

## **The Evolution of Outward Processing Scheme in Korea's FTAs: *The Case of the Gaeseong Industrial Complex in Korea-ASEAN and Korea-Vietnam FTA\****

**Jeongjoon Park**

*South-North Korean trade, also often referred to as inter- or Intra-Korean trade, is politically and diplomatically justifiable but legally controversial. Under the GATT and WTO regime, regardless of kind, a treatment by a Member 'nation' to another must immediately and unconditionally be applied to all other Member countries in the equal manner. Because under the South Korean Constitution, North Korea is not identified as a 'nation' but a partial territory of the Korean peninsula, all the goods delivered in and out between the two are therefore duty-free – that is to say, no tariff is applied. From the other parts of the world, however, both South and North Korea are the independent Members of the UN, and thus provoke the non-discriminatory treatment irony. South Korea runs the Gaeseong Industrial Complex on North Korean soil, and has constantly included the special consideration for the products manufactured in the Complex and carried into South Korea under the name of outward processing scheme (OPS) in order to label them as originating from South Korea. This paper investigates the changes and developments made within such frame, particularly based upon the present schemes in Korea-ASEAN and Korea-Vietnam FTA, then suggests a more advanced model, which could be considered in Korea's future FTA negotiations.*

**Keywords:** *Inter-Korean Trade, Gaeseong Industrial Complex, Outward Processing Scheme, Korea-ASEAN FTA, Korea-Vietnam FTA*

### 1. INTRODUCTION

South Korea's economic development is miraculous. Kim (2015) remembers that "Korea, a small nation in Asia, has been overcoming the difficulties of post-war circumstances and has shown the remarkable economic development and cultural sophistication in half a century" (Kim et al., 2015: 7). Therefore, South Korea's economic miracle – or 'development style' – is often considered a very interesting subject of study, and also treated as an exemplar case for many other developing countries. SaKong (2013) well summarizes the fashion of the economic development as follows:

The transformation of the Korean economy can be summarized [by using] two [key]words – industrialization and globalization. The share of the industrial sector (manufacturing, construction, and public utilities) in total value-added more than doubled from 17 percent in the 1950s to 38 percent in the 1980s, and has fluctuated around this level ever since. The service sector has also increased its share from 41 percent in the 1950s to 60 percent in the 2000s. By

---

\* The author would like to thank Professor Dukgeun Ahn of the Graduate School of International Studies, Seoul National University and Ms. Min-sun Lee, the certified customs consultant of the Ciel PLUS Customs Brokerage Corporation for their helpful comments. He also expresses his gratitude to the anonymous referees and the editorial board.

contrast, the primary sector has experienced a precipitous fall in its share from 42 percent to 3 percent in the same period. Along with rapid industrialization, integration into the global economy accelerated, as indicated by the total trading volume, which rose from about 10 percent of the gross domestic product (GDP) in the 1950s to 80-90 percent in recent years. Cross-border capital flows also increased rapidly during this period.

The industrialization of the Korean economy has been greatly affected by the globalization trend. International trade offered a vast global market for Korean producers. It also enabled them to import intermediate goods and advanced technologies needed for the production of export goods. At the beginning, the international division of labor prompted the growth of labor-intensive industries in which Korea had a comparative advantage. These industries absorbed surplus labor from rural areas and contributed to an increase in the per capita income and the savings rates. Later, as capital accumulation progressed, the comparative advantage shifted from labor-intensive to capital-intensive industries, and the latter began to dominate industrial production and exports. Per capita income continued to grow rapidly as productivity improved. (SaKong and Koh, 2013: 2)

In summary, “[o]ver the past six decades, South Korea has experienced rapid growth and industrialization. During this period, international trade played a critically important role and the government heavily intervened in the market, especially during the 1960s and 1970s. For this reason, Korea’s growth is often characterized as ‘export-led’ and ‘government-led’” (SaKong and Koh, 2013: 120). While South Korea has reached its economic peak and turned over a new leaf as an economic powerhouse of Northeast Asia and the world with its successful trade policies until today, joining the GATT and WTO in 1967 and 1995 respectively, certainly provided a momentum to kick-start its economy. As shown below in Table 1, after the slow pace of the increase in both total import and export volumes from 1955 to 1967, it invited a significant boost after South Korea’s ‘GATT-era’ begins in the year 1968.

Under the auspices of the world trading regulations of the GATT and WTO, South Korea has continued to pursue more opened and aggressive trade policies, continuously leading to more economic growth. It should be recalled that “[u]nlike previous rounds, Korea played an active role during the UR<sup>1</sup> process, increasing its tariff binding from 24 percent to 90 percent and reducing its tariffs by 54 percent. In services trade, the country conceded 78 items out of 155. The stricter rules governing the dispute settlement process were beneficial to Korea [...]” (SaKong and Koh, 2013: 138). South Korea in conformance with the WTO system is therefore crucial for its future economic success.

Meanwhile, South Korea faces an original dilemma historically, politically and diplomatically. The peninsula which it is located in is divided between North and South Korea after the World War II, and more correctly since the ceasefire of the Korean War in 1953. Embracing undesirable and regretful fact that Korea is the only remaining divided country in the world, internal economic cooperation and trade between South and North Korea had been considered a very meaningful and important link, connecting the two parts. In spite of ‘another ceasefire’ at the Gaeseong Industrial Complex soon after this year’s UN Resolution 2270, “[t]he Government of Korea, in fact, has enhanced the economic cooperation [and diplomatic tie] with the North through [...] [the] Complex” (Ahn and Park,

---

<sup>1</sup> Uruguay Round (1986-1994).

**Table 1.** Korea's Imports and Exports [around the GATT accession] (1955-1970) (SaKong and Koh, 2013:125-126)

(Unit: million dollars)

	Total Imports	Exports				
		Total Exports	Manufactures			Non-manufactures
			Total Manufactures	SITC <sup>2</sup> 6+8	SITC 5+7	
1955	341.4	18.0	1.6	1.3	0.3	16.3
1956	386.1	24.6	2.5	2.3	0.2	22.1
1957	442.2	22.2	4.1	4.0	0.1	18.1
1958	378.2	16.5	2.6	2.5	0.0	13.9
1959	303.8	19.8	2.4	2.2	0.1	17.4
1960	343.5	32.8	4.5	4.0	0.5	28.3
1961	316.1	40.9	6.2	4.8	1.5	34.6
1962	421.8	54.8	10.6	8.2	2.4	44.2
1963	560.3	86.8	39.5	34.5	5	47.3
1964	404.4	119.1	58.3	55.5	2.8	60.7
1965	463.4	175.1	106.8	100.9	5.9	68.3
1966	716.4	250.3	153.6	143.4	10.3	96.7
1967	996.2	320.2	215.2	198.6	16.6	105.1
1968	1,462.9	455.4	338.2	310.6	27.6	117.2
1969	1,823.6	622.5	479.1	416.1	63.0	143.4
1970	1,984.0	835.2	646.3	573.4	72.9	188.9

Source: Bank of Korea, Economic Statistics Yearbook, various issues.

2014: 140). "Under the regulations of the WTO system, however, the issues in internal trade could no longer be a sole problem of the two Koreas, but often cause controversies, particularly related to non-discriminatory treatment measure" (Ahn and Park, 2014: 169). Ahn (2005) explains the legal controversy that:

The imminent legal issues regarding the internal trade of South-North Korea are non-discrimination – specifically, the most-favoured-nation (MFN) – requirement under the WTO

<sup>2</sup> Standard International Trade Classification.

