exporter.

Then, if the goods are delivered to local warehouses in Korea, an import declaration must be completed and an import tax, including import duties, paid in order for the goods to be free circulate in Korea.

This is exactly same process when EU originating goods are imported into Korea from GDC and we can still claim preferential duty treatment under KR-EU FTA with additional documents, such as original bill of lading when goods were arrived at GDC from the Netherlands.

Therefore, under the KR-US FTA, the original bill of lading issued by the US exporter when the goods were exported from the United States to the GDC will suffice to prove transport rule from the United States to Korea along with usage and consumption declaration filed when goods are arrived at GDC from the United States.

[Figure 14 : Bill of Lading and Shipping invoice]

**Bill of Lading**

988 JFK 46533421 HAWB No: L9X0002713

Shipper's Name and Address ASML US LLC US MANUFACTURING OPERATIONS 7 EDMUND ROAD NEWTOWN CT 06470-165 US		Shipper's Account Number 6408442143	Not Negotiable <b>House Air Waybill</b> Issued by: DIV AIR & SEA INC. - 1902 200 WOOD AVENUE S SUITE 300, ISELIN, NJ, 08830, UNITED STATES	
Consignee's Name and Address ASML NETHERLANDS B.V. C/O SCHENKER KOREA LTD. Airport Logistics Park G3 block 97-49, GONGHANGDONG-RO 296-GIL JUNG-GU INCHEON 22379 KR		Consignee's Account Number 68015037	It is agreed that the goods described herein are accepted in apparent good order and condition except as noted on the invoice SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL QUANTITIES WILL BE CARRIED BY AIR. OTHER THAN INCLUSIVE WEIGHT OR AIR CARRIER'S WEIGHT UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THIS AGREEMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. SHIPPER may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.	
Issuing Carrier's Agent Name and City DIV AIR & SEA INC TORRANCE		Accounting Information		
Agent's IATA Code 01-1 9608/0034		Account No.		
Reference Number JOHN F. KENNEDY APT/NEW YORK By First Carrier: <input checked="" type="checkbox"/> <b>OZ</b> By Second Carrier: <input type="checkbox"/> <b>ICN</b>		Reference Number CUS2251656	Optional Shipping Information TERMS: DAP Declared Value for Carriage NVD Declared Value for Customs NCV	
INCHEON INTL APT/SEOUL Handing information REF.NOS.80288190		Amount of Insurance XXX	INSURANCE - If Carrier offers insurance and such insurance is required in accordance with the conditions listed, indicate amount to be insured in figures in box marked "amount of insurance". ITN: X20230324798163	
No. of Pieces 1	Gross Weight 12.00 K	Net Weight	Charge	Total As Agreed
Nature and Quantity of Goods (Ind. Dimensions or Volume) PART FOR WAFERSTEPPER SL PRIORITY IN#80288190				

**Shipping Invoice**

**ASML**

Seller Company ASML Netherlands B.V. De Run 6501 5504 DR Veldhoven The Netherlands VAT NL007051104B01	Invoice 100072391 Invoice date 24 Mar 2023 ASML SD 1100118276					
Sold to ASML Netherlands BV De Run 6501 5504 DR Veldhoven The Netherlands	Customer NL01 VAT/CT/ST/IT/GST NL007051104B01 Customer PO 4030050000					
Delivery Ship to ASML Netherlands BV. c/o Schenker Korea Ltd. 97-49, Gonghangdong-ro,296-gil Jung-gu 22379 South Korea	Ship From Company ASML US LLC ASML Warehouse 7 Edmund Road Newtown CT 06470-1650 U.S.A.	Incoterms DAP Destination WH Ship via Airwaybill Document 80288190				
Item 001	Part Number 4022.502.65376 KR.HF9031809099 US.ITF9031808085 ECCN: 3B001.f Co: US	Description and Serial Number(s) RH.NX.FCD.SENSOR.ASSY 192775000118806, 192775000118810, 192775000118809, 192775000118805, 192775000118808, 192775000118807	Qty 6	Unit PC	Unit Price 2,130.87	Total Amount 12,785.22
Currency <u>EUR</u>						

## 7.2 Customs Procedure

As indicated in the research, to claim preferential tariff treatment under KR-US FTA, the importer must follow specific customs procedures, which can be complicated, especially when transporting goods through a third country like the Netherlands. There are several steps that the importer can take to simplify these procedures.

