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Supreme Court Confirms Application of Increased Korea–Australia FTA Preferential Tariff Rate Based on Vessel Arrival Date Where Pre-Arrival Import Declaration Was Prohibited

(Supreme Court Decision 2025Du34241 rendered on December 11, 2025)

Overview

This case concerned the determination of the relevant "import date" for purposes of applying the preferential tariff rate under the Free Trade Agreement between the Republic of Korea and Australia (the "Korea–Australia FTA").

The taxpayer imported fresh potatoes from Australia for use in potato chip production. Under the Korea–Australia FTA, a preferential tariff rate of 0% applied through April 30, 2021, after which an increased preferential tariff rate of 141.8% took effect on May 1, 2021.

Anticipating the tariff increase, the taxpayer submitted an import declaration on April 30, 2021—before the vessel carrying the goods had arrived in Korea. The vessel did not reach a Korean port until May 1, 2021, by which time the higher preferential tariff rate was already in effect.

The customs authorities assessed customs duties at the 141.8% tariff rate and related surcharges, taking the position that the relevant import date was May 1, 2021—the date of the vessel's arrival. The taxpayer challenged the assessment, contending that the applicable tariff rate should be determined by reference to the date on which the import declaration was filed, i.e., April 30, 2021.

Court's Decision

The Supreme Court upheld the assessment and concluded that the increased preferential tariff rate was properly applied.

The Court observed that neither the Korea–Australia FTA nor the Act on Special Provisions of the Customs Act for the Implementation of Free Trade Agreements (the "FTA Customs Act") independently defines the term "import." The definition and principles set forth in the Customs Act therefore govern.

Under established Supreme Court precedent, imported goods generally become domestic goods upon acceptance of an import declaration. The import date for customs purposes is thus ordinarily the date on which the import declaration is accepted.

The Court emphasized, however, that the Customs Act and its Enforcement Decree contain important exceptions to this general rule. While import declarations may ordinarily be filed after a vessel enters a Korean port, pre-arrival import declarations are permitted only in limited circumstances. Where goods are subject to an imminent tariff increase or newly imposed import restrictions, the Enforcement Decree expressly prohibits the filing of a pre-arrival import declaration.

The Court reasoned that these provisions are designed to prevent importers from circumventing higher tariff rates by filing import declarations before the arrival of goods when a tariff increase is already scheduled to take effect upon arrival.

Because the imported potatoes were subject to a known tariff increase effective May 1, 2021, a valid pre-arrival import declaration was not permitted under the applicable customs regulations. The relevant import date was therefore May 1, 2021—the date the vessel arrived in Korea—and the preferential tariff rate of 141.8% was correctly applied.

Practical Implications

This decision provides important guidance on the interaction between customs procedures and preferential tariff schedules under Korea's free trade agreements.

Although customs duties are generally determined based on the date of importation, taxpayers cannot rely on pre-arrival import declarations to secure a lower tariff rate where customs regulations prohibit such declarations in anticipation of a pending tariff increase. In those circumstances, the arrival date of the goods will effectively determine the applicable tariff treatment.

Importers should closely monitor scheduled tariff adjustments, tariff-rate quota changes, and other customs measures that may affect the timing of importation. Businesses that regularly import agricultural products, raw materials, or other goods subject to seasonal or quota-based tariff changes should carefully coordinate procurement, shipping, and customs clearance schedules to mitigate unexpected duty exposure.

The ruling also emphasizes the importance of reviewing not only the substantive tariff provisions of an applicable free trade agreement, but also the procedural requirements and restrictions under Korea's Customs Act and related regulations, which may ultimately determine the availability of preferential tariff treatment.

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