Agreements. Indeed, this issue is contingent on how North Korea is considered in the WTO system. In case North Korea is treated as a country or at least an entity that has sufficient legal status to become an independent WTO Member, the WTO Agreements mandate MFN treatment for other members based on “any advantage, favor, privilege or immunity”<sup>3</sup> accorded to the like product originating in or destined for the territories of North Korea.

In terms of strict legal stipulations, there is a subtle difference in the WTO Agreements concerning the MFN obligation. While most other WTO Agreements stipulate MFN obligations on the basis of a “Member” that embraces both states and “separate customs territory possessing full autonomy in the conduct of its external commercial relations”<sup>4</sup>, Article I of the GATT and Article II of the GATS require MFN treatment based on treatment accorded to like products and services of any other “country.”<sup>5</sup> (Ahn, 2005: 367)

The sense of sovereignty could possibly permit South Korea to operate the Gaeseong Industrial Complex in North Korean territory, politically and legally justified. Yet, bringing the manufactured goods from there into the South ‘duty-free,’ or seeking for the opportunities to export to overseas as ‘South Korean-origin’ could trigger a serious controversy under the world trading system, ruled by the GATT and the WTO as explained above. For such reason, South Korea since the FTA with Singapore in 2006, has always inscribed related exceptional provision named OPS for last 10 years and in 14 different FTAs.

This paper first briefly investigates three different models of OPS in Korea’s 14 FTAs from 2006 to 2015, and then compares the Korea-ASEAN FTA model – particularly, Vietnam’s – of 2007 and Korea-Vietnam FTA’s bilateral model of 2015. It analyzes the difference and development made in the 8-year spectrum of the experience, targeting the same country, which is Vietnam. At the end, the paper suggests the ideal model of OPS for Korea’s future FTA negotiations so that its economic and political cooperation with the

---

<sup>3</sup> See the GATT 1947 Article I for the full legal text on *General Most-Favoured-Nation Treatment*.

<sup>4</sup> See the Marrakesh Agreement establishing the WTO Article XII *Accession* for the full text.

<sup>5</sup> In his writing, Ahn continuously explains the reason why North Korea’s identity is controversial. He writes that “[a]lthough there is still domestic controversy about whether South and North Korea recognize each other as a state within their own constitutional systems, both parties simultaneously joined the United Nations on September 17, 1991 as independent members under the name of ‘Republic of Korea’ and ‘Democratic People’s Republic of Korea.’ Since the United Nations demands a ‘state’ entity for its membership requirement, the mutual accession to the United Nations seems to imply bilateral as well as international recognition of a ‘state’ status for both parties. Therefore, it is very likely that both parties are treated as independent members in the context of WTO Agreements unless they are substantially reunified. Moreover, considering UN membership, the MFN requirement based on treatment accorded to the other ‘country’ would also be applied” (Ahn, 2005: 367-368). He also provided earlier on his writing about the WTO perspective that “[t]he WTO, as an international trade organization, demands that an accession applicant be at least a ‘separate customs territory possessing full autonomy in the conduct of its external commercial relations and of other matters provided for in this Agreement.’ Accordingly, Hong Kong and Macao secured independent membership status on January 1, 1995 and Chinese Taipei joined the WTO on January 1, 2002 as the ‘Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.’ It implies that in case North Korea is to be addressed under the WTO system, it would certainly ensure independent membership status.” (Ahn, 2005: 362)

North could still be justified and continue its contribution in terms of global security and eventual reunification.

## 2. OUTWARD PROCESSING SCHEME IN KOREA'S FTAs

Rules of origin has arisen as a more important criterion as FTAs flourish, but also has become more complicated with the diversified and complex Global Value Chain (GVC). It is very usual to understand the exporting party as the origin, and any preferences or privilege given by importing country under the FTA is therefore supposed to be granted to that exporting party only. Yet, some FTAs in the past and present often give special consideration to the rules of origin called OPS and have made the rules of origin even more intricate. Komuro (2009) recognizes the scheme as "an exception to the territoriality principle" (Komuro, 2009: 9) and explains "[t]he scheme permits the exporting Party to manufacture goods using a non-Party's labour in the midst of the manufacturing process and claim preferences for the final goods to the importing Party. Under the scheme, final goods exported to the importing Party need not be manufactured without interruption in the exporting Party's territory" (Komuro, 2009: 9).

The scheme is well utilized in mainly two different occasions. First, when a country's land area is confined, being unable to have all-stage processing bases set up in the territory, the scheme enables some manufacturing interruption from the outward. Secondly, it is also readily applied when two adjacent nations could freely interact in delivering original materials and half- or partly-manufactured goods in the process of producing the final goods. Based on this understanding, the OPS has a relatively long and widespread history in European and some Asian regions, for instance, from European Free Trade Association (EFTA),<sup>6</sup> Israel, Singapore to South Korea.

As mentioned above, South Korea has always negotiated for such scheme, seriously taking account of its exceptional circumstance with North Korea and the Gaeseong Industrial Complex, after its FTA with Chile. Korea could not include the scheme in its FTA with Chile which was negotiated from 1999 to 2003 and entered into force as of April 1, 2004, because, the date when the first product manufactured in Gaeseong came out was December 15, about 8 months later the Agreement was already launched. For that reason, Korea-Chile FTA is the only FTA that Korea has agreed, completed or entered into force without such scheme.

In Korea's other 14 FTAs, the OPS are present and based upon the geographical location of industrial complexes and the amount of conceded products for outward processing, 3 different models are introduced. They are the Gaeseong Industrial Complex (GIC)-Limited, Committee, and the GIC-Plus models (Ahn and Park, 2014: 162-166). Table 2 below briefly summarizes the three different models.

---

<sup>6</sup> According to Komuro (2009) "[h]istorically speaking, the EFTA has been very active in promoting the outward processing scheme" (Komuro, 2009: 20), and it is continued that "EFTA introduced the scheme for the first time in the history into its FTA with Turkey, signed on 10 December 1991 and entered into force on 1 April 1992" (Komuro, 2009: 20).

