

2010 Modularization of Korea's Development Experience: Trade Liberalization

2011

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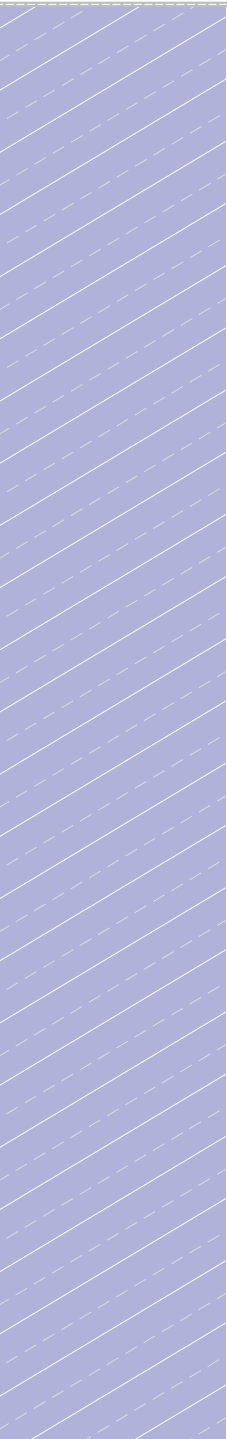
2011



Preface

In the 21st century, knowledge is one of the key determinants of a country's socio-economic development. In recognition of this fact, the Ministry of Strategy and Finance (MOSF) and the Korea Development Institute (KDI) launched Knowledge Sharing Program (KSP) in 2004. The KSP aims to share Korea's development experience and knowledge to assist socio-economic development of partner countries.

The KSP is comprised of three parts: 1) the systemization and modularization of Korea's development experiences into case studies, 2) policy consultation through knowledge sharing with partner countries, and 3) joint consulting with international organizations. The systemization and modularization of Korea's development experience researches and documents Korea's successful policy experiences, such as the 'Five-Year Economic Development Plan' and 'Saemaul Undong (New Village Movement).' The policy topics are 'systemized' in terms of the background, implementation and outcome, and then, presented as case studies in order to achieve a complete understanding of the actual policies. These systemized policy case studies are further 'modularized' by sector so they can be utilized as concrete examples by partner countries to meet their interests in specific institutions, organizations or projects. For example, Korea's 'Export Promotion Policy' has been prepared as a systemized case study while 'the Establishment of the Export-Import Bank' has been modularized to provide a specific example of Korea's export promotion experience in export financing. The modularization of Korea's development experience traces back to a policy's inception and recapitulates the rationale for its introduction; its main content; and its implementation mechanism. The case studies also evaluate a policy's outcome and draw insights with a global comparative perspective. These case studies include literature reviews, surveys and in-depth interviews with the policy practitioners and experts who participated in the implementation process.



The systemization of Korea's development experience was initiated in 2007 and finished in 2009. Under the new Modularization Project, launched in 2010, the plan has been set out to modularize 100 case studies by sectors and topics in three years.

I would like to take this opportunity to express my sincere gratitude to Project Manager, Dr. Wonhyuk Lim, and all the Korean experts for their immense efforts in successfully completing the '2010 Modularization of Korea's Development Experience.' I am also grateful to Managing Director, Dr. Kwang-Eon Sul, and Program Officer, Ms. Ja-Kyung Hong, the members of the Center for International Development, KDI, for their hard work and dedication to this Program.

I earnestly hope that the final research results will be fully utilized in assisting the development partner countries in the near future.

Oh-Seok Hyun
President
Korea Development Institute

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WTO Accession Strategies

1. Korea in the GATT System
2. Korea in the Uruguay Round Negotiation
3. Korea in the WTO System
4. Assessment
5. Implications for Other Developing Countries

WTO Accession Strategies

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<Summary>

1. Korea's Experience in the GATT/WTO System

In 1967, Korea officially acceded to the GATT as the 71st Contracting Party in the final phase of the Kennedy Round. For a poor country pursuing an export-oriented development strategy, the GATT membership was critical to Korea because it could secure most-favored-nation (MFN) status with all 66 GATT Contracting Parties. Earlier, Korea concluded bilateral trade agreements with only a handful of countries such as the United States (1956), Philippines (1961), Taiwan (1961) and Thailand (1961). As exports grew, more trade agreements were negotiated. While this was a time-consuming and cumbersome procedure, securing GATT membership was a once-and-for-all solution to bypass negotiating endless bilateral agreements by gaining the MFN status in overseas markets. The GATT membership was also perceived by the Korean policy makers as an opportunity for cooperating with other developing countries. This allows to combat discrimination and protectionism against export items of interest to Korea, particularly in the agricultural and cotton textile sectors.

As a new member, Korea did not have to pursue market liberalization first, which was a requirement to GATT membership; instead, Korea could delay liberalization by invoking Article XVIII:B, which allowed import restrictions for developing countries with balance of payment (BOP) problems. This so-called BOP exception offered a valuable opportunity for Korea to implement trade policies closely aligned with its industrial development policies. Korea revoked Article XVIII:B as of January 1, 1990 under the understanding that Korea would phase-out its remaining import restrictions by July 1, 1997. By revoking Article XVIII:B in

October 1989, Korea was the first case where a developing country no longer invoked this exception under GATT. This decision allowed Korea to begin market liberalization including agriculture, which had been the most protected sector in the Korean economy. However, Korea was given an eight-year transition period and the decision of the BOP Committee was later superseded by the Agreement on Agriculture in the Uruguay Round four years later.

Unlike the Tokyo Round, Korea became an active participant in the Uruguay Round negotiation. It played a significant role in both launching the round and participating in the negotiations as well. This enhanced role of Korea, which was owed to a number of developments that had taken place in Korea as well as in the international economy in the several years preceding the launch of the round in 1986. Korea's objective in the Uruguay Round was much more clearly defined than in the previous round. The multilateral trading system was seen as the best mean of resisting bilateral trade pressures and an important constraint on protectionist pressures as well as on the negative aspects of regionalism. Therefore, Korea was interested in improving the GATT's ineffective dispute settlement procedure, to oppose selective safeguards, to stop abuses of anti-dumping measures, and to reintegrate textiles into the GATT. On the other hand, in agriculture, Korea's goal in the round was defensive. While supporting progressive liberalization in agriculture, Korea strongly argued that certain agricultural products including rice should be shielded from foreign competition.

As far as the new areas are concerned, Korea did not have a strong service sector or a strong system of protecting intellectual property rights. Therefore, Korea was not part of the group of countries that argued strongly for liberalization and protection in these areas. However, Korea broadly supported the inclusion of these sectors in the new round. Korea had already embarked on the modernization of laws for intellectual property rights, partly in response to the bilateral trade pressures of industrialized countries in the early 1980s, particularly by the United States. As a result, the new negotiations were not expected to overwhelm Korea with overly difficult obligations. It was also widely believed that strengthening intellectual property rights would be crucial to technological advancement in Korea.

Although Korea's experience in the multilateral trade negotiations was limited, it played a fairly active role in every phase of the Uruguay Round. This active role reflected the more diversified trading interest of Korea, which, by then, had emerged as the 12th largest trading nation. Unlike in the previous round, the Korean delegation made many written proposals independently of other countries in nearly every area that was negotiated. They covered issues such as dispute settlement, safeguards, anti-dumping, subsidies, agriculture, services, and intellectual property rights. The most extensive Korean proposal was probably in the area of anti-dumping, where Korea initially proposed amendments in at least 13 issues of the anti-dumping code agreed during the Tokyo Round.

Since the Korean government had already prepared independently a substantive tariff reduction plan of the Uruguay Round, tariff negotiation itself was not much of an issue or concern for the Korean government. Basically, the Korean government sought after tariff reductions that would benefit its own export-driven sectors. In addition to tariff reductions, Korea also participated in sectoral negotiations dealing with tariff elimination and harmonization, which were primarily driven by the Quad countries – U.S., EC, Canada and Japan. As a result of the Uruguay Round, the average bound rate for Korea was reduced from 17.9% in 1986 to 8.1%. However, the applicable duty rates were actually lower than the bound rates in 1994 for most products, except for items under the agreement of tariff elimination and harmonization.

The Uruguay Round brought about a general reform of the agricultural sector and accelerated market opening both home and abroad. The Uruguay Round forced Korea to open its market for all agricultural products. The Agreement on Agriculture rendered a significant impact on the agricultural sector in Korea. Only rice was exempted from the tariff for 10 years with minimum market access (MMA) started from one percent of total domestic consumption in 1995 and expanded to four percent in 2004. Tariff-Rate Quotas was established for 67 items, such as garlic, corn, starches, oranges, and ginseng etc. The Uruguay Round also exerted a significant impact on domestic agricultural policies. Korea utilized the current Aggregate Measurement of Support (AMS) almost to the upper bound. Obligatory reduction of AMS for domestic support was a binding constraint for Korea. The government's intervention through a rice procurement program had to be scaled down every year since it accounted for over 90 percent of the AMS use. Consequently, the proportion of rice purchased by the government to total production dropped from 29 percent in 1995 to 16 percent in 2004.

The Korean government was generally favorable to the newly negotiated market liberalization terms for the service sector. Although it had some concern for certain services sectors at least in the short term, the Korean government recognized the necessity to improve the sector's competitiveness through market liberalization. Also, its already strong competitiveness in limited services sectors such as transportation and construction led Korea to participate in the services negotiations more actively. In fact, Korea submitted its initial offer list in January 1991, the second earliest among developing countries only after Hong Kong. Among 155 subsectors in 12 main sectors covered in GATS, Korea made concessions for 78 subsectors in the following eight main sectors: business services, communications services, construction services, distribution services, environmental services, financial services, tourism services, and transportation services. However, Korea did not make any concessions in education services, health services, recreational services, and other services. Korea's market access commitment level was far below compared to other developed countries. In addition, Korea also attached many limitations even for sectors it made a commitment to market access. This situation contrasted to other developed countries that did not normally have limitations for the sector in which market access commitment was made.

The reaction of the Korean government to the results of the Uruguay Round was generally favorable except in agriculture. The market access results were perceived as creating new export opportunities for Korea. The 35 percent tariff reductions by industrial countries and the substantial lowering of tariffs and tariff bindings on the part of developing countries were significant market access improvements for Korea's export economy. On the other hand, Korea's market access commitments were also considerable. These substantial tariff commitments, however, did not require a major overhaul in Korea's tariff structure, as many concessions were well within the existing tariff rates resulting from the unilateral liberalization initiatives since the 1980s.

The strengthening of the rules and dispute settlement mechanisms in the Uruguay Round were widely received in Korea as a welcome development as they were expected to reduce unilateral trade pressures by major trading partners. The phase-out of grey-area measures, strengthened rules in anti-dumping and countervailing duties were also expected to act as strong deterrents to protectionism faced by Korean exports. The ten year phase out of the MFA under the Agreement on Textiles and Clothing was generally seen as a disadvantage rather than an advantage by the Korean textile industry. Its global market share accumulated with a large quota was expected to be reduced in the liberalization process to low-cost suppliers. In a few cases, the new Uruguay Round agreements created new obligations in Korea's trade policies. For example, the Agreement on Subsidies and Countervailing Duties, which introduced new disciplines in the subsidies, imposed a new requirement to phase out Korean subsidies related to exports and domestic production. Under the Agreement on Import Licensing which became a multilateral agreement as a result of the Uruguay Round, Korea was required to phase-out the Import Diversification Program targeted against Japan.

In the new areas, Korea's commitments were expected to be substantial. In reality, however, they turned out to be only moderate. In services, Korea has assumed commitments in about half of the negotiated service sectors, i.e., 78 out of 155 total service sectors. Korea made full commitments in construction and engineering services, but its commitments in other services such as financial, telecommunications, transportation services were only partial. Korea did not make any commitments in education, health and social services as well as in recreation, cultural and sporting services, among others. Korea's commitment also included only one MFN exemption, computer reservation services, thereby offering non-discriminatory treatment in virtually all service sectors. In intellectual property rights, the TRIPS Agreement introduced a high standard for protection. However, Korea had already introduced a strong protection measures in all areas of intellectual property laws, partly due to the bilateral agreements negotiated with major trading partners during the mid-1980s. Korea's new obligations in this area were few, such as the extension of patent and computer software protection periods and the introduction of color trademarks.

Korea has been unequivocal in its support of a new trade round from the very early stages of discussion. Korea's role in the WTO became much more visible, particularly in the area of rules negotiation of the Doha Development Agenda. The impact of the GATT/WTO and the Uruguay Round on Korea has been significant. Their economic effects should perhaps be considered most significant. In addition, its political implications have also been considerable, particularly after the Uruguay Round. There has been relatively less social impact, although increasing numbers of NGOs have begun to express views on WTO related matters since the WTO Ministerial Conference in Seattle in 1999.

2. Implications for Other Developing Countries

One of the typical problems that developing countries face in participating in international trade negotiations is the lack of proper system for policy coordination to organize many different government ministries, agencies and even NGOs. In particular, policy coordination in the WTO system has become much more important and difficult due to the wide scope of the WTO agreements. Embracement of services trade and intellectual property protection allowed trade policies of developing countries, which involve numerous ministries that have little experience and exposure to international negotiations. This situation has made inter-ministry coordination increasingly controversial in most developing countries.

Although the policy coordination system in Korea has not been always perfect, it has worked very effectively throughout the Uruguay Round negotiation, albeit at a lesser degree, and under the WTO system. In that regard, the role of the Economic Planning Board (EPB) during the Uruguay Round negotiation should be emphasized for policy planning and coordination. Unlike the other ministries that were supposed to promote and protect pertinent industries under their own jurisdiction, the EPB was not bound by such a government-business relationship. Thereby, its policy decisions tended to be more neutral and reasonable in terms of overall economic welfare. In other words, the policy decisions by the EPB could be supported by wider range of policymakers and social groups. Moreover, the EPB had budgetary authority for all government ministries, and this authority sometimes worked as a very strong tool to press reluctant or opposing ministries. This mixture of decisive policy decision-making and powerful tools of implementation of those policies turned out to be the critical factor for the Korean government. This allowed navigating through turbulent trade negotiations towards the direction of market liberalization.