As previously discussed, there are two options to claim preferential tariff treatment under the FTA in Korea. The first option is to claim preferential tariff treatment when goods are imported into Korea, so at the same time as filing the import declaration. The second option is to retrospectively claim preferential tariff treatment within one year of the goods being accepted for free circulation by the customs authority.

For ASML, if the preferential origin is confirmed before the goods are shipped from the United States and the certificate of origin is available, we can claim preferential tariff treatment at the time of importation in Korea.

When goods are transshipped via the Netherlands, the exporter is the ASML Netherlands, not ASML US. Therefore, in order to claim preferential tariff treatment when importing goods to Korea, the original certificate of origin issued by ASML US is required.

As discussed previously, there are two options for issuing the certificate of origin under the KR-US FTA.

The first option is to issue the certificate of origin with each shipment's shipping invoice, whereas the other option is to issue a blanket certificate of origin using the format released by KCS.(see chapter 6.2)

When goods are imported to Korea through the Netherlands, the seller and shipper is the ASML Netherlands. Thus this export does not commence from the US and the shipping invoice issued by ASML Netherlands cannot be used to issue the certificate of origin, because ASML Netherlands is not the Party under the KR-US FTA. Instead, to claim preferential duty treatment, the certificate of origin issued by ASML US should be attached when goods are shipped to the Netherlands, or a separate blanket certificate of origin should be issued for US originating items. This certification, can be deemed as the certificate of origin under KR-US FTA.

To issue the blanket certification, ASML must pre-define US originating items before they are shipped to the central warehouse in the Netherlands from the United States. All required information should be completed in the format provided in Appendix 3 and sent to the Netherlands when goods are delivered to the central warehouse. This information should be also sent to ASML Korea.

When US originating goods are imported from the Netherlands, ASML Korea, as the importer, must check the blanket certification to claim preferential duty treatment under the KR-US FTA. If the items are included in the blanket certification, an FTA application should be submitted along with the import declaration to Korea customs authorities.

By following these step, ASML Korea can benefit from preferential duty treatment under the KR-US FTA for US originating goods imported via the Netherlands.

### **7.3 System Enhancement**

As elucidated in the previous chapter, ASML developed a customized system to enhance operational efficiency and manage high volumes by automating the primary entry filing procedures. Essentially, all operation process are executed and managed in SAP, while origin related information is managed in SAP GTS. For complying with the requirements of the KR-EU FTA, also based upon the long-term declarations for materials from the suppliers, GTS determines the origin of the final products based on the rules of origin of the KR-EU FTA.

Once the goods are ordered in SAP to transport to other location, the shipping invoice is generated in SAP and a special indicator for preferential origin under KR-EU FTA is included on that document, along with the origin statement if the material's preferential origin in GTS is EU. The indicator is then transmitted to IP and validated with the other information to ensure that the legal requirements under KR-EU FTA, including the transport rules are met to claim preferential tariff treatment. If the conditions are met, the FTA indicator is populated in the system and it is communicated to the customs broker's system, which provides instructions for applying for preferential tariff treatment under the KR-EU FTA when filing the entry for imported goods from EU.

Therefore, to comply with the legal requirements and to streamline the process of claiming preferential duty treatment under the KR-US FTA, it is necessary implement an alternative system for issuing certificate of origin. This alternative system should be designed in a way that reduces the administrative burden on ASML and ensure the accurate and efficient issuance of certificate of origin.