**Table 2.** The Outward Processing Models for the Gaeseong Industrial Complex in Korea's FTAs

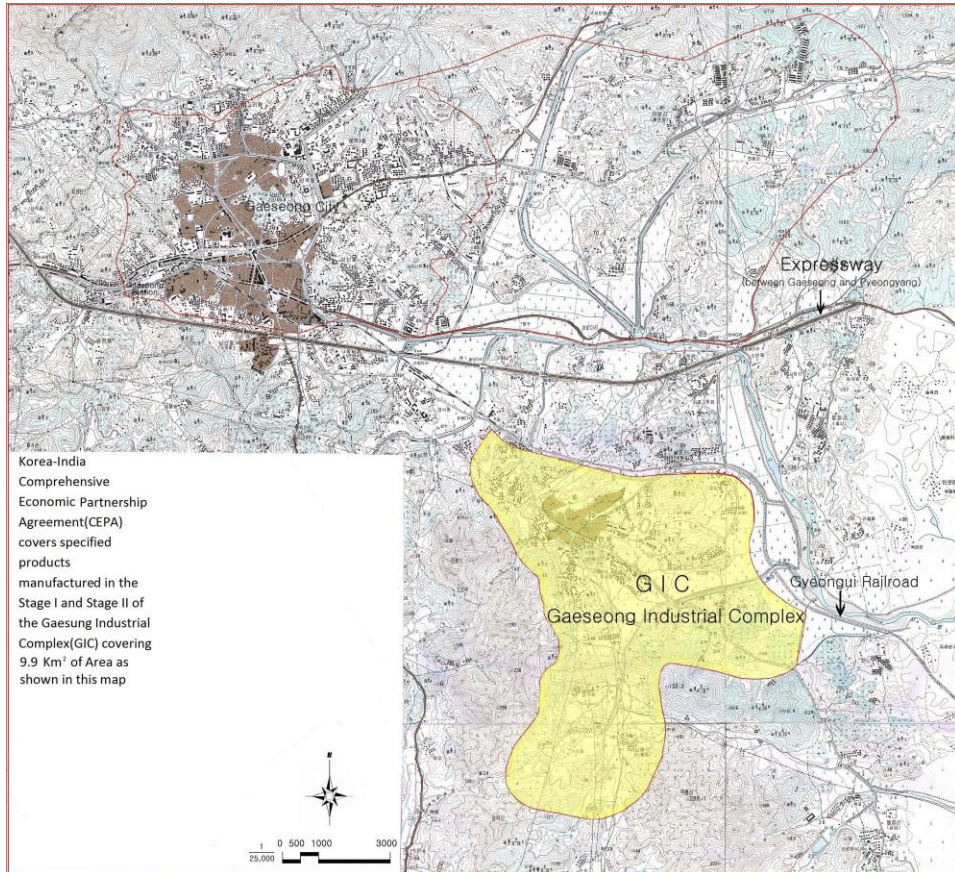
No.	Type	Coverage	FTAs with (the year into effect)
1	GIC-Limited	<ul style="list-style-type: none"> <li>- the location of the industrial Complex is strictly limited to original Gaeseong area;</li> <li>- the limited number of products for exceptional treatment</li> <li>- strong rate-limit in the total value of non-originating input</li> </ul>	India (2010) Peru (2011) Colombia (2015)
2	Committee	<ul style="list-style-type: none"> <li>- exceptions for the Gaeseong Industrial Complex is not permitted</li> <li>- the Committee is to be established in the future to review the provisions</li> <li>- often requires preconditions like the environmental, labor, and wage standards and practices and so forth</li> </ul>	The European Union (2011) The United States (2012) Turkey (2013) Australia (2014) Canada (2015) New Zealand (2015)
3	GIC-Plus	<ul style="list-style-type: none"> <li>- other than Gaeseong Industrial Complex is also considerable</li> <li>- broader coverage of products</li> <li>- the list of products covered to be updated to meet the true needs of the manufacturers</li> </ul>	Singapore (2006) EFTA (2006) ASEAN (2007) China (2015) Vietnam (2015)

### 2.1 The GIC-Limited Model

The GIC-Limited Model is found in South Korea's FTAs with India, Peru and Colombia. The Model acknowledges the outward processing from the city of Gaeseong, however, in a restricted manner. For example, Korea-India FTA (officially named Korea-India Comprehensive Economic Partnership Agreement, also known as Korea-India CEPA) it limits the areal condition by including a geographic map of the certain area of the Gaeseong as shown in Figure 1. More specifically it provides exceptional territorial regulation which the special understanding of outward processing and grant of the South-Korean origin are "limited to goods which undergo working or processing in an area of 9.9 Km<sup>2</sup> of the Gaeseong Industrial Complex in North Korea as identified in the map, which is authenticated and attached to this letter"

Not only geographically limited, but also the conceded products by the Indian Government are limited in number. The number of covered products is only 108, which is attached in an Appendix 3-B-1 naming "product list subject to exemption from the principle of territoriality." Next, possibly because of its common and shared Latin identity, Korea's FTAs with Peru and Colombia have somewhat similar outward processing treatments in the texts. While both FTAs indicate the total value of non-originating or outward processing – that is to say from the Gaeseong Industrial Complex – input shall not exceed 40 percent of the Free-on-Board (FOB) price of the final product for which originating status – South-Korean origin – is to be claimed, Korea-Peru FTA also lists 100 products coverage that are

**Figure 1.** The Territorial Limitation for Outward Processing in the Gaeseong Industrial Complex in Korea-India FTA



from plastics, rubber, leather products, footwear and imitation jewelry to electrical machinery and equipment.

## 2.2 The Committee Model

Next Model is ‘Committee’ type. It is found in the most FTAs concluded by South Korea – 6 out of 14 FTAs include such clause. The agreements with the United States, the European Union, Turkey, New Zealand, Australia and Canada all adopt and institute this Model. This is what is considered the most conservative Model so far and usually the countries with strained ties with North Korea, especially the United States, due to the uncertainties and security dilemma caused by North Korea’s nuclear program likely to apply this Model. When an FTA contains this scheme in the agreement, it means that the Gaeseong Industrial Complex and its outward processing is currently neither recognized nor permitted. That is to say what is produced in the Complex is not South-Korean origin, but North Korean.

In most cases under this Model, it writes that the FTA parties are to “establish a Committee on Outward Processing Zones on the Korean Peninsula. The Committee shall

review whether conditions on the Korean Peninsula are appropriate for further economic development through the establishment and development of outward processing zones.”<sup>7</sup> Although having such ambiguous wordings like ‘conditions’ and ‘appropriate,’ at least the Model leaves the opportunity for the future negotiations to acknowledge the outwarding process in Gaeseong and specifically indicates when and how often the Committee shall be formed for discussion and evaluation. It varies from 6 months (in the Korea-Australia FTA) to 1 year (in the Korea-US and Korea-EU FTA) after the agreement takes effect, and meeting annually (in the Korea-US and Korea EU-FTA) or biannually (in the Korea-Australia FTA).

Not only denying the recognition of the outward processing from Gaeseong, but also some FTAs with this ‘Committee’ Model “establish criteria that must be met before goods from any outward processing zone may be considered originating goods for the purposes of [the] Agreement.” Typically speaking, the Korea-US FTA strictly and fastidiously describes such precondition to address relevant issues “including but not limited to: progress toward the denuclearization of the Korean Peninsula; the impact of the outward processing zones on

---

<sup>7</sup> The Korea-US FTA’s OPS is the most sophisticated and fastidious. Here is attached the full Annex 22-B, which describes the scheme:

#### ANNEX 22-B

#### COMMITTEE ON OUTWARD PROCESSING ZONES ON THE KOREAN PENINSULA

1. Recognizing the Republic of Korea’s constitutional mandate and security interests, and the corresponding interests of the United States, the Parties shall establish a Committee on Outward Processing Zones on the Korean Peninsula. The Committee shall review whether conditions on the Korean Peninsula are appropriate for further economic development through the establishment and development of outward processing zones.
2. The Committee shall be comprised of officials of each Party. The Committee shall meet on the first anniversary of the entry into force of the Agreement and at least once annually thereafter, or at any time as mutually agreed.
3. The Committee shall identify geographic areas that may be designated outward processing zones. The Committee shall establish criteria that must be met before goods from any outward processing zone may be considered originating goods for the purposes of this Agreement, including but not limited to: progress toward the denuclearization of the Korean Peninsula; the impact of the outward processing zones on intra-Korean relations; and the environmental standards, labor standards and practices, wage practices and business and management practices prevailing in the outward processing zone, with due reference to the situation prevailing elsewhere in the local economy and the relevant international norms.
4. The Committee shall determine whether any such outward processing zone has met the criteria established by the Committee. The Committee shall also establish a maximum threshold for the value of the total input of the originating final good that may be added within the geographic area of the outward processing zone.
5. Decisions reached by the unified consent of the Committee shall be recommended to the Parties, which shall be responsible for seeking legislative approval for any amendments to the Agreement with respect to outward processing zones.



intra-Korean relations; and the environmental standards, labor standards and practices, wage practices and business and management practices prevailing in the outward processing zone, with due reference to the situation prevailing elsewhere in the local economy and the relevant international norms." Before the Committee provides a positive review result, the outward processing zones on the peninsula may neither be recognized nor excused. Additionally, the Korea-Canada FTA interestingly mentions the objective of the Committee and its consideration for OPS is under the circumstance "[r]ecognising Korea's constitutional mandate and security interests, and the corresponding interests of Canada, and both Parties' commitment to promoting peace and prosperity on the Korean Peninsula, and the importance of intra-Korean economic co-operation toward that goal."