In many developing countries, trade negotiations cause diverse policy conflicts due to a lack of neutrality that is heavily influenced by political decisions or policy coordination. Identifying kind of institutional arrangements and determining how these institutions can be built to facilitate trade policy coordination will be crucial tasks for government of developing country to cope with the increasingly complicated WTO system.

Developing a trade remedy system has been an important issue for developing countries to address rapid liberalization of domestic markets under the auspices of the WTO. Although rules for trade remedy systems under the GATS have not yet been established, the necessity of trade remedy systems has confirmed even for services trade.

Under the GATT system in which contracting parties tended to maintain numerous *ex ante* import constraining measures, developing countries had typically controlled the import of goods through surveillance, monitoring, or licensing. Korea basically followed the same pattern of other developing countries. Since imports into the Korean market were generally controlled by *ex ante* import limitation, there was not much need for a trade remedy system to address *ex post* import problems. It explains why Korea established the Korea Trade Commission (KTC) only as the main institution for trade remedy in 1987 despite accession to the GATT in 1967.

The effectiveness of a system for trade remedy in dealing with damage of domestic market appears to be vastly different since the frequency to utilize the trade remedy system differs among developing countries. However, the importance of a trade remedy institution continues to increase as the scope of market liberalization continues to grow. Not only trade in goods covering manufacturing and agricultural products, but also trade in services expand the coverage and depth of liberalization. Accordingly, usefulness of the trade remedy system as a last resort for import injury has been seriously considered by many developing countries.

The difficult practical problem for developing countries is that most of those trade remedy systems have not been refined or articulated on the basis of the recent WTO regime. The WTO trade remedy rules have been substantially improved based on a considerable number of rulings by the panels and particularly by the Appellate Body. Therefore, it is imperative for developing countries to improve the general capacity as well as expertise of their own trade remedy institutions, so that they can utilize such systems effectively in line with rules of the WTO.

The development of the Korean trade remedy system also followed the typical pattern found in developing countries. Initially, Korea heavily relied on safeguard measures to protect import markets as observed in the many developing countries under the current WTO system. After the serious trade conflict with China in 1999 over safeguard measures on dairy products and the ensuing WTO dispute, Korea has virtually stopped using safeguard measures that often excessively restrict imports. In addition, the very first anti-dumping case was brought by the U.S. and went through the GATT dispute settlement procedure. Losing this first anti-dumping case in the GATT also became an important opportunity to significant reform of rules and procedures related to anti-dumping investigation. So far, only WTO dispute on anti-dumping was brought against Korea, the WTO dispute settlement body found almost all aspects of the KTC's decisions and procedural practices to be consistent with the WTO obligations.

Based on this kind of general capacity building, the Korean government introduced the Trade Adjustment Assistance (TAA) system in 2007 for which the KTC plays a key role in determining the eligibility of the TAA benefits. Although the trade remedy system in Korea is not the panacea for trade matters, the relatively strong confidence has allowed the Korean government to accept market liberalization more aggressively. The Korean government has even tried to modify the trade remedy rules through FTA negotiations, which can have important implication for the WTO trade remedy system.

The experience of the Korean government in establishing and developing its trade remedy system may offer useful insights for other developing countries that need to articulate their trade defense mechanism. In addition to institutional expansion, building technical expertise and ensuring political neutrality of trade remedy authorities become increasingly important for developing countries. More effective trade remedy systems, in turn, permit governments – particularly, of developing countries – to become more open to market liberalization, regardless of whether the trade remedy systems are used or not. Often, having a dependable trade remedy systems can be a good political defense to accommodate more liberal trade policies. Therefore, the initiative to further develop trade remedy systems should be seriously taken by developing countries as a prerequisite for any serious market liberalization policies.

1. Korea in the General Agreement on Tariffs and Trade (GATT) System¹

1.1. Accession to the GATT

GATT since 1948 has been the most important development to promote international trade and economic recovery after World War II. The first five multilateral trade negotiations completed in the early 1960s under the auspice of GATT worked to considerably lower prevalent protective tariffs among major trading countries.

After contributing significantly to trade liberalization for developed countries, the GATT regime underwent substantial change to more squarely address development issues during the late 1960s. The efforts to demonstrate a more forceful commitment to the interests of developing countries within the GATT system led to the adoption of the new provisions, Articles XXXVI-XXXVIII, as Part IV of the GATT.² In addition, the GATT sought to be more favorable platform for developing countries. For example, the 1964 GATT publication titled “The Role of GATT in Relation to Trade and Development” emphasized considerable legal freedom for developing countries, such as non-reciprocity, protection of infant industries for the sake of industrial development, and balance-of-payment protection measures.³ It clearly demonstrated a strong GATT policy to expand developing country’s membership. In addition, the late 1960s was probably the lowest point in GATT’s history from a legal framework perspective.⁴ During the period of 1959-1970, the GATT mechanisms for dispute settlement became virtually non-existent in the late 1960s.⁵ These developments appeared to nurture a more favorable environment for developing countries to join GATT. In fact, the GATT membership increased most during the 1960s, in which 39 countries acceded.⁶

With such a backdrop, in 1967, Korea officially acceded to the GATT as the 71st

1. This part was drawn from Dukgeun Ahn, “Korea in the GATT/WTO Dispute Settlement System: Legal Battle for Economic Development”, *Journal of International Economic Law*, Vol.6, No.3, 597-633 (2003) and Chulsu Kim, “Chapter 73 Korea,” *The World Trade Organization: Legal, Economic and Political Analysis*, vol III, edited by Patrick F. J. Macrory, Arthur E. Appleton, and Michael G. Plummer, Springer, New York, 2005.

2. The Protocol Amending the General Agreement on Tariffs and Trade to Introduce a Part IV on Trade and Development, which was adopted on Feb. 8, 1965, entered into force on June 27, 1966. WTO, *Analytical Index: Guide to GATT Law and Practice* 1040 (1995).

3. Robert E. Hudec, *Developing Countries in the GATT Legal System*, 59-60 (1987).

4. *Id.* at 65.

5. *Id.* at 235-250 .

6. Data on GATT accession by period is as follows:

Contracting Party in the final phase of the Kennedy Round.⁷ The Korean government carefully weighed the decision to join the GATT for several years by comparing benefits and costs since it launched the First Five Year Economic Development Plan in 1962. The revision of the GATT to include Part IV addressing development issues was an important factor in Korea’s decision to join GATT at the time. However, once the decision had been made to accede to the GATT, the process was extraordinarily swift. After extensive internal discussions, the Korean government submitted its application to the GATT Secretariat on May 20, 1966, and conducted the tariff negotiations with 12 contracting parties from September to December 2, 1966.⁸ On December 16, 1966, the Council of Representatives adopted the “Report of the Working Party” for GATT accession.⁹ After the Korean government completed the domestic ratification procedure, the “Protocol for the Accession of Korea” to the GATT entered into force on April 14, 1967.¹⁰ On the other hand, Korea invoked Article XXXV for non-application of GATT with respect to communist countries – Cuba¹¹, Czechoslovakia¹², Poland¹³, and Yugoslavia¹⁴. In September 1971, Article XXXV was all simultaneously revoked.¹⁵

“In fact, Korea had begun to work to enter GATT much earlier. Korea, as a newly independent nation after World War II, had sent a delegation in September 1950 to Torquay in England, where the second trade round was held, to seek accession to the GATT. At the negotiations in Torquay, Korea made tariff concessions on 31 items, including bituminous coal, chemical fertilizers, cotton, pesticides, whiskey and champagne. The Korean delegation actually signed the Protocol of Accession which was endorsed by 25 of the 34 Contracting Parties of the GATT at the time.¹⁶ The accession procedure, however, was not completed because the Korean

| Years | 1948-1948 | 1950s | 1960s | 1970s | 1980s | 1990-1994 | Total |
|------------------------------|-----------|-------|-------|-------|-------|-----------|-------|
| Number of Acceding Countries | 19 | 17 | 39 | 9 | 11 | 33 | 128 |

The accession to the GATT was also substantially increased in the early 1990s during which the Uruguay Round negotiation had been conducted. See generally WTO, Analytical Index: Guide to GATT Law and Practice 1136 (1995).

7. GATT, Korea - Accession under Article XXXIII (Decision of 2 March 1967), BISD 15S/60 (1968).
8. The Working Party for the Korea’s accession included 14 contracting parties. Tae-Hyuk Hahm, “Reflections on the GATT Accession Negotiations” 5, Diplomatic Negotiation Case 94-1, 23 (1994; in Korean).
9. GATT, BISD 15S/106 (1968).
10. GATT, BISD 15S/44 (1968).
11. GATT, L/2783 (April 1967).
12. GATT, L/2783 (April 1967).
13. GATT, L/2874 (Oct. 1967)
14. GATT, L/2783 (April 1967).
15. GATT, L/3580 (1971). See also WTO, Analytical Index: Guide to GATT Law and Practice 1034-1036 (1995). On the other hand, it is noted that 50 contracting parties invoked Article XXXV in respect of Japan at its accession. *Id.*

government failed to take necessary steps, including the ratification of the Protocol of Accession, in the midst of the Korean War. As one of the poorest countries with hardly any international trade at the time, the decision to seek membership in the GATT in 1950 was primarily motivated by the desire of the Korean government. The government wanted to gain political legitimacy in the international community, particularly by seeking membership in any and all international organizations, after its independence from Japan after World War II.¹⁷

Unlike at the time of the Torquay Round, Korea's decision to join the GATT in 1966 was much more deliberate and commercially motivated. When the new government that came into power in 1962 through a military coup had launched an ambitious outward-oriented Five Year Economic Development Plan, export promotion became one of the central policy thrusts of the Plan. These export promotion policies significantly increased Korean exports in spite of the weak and small industrial base. The Korean exports grew annually by 45 percent, during the first five year plan, reaching US \$250 million in 1966.

In July 1963, the Director General of the GATT sent a letter to the Korean government recommending GATT entry. This put in motion studies, which were conducted by trade-related ministries about the benefits and costs of GATT accession. It was on November 15, 1965 that President Chung-Hee Park instructed his government to explore GATT membership officially in one of the monthly Export Promotion Meetings. An inter-ministerial committee, composed of members from the ministries of trade, finance, and foreign affairs, was created shortly thereafter for this purpose.

In order to pursue an export-oriented development strategy as a poor country, the GATT membership was critical to Korea because it could secure most-favored-nation (MFN) status from all 66 GATT Contracting Parties. Earlier, Korea concluded bilateral trade agreements with only a handful of countries such as the United States (1956), Philippines (1961), Taiwan (1961) and Thailand (1961). As exports grew, more trade agreements were negotiated. Even though this was a time-consuming and cumbersome procedure, the GATT membership offered an all-in one solution to avoid negotiating endless bilateral agreements with MFN status in overseas markets. The GATT membership was also perceived by the Korean policy makers as a platform for cooperating with other developing countries in combating discrimination and protectionism against Korean exports, particularly in the agricultural and cotton textile sectors.¹⁸

16. GATT, BISD II/33-34. At that meeting, Austria, Peru, Philippines and Turkey also finished the accession negotiation. While Austria, Peru and Turkey formally became contracting parties in 1951, the Philippines formally joined the GATT on December 27, 1979.

17. Tae-Hyuk Hahm, *supra* note 8.

18. How the Korean Government viewed the GATT accession is well explained by the Report to the Economic Ministers Meeting by the Minister of Foreign Affairs in the Proceeding of the Economic Ministers Meeting, No.138, May 9, 1966.

The ministries that dealt with trade policy, such as trade, finance, and foreign ministries, had also carefully examined the “cost” of GATT membership. In particular, their main concern was whether or not Korea as a developing country could, under the existing GATT framework, maintain its flexibility with regards to existing economic and trade policies which involved a high degree of government intervention in all sectors of industries. Such questions as whether or not Korea could pursue trade liberalization on its own pace or industrial subsidies could still be provided, appeared to have loomed large in the minds of policy makers examining the benefits and costs of GATT membership.¹⁹ The addition of Part IV to the GATT in 1963, with its “more favorable and differential treatment” for developing countries was, therefore, seriously considered by the Korean government. Korean policy makers were convinced that the GATT membership, while providing substantial benefit to Korea, would not overly constrain Korea’s economic and trade policies regardless of its status as a developing country. Thus, the Korean government finally decided to pursue the GATT membership in early May 1966 and formally notified Korea’s intention to join the GATT on May 20 and to participate in the Kennedy Round.

The tariffs were negotiated in Geneva from September to December 1966 and Korea’s strategy was sought to limit its own tariff concessions, rather than gaining tariff concessions from trading partners. Korea’s terms for negotiations with seven Contracting Parties²⁰ which sought bilateral negotiations with Korea, was limited in scope and many of the terms were confined to keeping the present tariff levels. Despite the fewer substantial commitments, the major trading partners of Korea seemed to have refrained from making many additional demands considering the fact that Korea was still a minor developing country with a small trade volume and a low per capita income. When the negotiations were completed in December 1966, Korea made tariff concessions on 60 items, of which 41 items were binding at the existing tariff levels, while 17 items were tariff reductions and two items were ceiling bindings. The combined imports of those 17 duty reduction items in 1965 was about 1.2 percent of Korea’s total imports of \$463 million registered for that year. The United States sought tariff reductions on several other items, including automobiles, but later relented. Japan withdrew their request for reductions under the condition that Korea would not seek any reciprocal concessions from Japan. New Zealand sought and received a 10 percentage of tariff reduction on lamb meat from 35 to 25 percent.²¹

The GATT Working Party on Accession of Korea, composed of 14 Contracting Parties, met twice on November 30 and December 6, 1966, to examine Korea’s trade policy and review

19. For background of Korea’s decision to apply for membership, see Tae-Hyuk Hahm, *supra* note 8, at 23.

20. The U.S., Japan, EC, the United Kingdom, Canada, New Zealand, and Australia negotiated bilateral tariff concessions with Korea in the accession negotiation.