Furthermore, other requirements can be incorporated into the current system(IP) to ensure compliance with legal requirements. For instance, IP can include additional verification measure to identify US originating goods and claim preferential duty treatment under KR-US FTA. This would help prevent fraudulent claims and ensure the authenticity of the certificate of origin.

Overall, the implementation of an alternative system for issuing blanket certificate of origin under the KR-US FTA, along with additional verification measures, would help to streamline the process of claiming preferential duty treatment and ensure compliance with legal requirements, while reducing the administrative burden on ASML.

## 8. Conclusion

Based on the research conducted, it is posited that preferential tariff treatment can be sought for US-originating goods transported from a central warehouse in the Netherlands, provided that the goods undergo no processing beyond the mere preservation of their condition and remain under customs supervision. Compliance with laws, regulations, and guidelines is essential for the transportation of goods, along with a thorough review of transport rule requirements and ensuring supply chain and logistics processes comply to avoid potential penalties or loss of benefits.

The KR-US FTA defines rules of origin, including transportation rules that are defined with soft guidelines, and direct transportation is not explicitly defined. However, goods originating in the United States may still be considered as originating in the United States when transported to Korea via the Netherlands, as long as additional conditions, customs control, and non-manipulation, under the KR-US FTA are met. Relevant documents, such as non-manipulation certificates and license warehouse certificates, should be presented to customs authorities to prove the transport rule.

In the case of ASML, materials shipped from the US factory to the Netherlands' central warehouse are stored in a customs warehouse under Dutch Customs supervision by filing TAD. The materials are then reexported to Korea from a customs warehouse by filing TAD documents again. Materials are repackaged for export and import as needed because no additional processing or production is taking place while the materials are stored at the central warehouse and orders from local entities are being fulfilled.

However, it is unclear which documents are required to prove that the materials originated in the United States, as the KR-US FTA and Korea FTA regulations do not clearly specify the required documentation for direct transport. Therefore, an official decision may be requested from the customs authority on the documentation required to apply for preferential tariff treatment under KR-US FTA, including whether TAD is sufficient to prove non-manipulation with other shipping documents such as airway bills, shipping invoices, and blanket certification issued by the original exporter.

In summary, while the KR-US FTA does not explicitly define direct transport, goods originating in the United States can still be considered US-originating when transported through the

Netherlands if certain conditions are met and appropriate documentation is provided. To implement a duty-saving program under the KR-US FTA, ASML needs to resolve three main challenges: (1) the Classification team needs to identify US origin items based on the Rules of Origin under the KR-US FTA, (2) the LSO Customs team should set up an operational process, and (3) an official decision may be requested from the customs authority on the required documentation for preferential tariff treatment. Once these challenges are addressed, ASML can implement an internal process for a duty-saving program under the KR-US FTA.

Based on my research, here are my suggestion to resolve three main challenges to design a duty-saving program under KR-US FTA.

1. Determination of origin under KR-US FTA

Utilize import data for the past three years to identify the target items imported from the Netherlands or the United States, including the goods from GDC, and determine the final target items based on their HS code. The classification team should then collaborate with the sourcing team to obtain the origin declaration of raw materials from suppliers to determine the preferential origin under the KR-US FTA.

Items with a saving amount less than €1000 could be excluded for efficiency purpose.

2. Confirmation of certificate of origin

The classification team in the United States should fill in the blanket certification format for target items and maintain the blanket certification to claim for preferential duty treatment under the KR-US FTA. The validity period of blanket certification should be tracked, and the Korea Customs team should review the validation of the blanket certification before claiming preferential duty treatment under the KR-US FTA.

3. System update (IP)

When adding new conditions for KR-US FTA, confirmed requirements should be added to the system (IP). In those cases where ship-from is the Netherlands and preferential origin is US, the FTA flag will be populated, and the broker will file the FTA application form along with the import declaration.