The Committee Model is rather interconnected with more of political and diplomatic understanding of North Korea and its security dilemma in relations with its nuclear and missile development than economic calculations. It, thus, often questions itself the possibility of future improvement or modification of the provision.

### 2.3 The GIC-Plus Model

The last and the most developed kind is so called the GIC-Plus Model. The FTAs with Asian nations usually entrust this Model, probably having a better understanding of South-North Korean relationship. Korea's FTAs with Singapore and EFTA that are effective since 2006, ASEAN from 2007, China and Vietnam both in effect from 2015 have applied this Model.

It is partially similar to the GIC-Limited Model which is explained above, however, embraces more broadly in terms of geographic and product coverages. The Korea-Singapore FTA has the most desirable geographical identification for South Korea's outward processing. In the original text of the Agreement, it states the certain definition of the outward processing zones as "the Gaesong<sup>8</sup> Industrial Complex and other industrial zones on the Korean Peninsula." It means the expansion of industrial complexes or zones elsewhere on the peninsula is technically and legally possible and recognizable when the products manufactured from there are to be exported to Singapore as South-Korean origin under this Agreement.

In case of Korea-China FTA, which seems to equip with the same clause, however, it is interesting that the FTA has indicated that the recognition of the geographic area for outward processing is "limited to the existing area of the industrial complex located and operated in the Korean Peninsula prior to the signing of this Agreement." In other words, at this point of time, though in force, the Agreement shall not acknowledge any other industrial complexes on the Korean peninsula other than the Gaeseong Industrial Complex as outward processing zones. Yet, under the Article 3.3,<sup>9</sup> it writes that "[t]he Parties shall establish a Committee on Outward Processing Zones under the auspices of the Joint Commission to perform [...] the review and designate the expansion of the existing Outward Processing Zone and the additional Outward Processing Zones." According to this original text, the Outward Processing Zones "shall refer to industrial zones in the Korean Peninsula. [and] The relevant

---

<sup>8</sup> The name of the city Gaeseong is in many different forms and spellings in Korea's FTAs. It varies from Gaeseong, Gaesong to Kaesung. Since this paper mainly and particularly discusses about Korea-ASEAN and Korea-Vietnam FTA, the name from the Agreements is used.

<sup>9</sup> *Treatment of Certain Goods*

authorities of the Parties shall discuss and agree on the relevant rules and procedures for the additionally designated Outward Processing Zones and the expansion of the existing Outward Processing Zones.” Therefore, under the Korea-China FTA in the future, the scope of outward processing area could spread all over the North Korean territory like in the Korea-Singapore FTA.<sup>10</sup>

However, when comparing the covered products range, the FTA with Singapore prevails China and other nations by having about 4,625 goods from the Gaeseong Industrial Complex recognized whereas the Korea-China FTA permits 310 products for outward processing in the same complex.<sup>11</sup> As for the reference, Korea-EFTA FTA has conceded 267 goods while its geographical limitation is similar to the previous cases. Both Korea-ASEAN and Korea-Vietnam FTA, also adopting the GIC-Plus Model, are to be compared and analyzed more in depth in the following.

### 3. THE OUTWARD PROCESSING SCHEME IN KOREA-ASEAN FTA: 2007 MODEL

Korea’s FTA with 10 ASEAN nations has taken effect since June 1, 2007. In spite of its presence for the last 9 years, however, Korea has reached another separate bilateral FTA with Vietnam for better balanced and more opened market access both for goods and services, being in force since the end of 2015. Because Vietnam is one of the ASEAN Members and both FTAs have special treatment for outward processing in the Gaeseong Industrial Complex, comparing the two coverages – both the GIC-Plus Model – and investigating the differences and developments could provide some clues for establishing even more advanced Model of OPS for the future negotiations.

The Korea-ASEAN FTA’s GIC-Plus Model of outward processing is written under Annex 3 Rules of Origin, in the Rule 6 as follows:

Rule 6  
Treatment for Certain Goods

Notwithstanding Rules 2, 4 and 5<sup>12</sup>, certain goods shall be considered to be originating even if the production process or operation has been undertaken in an area outside the territories of Korea and ASEAN Member Countries (i.e. industrial zone) on materials exported from a Party and subsequently re-imported to that Party. The application of this Rule, including the list of products and the specific procedures related to this application shall be mutually agreed upon by the Parties.

And in the later part of the Agreement text, the specially-exchanged notes between the

---

<sup>10</sup> More interestingly, it is often interpreted that such clause enables the Chinese could also operate the outward processing industrial complexes on North Korean soil. It means, the Chinese may invest and establish industrial complexes in North Korea for their outward processing, then manufacture goods, labelling Chinese-origin when exporting.

<sup>11</sup> Seemingly few, yet, the products conceded in the Korea-China FTA is likely to better reflect the actual production from today’s Gaeseong Industrial Complex, since it is a newer agreement.

<sup>12</sup> Rule 2 is *Origin Criteria*, Rule 4 is *Not Wholly Obtained or Produced Goods*, and Rule 5 is *Product Specific Rules*.

Parties provide more specific geographical scope that is to say, “goods which undergo working and processing in the industrial complex located in Gaeseong City and its surrounding area of North Korea and that the Government of the Republic of Korea ensures that its issuing authorities shall issue certificates of origin in accordance with Rule 6 and the Exchange of Notes regarding the Implementation and Monitoring of Rule 6 only to such goods.” More specifically, in accordance with Komuro (2009), there were two conditions to implement Rule 6 above for the OPS in the Agreement:

First, the total value of non-originating input may not exceed 40 percent of the FOB price of the final good for which originating status is claimed. The total value of non-originating input is broken down into the value of any non-originating materials added in an offshore non-Party and all other cost accumulated in other non-Parties, including transport costs. Compared to the 40 percent non-originating content test (i.e., a 60 percent originating content test based on the ex-works price) in the South Korea-EFTA FTA, the 40 percent originating content test (based on the FOB price) under the South Korea-ASEAN 10 FTA is less restrictive. The reason is that while ASEAN maintains a 40 percent content test for AFTA<sup>13</sup> and other FTAs with China and Japan, EFTA adheres to the traditional 60 percent content test.

Second, the value of originating materials exported from a Party may not be less than 60 percent of the total value of materials used in manufacturing the final good. Conversely, the use of non-originating materials including [Gaeseong] parts was allowed up to at most 40 percent of the total value of materials. This is the same as the 60 percent originating test under the South Korea-EFTA FTA (Komuro, 2009: 70-71).

The discretion to list what products to concede for the special treatment is given to each of 10 ASEAN nations, meaning that the Agreement has 10 different concession lists for outward processing in the Gaeseong Industrial Complex. Back then when the FTA negotiation was in progress, the Gaeseong Industrial Complex was producing and planning to produce about the total of 232 different types of goods, and under the Agreement, the Parties agreed on designating 100 products at the HS 6-digit level for each – in sum, it could be considered about 1,000 products including the overlaps. The products vary and relatively are well balanced from “textiles and footwear, certain electronic machinery or watches” (Komuro, 2009: 71).