21. Tae-Hyuk Hahm, *supra* note 8, at 23-25.

Korea's plan to bring its trade regime in line with the GATT rules. The Korean delegation assured the Working Party members of its intention to further liberalize trade as Korea's balance of payments improves and as its infant industries gain competitiveness.²² The Working Party adopted the Protocol of Accession²³ on December 8 and sent its report to the General Council, which approved Korea's accession to the GATT by consensus a week later. The post ballots were sent out by the GATT Secretariat on January 10, 1967 to fulfill the terms of Article XXXIII of the GATT, which required two-thirds majority approval for the accession of new members. The two-thirds majority was required 47 votes out of 70 Contracting Parties, which was achieved as of March 1, 1967.

The ratification process in Korea was extraordinarily swift. On March 6, the GATT Secretariat notified the Korean Government that the requirements of accession under the Article XXXIII had been fulfilled. On March 8, the joint meeting of the Committees of Finance and Economy, Trade, Industry and Energy, and Foreign Affairs of the Korean National Assembly unanimously approved the country's accession without much discussion. Two days later, on March 10, the Plenary Session of the National Assembly also approved the accession unanimously, again without much discussion. The National Assembly's ratification paved the way for the Korean Ambassador in Geneva to sign the Protocol of Accession on March 15 and Korea became a new Contracting Party one month later, on April 14, 1967.

As a new Contracting Party in GATT, Korea was soon to get benefits from 33 to 35 percent reduction in tariffs on average for some 41,111 items negotiated in the Kennedy Round, which was concluded in May 15, 1967. According to the Korean government's estimation, Korea's benefits from tariff concessions covered 44 percent of Korea's total exports in 1966.²⁴

1.2. Early Years in the GATT

1.2.1. Textile Trade for Korea

Korea's role in the GATT in the early years of accession was only marginal, mainly because Korea was still a very minor trading nation. Korea's early involvement in GATT proceedings was mostly related to the multilateral discussions on textile trade. Korea, as a minor cotton textiles exporter, became a signatory to the Long Term Arrangement for Trade in Cotton Textiles (LTA) in 1964, and after joining the GATT in 1967, it took part in the extensions of this arrangement in 1967 and 1970. In the meantime, Korea concluded bilateral cotton textile

22. *Id.*, at 2.

23. Korea's Protocol of Accession is contained in, BISD, 15th Supplement, April 1968, at 44-46.

24. Korean Customs Association, *The Trade of Korea and GATT* (1967), at 3.

restraint arrangements under the LTA with the United States, EEC, Canada, United Kingdom, Austria, Sweden, Australia, Denmark and Norway.

With the LTA due to expire on September 30, 1973, the GATT Contracting Parties began to discuss a possible new multilateral trade arrangement on all textile products in May 1972. Korea, as an emerging textile exporter, was opposed in principle to any multilateral arrangement aimed at regulating international trade in textiles. However, the threat of the global quota imposed by importing countries convinced Korea to take part in the deliberations of the GATT Working Party that was created for the purpose of negotiating a multilateral arrangement. Ironically, Korea's first exposure to the GATT – supposedly the international institution to promote free trade – involved issues related to the management of textile trade. Textiles were the single most important export item for Korea at the time, comprising a predominant portion of total exports in 1972. This experience helped to convince Korea that the GATT might not be a very effective way to mitigate protectionism, which was regarded as one of the most important obstacles to Korea's exports.

1.2.2. Tokyo Round

Although Korea participated in the last phase of the Kennedy Round, its participation was fairly limited and largely confined to negotiations on tariff concessions in connection with Korea's accession to the GATT. In the Tokyo Round, which began in September 1973, Korea participated in the GATT trade negotiations for the first time as a formal contracting party. Since Korea was a minor player, its role and influence was still marginal.

As a member of the Group of 77, Korea had a view, which was very typical of a developing country on international trade at the time. The Korean delegate to the third and the final sessions of the Preparatory Committee for Trade Negotiations on July 4 1973 urged that the “participation of developing countries should be based on the principles of non-reciprocity, non-discrimination and preferential treatment”, and that “priority should be given to the removal of non-tariff barriers to export products of developing countries.”²⁵

The Korean minister at the Tokyo Ministerial Conference, which launched the new trade negotiations in September 1973, stated that “we are prepared to contribute in what way we can to trade negotiations,” but he stressed that “the extent and manner of the contribution by developing countries could be considered only in the light of the additional and special benefits granted by the developed countries in the process of trade negotiations.”²⁶ He went on to

25. Ministry of Foreign Affairs, *Materials for the Participation of the GATT Multilateral Negotiations* (1973), at 52-53.

26. Statement by Dr. Duk-Woo Nam, Minister of Finance, September 13, 1973 in *GATT Ministerial Meetings Files* (1973), Ministry of Foreign Affairs.

emphasize the importance of generalized system of preference (GSP), the need to offset costs incurred to developing countries due to the impending textile arrangements, and the need for a differential treatment for developing countries in the new rules pertaining to safeguard mechanisms.

The most important objective of Korea in the Tokyo Round negotiation was easing import barriers and restrictions of industrial countries on major export items such as textile, footwear and steel products. In the tariff negotiations, Korea made concessions on some 657 items, or 10 percent of all tariff lines involving, inter alia, meat, chemicals, industrial machinery, and parts and components, representing about 30% of Korea's total imports. The tariffs were reduced by 10 to 20 percent on these items. Korea's requested list included many major export items such as textiles, footwear, leather products, steel and consumer electronic products, but tariff concessions on labor-intensive products such as textiles, footwear, and leather products were rather limited by trading partners.

In the non-tariff barrier negotiations, Korea, as a member of the Group of 77, actively participated in the safeguard negotiations with the objective of removing selective application of safeguards and of dismantling grey-area measures, but it was not really successful.²⁷ Korea also had an important stake in the negotiation of custom valuation, anti-dumping, and subsidies and countervailing duties and sided with other countries, which had similar positions depending on the issue.

After the conclusion of the Tokyo Round negotiations, Korea joined four out of nine newly developed Tokyo Round Codes: Subsidy Code²⁸, Standards Code²⁹, Customs Valuation Code³⁰ and Anti-Dumping Code³¹. Korea had never joined the sectoral agreements on bovine meat, dairy products and civil aircrafts and the Import Licensing Code. Korea joined the "Agreement

27. The Safeguard Code could not be concluded during the Tokyo Round negotiation, whereas Anti-dumping Code and Subsidy Code were established after the negotiation. The Agreement on Safeguard was adopted by the Uruguay round negotiation.

28. The Agreement on Interpretation and Application of Articles VI, XVI and XXIII. In Korea, it was signed on June 10, 1980 and entered into force on July 10, 1980 as Treaty No. 709. See Ministry of Foreign Affairs, *Compilation of Multilateral Treaties*, Vol.5.

29. The Agreement on Technical Barriers to Trade. In Korea, it was signed on September 3, 1980 and entered into force on October 2, 1980 as Treaty No. 715. See Ministry of Foreign Affairs, *Compilation of Multilateral Treaties*, Vol.5.

30. The Agreement on Implementation of Article VII. The Customs Valuation Code entered into force on January 1, 1981 while the other three Codes entered into force on Jan. 1, 1980. GATT, BIDS 28S/40. In Korea, it was entered into force on January 6, 1981 as Treaty No. 729. See Ministry of Foreign Affairs, *Compilation of Multilateral Treaties*, Vol.5.

31. The Agreement on Implementation of Article VI. Korea accepted the Anti-Dumping Code on Feb. 24, 1986 and the Code entered into force for Korea on March 26, 1986 as Treaty No. 877. GATT, BIDS 33S/207. See also Ministry of Foreign Affairs, *Compilation of Multilateral Treaties*, Vol.8.

on Government Procurement” only after the Uruguay Round and implemented it from January 1, 1997, while other signatories applied it from January 1, 1996.³²

1.3. Balance-of-Payment Consultation and Beef Dispute

The main solution for Korea to address market liberalization mandated by the GATT membership was a special provision in the GATT – Article XVIII:B – that permits the use of import restrictions by developing countries with weak balance of payments (BOP). This so-called BOP exception offered a valuable opportunity for Korea to implement trade policies closely aligned with its industrial development policies.

1.3.1. BOP Consultation

Although Korea had implemented import liberalization policies since the early 1970s, a substantial number of products, particularly agricultural products, remained on the restricted list until the late 1980s. These import restrictions had been justified under the balance of payments provisions of Article XVIII:B since it acceded to the GATT. Korea had full consultation with the Committee on Balance of Payment Restrictions (BOP Committee) five times in 1969, 1971, 1976, 1979, and 1984. There were also simplified consultations six times, in 1973, 1975, 1978, 1981, 1981 and 1986. In all of these consultations, Korea’s right as a developing country to invoke Article XVIII:B restrictions was never questioned since Korea had constantly recorded substantial trade deficits every year since its accession to the GATT.

This situation changed dramatically in 1987 after a full consultation with the BOP Committee. Korea’s current account registered a surplus for the first time in 1986. The external current account registered a surplus of \$5 billion (5 percent of GNP) in 1986 and \$10 billion (8 percent of GNP) in 1987. Moreover, the Korean economy performed impressively in 1986 and 1987. Real GNP grew by 12 percent annually for both years following a year of relatively slow growth in 1985.

Korea has sought to liberalize its import system unilaterally since 1980, when over 30 percent of all tariff lines were listed as restricted imports. This percentage had been reduced to 19 percent by 1993, and starting in 1984, a major new five year trade liberalization program was launched with the objective of reducing the share of the restricted items to 5 percent of all tariff lines by 1988. A five-year tariff reduction program was also launched in 1984. As a result, the average tariff was to be lowered from 23.7 percent in 1983 to 18.1 percent in 1988.

32. WTO, Agreement on Government Procurement, Article XXIV:3. Hong Kong also had one more year for implementation.

When Korea consulted with the BOP Committee in November 1987, the prevailing view of the Committee was that the Korea's current economic situation and outlook for the balance of payments "was such that import restrictions could no longer be justified under Article XVIII:B." The Committee also stressed "the need to establish a clear timetable for the early, progressive removal of Korea's restrictive trade measures maintained for balance-of-payments purposes." The Committee went further to welcome Korea's willingness to consult with the Committee in the first part of 1989. However, "expectation was expressed that Korea would be able in the meantime to establish a timetable for the phasing out of balance-of-payments restrictions, and that Korea would consider alternative GATT justifications for any remaining measures, thus obviating the need for such consultations."³³

In view of Korea's changed circumstances regarding to the GATT, the new government which came into power in February 1988 began to seriously consider how to dismantle BOP restrictions. In addition, the first legal challenge against Korea in the GATT also forced the Korean government to seriously reconsider the protection under Article XVIII:B.³⁴ Korea finally decided to expedite import liberalization and tariff reduction programs. In April 1989, the government announced a new three year (1989-1991) import liberalization program covering 273 products including 237 agricultural items. In the same year, it also announced another five-year tariff reduction program (1989-1993) which called for a lower tariff rate on average from 18.1 percent in 1988 to 7.9 percent in 1993. According to the Korean government, this was "comparable to levels in OECD countries."³⁵

In the meantime, the Korean economy continued to perform well in 1988. Real GDP grew by over 12 percent for three consecutive years and the current account surplus increased from 8 percent of GNP in 1987 to 8.5 percent of GNP in 1988. While labor unrest was widespread, inflation was growing, and output and export growth were slowing down. Korea's official foreign reserves continued to increase reaching \$14 billion by March 1989, equivalent to three months of 1988 imports, and foreign debt also declined.

Under these circumstances, the Korean government decided to revoke the BOP restrictions. When the BOP Committee reconvened in June 1989, the IMF representative stated the preliminary view that in light of Korea's balance-of-payments and reserve position, restrictions on imports could no longer be justified on the grounds of balance of payments. This view was confirmed in the IMF's Article IV consultations of October 1989 with Korea which was held shortly before the BOP Consultation in the GATT. In the BOP Consultation, the Korean

33. BOP/R/171.

34. For more details on the GATT dispute, see Section 1.3.2.

35. Statement by Korea, June 27, 1987 in Ministry of Foreign Affairs, *The GATT BOP Consultations* (1989), 69.

representative stated that while Korea believed that “a continued invocation of Article XVIII:B for some time would be most desirable,” he did not “foreclose the possibility of discussing disinvoation ... provided that the BOP Committee recognize Korea’s need for and agrees to a grace period sufficiently long enough for further liberalization and phase-out of the restrictions presently under BOP cover after its disinvoation, and reaches an understanding that Korea will not be subject to any unilateral actions or to multilateral legal challenges in terms of GATT provisions during the agreed grace period.”³⁶

The negotiations to determine the conditions of disinvoation was been difficult and were carried over to another round of consultations in October 1989. For Korea, having a long grace period was important because the bulk of the remaining restrictions were agricultural products. In the 1989 consultation, the Korean representative strongly objected that “[i] ... Korea, a developing country experiencing balance of payment surplus only for three years in its entire history, were to be completely undressed of all protection of its agriculture and thrown out in the cold with only a nominal grace period, we cannot but express our serious doubt as to the justice and fairness of the GATT system itself.”³⁷

The BOP Committee finally agreed on the terms of disinvoation in late October, and Korea agreed to revoke Article XVIII:B as of January 1, 1990 under the understanding that Korea would phase-out its remaining restrictions by July 1, 1997. The eight year grace period was in recognition of the appropriate flexibility which was necessary for Korea, particularly in the agricultural sector. It was also understood that the other Contracting Parties would exercise due to restraint in the application of their rights under the GATT in relation to products included in the liberalization programs.³⁸

Korea’s disinvoation of Article XVIII:B in October 1989 was the first case where a developing country lost its BOP cover in the GATT. Through this decision, Korea was forced to begin market liberalization including agriculture, which had been the most protected sector in the Korean economy. However, Korea was given an eight-year transition period, and four years later, the decision of the BOP Committee was superseded by the Agreement on Agriculture in the Uruguay Round.

