


## Response to “Made in Which Korea?”

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## Response to "Made in Which Korea?"

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Discussion of Policy Forum Online 05-94A: November 21st, 2005

### Response to "Made in Which Korea?" by Andrei Lankov

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#### I. Introduction

The following are comments on the editorial "Made in which Korea?" by the Joongang Ilbo. Pilho Park is affiliated with the East Asian Legal Studies Center at the University of Wisconsin Law School.

The views expressed in this article are those of the author and do not necessarily reflect the official

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policy or position of the Nautilus Institute. Readers should note that Nautilus seeks a diversity of views and opinions on contentious topics in order to identify common ground.

## **II. Comments by Pilho Park on "Made in which Korea?"**

The South Korean Reunification Minister Chung's remark on the amendment of territorial provision of the Constitution has nothing to do with the country of origin for the goods produced in the Kaesong Industrial Complex (KIC). The JoongAng Daily News made its allegation in an editorial comment that, as Minister Chung has spoken of the need to amend the South Korea's Constitution to recognize North Korean territory, it would be hard to declare the products from the KIC as South Korea's. It seems to me that this allegation stems from misunderstanding of substantive laws of international trade.

While South Korea in its Constitution declares that its territory encompasses the whole Korean peninsula and its adjacent islands, rules of origin of a product are governed by the practical component of the product rather than territorial boundaries themselves. A good produced in the KIC is a typical example of non-preferential rules of origin - a good which is produced in two or more countries. According to the Agreement on Rules of Origin of the World Trade Organization, country of origin of a good is determined by the principle that the "last substantial transformation" of the good is carried out. In the United States, federal regulations also suggest the "substantial transformation" standard in order to determine the country of origin.

There is no universal standard what the substantial transformation means. Individual countries set their own rules, by statutes or cases, to determine it. The United States has accumulated a number of cases during the last century; however, no single standard to determine the country of origin has been made yet. In a case (*Torrington v. U.S.* 764 F.2d 1563 (1985)) where two or more countries are involved for a good, the court suggested 35 percent of components of a good to be recognized as a substantial transformation. In other case (*Superior Wire v. U.S.* 867 F.2d 1409 (1989)), the court denied 15 percent of components as a substantial transformation. If a good produced in the KIC is determined as that of North Korea by the substantial transformation standard, it is subject to a very high customs duty in the United States. As such, the standard to determine the country of origin is not a mechanical application of territorial boundaries.

Moreover, in the international trade law, the country is not necessarily to mean a sovereign state. Suffice it to say that it is a "government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial relations (i.e., formerly Hong Kong; GATT Art. XXXIII)" or "political entity known as a nation (19 U.S.C.F.R. §134.1)." No one can deny that North Korea is a government with a separate customs territory and a political entity known as a nation. As long as North Korea maintains such a status regardless of South Korea's constitutional provisions, whenever it is imported into a country, a good produced in the KIC can be subject to scrutiny in order to determine what degree of transformation has been made in the "practical territory" of North Korea. Thus, it may be said that the JoongAng Daily's editorial, implicating the country of origin with the Chung's remark, erred by misunderstanding the laws of the country of origin concerned.

## **III. Nautilus Invites Your Responses**

The Northeast Asia Peace and Security Network invites your responses to this essay. Please send responses to: [napsnet-reply@nautilus.org](mailto:napsnet-reply@nautilus.org) . Responses will be considered for redistribution to the network only if they include the author's name, affiliation, and explicit consent.

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