**Table 3.** Top 5 Product Lines conceded in Korea-ASEAN FTA and produced in the Gaeseong Industrial Complex

	Clothes	Watches	Footwear	Textiles	Electronic Machinery
Conceded in Korea-ASEAN FTA	24.8%	17.9%	12.8%	9.1%	7.2%
Being Produced (or to be produced) in the Gaeseong Industrial Complex (232 Products)	26.7%	12.1%	12.5%	9.9%	8.5%

<sup>13</sup> ASEAN Free Trade Area

**Table 4.** The List of Goods conceded by Vietnam under the Korea-ASEAN FTA in 2007

HS 2002			HS 2007	
No	AHTN Code <sup>14</sup>	Product Description	AHTN Code	Product Description
1	292390	Other	292390	Other
2	420212	With outer surface of plastics or of textile materials:	420212	With outer surface of plastics or of textile materials
3	420219	Other:	420219	Other:
4	420291	With outer surface of leather, of composition leather or of patent leather:	420291	With outer surface of leather, of composition leather or of patent leather:
5	420292	With outer surface of plastic sheeting or of textile materials:	420292	With outer surface of plastic sheeting or of textile materials:
6	420299	Other:	420299	Other:
7	420321	Specially designed for use in sports	420321	Specially designed for use in sports
8	610719	Of other textile materials:	610719	Of other textile materials
9	610799	Of wool or fine animal hair	610799	Of other textile materials
10	610899	Of other textile materials:	610899	Of other textile materials
11	611720	Ties, bow ties and cravats:	ex611780 <sup>15</sup>	Other accessories:
12	620321	Of wool or fine animal hair	ex620329	Of other textile materials
13	620510	Of wool or fine animal hair	ex620590	Of other textile materials
14	621120	Ski suits:	621120	Ski suits
15	621141	Of wool or fine animal hair	621141	Of wool or fine animal hair
16	621142	Of cotton:	621142	Of cotton
17	621210	Brassieres:	621210	Brassieres
18	621220	Girdles and panty-girdles:	621220	Girdles and panty-girdles:
19	621290	Other:	621290	Other:
20	621310	Other:	ex621390	Of other textile materials

<sup>14</sup> ASEAN Harmonized Tariff Nomenclature Code

<sup>15</sup> According to the official Korea-ASEAN FTA text, “the prefix ‘ex’ is used to indicate that only a part of the subheading concerned is covered by the code number referred to in the left-hand column.”

HS 2002			HS 2007	
21	621320	Of cotton	621320	Of cotton
22	621390	Of other textile materials	ex621390	Of other textile materials
23	621410	Of silk or silk waste	621410	Of silk or silk waste
24	621420	Of wool or fine animal hair	621420	Of wool or fine animal hair
25	621430	Of synthetic fibres	621430	Of synthetic fibres
26	621490	Of other textile materials	621490	Of other textile materials
27	630251	Of cotton	630251	Of cotton
28	630253	Of man-made fibres:	630253	Of man-made fibres
29	630291	Of cotton	630291	Of cotton
30	630293	Of man-made fibres:	630293	Of man-made fibres
31	630391	Of cotton	630391	Of cotton
32	630392	Not knitted or crocheted, of cotton:	630392	Of synthetic fibres
33	640110	Footwear incorporating a protective metal toe-cap	630419	Other:
34	640191	Covering the knee	630492	Not knitted or crocheted, of cotton
35	640192	Covering the ankle but not covering the knee	640110	Footwear incorporating a protective metal toe-cap
36	640199	Other	ex640199	Other
37	640212	Ski-boots, cross-country ski footwear and snowboard boots	640192	Covering the ankle but not covering the knee
38	640199	Other	ex640199	Other
39	640212	Ski-boots, cross-country ski footwear and snowboard boots	640212	Ski-boots, cross-country ski footwear and snowboard boots
40	640219	Other	640219	Other
41	640230	Other footwear, incorporating a protective metal toe-cap	ex640291 ex640299	Covering the ankle: Other
42	640291	Covering the ankle	ex640291	Covering the ankle:
43	640299	Other	ex640299	Other

HS 2002			HS 2007	
44	640312	Ski-boots, cross-country ski footwear and snowboard boots	640312	Ski-boots, cross-country ski footwear and snowboard boots
45	640319	Other	640319	Other
46	640330	Footwear made on a base or platform of wood, not having an inner sole or a protective metal toe-cap	640391 640399	Covering the ankle Other
47	640340	Other footwear, incorporating a protective metal toe-cap	640340	Other footwear, incorporating a protective metal toe-cap
48	640351	Covering the ankle	640351	Covering the ankle
49	640359	Other	640359	Other
50	640391	Covering the ankle	640391	Covering the ankle
51	640399	Other	640399	Other
52	640411	Sports footwear; tennis shoes, basketball shoes, gym shoes, training shoes and the like	640411 640411	Fitted with spikes, cleats or the like Other
53	640419	Other	640419	Other
54	640420	Footwear with outer soles of leather or composition leather:	640420	Footwear with outer soles of leather or composition leather
55	640510	With uppers of leather or composition leather	640510	With uppers of leather or composition leather
56	640520	With uppers of textile materials	640520	With uppers of textile materials
57	640590	Other	645090	Other
58	640610	Uppers and parts thereof, other than stiffeners	640610	Uppers and parts thereof, other than stiffeners
59	640620	Outer soles and heels, of rubber or plastics	640620	Outer soles and heels, of rubber or plastics
60	640691	Of wood	640691	Of wood
61	640699	Of other materials:	640699	Of other materials:
62	701510	Glasses for corrective spectacles	701510	Glasses for corrective spectacles

HS 2002			HS 2007		
63	711311	Of silver, whether or not plated or clad with other precious metal:	711311	Of silver, whether or not plated or clad with other precious metal:	
64	711319	Of other precious metal, whether or not plated or clad with precious metal:	711319	Of other precious metal, whether or not plated or clad with precious metal:	
65	711320	Of base metal clad with precious metal:	711320	Of base metal clad with precious metal:	
66	711610	Of natural or cultured pearls	711610	Of natural or cultured pearls	
67	711620	Of precious or semi-precious stones (natural, synthetic, or reconstructed)	711620	Of precious or semi-precious stones (natural, synthetic or reconstructed)	
68	711711	Cuff-links and studs:	711711	Cuff-links and studs:	
69	711719	Other:	711719	Other:	
70	711790	Other:	711790	Other:	
71	847310	Parts and accessories of the machines of heading 84.69:	847310	Parts and accessories of the machines of heading 84.69:	
72	901380	Other devices, appliances and instruments:	901380	Other devices, appliances and instruments:	
73	910112	With opto-electronic display only	ex910119	Other	
74	910119	Other	ex910119	Other	
75	910121	With automatic winding	910121	With automatic winding	
76	910129	Other	910129	Other	
77	910199	Other	910199	Other	
78	910211	With mechanical display only	910211	With mechanical display only	
79	910212	With opto-electronic display only	910212	With opto-electronic display only	
80	910291	Electrically operated:	910291	Electrically operated:	
81	910299	Other:	910299	Other	
82	911110	Cases of precious metal or of metal clad with precious metal	911110	Cases of precious metal or of metal clad with precious metal	