1.3.2. Beef Dispute

Since its accession to the GATT in 1967, Korea had imposed various import restrictions on the basis of the BOP exception under Article XVIII:B, and as of 1988, still maintained such

36. *Id.* at 70-71.

37. Statement by Korea, October 23, 1989, at 74.

38. BOP/R/183/Add.1. October 27, 1989.

measures on 358 items, including beef. In October 1984, Korea stopped issuing tenders for commercial imports to the general market, and in May 1985 orders for imports of high quality beef for the hotel sector also ceased. Between May 1985 and August 1988, virtually no commercial imports of beef took place. Korea partially reopened its market in August 1988 under a quota system.

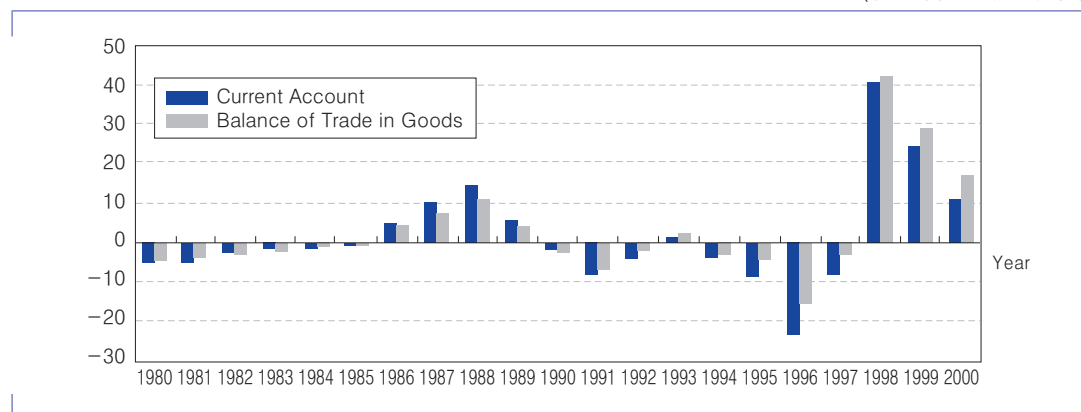
The prohibition of beef imports was challenged by the United States. On February 16, 1988, the American Meat Institute filed a Section 301 petition and the USTR initiated a Section 301 investigation on March 18, 1988.³⁹ Bilateral consultations was failed to produce satisfactory results, and the United States also requested to establish a panel for GATT dispute settlement.⁴⁰ The United States argued that the Korean measure contravened Article XI of the GATT against maintenance of quantitative restrictions on imports and nullified and impaired the tariff binding on beef negotiated during the Tokyo Round.⁴¹ On the other hand, Korea argued in the panel proceedings that its restrictions on beef imports were covered by the balance of payments provisions of Article XVIII:B and thus it was permissible under the GATT.

Incidentally, as shown in Figure 1-1, Korea had accumulated a trade surplus since 1986, for the first time in history, until 1990.

Korea blocked the establishment of the panel in the consecutive Council meetings of March 22 and April 8, arguing that the bilateral consultations had not yet been fully exhausted.⁴²

Figure 1-1 | Trend of Balance of Payments in Korea

(Unit: US Billion Dollars)



Source: Bank of Korea, Statistics Database (<http://www.bok.or.kr>).

39. USTR, *Section 301 Table of Cases, Beef (301_65)* <<http://www.ustr.gov/html/act301.htm>>.

40. Korea Restrictions on Beef Imports, L/6316 (March 1988).

41. *Id.*

42. C/M/2 18, April 19, 1988 and C/M/219, April 26, 1988.

However, it agreed to the establishment of a panel in the subsequent Council meeting held in May 4, 1988⁴³, when Australia also requested the establishment of a panel on the same matter. On September 22, a third panel requested by New Zealand on the same matter was established in the Council meeting.

Three panels were separately established although the memberships of the panels were identical.⁴⁴ On the basis of the BOP Committee consultation and the IMF opinion provided thereto, the panel held that Korea's import restrictions were not consistent with the GATT and could not be justified under the BOP exception of Article XVIII:B. The panel declined the Korean government's argument that this issue should be addressed by the BOP Committee, rather than the dispute settlement panel.⁴⁵

The panel found, among others, that a) import measures introduced in 1984/85 and amended in 1988, were not consistent with the grounds of balance of payments⁴⁶, b) that in the light of the continued improvement of the Korean balance of payments situation, there was a need for the prompt establishment of a timetable for phasing-out of Korea's BOP restrictions on beef.⁴⁷ The panel proceeded to recommend that a) Korea eliminates the import measures on beef introduced in 1984/85 and amended in 1988, and b) Korea hold consultation with the United States and other interested parties to work out a timetable for the removal of import restrictions on beef and reports the results of the consultations within a period of three months.⁴⁸

This panel report was circulated to the GATT Contracting Parties on May 24, 1989. Korea repeatedly objected to the panel reports in the subsequent Council meetings held on June 22-23, July 19 and October 11, 1989, raising serious reservations about some of the Panels' findings and conclusions. In particular, Korea argued that the Panels had prejudged the result of the BOP Committee's work by making a ruling on the compatibility of BOP restrictions before the BOP Committee could have reached a conclusion.

On the other hand, effective September 28, 1989, the USTR made a positive determination⁴⁹

43. C/N/226, November 2, 1988.

44. GATT, BISD 36S/202,36S/234, 36S/268 (adopted on Nov. 7, 1989).

45. The case raised an important issue of a proper jurisdictional dichotomy between panels and committees. For more detailed discussion on the institutional balance, see Frieder Roessler, "The Institutional Balance between the Judicial and the Political Organs of the WTO", in *New Directions in International Economic Law* 325 (M. Bronckers & R. Quick, ed., 2000). See also Dukgeun Ahn, "Linkages between International Financial and Trade Institutions - IMF, World Bank and WTO", 34 (4) *Journal of World Trade* 1, 16-23 (2000).

46. Para. 113, Report of the panel L/6503, May 24, 1989.

47. *Id.* Para. 123.

48. *Id.* Para.134.

49. 54 FR 40769.

on the Section 301 investigation and subsequently announced that if there were no substantial movement toward a resolution by mid-November, a proposed retaliation list would be published. In response to this threat of Section 301 retaliation, Korea finally agreed to the adoption of the panel reports at the Council meeting on November 7, 1989⁵⁰, when the BOP consultation was indeed concluded and thereby Korea agreed to revoke Article XVIII:B by January 1, 1990.⁵¹ On March 21, 1990, Korea signed a memorandum of understanding with the United States on beef imports and formally exchanged the letter on April 26, 1990 when the Section 301 investigation was terminated.⁵² On the other hand, noting that the remaining restrictions were largely concentrated in the agricultural sector, Korea was permitted to phase-out the remaining restrictions by July 1, 1997. However, this decision on the transition period by the BOP Committee was later superseded by the Agreement on Agriculture in the Uruguay Round.⁵³

1.4. Development of Trade Remedy System

Until the mid-1980s, the Korean government did not have much interest in developing a trade remedy system that provided ad hoc import protection measures. It had maintained various import control systems such as an import license system and recommendation, import quotas, import monitoring, and import diversification measure. In addition, tariffs were also adjusted frequently to accommodate the need of domestic industries. Therefore, the Korean government realized the need to establish a trade remedy system that addressed industry injury problems incurred by import market liberalization.

The first anti-dumping regulation in Korea was introduced in 1963 by permitting additional duties to excessively underpriced imports that caused the need for industry protection.⁵⁴ This regulation, however, was very primitive in that it lacked proper procedural as well as substantive rules concerning anti-dumping investigation. The major improvement took place by comprehensive amendment of the Tariff Act in 1983, which adopted rules under the Tokyo Round Antidumping Code. After the Tokyo Round Anti-dumping Code was formally entered into force in Korea in 1986, the domestic regulation was further elaborated to introduce important legal elements such as industry injury, causation, and price undertakings.

The anti-dumping investigation was initially conducted by the Tariff Review Committee.

50. GATT, C/M/237, 19 (dated on Nov. 28, 1989).

51. GATT, BOP/R/183/Add.1, 2 (dated on Oct. 27, 1989).

52. 55 FR 20376.

53. Chulsu Kim, "Korea in the Multilateral Trading System: From Obscurity to Prominence", in *The Kluwer Companion to the WTO Agreement 8* (forthcoming).

54. Article 7.2, Tariff Act, Law No. 1461 (amended Dec. 5, 1963; entered into force Jan. 1, 1964).

However, later the dumping investigation was assigned to the Office of Customs Administration, while the injury determination was given to the Korean Trade Commission (KTC), the newly established agency in 1987 as the main trade remedy authority.⁵⁵

The very first anti-dumping measure in Korea, however, was ill-fated and yet very useful to the development of the trade remedy system in Korea. Following a Korean company's petition on May 8, 1990, the KTC formally initiated an investigation involving two U.S. and one Japanese polyacetal resin producers on August 25, 1990.⁵⁶ On February 20, 1991, the Office of Customs Administration found dumping margins ranging from 20.6 to 107.6 percent for three respondents.⁵⁷ On April 24, 1991, the KTC made a positive determination on material injury to the domestic industry. Subsequently, on September 30, 1991, the Ministry of Finance imposed anti-dumping duties that were due to expire on October 3, 1993.

On June 21, 1991, however, the United States requested consultations regarding the anti-dumping measures under the Tokyo Round Antidumping Code, which was the very first GATT dispute settlement case for Korea.⁵⁸ When the two consultation meetings on July 24 and September 30, 1991 failed, the Committee on Anti-Dumping Practices agreed to establish a panel on February 17, 1992. Canada, the European Communities and Japan joined the dispute as third parties. In this case, the panel held that the KTC's determination on industry injury was inconsistent with the obligation under the Anti-dumping Code. This ruling was adopted by the Committee on April 27, 1993.⁵⁹

Korea strongly disagreed with the Panel's decision, particularly about the denial of evidentiary value of the transcript of the KTC's voting session on April 24, 1991 for the simple reason that it was not notified publicly. However, Korea did not object to the adoption of the panel report, saying it was refraining "because it believed that the multilateral dispute settlement system provided the best way to solve trade issues, and because it had in the past strongly supported the strengthening of the multilateral dispute settlement system."⁶⁰ In any case, the original due of the anti-dumping duties remained only a little more than 5 months.

55. The KTC began its works in July 1987, pursuant to Article 37 of the Foreign Trade Act. The KTC started only with 5 commissioners and no role for actual investigation. But, in 1990, the KTC increased the number of the commissioners to nine and added the investigation office with 50 staffs.

56. This case was the fourth AD case for the KTC. *See generally* Korea Trade Commission, A History of 10 Years for the KTC, 170 (1997).

57. The authority to make a dumping margin determination was transferred to the KTC in 1996 by the revision of the "Regulations for Implementation of the Customs Duties Act". *See* President Order No. 14871 (dated on Dec. 30, 1995). Since then, the KTC has maintained the authority to make determinations on both dumping margin and injury.

58. Korea - Anti-Dumping Duties on Imports of Polyacetal Resins from the United States, GATT, BISD 40S/205 (adopted April 27, 1993).

59. GATT, BISD 40S/205.

60. GATT, ADP/M/40, para. 185.

This case enlightened the Korean government about the importance of implementing the trade remedy system properly pursuant to GATT rules. As part of efforts to embrace the GATT rulings, the Korean government transferred more functions and authorities related to trade remedy systems to the KTC. In December 1993, the authority concerning application and initiation decision for anti-dumping investigation was moved from the Ministry of Finance (MOF) to the KTC. It was in December 1995 that the entire function for anti-dumping investigation was transferred from the MOF to the KTC.

The countervailing regulation was first introduced in the Tariff Act in 1967.⁶¹ The newly established rules under the Tokyo Round Subsidy Code were incorporated more comprehensively by the amendment of the Tariff Act in December 1981.⁶² The roles of the KTC related to countervailing investigations were also increased along with those for anti-dumping investigations. The KTC, however, has not yet initiated any countervailing investigation as of August 2011.

Article 12 of the Tariff Act of 1968 stipulated “Emergency Tariff” that reflected Article XIX of GATT.⁶³ However, a more GATT-consistent safeguard regulation was prepared by Chapter 4 of the Foreign Trade Act in 1987.⁶⁴ When the GATT BOP Committee revoked Article XVIII:B for Korea in November 1989, the Korean government further elaborated the Foreign Trade Act in December 1989 to make the safeguard measure more feasible and consistent with GATT Article XIX. In fact, the KTC relied heavily on the safeguard measures to protect the domestic market during the GATT period. Between 1987 and 1994, the KTC received 24 safeguard applications and issued the positive determination in 16 cases.

The KTC also regulates “unfair trade practices” whose primary focus is on the protection of intellectual property rights. Chapter 5 of the Foreign Trade Act of 1987 first introduced the regulatory framework against unfair trade practices to the KTC. In particular, Article 44.1 provided that exports as well as imports of products infringing on trademarks and designed patents protected by trading partners would be prohibited. This provision was driven by the trade conflicts with developed countries that were caused by counterfeit products. In 1989, the scope of protected intellectual property (IP) rights was broadened to cover other IP rights such as patents and copyrights.⁶⁵ The amendment in 1993 made a notable change by including intellectual property rights protected by domestic laws and regulations.⁶⁶ The KTC received the most applications related to unfair trade practices in 1988 and 1989 – 65 and 61,

61. Article 13, Tariff Act, Law No. 1976 (amended Nov. 29, 1967; entered into force Jan. 1, 1968).

62. Tariff Act, Law No. 3478 (amended Dec. 31, 1981; entered into force Jan. 1, 1982).

63. Tariff Act, Law No. 1976 (amended Nov. 29, 1967; entered into force Jan. 1, 1968).

64. Foreign Trade Act, Law No. 3895 (entered into force July 1, 1987).

65. Foreign Trade Act, Law No. 4145 (amended Dec. 31, 1989; entered into force Dec. 31, 1989).

66. Foreign Trade Act, Law No. 4527 (amended Dec. 8, 1992; entered into force July 1, 1993).

respectively. Since 1992, however, the number of applications was dropped down to single digit levels.