For the required systems update, the Korea customs team should submit the change request to IP. In case IP decides the change is not acceptable but new logic should be built into the

system a new request may be required. At the same time, the ASML IT team need to update the requirements to indicate the US origin item on the shipping invoice.

4. Acquiring on KCS official decision on the documentation set to prove that the transport conditions under KR-US FTA are met

To confirm the required that the documentation as suggested is sufficient for KCS as the basis to prove the transport conditions and non-manipulation rule are met, an official decision of KCS is required before ASML can claim preferential duty treatment under KR-US FTA

The Korean ASML Customs team should prepare such a set of documents, which will need to include evidence such as the TAD, the original shipping invoice, the blanket certificate, an air way bill(from the Netherlands to Korea) together with an explanation on what these documents represent. After reviewing the documents together with external counsel, the application documents will be submitted to KCS to ask for their official approval. Based upon their feedback, further steps may be required ( further prove or validation in The Netherlands)

5. Update the broker work instructions and process documents

Next to adding a new FTA flag, also the related broker work instructions and process documents should be updated. Until now, they review the requirements under KR-EU FTA based on shipping information and origin (ship-from : the Netherland and preferential origin : EU). Then new conditions (ship-from : NL and preferential origin : US) for claiming preferential duty treatment under KR-US FTA will be added on the documents to inform them a FTA application form at the time of importation need to be filed.

## Reference

Korea-US Free Trade Agreement

US-Korea Free Trade Agreement : Effects on US small and Medium-sized Enterprises(US International Trade Commission)

US-South Korea(KORUS) FTA and Bilateral Trade Relations(Congressional Research Service)  
Direct Transport Rules in Regional Trade Agreement and Suggestions(Journal of international Trade & Commerce)

Economic effects of A KR-US FTA(Kozo Kiyota/Robert M. Stern)

Tariff oriented Supply Chain Management : Implications of trade agreements on strategic decisions

SME internationalization through global value chains and free trade agreement : Malaysian evidence

Asia-Pacific Megaregional Free Trade Agreement : Fostering Global Supply Chain?

Analysis of Supply Chain Network by Rules of Origin in FTA environment

Trade facilitation and Global Supply Chains : The Role of FTA (Hyo-Young Lee)

The effect of the Korea-US free trade agreement on governance of the aquaculture value chain(Sang-Go Lee, Amaj Rahimi Midani)

Trade creation and the status of FTAs : empirical evidence from East Asia

The Gravity Model Specification for Modeling International Trade flows and Free Trade Agreement Effects : A 10-year Review of Empirical Studies