HS 2002			HS 2007	
83	911120	Cases of base metal, whether or not gold- or silver-plated	911120	Cases of base metal, whether or not gold- or silver-plated
84	911180	Other cases	911180	Other cases
85	911190	Parts	911190	Parts
86	911290	Parts	911290	Parts
87	911310	Of precious metal or of metal clad with precious metal	911310	Of precious metal or of metal clad with precious metal
88	911320	Of base metal, whether or not gold- or silver-plated	911320	Of base metal, whether or not gold- or silver-plated
89	911390	Other	911390	Other
90	911410	Springs, including hair-springs	911410	Springs, including hair-springs
91	911420	Jewels	911420	Jewels
92	911430	Dials	911430	Dials
93	911440	Plates and bridges	911440	Plates and bridges
94	911490	Other	911490	Other
95	940490	Other:	940490	Other:
96	950210	Dolls, whether or not dressed	95030021	Dolls, whether or not dressed
97	950291	Garments and accessories therefor, footwear and headgear	95030022	Garments and garments accessories; footwear and headgear
98	950341	Stuffed	95030060	Stuffed toys representing animals or non-human creatures
99	950349	Other:	ex95030099	Other
100	950390	Other:	ex95030099 95030091 95030092 95030093	Other Toy counting frames (abaci); toy sewing machines; toy typewriters Skipping ropes Marbles



In the Korea-ASEAN FTA, each nation has its own independent list of products covered, and, more specifically in case of Vietnam in the Agreement, the discretion results comparatively identical. They also conceded textile materials, ties, ski-wears, underwears, cotton products, footwears, glasses, some jewelry products, dolls and so forth as shown in Table 4.

Since most ASEAN countries are considered economically less-developed than South Korea, it was known that they were reluctant and have strong feelings of wariness in negotiating special treatment provision for the Gaeseong Industrial Complex. In that sense, the Agreement officially states the provisions for both Annual Review<sup>16</sup> and Option of Rescinding.<sup>17</sup> Not sufficiently satisfied with such provisions and options included, as for the safety valve, Korea-ASEAN FTA also embraces Special Safeguard mechanism for the products of the Gaeseong Industrial Complex.<sup>18</sup> Considering the fact that Special Safeguards

---

<sup>16</sup> In the official Korea-ASEAN FTA text, the original article is written as follows:

5. The Annual Review

- (a) Parties shall review the implementation and operation of Rule 6 at the Implementing Committee which shall convene in accordance with paragraph 6 of Article 5.3 of the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Republic of Korea and the Member Countries of the Association of the Southeast Asian Nations. For this purpose:
  - (i) the exporting Party shall provide to the Implementing Committee a brief factual report on the operation of Rule 6, including export statistics of each good listed in the attached lists referred to in paragraph 1(a) to the importing Parties during the previous one-year period; and
  - (ii) the importing Party shall provide upon the request of the Implementing Committee information pertaining to denial of claims for preferential tariff treatment, if any, including the number of Certificates of Origin not accepted, and reasons for denial.
- (b) The Implementing Committee may request such additional information as it may consider necessary for its review of the implementation and operation of Rule 6 from the exporting Party.
- (c) Taking into account the result of the review provided for in subparagraph (a), the Implementing Committee may make recommendations as they may consider necessary.

<sup>17</sup> Ibid., the original text below:

6. Option of Rescinding

Anytime five years after the entry into force of the Agreement on Trade in Goods, an ASEAN Member Country will have an option of rescinding the application of this Note when it determines, on the basis of a review and on its own discretion, that its interests have been seriously damaged as a consequence of the application of Rule 6.

<sup>18</sup> Ibid., the original clause is stated as follows:

4. Special Safeguard

- (a) When a Party determines that there is an increase of importation of a good covered by Rule 6 into the territory of that Party in such quantities and under such conditions as to cause, or threaten to cause, serious injury to its domestic industry, that Party shall be free to suspend the application of Rule 6 to such a good for such a period of time as it may consider necessary to prevent or remedy such injury or threat to cause injury to the domestic industry of the Party.

measure is very unusually and exceptionally allowed and included in the Agreement on Agriculture under the GATT and WTO system,<sup>19</sup> it is a very unique feature that the FTA has instituted.

#### 4. THE OUTWARD PROCESSING SCHEME IN KOREA-VIETNAM FTA: 2015 MODEL

Vietnam is one of Korea's favorite destinations for investments. As shown below in Table 5, the importance of the bilateral trade has been more emphasized and increased in volume in recent years. Understanding both the significance of the Vietnamese market and weakness of the old FTA with ASEAN, South Korea has negotiated and launched the bilateral FTA with Vietnam in December, 2015. Vietnam had negotiated regarding the outward processing from the Gaeseong Industrial Complex with Korea during its negotiations for Korea-ASEAN FTA in the past, and re-negotiated the same provisions for its newer FTA in its bilateral agreement. Therefore, the comparison and investigation about the differences in two different provisions in two different Agreements in a closer manner could bring many legal and political implications.

**Table 5.** Korea's Trend of Trade with Vietnam

	(Unit: million dollars, %)				
	2011	2012	2013	2014	May, 2015
Export	13,551(40.4)	15,954(17.7)	21,088(32.2)	22,352(6.0)	11,280(24.3)
Import	5,084(52.6)	5,718(12.5)	7,175(25.5)	7,989(11.4)	3,380(18.7)
Trade Balance	8,467	10,236	13,912	14,361	7,900

Source: Korea Trade Information Service (KOTIS) from Korea International Trade Association (KITA).

- (b) A Party that intends to suspend the application of Rule 6 pursuant to subparagraph (a) shall notify to Korea two months in advance of the start of the suspension period and afford Korea an opportunity to exchange views with it in respect of the proposed suspension.
- (c) The period mentioned in sub-paragraph (a) of this paragraph may be extended provided that the Party has taken the action of suspension (hereinafter referred to as "Suspending Party") has determined that the suspension continues to be necessary to prevent or remedy injury.
- (d) In critical circumstances, where delay would cause damage which would be difficult to repair, the suspension of the application of Rule 6 under sub-paragraph (a) of this paragraph may be taken provisionally without two months advance notification to Korea, on the condition that notification shall be made before such suspension takes effect.
- (e) When a Party has made a determination mentioned in sub-paragraph (a) and the requirements set out in sub-paragraph (b) are fulfilled, the Party concerned may suspend the application of Rule 6 unilaterally and unconditionally, including as follows:
  - (i) there shall be no obligation to prove that there is serious injury;
  - (ii) there shall be no obligation for advance consultation;
  - (iii) there shall be no limit to the duration or frequency of suspension; and
  - (iv) there shall be no obligation for compensation.

<sup>19</sup> The related clause can be found in Part III Article 5 *Special Safeguard Provisions* of the Agreement on Agriculture from the official legal texts of the WTO Agreement.

The OPS in the Korea-Vietnam FTA is also and still considered the GIC-Plus Model, but a little different than what Vietnam previously agreed upon under the Korea-ASEAN FTA, more accurately speaking, it is a little more upgraded and updated in some sense.

The special understanding of outward processing in the Korea-Vietnam FTA is handled in Article 3.5 Treatment for Certain Goods under Chapter 3 Rules of Origin and Origin Procedures and Annex 3-B. The clause is written in a similar manner as the one in the Korea-ASEAN FTA. It says:

Article 3.5: Treatment for Certain Goods

Notwithstanding Article 3.1, 3.3 and 3.4,<sup>20</sup> certain goods shall be considered to be originating even if the production process or operation has been undertaken in the Gaeseong Industrial Complex located in the Korean Peninsula, on materials exported from a Party and subsequently re-imported to that Party provided that the conditions set out in Annex 3-B are fulfilled.