2. Korea in the Uruguay Round Negotiation

2.1. Background

Unlike during the Tokyo Round, Korea became an active participant in the Uruguay Round negotiations. It played a significant role in both launching the round and negotiating.⁶⁷ This enhanced role of Korea is owed to a number of developments that have taken place in Korea as well as in the international economy in the several years preceding the launch of the round in 1986.

Korea shifted the emphasis of economic policies from heavy interventionist policies to more market-based economic policies and embarked on an ambitious trade liberalization program since the beginning of the 1980s. In the earlier decades, Korea experimented with import substitution policies under the Heavy and Chemical Industry (HCI) Promotion Policies. Under this policy drive, officially announced in 1973, credit, interest rate, tax and trade policies were used to promote development of “key” industries, such as iron and steel, non-ferrous metals, shipbuilding, machinery, automobiles, electronics and petrochemicals.⁶⁸ While this policy laid the foundation for industrial growth in Korea in the 1980s and beyond, it contributed to the serious structural imbalances and inflationary pressures in the Korean economy by the late 1970s. Actually, in 1979, the policy was officially abandoned, and the government began to take measures to correct resource misallocation emerging from the HCI policy and to enhance the overall competitiveness of Korean industries. Significantly, the Korean government took market opening measures as a first step. Starting in 1978, it began to take trade liberalization measures. By the end of 1979, import items subject to automatic licensing reached 70 percent of all tariff lines and the unweighted average tariff rate had been cut to just below 24%.

67. In fact, the Uruguay Round could have been considered the “Korea Round” or “Seoul Round.” In 1985, GATT contracting parties strongly supported and agreed with Korea as the historic country to launch the new major multilateral trade negotiation. As one of a few countries that achieved remarkable economic growth mainly through international trade, Korea appeared to be a perfect candidate to launch new trade negotiation whose aim was very ambitious to include services trade and intellectual property protection. The Korean government, however, turned down the offer from GATT to be the next place since Korea then hosted already many major events such as APEC Meeting in 1985, and Asian Games in 1986. Interviews with Professor Taeho Bark and former ambassador Keun Park.

68. For HCI policy drive, see, Trade Policy Review of Korea, C/RM/S/27A, June 2, 1992, 9-10.

These trade liberalizing initiatives were strengthened when the government subsequently launched a pre-announced three year program to expand the scope of automatic import licensing in 1983 and a five year program to reduce tariffs in 1984. These plans were renewed in subsequent years and continued until the early 1990s. At the time, nearly all industrial products became subject to automatic import licensing and the average tariff rates were reduced to 7.9% by 1994, and agriculture still had the protection for trade. In 1985, industry-specific promotion laws enacted during the late 1960s, and the Industrial Development Act replaced it with the intention to promote restructuring and technological development on an industry-wide basis in the early 1970s.

Under the new market-based macroeconomic policies and the ambitious trade liberalization programs, the Korean economy regained its competitiveness and performed well since 1985. Under these circumstances, Korea became more favorable towards the global effort to launch a new trade round. In addition, Korean policy makers perceived a new round as solutions to a number of challenges, which Korea faced in the worsening global trade environment or the growing protectionism abroad. As Korea's presence in the world markets became more prominent, protectionist measures such as safeguard measures, gray-area measures, anti-dumping actions and countervailing duties were imposed with increasing frequency on Korean export products.

According to the study by the Ministry of Trade and Industry, during 1982 to 1985, some 270 export items were subject to import restrictions in 21 industrial countries covering about 30% of total exports to these countries.⁶⁹ In 1984, Korea concluded a voluntary export restraint arrangement on steel products, another major export item, with the United States. At the end of 1985, many anti-dumping and countervailing duties were imposed on Korean export products, ranging from photo albums and color television receivers. In 1985 alone, 15 new anti-dumping and countervailing duty investigations on Korean export products were initiated by Korea's trading partners, of which ten were undertaken by the United States.

The other challenge was the growing market opening pressures by Korea's trading partners. By the mid-1980s, Korea was beginning to face strong market opening pressures from its trading partners, particularly from the United States. Bilateral trade between the two countries expanded rapidly since the 1960s. The United States was Korea's largest trading partner with the bilateral trade volume of \$17 billion in 1985. Korean exporters' dependence on the U.S. market was considerable, with 35.5% of Korea's total exports going to that market in the same year. Korea's trade balance with the United States registered a surplus for the first time in 1982, and it expanded to \$4.3 billion in 1985.

69. CCCN 4-digit classification applied. See, Ministry of Trade and Industry, *Forty Years of Trade Promotion* (1998), 573.

The United States began demanding market opening measures in 1983. Initially, it demanded tariff reductions and removing quantitative restrictions in the goods sector. But later, a full trade offensive involving service sectors and the protection of intellectual property were undertaken, utilizing Section 301 of the U.S. Trade Act of 1974. In September and October of 1985, investigations and subsequent negotiations took place about Korea's insurance market and the protection of intellectual property rights. Under these negotiations, Korea promised to partly open fire and life insurance markets to U.S. firms and promised to modernize copyright, software and patent laws. In addition, several patent infringement cases involving Korean firms were filed with the U.S. International Trade Commission (ITC) in the mid-1980s.

As Korea faced more protectionism abroad and pressures to open its domestic market by its trading partners, it became evident to its policymakers that Korea's overall economic interests were quite consistent with the objectives of the new trade round. It, therefore, became one of the most active supporters of the launching of a new round of trade negotiations.

Korea thus took a very positive stance toward the launching of a new round in Punta de Este, Uruguay in September 1986. The head of the Korean delegation, Woong-Bae Rha, Minister of Trade and Industry, strongly urged building a consensus to launch a new round, and advocated that both "old" and "new" issues should be discussed. He stated that Korea attached importance to "tighter safeguard principles, the elimination of non-tariff measures and the strengthening of dispute settlement procedures." As for the new issues, the Minister believed that "the trading nations should recognize that the world economy is constantly evolving and that the trading system needs to be more responsive to this change, "but that the interests and concerns of developing countries should be fully reflected in adapting our trading system to meet new challenges."⁷⁰ He supported two other initiatives to strengthen the function of the GATT. One was to establish a permanent surveillance body in the GATT to monitor trade policies and practices of GATT Contracting Parties. The other was for ministers to become more involved in the decision-making process of the GATT by meeting periodically on a regular basis.⁷¹

70. Korea : Statement by H. E. Woong-Bae Rha, Minister of Trade and Industry at the Meeting of the GATT Contracting Parties of Ministerial Levels, September 15-19, 1986, Punta de Este, Uruguay, MIN(86)/ST/ 11, September 16, 1986.

71. *Id.*

2.2. Korea's Participation in the Uruguay Round

2.2.1. Objectives in the Round

Korea's objective in the Uruguay Round was much more clearly defined than in the previous round. The multilateral trading system was seen as the best mean of resisting bilateral trade pressures and an important counterbalance to protectionist pressures as well as on the negative aspects of regionalism. Therefore, Korea was interested in improving the GATT's ineffective dispute settlement procedure, to oppose selective safeguards, to stop abuses of anti-dumping measures, and to reintegrate textiles into the GATT. On the other hand, in agriculture, Korea's goal in the round was defensive. While supporting progressive liberalization in agriculture, Korea strongly argued that certain agricultural products including rice should be shielded from foreign competition.

As far as the new areas were concerned, Korea did not have a strong service sector or a strong system of protection of intellectual property rights. Therefore, Korea was not at the forefront of strongly advocating for the liberalization and protection in these areas. However, Korea broadly supported the inclusion of these sectors in the new round. As for intellectual property rights, Korea already had embarked on the modernization of its laws, partly in response to the bilateral trade pressures of industrialized countries in the early 1980s, particularly by the United States. As a result, the new negotiations were not expected to bring overly difficult new obligations to Korea. It was also widely believed that strengthening of intellectual property rights would be crucial to technological advancement in Korea.

The service sector in Korea occupied more than 50 percent of its GDP at the turn of the 1980s and 55.9 percent by 1985. According to GATT statistics, Korea's service exports reached \$8 billion and imports \$5 billion respectively in 1987, making Korea the 15th largest exporter and 19th largest importer of services in the world by 1987.⁷² Despite the size of the service industry in Korea, the industry as a whole lagged substantially behind the manufacturing sector due to the small market, heavy regulation and low level of productivity and research and development in many service sectors. Therefore, the inclusion of services in the negotiation was generally seen as a burden to the Korean economy. On the other hand, Korea was seen to have a comparative advantage in selected services such as transportation and construction and in the movement of natural persons.⁷³

72. See, Taeho Bark, *Services Negotiations in the Uruguay Round and Korea's Countermeasures*, in Korea International Economic Policy Institute, *Seminar on Uruguay Round and Countermeasures* (1996).

73. The Korean government did take strong positions in negotiating transportation and construction services. However, unlike the general perception, it did not push an agenda for movement of natural persons during negotiations because, at the time of Uruguay Round, Korea already experienced a surge of foreign workers in the manufacturing sectors. Comments by Professor Keuk-je Sung - then, the Chief Negotiator for Services Negotiation.

2.2.2. Korea in the Negotiations

Korea played a much more important role in the Uruguay Round compared to the Tokyo Round. The more important role for Korea was a reflection of the enhanced status of Korea as a trading nation. By 1986, Korea became the 12th largest trading nation in the world with a two-way trade volume of \$66 billion. Its industries, such as textiles, electronics, shipbuilding, steel

Table 1-1 | Written Proposals by Korea in the Uruguay Round

| Document No. | Date | Subject |
|----------------------------|--------------------|---------------------------------------|
| 1. MTN. GNG/NG7/W6 | June 1, 1987 | Article 28 |
| 2. MTN. GNG/NG7/W/59 | November 3, 1989 | Article 28* |
| 3. MTN. GNG/NG8/W3 | May 20, 1987 | Anti-Dumping |
| 4. MTN. GNG/NG8/W/10 | September 30, 1987 | Anti-Dumping |
| 5. MTN.GNG/NG8/W/40/Add.1. | November 22, 1988 | Anti-Dumping |
| 6. MTN. GNG/NG8/20/40 | November 22, 1988 | Anti-Dumping |
| 7. MTN. GNG/NG8/40/Add.2 | December 20, 1989 | Anti-Dumping |
| 8. MTN. GNG/NG9/W/4 | May 25, 1987 | Safeguards** |
| 9. MTN. GNG/NG9/W/8 | October 5, 1987 | Safeguards** |
| 10. MTN. GNG/NG10/W/5 | June 1, 1987 | Subsidies and Countervailing Measures |
| 11. MTN. GNG/NG10/W/11 | October 22, 1987 | Subsidies and Countervailing Measures |
| 12. MTN. GNG/NG10/W/21 | June 17, 1988 | Subsidies and Countervailing Measures |
| 13. MTN. GNG/NG1/W/13 | November 16, 1987 | Tariffs |
| 14. MTN. GNG/NG8/W/21 | December 7, 1987 | Government Procurement |
| 15. MTN. GNG/NG8/W/39 | November 8, 1988 | Government Procurement |
| 16. MTN. GNG/NG5/W/80 | October 16, 1988 | Agriculture |
| 17. MTN. GNG/NG5/W/178 | July 24, 1990 | Agriculture |
| 18. MTN. GNG/NG13/W/19 | November 20, 1987 | Dispute Settlement |
| 19. MTN. GNG/NG11/W/48 | October 26, 1989 | TRIPS |
| 20. MTN. GNG/TRIPS/W/1 | July 12, 1991 | TRIPS |
| 21. MTN. GNS/W/80 | October 24, 1989 | GATS |
| 22. MTN. GNG/NG2/RS/25 | May 18, 1990 | Non-tariff Measures |
| 23. MTN. GNS/CON/W/2 | October 9, 1990 | Construction Services |
| 24. MTN. SB/RBN/5 | October 22, 1990 | Rollback |
| 25. MTN. TNC/W/61 | January 14, 1991 | Trade in Services |

*Joint proposal with Argentina, Canada, Columbia, Czechoslovakia, Hong Kong, Hungary, Mexico, New Zealand and Singapore

** Joint proposal with Australia, Hong Kong, New Zealand, and Singapore

and automobiles were already global in scale and in its competitiveness. Korea thus had an important stake in the outcome of negotiations, and the Korean government placed a high priority in the negotiations by increasing resources and placing a national framework of preparations for the negotiation.

In December 1986, the government created an inter-agency committee on the Uruguay Round under the Economic Planning Board, which had a coordinating role in domestic and international economic policy matters. The Uruguay Round Steering Committee (UR Committee), as it was called, was composed of high level officials from nearly all economic ministries and the foreign ministry. The Committee reported to the ministerial level International Policy Cooperation Committee headed by the Deputy Prime Minister, who was concurrently the Minister of Economic Planning on important matters. The UR Committee was also divided into seven subcommittees composed of officials of relevant ministries and experts from private sectors. The positions developed by the subcommittees were screened and coordinated by the UR Committee before officially being communicated to the various negotiating groups created under the Trade Negotiating Committee in Geneva.