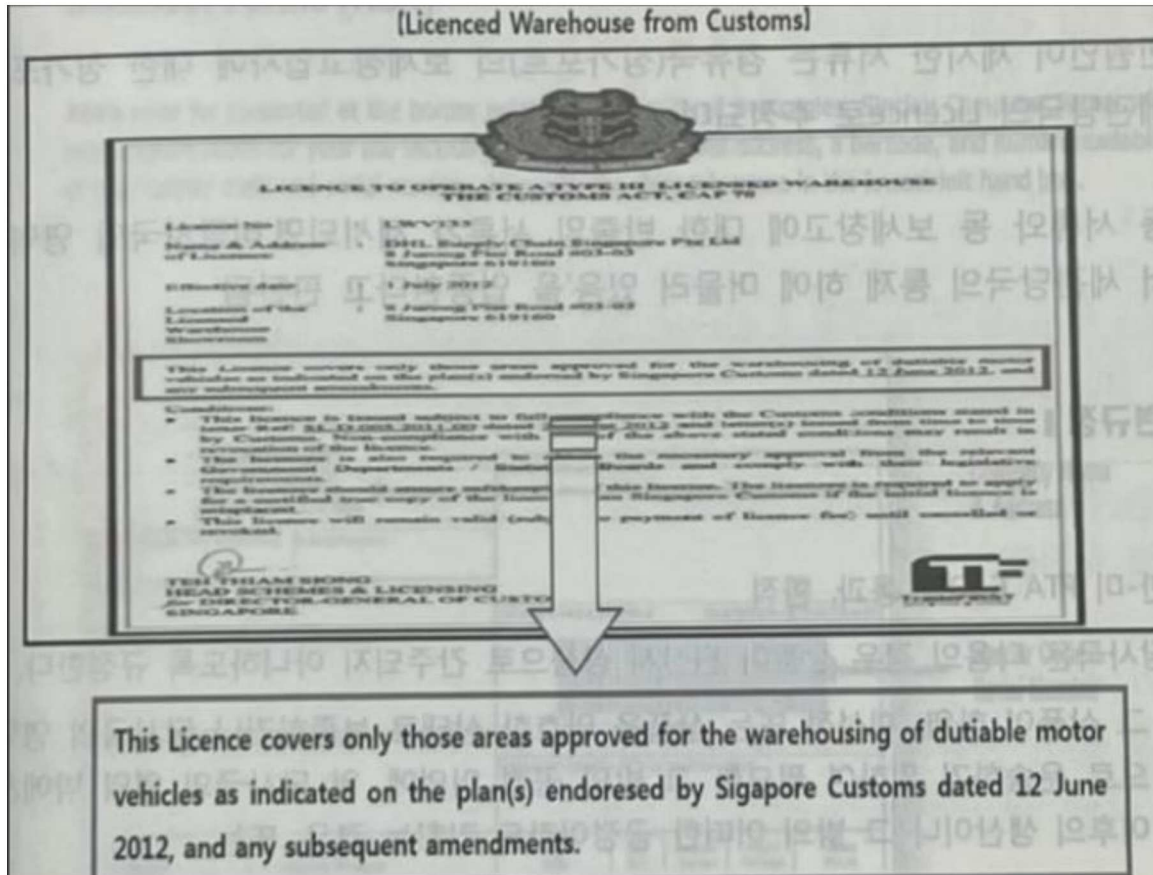
The United States-Korea Free Trade Agreement : Path to Common Economic Prosperity or False Promise?(Yong-Shik Lee, Jaemin-Lee, Kyung-Han Sohn)

Korea's Institutional Framework for FTA Negotiations and Administration: Tariffs and Rules of Origin(Jong-Bum Kim)



# Appendix

## Appendix 1 Licensed Warehouse from Customs(Singapore)



## Appendix 2 Application for FTA tariff treatment

■ 자유무역협정의 이행을 위한 관세법의 특례에 관한 법률 시행규칙 [별지 제1호서식]

### 협정관세 적용신청서 (갑지)

※ 작성방법을 읽고 작성하여 주시기 바라며, [ ]에는 해당되는 곳에 '나'를 기재합니다. (5쪽 중 제1쪽)

※ 세관기재란(For Official Use Only)