The Annex 3-B which has more details and sophisticated clauses about outward processing from Gaeseong Industrial Complex is also structured alike to the architecture of the same scheme in the Korea-ASEAN FTA. More specifically, the Korea-Vietnam FTA also has Special Safeguard mechanism, providing against a sudden and unpredicted import surge and Annual Review requirement. But, it excluded the Option of Rescinding. Meanwhile, like in the Korea-ASEAN FTA, “the total value of non-originating input<sup>21</sup> does not exceed 40 percent of the FOB price of the final good for which originating status is claimed” in the Korea-Vietnam FTA.

The product coverage is the most interesting feature in the Korea-Vietnam FTA. The list of goods covered under the Agreement for the special outward processing treatment is attached in the same Annex, having 100 products. In terms of quantity, it is not different than what it had in the Korea-ASEAN FTA. In quality, however, the line of goods is significantly modified compared to what Vietnam conceded about 9 years ago during the Korea-ASEAN FTA negotiations. During the process of composition of the list for its bilateral FTA with Vietnam, the Government of Korea conducted a survey targeting the current manufacturers at the Gaeseong Industrial Complex to discover their true needs, present and planned production for their expected exportation. Even though the list covers the same amount of products as in the Korea-ASEAN FTA, the list in the Korea-Vietnam FTA better reflects the realistic demand and expectation of the local firms at the Complex. The Table 6 illustrates the list of goods conceded by Vietnam in its FTA with South Korea in effect since 2015.

---

<sup>20</sup> Article 3.1 is *Origin Criteria*, and Article 3.3 is about *Not Wholly Obtained or Produced Goods* while Article 3.4 is about *Product Specific Rules*.

<sup>21</sup> According to the official Korea-Vietnam FTA text, it says “[t]otal value of non-originating input’ shall mean the value of any non-originating materials added inside as well as any materials added and all other cost accumulated outside Korea and [Vietnam], including transport costs.”

**Table 6.** The List of Goods conceded by Vietnam under the Korea-Vietnam FTA in 2015

No	HS 2012	Product Description
1	121221	Fit for human consumption
2	321310	Colours in sets
3	340700	Modelling pastes, including those put up for children's amusement; preparations known as "dental wax" or as "dental impression compounds", put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms; other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulphate).
4	350610	Products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg
5	391740	Fittings
6	392310	Boxes, cases, crates and similar articles
7	392329	Of other plastics
8	392350	Stoppers, lids, caps and other closures
9	392690	Other
10	401699	Other
11	420229	Other
12	481940	Other sacks and bags, including cones
13	520839	Other fabrics
14	550932	Multiple (folded) or cabled yarn
15	560811	Made up fishing nets
16	580421	Of man-made fibres
17	581092	Of man-made fibres
18	610230	Of man-made fibres
19	610290	Of other textile materials
20	610711	Of cotton
21	610791	Of cotton
22	610821	Of cotton
23	610822	Of man-made fibres

No	HS 2012	Product Description
24	610891	Of cotton
25	610910	Of cotton
26	610990	Of other textile materials
27	611011	Of wool
28	611120	Of cotton
29	611130	Of synthetic fibres
30	611522	Of synthetic fibres, measuring per single yarn 67 decitex or more
31	611529	Of other textile materials
32	611594	Of wool or fine animal hair
33	611595	Of cotton
34	611596	Of synthetic fibres
35	611599	Of other textile materials
36	620113	Of man-made fibres
37	620119	Of other textile materials
38	620193	Of man-made fibres
39	620211	Of wool or fine animal hair
40	620213	Of man-made fibres
41	620293	Of man-made fibres
42	620312	Of synthetic fibres
43	620319	Of other textile fibres
44	620331	Of wool or fine animal hair
45	620333	Of synthetic fibres
46	620341	Of wool or fine animal hair
47	620342	Of cotton
48	620343	Of synthetic fibres
49	620433	Of synthetic fibres
50	620443	Of synthetic fibres

No	HS 2012	Product Description
51	620453	Of synthetic fibres
52	620462	Of cotton
53	620463	Of synthetic fibres
54	620520	Of cotton
55	620530	Of man-made fibres
56	620640	Of man-made fibres
57	620690	Of other textile materials
58	620711	Of cotton
59	620719	Of other textile materials
60	620799	Of other textile materials
61	620892	Of man-made fibres
62	621143	Of man-made fibres
63	621600	Gloves, mittens and mitts.
64	630231	Of cotton
65	630493	Not knitted or crocheted, of synthetic fibres
66	630532	Flexible intermediate bulk containers
67	630533	Other, of polyethylene or polypropylene strip or the like
68	630612	Of synthetic fibres
69	630790	Other
70	650700	Head-bands, lining, covers, hat foundations, hat frames, peaks and chinstraps, for headgear.
71	691200	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china.
72	691490	Other
73	732393	Of stainless steel
74	761699	Other
75	841330	Fuel, lubricating or cooling medium pumps for internal combustion piston engines
76	842123	Oil or petrol-filters for internal combustion engines

No	HS 2012	Product Description
77	848490	Other
78	850110	Motors of an output not exceeding 37.5 W
79	850300	Parts suitable for use solely or principally with the machines of heading 85.01 or 85.02.
80	851240	Windscreen wipers, defrosters and demisters
81	851290	Parts
82	851610	Electric instantaneous or storage water heaters and immersion heaters
83	851660	Other ovens; cookers, cooking plates, boiling rings, grillers and roasters
84	851690	Parts
85	851770	Parts
86	852990	Other
87	853669	Other
88	853670	Connectors for optical fibres, optical fibre bundles or cables
89	853890	Other
90	853990	Parts
91	854430	Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships
92	854442	Fitted with connectors
93	870892	Silencers (mufflers) and exhaust pipes; parts thereof
94	870894	Steering wheels, steering columns and steering boxes; parts thereof
95	870899	Other
96	940510	Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares
97	940592	Of plastics
98	940599	Other
99	960820	Felt tipped and other porous-tipped pens and markers
100	960910	Pencils and crayons, with leads encased in a rigid sheath

## 5. THE 'GIC-HYBRID' MODEL OF AN OUTWARD PROCESSING SCHEME

So far, this paper not only has described all the three different models of the OPS, especially targeting the Gaeseong Industrial Complex, in Korea's all the 14 FTAs, but also compares the upgrades and modifications made in case of Vietnam in the Korea-ASEAN and Korea-Vietnam FTA. In spite of some fluctuations, the OPS has been slightly leaning towards the GIC-Plus Model and steadily developed. For the future negotiations, it seems very ideal to introduce a newer and even more developed model, compiling all the features experienced from the past and eliminating the possible demerits, called the GIC-Hybrid Model.

First of all, geographically the GIC-Hybrid Model must take account more into than Gaeseong Industrial Complex like in some cases witnessed from Korea-Singapore and Korea-China FTA. It enables many other industrial zones for outward processing in North Korean territory. When limiting the location of industrial complexes too strictly like in the case of the Korea-India CEPA, it could possibly discourage further investment towards the North since there is no chance of expanding industrial zones – and eventually the business scale – than the existing Complex in the city of Gaeseong.

Second, the product coverage must be at least 100 products and as many as 4,625 products as covered in Korea-Singapore FTA. The more products conceded and specially treated as South Korean-origin, the better chance the business owners of the Complex have to export their goods to overseas under the auspices of FTAs with the preferential treatment.