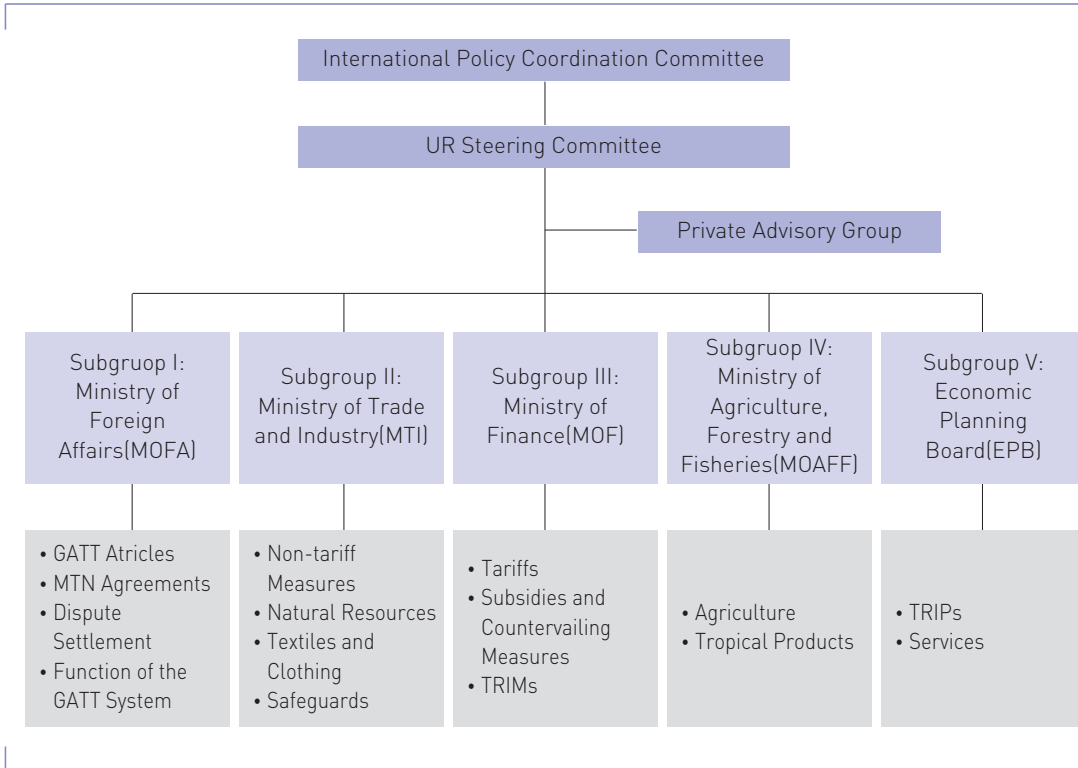
Although Korea's experience in the multilateral trade negotiations was rather limited, it played a fairly active role in every phase of the Uruguay Round. This active role reflected more diversified trading interests of Korea, which, by then, had emerged as the 12th largest trading nation. Unlike in the previous round, the Korean delegation had many written proposals independently of other countries in nearly every area under negotiations during the round. As Table 1-1 shows, Korea submitted some 25 written proposals during the Uruguay Round. They covered issues such as dispute settlement, safeguards, anti-dumping, subsidies, agriculture, services, and intellectual property. The most extensive Korean proposal was probably in the area of anti-dumping, where Korea initially proposed amendments in at least 13 issues of the anti-dumping code agreed during the Tokyo Round.⁷⁴

Five government ministries of Korea were mainly involved in the Uruguay Round negotiations.⁷⁵ A total of 15 issues are divided into the five working level subgroups. The initial positions formed by the working group were then reported to the UR Committee. This committee is chaired by the Assistant Minister for International Policy Coordination of the Economic Planning Board and responsible for finalizing the Korean government's positions for each agenda being negotiated.

74. MTN. GNG/NG8/W/3, May 20 1987.

75. Taeho Bark, *The Uruguay Round Negotiations and the Korean Economy*, KIEP Working Paper No.91-05, 5 (1991).

Figure 1-2 | Korea's Uruguay Round Negotiation Structure in 1986⁷⁶



Finally, the International Policy Coordination Committee that is chaired by the Deputy Prime Minister – actually, Minister of the Economic Planning Board – confirmed the government’s ultimate positions on the negotiations. Throughout this policy coordination process, various government-funded research institutes such as the Korea Development Institute (KDI), Korea Institute for International Economic Policy (KIEP), Korea Institute for Economics and Technology (KIET) and Korea Rural Economic Institute (KREI) advised the government on pertinent subject matters.

When the Trade Negotiation Committee adopted a new negotiation structure to reorganize 15 issues into 7 negotiating groups in April 1991, the Korean government also restructured the negotiation system as shown in Table 1-2.⁷⁷ It is noted that the Korean Intellectual Property Office began to take charge of the TRIPS negotiation.

⁷⁶. *Id.* at 8.

⁷⁷. *Id.* at 8-9.

2.2.2.1. Goods Negotiation

The Uruguay Round tariff negotiation was based on applicable or bound rates available in September 1986. In general, tariffs for goods were supposed to be reduced at least by 33%. The tariff negotiation would grant credits for unilateral tariff reduction or market liberalization undertaken since September 1986.

Table 1-2 | Korea's New Negotiating Structure in 1991

| New Negotiation Groups | Ministry with Principal Responsibility | Related Ministries |
|---|--|--|
| (1) Market Access <ul style="list-style-type: none"> • Tariffs • Non-tariff Measures • Tropical Products • Natural Resources | MOF | MTI, MOAFF |
| (2) Textiles and Clothing | MTI | |
| (3) Agriculture | MOAFF | |
| (4) Rule-Making and Investment Measures <ul style="list-style-type: none"> • GATT Articles • MTN Agreements • Subsidies and Countervailing Measures • Safeguards • TRIMs | MTI | MOFA, MOF |
| (5) GATT Institution <ul style="list-style-type: none"> • Dispute Settlements • Function of the GATT System • Final Act | MOFA | MTI |
| (6) TRIPs | Korean Intellectual Property Office | MTI, Ministry of Culture, Ministry of Science and Technology |
| (7) Services | EPB | 17 relevant ministries |

Since the early 1980s, Korea had consistently pursued policies to reduce tariffs. Korea had been implementing its five-year programs to reduce tariff rates since 1984 in order to enhance the effectiveness of import liberalization. The first five year schedule lowered the average tariff rate from 23.7% in 1983 to 18.1% in 1988. In 1994, when the second five-year program was

completed, Korea's average tariff rate dropped from the current 10.1% to 7.9%, reaching the level in effect in most OECD countries. In addition to the five year schedules, the Korean government made further reductions in tariff quotas in order to promote imports. The Korean government made an advance notice for tariff reduction plans in order to minimize market distortions due to sudden reductions in tariffs. Table 1-3 shows the advance notice for tariff reduction between 1988 and 1994.

As shown by the advance notice policy, the Korean government already prepared independently substantial tariff reduction plans of the Uruguay Round negotiation. Thus, the tariff negotiations itself were not much of an issue or concern for the Korean government. Basically, the Korean government believed tariff reductions on goods would benefit its own economy that was critically contingent on exports. So, in addition to negotiations on tariff reduction, Korea also participated in negotiations on sectoral tariff elimination and tariff harmonization primarily driven by Quad countries – U.S., EC, Canada and Japan. Quad countries agreed to completely eliminate tariffs for 75 product items in 8 sectors including steel, construction equipments, furniture, and medical devices. They also agreed to harmonize tariffs for 196 chemical products at a range of 0-6.5%. Korea joined the agreements to eliminate tariffs for 67 products in 6 sectors and to harmonize tariffs for 193 chemical products.

Table 1-3 | Advance Notice of the Tariff Reduction Plan (1988-1994)⁷⁸

(Unit: %)

| | 1988 | 1989 | 1990/1991 | 1992 | 1993 | 1994 |
|----------------------------|------|------|-----------|------|------|------|
| Manufactured products | 16.9 | 11.2 | 9.7 | 8.4 | 7.1 | 6.2 |
| Agricultural products | 25.2 | 20.6 | 19.9 | 18.5 | 17.8 | 16.6 |
| All products | 18.1 | 12.7 | 11.4 | 10.1 | 8.9 | 7.9 |
| Representative tariff rate | 20 | 15 | 13 | 11 | 9 | 8 |

Source: Ministry of Finance.

As a result of the Uruguay Round negotiation, the average bound rate for Korea was reduced from 17.9% in 1986 to 8.1%. However, the applicable duty rates were actually lower than the bound rates in 1994 for most products, except for items under the agreements of tariff elimination and harmonization.

2.2.2.2. Agriculture Negotiation

After the BOP exception expired under GATT Article XVIII:B in 1989, import liberalization of agricultural products was one of the most important challenges facing Korea. The Uruguay

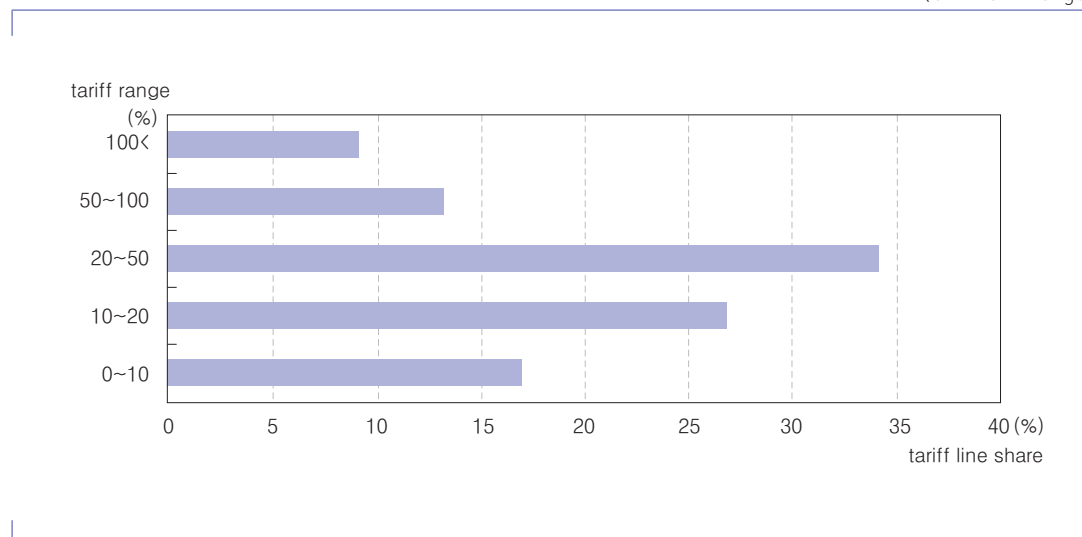
78. GATT, C/RM/G/27, 54 (June 12, 1992).

Round brought the general reform of the agricultural sector and accelerated market opening both home and abroad. The Uruguay Round forced Korea to open its market for all agricultural products. The Agreement on Agriculture rendered a significant impact on the agriculture sector in Korea. Only rice was exempted from tariffs for 10 years with minimum market access (MMA) starting at one percent of total domestic consumption in 1995 and expanding to four percent in 2004. A Tariff-Rate Quota (TRQ) was established for 67 items, such as garlic, corn, starch, oranges, and ginseng etc.

The process of applying tariffs in the UR put out bound tariff rates for 118 items ranging from zero to 854 percent. Figure 1-3 shows tariff distribution of bound rates. High tariffs exceeding 100 percent accounted for nearly eight percent of the total tariff lines. Products protected by high tariffs included cereals, seasoning vegetables and sesame. They were deemed important in either ensuring food security or stabilizing farm income. Bound rates were averaged 64 percent which was slightly higher than world average agricultural tariff rates, 62 percent. Applied tariffs were similar to the bound tariffs structure. The majority of applied tariffs fell in the range of 10 to 50 percent. The average applied rate over agricultural products was 56 percent, a bit lower than the bound rate.

Figure 1-3 | Bound Tariff Rates in Korean Agricultural Commodities

(Unit: tariff range)



Source: Choi et al. (2002)

The Uruguay Round also exerted a significant impact on domestic agricultural policies. Korea utilized the current Aggregate Measurement of Support (AMS) almost up to the bound AMS. As for domestic support, obligatory reduction of AMS was a binding constraint for Korea. The government's intervention through a rice procurement program had to be scaled

down every year since it accounted for over 90 percent of the AMS use. Consequently, the proportion of rice purchased by the government to total production dropped from 29 percent in 1995 to 16 percent in 2004.

Table 1-4 | Comparison of Domestic Subsidies with Major WTO Members (1995)

| | U.S. (million USD) | EU (million EURO) | Japan (million JPY) | Korea (billion KRW) |
|--------------------------|-----------------------|----------------------|------------------------|------------------------|
| Total Ag. Production (A) | 190,110 | 207,400 | 10,450 | 26,736 |
| Bound AMS (B) | 23,083 | 78,672 | 4,801 | 2,183 |
| Current AMS (C) | 6,214 | 47,526 | 3,508 | 2,076 |
| B/A (%) | 12.1 | 37.9 | 45.9 | 8.2 |
| C/B(%) in 1995 | 26.9 | 60.4 | 73.1 | 95.1 |
| C/B(%) in 2004 | 60.9 | 46.0 | 15.3 | 97.9 |

Source; WTO notification of each country.

Korea usually used around 95% of its total permissible domestic support (Bound AMS) unlike other members of the WTO. The EU and Japan could establish more than one third of their total agricultural production value into AMS bound. Thus, the AMS reduction commitment was not a binding constraint for these countries. The United States used only 27% of Bound AMS in 1995. However, these ratios varied year by year. The last row in Table 1-4 is the ratio of current AMS versus bound AMS of each country reported to WTO in 2004. The countries mentioned above had enough room for further reductions, but Korea had little.

Table 1-5 | Rice Share of Total AMS in Korea

(Unit: billions Korean Won)

| | 1995 | 1997 | 1999 | 2000 | 2004 |
|--------------|-------|-------|-------|-------|-------|
| Total AMS | 2,075 | 1,937 | 1,552 | 1,691 | 1,458 |
| AMS for RICE | 2,016 | 1,884 | 1,503 | 1,647 | 1,370 |
| Share (%) | 97.1 | 97.3 | 96.9 | 97.4 | 94.0 |

Source: Ministry of Agriculture and Forestry.

Particularly, it is noteworthy that rice as a single commodity accounted for 97 percent on average among the total AMS reported to the WTO by the Korean government as shown in Table 1-5.