제출일자	처리기간	국시
1. 수입신고번호	상호	성명
2. 수입자	주소	전화번호
	전자우편주소	팩스번호
3. 수출자	사업자등록번호	통관고유번호
	주소 및 국가	성명 전화번호 팩스번호
4. 생산자	주소 및 국가	성명 전화번호 팩스번호
	5. 란 번호	
6. 품명·모델·규격	7. 신청일 및 적용법령	신청일: 적용법령: 법 제8조제1항 <input type="checkbox"/> 법 제9조제1항 <input type="checkbox"/> 법 제9조제2항 <input type="checkbox"/>
8. 원산지증빙서류 종류	원산지증명서 [ ] 사전심사서 [ ] 동종동질물품 [ ]	
9. 원산지증명서 발급·작성주체	기관 [ ] 자물(수출자) [ ] 자물(생산자) [ ] 자물(수입자) [ ]	
10. 원산지 (생산지역 주소 및 우편번호)	11. 기관명 및 종류	국가기관 상공회의소 비국가기관(기타)
12. 발급·작성 번호	13. 발급·작성일	
14. 총순증량	15. 적출국	
16. 적출항	17. 출항일	18. 환적국
19. 환적항	20. 환적일	
21. 연결원산지 증명서발급 국가	22. 제3국 수출장 발급국가	
23. 원산지인증 수출자번호	24. 협정적용 순증량	
25. 분할차수	26. 품목번호 (HS No.)	27. 협정관세율 (관세율구분부호)
28. 원산지결정 기준	원산지결정기준: 원산지제외로만 생산기준 [ ] 세번변경기준 [ ] 결합기준 [ ] 원산지제외로만 생산기준 [ ] 세번변경기준 [ ] 기타원산지기준 [ ] 특별공정기준 [ ] 부가가치기준 [ ] 결합기준 [ ] 특별공정기준 [ ] 부가가치기준 [ ] 역외가공기준 [ ] 기타원산지기준 [ ] 역외가공기준 [ ] 기타원산지기준 [ ] 차용발급 [ ] 차용발급 [ ]	

「자유무역협정의 이행을 위한 관세법의 특례에 관한 법률」 제8조·제9조에 따라 위와 같이 협정관세 적용 신청을 합니다.

신청인: 년 월 일 (서명 또는 인)

○○ 세관장 귀하

### 협정관세 적용신청서 (을지)

(5쪽 중 제2쪽)


5. 란 번호			
6. 품명·모델·규격			
7. 신청일 및 적용법령	신청일:	신청일:	신청일:
	적용법령: 법 제8조제1항 <input type="checkbox"/> 법 제9조제1항 <input type="checkbox"/> 법 제9조제2항 <input type="checkbox"/>	적용법령: 법 제8조제1항 <input type="checkbox"/> 법 제9조제1항 <input type="checkbox"/> 법 제9조제2항 <input type="checkbox"/>	적용법령: 법 제8조제1항 <input type="checkbox"/> 법 제9조제1항 <input type="checkbox"/> 법 제9조제2항 <input type="checkbox"/>
8. 원산지증빙서류 종류	원산지증명서 [ ]	원산지증명서 [ ]	원산지증명서 [ ]
	사전심사서 [ ] 동종동질물품 [ ]	사전심사서 [ ] 동종동질물품 [ ]	사전심사서 [ ] 동종동질물품 [ ]
9. 원산지증명서 발급·작성주체	기관 [ ]	기관 [ ]	기관 [ ]
	자물(수출자) [ ] 자물(생산자) [ ] 자물(수입자) [ ]	자물(수출자) [ ] 자물(생산자) [ ] 자물(수입자) [ ]	자물(수출자) [ ] 자물(생산자) [ ] 자물(수입자) [ ]
10. 원산지(생산지역 주소 및 우편번호)			
11. 기관명	국가기관 [ ]	국가기관 [ ]	국가기관 [ ]
기관종류	상공회의소 [ ]	상공회의소 [ ]	상공회의소 [ ]
	비국가기관(기타) [ ]	비국가기관(기타) [ ]	비국가기관(기타) [ ]
12. 발급·작성번호			
13. 발급·작성일			
14. 총순증량			
15. 적출국			
16. 적출항			
17. 출항일			
18. 환적국			
19. 환적항			
20. 환적일			
21. 연결원산지 증명서발급국가			
22. 제3국 수출장 발급국가			
23. 원산지인증 수출자 번호			
24. 협정적용 순증량			
25. 분할차수			
26. 품목번호(HS No.)			
27. 협정관세율(관세율구분부호)			
28. 원산지결정기준	원산지결정기준: 원산지제외로만 생산기준 [ ] 세번변경기준 [ ] 결합기준 [ ] 원산지제외로만 생산기준 [ ] 세번변경기준 [ ] 기타원산지기준 [ ] 특별공정기준 [ ] 부가가치기준 [ ] 결합기준 [ ] 특별공정기준 [ ] 부가가치기준 [ ] 역외가공기준 [ ] 기타원산지기준 [ ] 역외가공기준 [ ] 기타원산지기준 [ ] 차용발급 [ ] 차용발급 [ ]	원산지결정기준: 원산지제외로만 생산기준 [ ] 세번변경기준 [ ] 결합기준 [ ] 원산지제외로만 생산기준 [ ] 세번변경기준 [ ] 기타원산지기준 [ ] 특별공정기준 [ ] 부가가치기준 [ ] 결합기준 [ ] 특별공정기준 [ ] 부가가치기준 [ ] 역외가공기준 [ ] 기타원산지기준 [ ] 역외가공기준 [ ] 기타원산지기준 [ ] 차용발급 [ ] 차용발급 [ ]	원산지결정기준: 원산지제외로만 생산기준 [ ] 세번변경기준 [ ] 결합기준 [ ] 원산지제외로만 생산기준 [ ] 세번변경기준 [ ] 기타원산지기준 [ ] 특별공정기준 [ ] 부가가치기준 [ ] 결합기준 [ ] 특별공정기준 [ ] 부가가치기준 [ ] 역외가공기준 [ ] 기타원산지기준 [ ] 역외가공기준 [ ] 기타원산지기준 [ ] 차용발급 [ ] 차용발급 [ ]