**Figure 2.** The Evolution of Outward Processing Scheme in Korea' FTAs and beyond

Less ← Openness and Technical Advancement → More				
	Committee	GIC-Limited	GIC-Plus	GIC-Hybrid
Geography	n/a	Gaeseong	Gaeseong +	Gaeseong +
Product	n/a	100 to 108	100 to 4,625 optional survey	100 + mandatory survey
Non- originating input value	n/a	40%	40%	40% <
Sepecial Committee	Whether to introduce outward processing scheme	n/a	annual review + (further recommendations and modifications)	annual review + (further recommendations and modifications)
Special Safeguard	n/a	X	O	O
Option of Rescinding	n/a	X	O/X	X



Also, the products for the special treatment must reflect the timely request of the manufacturers in the Complex by conducting mandatory surveys in a regular manner like the experiences in the Korea-Vietnam FTA as mentioned above or the Korea-China FTA, having 310 goods for now, but to be modified as often as annually for better correspondence to the true needs of the manufacturing enterprises. If not modified or updated regularly to meet the requests of the companies, the original list of products cannot fully reflect what are actually produced in the Complex. Then the OPS is nominal, thus the enhancement of constant communication and timely survey are necessary.

Thirdly, if possible, the effort to ease the rate ceiling of non-originating input value, which is currently 40%, must be constantly made though seemingly very difficult.<sup>22</sup> The current rate is still perceived very reasonable since is easily found in many other FTAs of other countries, however, if the future negotiations could somehow lead to the higher level of non-originating input value requirement, then it could mitigate the burden for the manufacturers.

The role and presence of special Committee is also meaningful. In the GIC-Hybrid Model, the Committee must be responsible not only in annual review process but also like in the Korea-China FTA,<sup>23</sup> must work on investigating chances of modifications and recommendations for even better functioning of the provision. The Committee must assure of moving forward, making its role and aim clearer and more realistic. The wordings must be requiring better visibility, predictability and more accurate tones. For such concessions with upper standards as listed above to be obtained by South Korea, Special Safeguard mechanism probably needs to be yielded and granted for the counter Party, but no mercy on rescinding option is ideal.

## 6. CONCLUSION

The statement that South Korea has developed its economy with successful and pro-GATT and WTO trade policies is never a skeptical fact. From this perspective, leaving inter-

---

<sup>22</sup> According to Komuro (2009), in case of Singapore-Japan FTA first entered into force in November 2002, "the ratio of qualifying value to the freight on board (FOB) price of the end product was originally required to exceed 60 percent, but was lowered to 40 percent by the 2007 Agreement." (Komuro, 2009: 45)

<sup>23</sup> In the official Korea-China FTA text, the role of the Committee is well manipulated as stated below:

2. The Parties shall establish a Committee on Outward Processing Zones under the auspices of the Joint Commission to perform the following functions:
  - (a) monitor the implementation of paragraph 1 of this Article;
  - (b) report to the Joint Commission on its activities and provide recommendations to the Joint Commission as necessary;
  - (c) review and designate the expansion of the existing Outward Processing Zone and the additional Outward Processing Zones<sup>2</sup>; and
  - (d) discuss other matters specifically mandated by the Joint Commission.

To explain the footnote on 2(c), it is written that "[f]or the purposes of this subparagraph, Outward Processing Zones shall refer to industrial zones in the Korean peninsula. The relevant authorities of the Parties shall discuss and agree on the relevant rules and procedures for the additionally designated Outward Processing Zones and the expansion of the existing Outward Processing Zones."

Korean trade legally controversial under the WTO system puts South Korea in an uncomfortable and awkward position. This motivates the Korean Government to first institute special OPS into its FTAs for the Gaeseong Industrial Complex and its products.

Notwithstanding the inclusion of OPS in nearly all the FTAs that South Korea has agreed and taken in force, the products from Gaeseong have never been very successful in exportation. It is first because nearly a half of the FTAs including major economic powers do not recognize the Complex as Korea's outward processing zone, but instead, applying the Committee Model. This includes both the United States and the European Union. Moreover, 3 other FTAs with India, Peru and Colombia apply the GIC-Limited Model. Also, the products conceded and real end products of the Complex have certain disjunction. Some FTAs like with Singapore, EFTA, and ASEAN, though acknowledging the Complex, have the lists of conceded goods as old as 9 to 10 years. Whether or not the listed goods are still produced in the Complex remains unclear. Not only that, but the procedures are difficult and more time-consuming. This seriously impedes the further development of the Complex and its related clauses in the FTAs of Korea. Besides, the Gaeseong Industrial Complex is currently and completely closed down after UN Resolution 2270 early this year.

It is very ironic and contradictory to raise a strong voice regarding the needs of further development to be made in Korea's OPS in the FTAs at this point of time when the official inter-Korean transaction marked practically zero (Kim, 2016). Still, however, Korea's future FTA negotiations must consider this special provision of outward processing again, hoping that the Gaeseong Industrial Complex is to be reopened in the future, and also launch some other industrial zones in the North. In that sense, by comparing the OPS Models in Korea-ASEAN and Korea-Vietnam FTA, it is found that some significant and meaningful modifications have been made. This enables and provides some suggestions to establish a newer model named the GIC-Hybrid, which overcomes the shortcomings of previous three Models.

In spite of the questions on its efficacy, the input of the OPS into the FTAs by South Korea is impeccable from the legal, political and diplomatic perspectives under the WTO system. The inclusion of OPS with the GIC-Hybrid Model could not only grasp the inter-Korean ties yet also relieve the tension between the South and North.

The GIC-Hybrid Model is the considerable option for South Korea right from its next FTA negotiations. For example, the exit from the Brexit does not seem a plausible option for the United Kingdom in the next few years. Namely, it means that the Government of Korea, in spite of the Korea-EU FTA of 2011, needs to consider starting a new FTA negotiation with the British Government in a very timely manner. Though the Korea-EU FTA is currently equipped with the Committee Model, the FTA with the United Kingdom is another story. There is no reason why the GIC-Hybrid Model is non-negotiable.

**Article Received: 06-20-2016 Revised: 07-06-2016 Accepted: 07-11-2016**

#### REFERENCES

- Ahn, Dukgeun, and Jeongjoon J. Park. 2014. "A Study on Internal Trade between South/North Korea in the WTO System and Gaesung Industrial Complex." *Review of International and Area Studies* 23(4):139-170.
- Ahn, Dukgeun. 2005. "Legal Issues for Korea's "Internal Trade" in the WTO System" In

- Multilateral and Regional Frameworks for Globalization: WTO and Free Trade Agreements*, edited by Lim, Wonhyuk and Ramon Torrent, 362-376. Seoul: Korea Development Institute.
- Kim, Bongchul, Ho Kim, Joonpyo Lee, and Hyerim Lee. 2015. *Korean FTA: Policy and Law*. Seoul: Hankuk University of Foreign Studies Knowledge Press.
- Kim, Myong-song. 2016. "Trade with N.Korea Falls to Near-Zero." *Chosun Ilbo*, May 13. Accessed June 30, 2016. [http://english.chosun.com/site/data/html\\_dir/2016/05/13/2016051301098.html](http://english.chosun.com/site/data/html_dir/2016/05/13/2016051301098.html).
- Komuro, Norio. 2009. *Outward Processing Scheme under FTAs "Domine, Quo Vadis?"*. Seoul: Korea Institute for International Economic Policy.
- SaKong, Il, and Youngsun Koh. 2013. *The Korean Economy: Six Decades of Growth and Development*. Singapore: Cengage Learning Asia Pte Ltd.
- World Trade Organization. 1999. *The Legal Texts – the Results of the Uruguay Round of Multilateral Trade Negotiations*. New York: Cambridge University Press.