2.2.2.3. Services Negotiation

The Korean government was in general favorable to the newly negotiated services market liberalization. Although it had some concern for certain service sectors at least in the short term, the Korean government recognized the necessity to improve its competitiveness through market liberalization for service industries. Also, its already strong competitiveness in limited services sectors such as transportation and construction led to Korea to participate in negotiations on services more actively. In fact, Korea submitted its initial offer list for the services in January 1991, as the second earliest among developing countries only after Hong Kong.⁷⁹

Among 155 subsectors in 12 main sectors covered in GATS, Korea made concessions in 78 subsectors in the following eight main sectors: business services, communications services, construction services, distribution services, environmental services, financial services, tourism services, and transportation services. However, Korea did not make any concession in education services, health services, recreational services, and other services. As shown in Table 1-6, the market access commitment level of Korea was far below compared to those of other developed countries. In addition, Korea also attached many limitations even for sectors, which committed to market access. This situation contrasted with other developed countries that did not normally have limitations on sectors in which market access commitment was made.

It should be noted that construction services was the only sector that Korea made a full market access commitment. Since Korea had exported a significant amount of construction services to foreign countries, especially in the Middle East countries, it pushed hard for complete liberalization for construction services. By joining the Agreement on Government Procurement (GPA) in 1997, Korea later liberalized the public construction market as well.⁸⁰ So, Korea liberalized not only the private construction market through GATS but also the public construction services market through GPA.

Despite the generally favorable position of Korea towards GATS, it was very reluctant to accept market liberalization of financial services. The Ministry of Finance was particularly reluctant to accept market access request by the U.S. government. Therefore, the market access agreed in the financial services sector was basically the codification of status quo. This result was somewhat disappointing in that liberalization of the financial services sector was the key element of services market liberalization. However, even this much commitment could lead to some important changes in regulatory practices of the Korean government. There were prevalent practices by the government to regulate financial institutions through implicit

79. Taeho Bark, *supra* note 75. Korea's submission was the tenth earliest among all UR participants. *Id.*

80. Korea signed the GPA in 1996, which entered into force in 1997.

Table 1-6 | Services Market Access by Major WTO Members⁸¹

| Services Sector | Korea | U.S. | EC | Japan | Canada |
|-----------------------|-------|------|-----|-------|--------|
| 1. Business | 31 | 34 | 41 | 32 | 35 |
| 2. Communication | 9 | 15 | 13 | 15 | 8 |
| 3. Construction | 5 | 5 | 5 | 5 | 5 |
| 4. Distribution | 4 | 4 | 4 | 4 | 5 |
| 5. Education | 0 | 2 | 4 | 4 | 0 |
| 6. Environment | 3 | 4 | 3 | 4 | 4 |
| 7. Financial Services | 15 | 16 | 16 | 16 | 16 |
| 8. Health | 0 | 4 | 2 | 3 | 2 |
| 9. Tourism | 3 | 4 | 2 | 3 | 2 |
| 10. Recreation | 0 | 4 | 3 | 4 | 0 |
| 11. Transportation | 8 | 15 | 17 | 16 | 20 |
| 12. Others | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 78 | 107 | 110 | 105 | 95 |

administrative guides or orders, despite legal rules to permit free transactions. Mere codification of existing commitments and market access in GATS could prohibit the government from engaging in such implicit practices to interfere in market transactions in committed sectors.

2.2.2.4. TRIPS Negotiation

Incorporating intellectual property (IP) protection in the WTO system raised huge concerns from developing countries since the level of the protection was in fact higher than other IP treaties. Korea was also concerned about increased costs to domestic companies that relied on foreign technology licenses. However, Korea took the general position to support TRIPS negotiations because higher IP protection was considered to be the basis for domestic knowledge and technology development and also for technology transfer from developed countries. Moreover, Korea had already suffered from the counterfeit product problems in less developed countries and recognized the need for strengthening IP protection. In other words, while IP protection levels in Korea were substantially improved due to various government measures after bilateral negotiations with the United States, Korean products still needed such protection in developing country markets.

For example, in October 1985, U.S. President Reagan initiated Section 301 procedures to investigate Korean IP laws. This Section 301 investigation led to comprehensive agreements

81. Ministry of Foreign Affairs and Trade, Uruguay Round Negotiation Result and Evaluation (1994.8).

related to IP matters in July 1986. Accordingly, Korea signed a record of understanding with the United States related to intellectual property rights on August 28, 1986 and amended its IP laws for patent, copyrights, trademarks and integrated circuit protection. It should be noted that the amendment of the IP law in 1986 included various preferential benefits for U.S. right holders such as, most notably, retrospective patent and copyright protection. For example, the amended copyright law protected U.S. copyrights from 10 years prior to enforcement of the new law. At the time, Korea and the United States did not join the Berne Convention that provides retroactive copyright protection.⁸² Instead, Korea joined the Universal Copyright Convention (UCC) that did not recognize such retroactive copyright protection.⁸³ Nevertheless, Korea was required to offer preferential protection for U.S. copyright holders. This kind of situation led the Korean government to consider TRIPS as a preferable alternative to bilateral arrangements. Therefore, having been treated as a developing country and thus given a longer transition period, Korea did not have much problem with supporting the TRIPS Agreement.

Korea submitted its own communication to the Negotiating Group on Trade-Related Aspects of Intellectual Property Rights in October 1989.⁸⁴ In that communication, Korea set forth the following four principles for TRIPS negotiation⁸⁵:

1. The existing international agreements should be fully considered;
2. Protection of IPRs and the use of IPRs should be balanced;
3. Due consideration should be given to the public policy objectives underlying in each national system;
4. Reasonable transitional agreements and procedures of transfer of technology should be allowed for the adjustment of each participating country's domestic regulation, especially in new areas for which there exists no international agreement.

In addition, Korea made specific proposals for seven different IPRs protection and for enforcement procedures. Some of these proposals including the protection of integrated circuit and compulsory licensing were adopted in the final text, whereas others such as limiting neighboring rights were not.

After the 1986 amendment of IP laws in Korea, regulatory failure to address IP protection was no longer a serious issue. Instead, the effective enforcement of the IP laws became the major concern of the U.S. government. Between 1989 and 1995, Korea was designated twice as a watch-list country in 1990 and 1991, and a priority watch-list country in all other years under

82. Korea joined the Berne Convention in 1996 and US in 1989.

83. Korea joined the UCC on July 1, 1987. <<http://erc.unesco.org/cp/convention.asp?KO=15381&language=E>> (visited July 1, 2010).

84. GATT, MTM.GNG/NG11/W/48 (Oct. 26, 1989).

85. *Id.*

the Special 301 procedure. This fact also led the Korean government to agree on the TRIPS Agreement, believing that a multilateral framework should be established to prevent abusive pressure from the U.S. government.

3. Korea in the WTO System

3.1. The Uruguay Round Implementation

3.1.1. Overview of the Uruguay Round Implementation

Korean President Young Sam Kim announced “Segyehwa” – generally translated as globalization – project in late 1994 as the guiding principle of his administration. Market liberalization was regarded as the main vehicle for implementing Segyehwa. Therefore, the reaction of the Korean government to the results of the Uruguay Round was generally favorable except in agriculture. The negotiated market access was perceived as creating new export opportunities for Korea. The 35 percent tariff reduction by industrial countries and the substantial lowering of tariffs and tariff bindings on the part of developing countries were significant market access improvements for Korea’s export sector. On the other hand, Korea’s market access commitments were also considerable. These substantial tariff commitments, however, did not require a major overhaul in Korea’s tariff structure, as many concessions were well within the existing tariff rates resulting from the unilateral liberalization initiatives since the 1980s.⁸⁶

The strengthening of the rules and the dispute settlement mechanism in the Uruguay Round was widely received in Korea as a welcome development as they were expected to reduce unilateral trade pressures from major trading partners. The phase-out of grey-area measures, strengthened rules in anti-dumping and countervailing duties were also expected to act as strong deterrents to protectionism facing Korean exports. The ten year phase out of the MFA under the Agreement on Textiles and Clothing was generally seen as a disadvantage rather than an advantage by the Korean textile industry. Its global market share accumulated under a large quota system was expected to be reduced in the liberalization process to low-cost suppliers. In a few cases, the new Uruguay Round agreements created new obligations in Korea’s trade policies. For example, the Agreement on Subsidies and Countervailing Duties, which

86. For a general discussion of Korea’s commitment in the Uruguay Round, see, Choi, N., “Trade Opportunities in the Post-UR Regime: Korea’s Perspective,” KIET Occasional Paper, No. 19. See also, Ministry of Foreign Affairs, *The Results and Assessment of Uruguay Round Results* (1994), 31-39.

introduced a new framework on subsidies, required the phase out Korean subsidies related to exports and domestic production. Under the Agreement on Import Licensing which became a multilateral agreement as a result of the Uruguay Round, Korea was required to phase-out its Import Diversification Program targeted against Japan. Under this program, which was introduced in 1978, the products of Japanese origin were not allowed to be imported into Korea for domestic consumption even when import of the same product was generally liberalized, and therefore could be imported from elsewhere.

In the new areas, Korea's commitments were expected to be substantial. In reality, however, they turned out to be only moderate. In services, Korea assumed commitments in about half of the negotiated service sectors, i.e., 78 out of 155 total service sectors. Korea made full commitments in construction and engineering services, but its commitments in other services such as financial, telecommunications, transportation services were only partial. Korea did not make any commitments in educational, health and social services as well as in recreational, cultural and sporting services, among others. Korea's commitment also included only one MFN exemption in, computer reservation services, thereby offering non-discriminatory treatment in virtually all service sectors. In intellectual property rights, the TRIPS Agreement introduced a high standard for protection. However, Korea had already introduced a strong protection measures in all areas of intellectual property laws, partly due to the bilateral agreements negotiated with major trading partners during the mid-1980s. Korea's new obligations in this area were few, such as extension of patent and computer software protection periods and the introduction of color trademarks.

Korea's commitments for agricultural sectors were very controversial at home. Korea's negotiation with its trading partners had also been complicated due to the recommendation of the BOP Committee in 1989, when Korea agreed to phase out all quantitative restrictions by July 1, 1997. Korea resisted application of tariff on agricultural import quotas until the very last phase of the negotiation. In the end, Korea received a special treatment on rice along with Japan, but more favorable treatment as a developing country. The application of tariffs on rice could be delayed until 2004, while guaranteeing MMA. In 1995, the MMA was to be 1 percent of the domestic consumption, rising annually by 0.25 percent each year until 1999, after which it was to rise annually by 0.5 percent each year through 2004, when the MMA quota was to reach 4 percent of domestic consumption.⁸⁷ On beef, the existing quota system was to be extended until 2000 with the tariffs to be increased from 20% to 40%. In the meantime, the beef quota was to be increased from 123,000 tons in 1995 to 225,000 tons in 2000. For chicken and pork, quantitative restrictions were to be lifted by July 1, 1997, as it was agreed in the BOP consultation in 1989, but their tariffs were to be raised from 20 percent to 35 percent for chicken

87. See, Annex 5, Agreement on Agriculture, World Trade Organization, The Results of the Uruguay Round of Multilateral Trade Negotiations, (1995), 66-67.

and 25 percent to 37 percent for pork. During 1995 to 1997, 3.5 percent of domestic consumption in these products was to be allowed under the import quotas. Similar arrangements applied for mandarin oranges and orange juice, for which 3% of the domestic consumption was to be allowed under import quotas from 1995 to 1997 when quantitative restrictions were to be removed.

While Korea had made a very difficult decision in the Uruguay Round with respect to agricultural liberalization which would require a wide-ranging structural adjustment in the sector, the overall assessment of the round by the Korean government was quite positive.

3.1.2. Regulatory Reform

Immediately after the conclusion of the Uruguay Round in December 1993, the Korean government began to revise relevant laws in accordance with the new WTO agreements. As a result, Korea had almost completed its legislative work related to its Uruguay Round obligation as of December 1994, before the launching of the WTO. Even in areas where the implementation period did not expire, Korea revised many related laws in advance. As of the end of December 1995, Korea had revised a total of 24 laws related to the Uruguay Round agreements.⁸⁸

Implementation of the WTO Agreements involved the revision of various laws and regulations. Table 1-7 provides an overview of the notifications made in the context of WTO Agreements. New legislation included the “Act Relating to Contracts in which the State is a Party”, which entered into effect in July 1995, paving the way for Korea’s accession to the Agreement on Government Procurement. While WTO Agreements could not necessarily be directly invoked in Korea, the Constitution legally obliges the government to conform the relevant domestic laws to the WTO Agreements.⁸⁹

88. WTO, WT/TPR/G/19, 7.

89. Under Article 6 (11) of the Korean Constitution, however, an international treaty concluded and promulgated under the procedures prescribed by constitutional law has a direct effect on Korean judicial territory even in the absence of domestic implementation. WTO, G/ADP/W/74 (November 15, 1994). See also Moon-Soo Chung, “Implementation of the results of the Uruguay Round Agreements: Korea”, in *Implementing the Uruguay Round* 365-398 (eds. by John Jackson & Alan Sykes, 1997).