Appendix 3 Certificate of Origin of KR-US FTA

<b>Certificate of Origin</b>					
<b>Korea-US Free Trade Agreement</b>					
<b>1.Exporter</b> (수출자)	Name (성명)	Prestige Laver Co.,Ltd.		<b>2. Blanket Period</b> (원산지포괄증명기간) YYYY MM DD YYYY MM DD (년) (월) (일) (년) (월) (일) From 2019 / 10 / 02 To 2020 / 10 / 01 (부터)(까지)	
	Address(주소)	139, Huirisan-gil, Jongcheon-myeon, Seocheon-gun, Chungcheongnam-do, Republic of Korea			
	Email(전자주소)	maros43@daum.net			
<b>3.Producer</b> (생산자)	Name (성명)	Prestige Laver Co.,Ltd.		<b>4.Importer</b> (수입자)	Name (성명)
	Address(주소)	139, Huirisan-gil, Jongcheon-myeon, Seocheon-gun, Chungcheongnam-do, Republic of Korea			Address(주소)
	Email(전자주소)	maros43@daum.net			Alt(회주)
			Telephone(전화)		
<b>5. 원산지 증명 대상 물품 내역</b>					
Serial No. (연번)	Description of Good(s) (품명 · 규격)	Quantity & Unit (수량 및 단위)	HS No.	Preference Criterion (원산지결정기준)	Country of Origin (원산지 국가)
1			200899	PSR	Republic of Korea
2			200899	PSR	Republic of Korea
3			200899	PSR	Republic of Korea
<b>6. Observations: None</b> (특이사항)					

<p>I certify that:          본인은 다음 사항을 확인합니다.          -The information in this document is true and accurate and I assume the responsibility for proving such representations.          I understand that I am liable for any false statements or material omissions made on or in connection with this document.          상기 서식에 기재된 내용은 사실이고 정확하며, 기재된 사항에 대한 책임은 본인에게 있습니다. 이 증명서 또는 이와 관련한 허위 진술 또는 증대한 사실 누락에 대해서는 본인에게 책임이 있음을 확인합니다.          I agree to maintain, and present upon request, documentation necessary to support this Certificate, and to inform, in writing, all persons to whom the Certificate was given of any changes that would affect the accuracy or validity of this Certificate.          본인은 이 증명서를 입증하는데 필요한 문서를 보관하며, 요청이 있을 경우 이를 제출할 뿐 아니라, 이 증명서의 정확성이나 유효기간에 영향을 미치는 여타 변동사항에 대해서 이 증명서를 받은 관계자들에게 서면으로 통보할 것에 동의합니다.          The goods originate in the territory of one or both Parties and comply with the origin requirements specified for those goods in the Korea -United State of America Free Trade Agreement.          해당 물품은 대한민국과 미합중국간의 자유무역협정에 따른 원산지결정기준을 충족하고 있음을 확인합니다.          This Certificate consists of __1__ pages, including all attachments.          이 증명서는 첨부서류를 포함하여 총_1_장으로 구성되어 있습니다.</p>	
Authorized Signature (서명권자의 서명)	Company (회사명)
Name: (작성자 서명)	Title <b>C.E.O</b> (직위)
YYYYMMDD (년월일) <b>2019/10/02</b>	Telephone : 82-41-953-5555 Fax: 82-41-8958 (전화번호) (팩스번호)

Appendix 4 A8A form

 Canada Border Services Agency Agence des services frontaliers du Canada		Acquittal No. - N° de l'acquittement				
<b>IN BOND</b> <b>EN DOUANE</b>		<b>CARGO CONTROL DOCUMENT</b> <b>DOCUMENT DE CONTRÔLE DU FRET</b>				
U.S. port of exit - Bureau de sortie des É.-U.		In transit - En transit				
Manifest from - Manifeste de		To - À				
Consignee name and address - Nom et adresse du destinataire		Carrier code - Code du transporteur		Cargo control No. - N° de contrôle du fret		
Shipper name and address - Nom et adresse de l'expéditeur		Previous cargo control No. - N° de contrôle du fret antérieur				
No. of pkgs. Nombre de colis	Description and marks Désignation et marques	Weight Poids	Rate Taux	Advances Avances	Prepaid Port payé	Collect Port dû
Foreign point of lading - Port de chargement étranger		Location of goods - Emplacement des marchandises				
Name of carrier - Nom du transporteur		Conveyance identification - Identification du moyen de transport				

A8A(B) (18)



## Appendix D

### Form [A8A\(B\), In Bond - Cargo Control Document](#), Completion Instructions

The following outlines information to be shown on the CCD. For the data elements required on electronic ACI/eManifest reports for the air and marine modes, see [Memorandum D3-2-1, Air Pre-arrival and Reporting Requirements](#) and [Memorandum D3-5-1, Marine Pre-load/Pre-arrival and Reporting Requirements](#).

**U.S. Port of Exit** — Indicate the United States border crossing, both city/town and state, for all shipments invoiced from the United States. For goods invoiced from the United States that are entering Canada in the service of an air carrier, indicate the US CBP port where the goods are loaded on the aircraft which is to carry the goods to Canada. For transborder air shipments that enter Canada in the service of a highway carrier, indicate the US CBP port at which or nearest to which the highway carrier crosses the border of the United States into Canada.

The U.S. Port of Exit Codes listed in Appendix H, List 6, of [Memorandum D17-1-10, Coding of Customs Accounting Documents](#), may be used in lieu of the city/town and state name.

**In-transit** — Indicate the country of final destination.

**Manifest from** — Indicate the CBSA office where the goods are reported.

**To** — Indicate the CBSA office where the goods are to be released/destined. The CBSA offices are listed in the Directory of CBSA Offices available on the [CBSA website](#). Where the destination has more than one sufferance warehouse for the applicable mode of transport (for example, Toronto), the name of the receiving CBSA office must be followed by the name, abbreviation or code of the intended warehouse of clearance (for example, Toronto-498).

**Consignee Name and Address** — For imports: Indicate the name and address of the person (company) in Canada to whom the goods are being shipped. For in-transit and FROB shipments: Indicate the name and address of the person (company) that is the ultimate consignee.

**Shipper's Name and Address** — Indicate the name and address of the person or firm shipping the goods.

**Acquittal No.** — To be completed by importer/broker or the CBSA.