Table 1-7 | Principal Notifications Related To Implementing WTO Agreements as of 1996⁹⁰

| Agreement | Action |
|--|--|
| General Agreement on Tariffs and Trade 1994 | Schedule of Concessions on market access submitted on April 15, 1994 (List LX). |
| General Agreement on Trade in Services | Submission of Korea's Schedule of Specific Commitments(GATS/SC/48, Suppl.1 and Suppl.1/Rev.1, April 15, 1994, July 28, 1995 and October 4, 1995) and of Article II (m.f.n.) exemptions (GATS/EL/48 and Suppl.1 of April 15, 1994 and July 28, 1995). |
| Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) | Articles 1.3 and 3.1: Notification that Korea will not apply the criterion of publication for the protection of the producers of phonograms as provided for in Article 5.3 of the Rome Convention; and that Korea will protect broadcasts only if the broadcast was transmitted from another Contracting State as provided for in Article 6.2 of the Rome Convention (IP/N/2/KOR/1, October 13, 1995). |
| Agreement on Agriculture | Korea has notified the administration of tariff quotas(G/AG/N/KOR/1, May 31, 1995). Notification concerning trigger prices in the context of the special safeguard provision (G/AG/N/KOR/2, and Add.1, June 1, 1995 and December 14, 1995). |
| Agreement on Textiles and Clothing | Submission of the list of products to be integrated into GATT 1994 on entry into force of the WTO Agreement (G/TMB/N/46, April 28, 1995). Korea reserves the right to use the provisions of Article 6 (transitional safeguard mechanism; G/TMB/N/20, March 6, 1995). |
| Agreement on Trade-Related Investment Measures (TRIMs) | Korea's observations on the notifications by Canada, the European Union and the United States pursuant to ATC Article 2.1 (G/TMB/N/120, August 17, 1995). Notification under ATC Article 3 of voluntary export restraints (silk to Japan) and import restraints under Article XVIII.6 (silk fabrics, satin, etc. to be liberalized in 1997) (G/TMB/N/68, April 28, 1995). No notification. |
| Agreement on Anti-Dumping Practices | Notification of laws and regulations under Article 18.5 of the Agreement, i.e. relevant provisions of the Customs Act and secondary legislation (G/ADP/N/1/KOR/1, April 5, 1995). |
| Agreement on Customs Valuation | Notification that Korea intended to revise existing legislation and would renotify (G/VAL/N/1/KOR/1, September 28, 1995). |
| Agreement on Rules of Origin | Notification of non-preferential rules of origin under Article 5.1 (G/RO/N/1/Add.1, June 22, 1995). |

90. WTO, WT/TPR/S/19.

| Agreement | Action |
|---|---|
| | Notification of preferential rules of origin under Article 5 (G/RO/N/7, February 12, 1996). |
| Agreement on Subsidies and Countervailing Measures | Notification of laws and regulations under Article 32.6 of the Agreement, i.e. relevant provisions of the Customs Act and secondary legislation (G/SCM/N/1/KOR/1, April 4, 1995). Notification of subsidies for the years 1992-94 in the areas of agriculture, forestry, fisheries, coal industry, manufacturing and research and development (G/SCM/N/3/KOR/Rev.1, April 25, 1996). |
| Agreement on Safeguards | Notification of laws, regulations and procedures, i.e. relevant portions of the Foreign Trade Act and the Customs Act (G/SG/N/1/KOR/1 and /2, April 6 and October 11, 1995). Notification of pre-existing Article XIX measures (G/SG/N/2/KOR, March 27, 1995). Notification of measures under Article 12.7 (G/SG/N/3/KOR, March 28, 1995). Notification of timetable for phasing out voluntary export restraints (G/SG/N/5/KOR, August 15, 1995). |
| Understanding on the Interpretation of Article XVII of the GATT | Notification of products traded by State-trading entities (G/STR/N/1/KOR, November 20, 1995). |

3.1.3. Implementing the Uruguay Round Commitment

3.1.3.1. Market Access Commitment

Korea applies its MFN tariffs to all trading partners, whether they are WTO members or not. Under the WTO Agreements on Agriculture, Subsidies and Countervailing Measures, and Trade-Related Aspects of Intellectual Property Rights, Korea claimed developing-country status.⁹¹ Invoking developing country status, Korea had phased in its Uruguay Round-related tariff reductions over a 10-year period, i.e. by 2004. Applied tariff rates for 1995 and 1996, however, are virtually identical to the 1994 rates, indicating that most reductions were already incorporated into the applied tariff.

As a result of the Uruguay Round, the level of tariff bindings for industrial products rose from 24 percent to 89 percent of all tariff lines. Tariffs were to be reduced from the base level of

91. In contrast, Korea made no notification under the WTO Agreement on Trade-Related Investment Measures (TRIMs) which permitted temporary deviation from GATT obligations for developing countries.

24 percent to 8.3 percent by 2004. Korea also participated in zero for zero tariff negotiations initiated by the Quad countries. Out of 75 items, Korea agreed to zero tariff on 50 items, agreed to an eight to ten year transition period for 17 items, and did not make concessions on 8 items such as x-ray equipment, other medical equipment, and penicillin. Korea also participated in tariff harmonization on chemical products, making concessions in 193 of 196 total items. However, the direct impact on Korea's manufactured imports was limited, given generally low levels of applied rates.

Until the late 1990s, Korean exports were qualified under the General System of Preferences (GSP) of about 30 countries, including Canada, the Czech Republic, the European Union, Japan, New Zealand, Norway, Russia and Switzerland. GSP preferences were terminated in 1989 by the United States, in 1992 by Australia, and in 1996 by the EU (for major items), Canada (motor vehicles only) and Russia (clothing and others). Exports under GSP preferences accounted for about 9 percent of total exports in 1994.

Korea had operated voluntary export restraints (VERs) on seven products. In August 1995, Korea notified the WTO that five restraints would be eliminated in either December 1997 or 1998; they concerned microwave ovens and colour picture tubes (European Union), stainless steel flatware (Germany and the United Kingdom), oysters in containers (all countries) and chestnuts (Japan).⁹² The remaining two VERs applied to silk yarns and fabric, which were regulated under a bilateral agreement between Korea and Japan⁹³, and polyester exports to Panama and certain Asian countries. All these arrangements were also terminated.

3.1.3.2. Agricultural Market Liberalization

Market Access

As a result of the Uruguay Round, non-tariff measures on all agricultural products except rice and rice products in Korea were converted to tariff. Since Korea was recognized as a developing country in the Uruguay Round, its average tariff was reduced by 24 percent with a minimum of 10 percent per tariff line. Korea maintained a relatively high mean tariff rates at around 62%. Also, Korea maintained the highest mean tariff rate (366%) for out of quota, but the average tariff rate for in-quota was set at relatively low levels (20%) for 67 product groups under TRQs. High tariffs above 100% were mainly levied on grains, starch and vegetables which were subject to tariffs as shown in Table 1-8. Korea adopted alternative tariffs a selection between ad valorem tariff and specific tariff for about 5% of tariff lines.

92. WTO, G/SG/N/5/KOR (August 15 1995).

93. WTO, G/TMB/N/82 (April 28 1995).

Table 1-8 | Korea's Commitment of Market Access of Major Products

| Commodity | Year | Tariff Equivalent(% or won/kg) | Market Access (MT) | Tariff on Quota (%) |
|--------------|------|--------------------------------|--------------------|---------------------|
| Rice | 1995 | (no tariffication) | 51,307 | 5 |
| | 2004 | - | 205,228 | 5 |
| Barley | 1995 | 333% or 410 won/kg | 14,150 | 20 |
| | 2004 | 229.7% or 361 won/kg | 23,582 | 20 |
| Soybeans | 1995 | 541% or 1,062 won/kg | 1,032,152 | 5 |
| | 2004 | 487% or 956 won/kg | 1,032,152 | 5 |
| Corn | 1995 | 365% | 6,102,100 | 3 |
| | 2004 | 328% | 6,102,100 | 3 |
| Potato | 1995 | 338% | 11,286 | 30 |
| | 2004 | 304% | 18,810 | 30 |
| Sweet potato | 1995 | 428% or 375 won/kg | 11,121 | 20 |
| | 2004 | 385% or 338 won/kg | 18,535 | 20 |
| Oranges | 1995 | 99% | 15,000 | 50 |
| | 2004 | 50% | 57,017 | 50 |
| Beef | 1995 | 44.5% | 123,000 | 20 |
| | 2004 | 40% | 225,000 | 20 |
| Pork | 1995 | 37% | 21,930 | 25 |
| | 2004 | 25% | - | - |
| Poultry | 1995 | 35% | 7,700 | 20 |
| | 2004 | 20% | - | - |
| Pepper | 1995 | 300% or 6,900 won/kg | 4,311 | 50 |
| | 2004 | 270% or 6,210 won/kg | 7,185 | 50 |
| Garlic | 1995 | 400% or 2,000 won/kg | 8,680 | 50 |
| | 2004 | 360% or 1,800 won/kg | 14,467 | 50 |
| Onion | 1995 | 150% or 200 won/kg | 12,369 | 50 |
| | 2004 | 135% or 180 won/kg | 20,645 | 50 |
| Sesame | 1995 | 700% or 7,400 won/kg | 6,731 | 40 |
| | 2004 | 630% or 6,660 won/kg | 6,731 | 40 |

Source: Country Schedule of Republic of Korea (1994).

Korea employed TRQs for 67 product groups (190 items HS 10 Digits). All tariff quotas were allocated on a global MFN basis. There was no country quota except rice importation.

Korea utilized three different procedures for quota administration. Imports of 18 products, including rice, barley, soybeans, beef, oranges and sesame were sold in the domestic market solely by designated State-trading agencies for the purpose of ensuring “market order”. For 39 products, tariff quota entitlements were distributed on a first-come-first-served basis (if there was no historical import performance) or on past import performance. For the remaining 10 products, including pork, chicken and milk powder, an auction system was employed to ensure efficient quota management.⁹⁴

For a number of products including rice, barley, potatoes, and beans, Korea reserved its right to apply an import mark-up in addition to the in-quota tariffs. The import mark-up on beef was eliminated in 2001. In addition, a total of 118 tariff lines at the HS 10-digit level were subject to the special safeguard system for agricultural products.

Domestic Support

The largest share of Korea’s total support is a green box support, accounting for 68 percent over the period 1995-2000. Green box measures have been largely devoted to infrastructure and structural adjustment. Over 90% of annual bound AMS was used for rice, and therefore, the AMS reduction commitment was an important binding constraint for Korea. Korea maintained government purchases of rice at a favorable price, and the proportion of rice purchased by the government to total production dropped from 29 percent in 1995 to 16 percent in 2004 as the annual bound AMS level decreased. Since the government purchase price for rice was held constant or increased minimally, policy adjustment to meet the required AMS reduction commitment basically meant reducing the quantity of rice purchased by the government.

Table 1-9 | Summary of the WTO Notifications for Domestic Support⁹⁵

(Unit: 100 million won)

| | Bound AMS | Current AMS | de- minimis | Green Box | S&D Treatment | Total |
|------|-----------|-------------|-------------|-----------|---------------|--------|
| 1995 | 21,826 | 20,755 | 2,822 | 39,902 | 204 | 63,683 |
| 2000 | 17,978 | 16,909 | 5,247 | 50,541 | 506 | 73,203 |
| 2004 | 14,900 | 14,584 | 5,388 | 48,669 | 541 | 69,182 |

Source: Ministry of Food, Agriculture, Forestry and Fisheries.

94. Auction procedures for livestock products, milk powder, condensed milk and honey were detailed in the “Livestock Quota Auctioning Guideline” of the Livestock Products Marketing Organization (LPMO).

95. For more detailed yearly data until 2004, see WTO, G/AG/N/KOR/37 (Feb. 28, 2007).

Export Subsidies

Korea has no export subsidy commitment in the Uruguay Round country schedule. However, some kinds of export subsidies were allowed to developing countries under Article 9.4 of Agreement on Agriculture; in that, export subsidies which reduced the marketing costs of agricultural exports or subsidies for internal transport and freight charges of export shipments were permitted.⁹⁶ It should be noted that, as shown in Table 1-10, total export subsidies have increased since the early 2000s.

Table 1-10 | Summary of the WTO Notifications for Export Subsidies

(unit: billion Won)

| Year | Total Export Subsidies | Products |
|------|------------------------|---|
| 2001 | 25.95 | Fruits, Flowers, Kimchi, Vegetables, Livestock, Ginseng |
| 2002 | 26.61 | |
| 2003 | 24.67 | |
| 2004 | 25.59 | |
| 2005 | 28.88 | |
| 2006 | 28.88 | |
| 2007 | 28.88 | (+) grains & processed food |
| 2008 | 32.68 | (+) traditional liquor |

Source: WTO, G/AG/N/KOR/42 (Oct. 4, 2010) & G/AG/N/KOR/36 (Feb. 27, 2007).

Exemption from Tariffication Obligation: Rice

During the Uruguay Round, rice in Korea was exempted from tariffication obligation until 2004, along with rice in Japan and the Philippines. Taiwan was also granted the same exception for rice when it joined the WTO in 2002. In lieu of the tariffication exemption, however, Korea was required to import rice equivalent to 4% of domestic consumption as MMA, based on 1986-1988. Thus, in 2004 when the tariffication exemption expired, Korea had to import 205,000 tons of rice under the MMA requirement.

Unlike Korea that was treated as a developing country, Japan and Taiwan were regarded as developed countries for the purpose of the Agreement on Agriculture. That arrangement required them to import rice equivalent to 8% of domestic consumption as MMA, which seemed more burdensome than tariffication. Thus, both countries accepted tariffication requirements earlier than the permitted due dates.

96. WTO, G/AG/N/KOR/36 (February 27, 2007).

In 2004, this exemption for Korea was further extended to 2014 after negotiation with 9 WTO members that showed interest in the matter. Under the new arrangements, the import quotas were allocated to China, U.S., Thailand, and Australia.

Table 1-11 | Yearly Import Requirement under Tariffication Exemption

(unit: metric ton)

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
|---------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| MMA(A) | 225,575 | 245,922 | 266,270 | 286,617 | 306,964 | 327,311 | 347,658 | 368,006 | 388,353 | 408,700 |
| Rice for cooking(B) | 22,557 | 34,429 | 47,928 | 63,055 | 79,810 | 98,193 | 104,297 | 110,401 | 116,505 | 122,610 |
| B/A(%) | 10 | 14 | 18 | 22 | 26 | 30 | 30 | 30 | 30 | 30 |

The recent increase in rice prices, however, considerably increased costs to comply with MMA requirements. Despite constantly decreasing domestic demand and huge accumulation of surplus, the MMA amount must be imported regardless of price or market conditions. Moreover, the MMA requirement must be satisfied even at the time tariffication is accepted. This may be a significant burden in the future because the market demand for rice in Korea continues to decline.

Another problem is that the shadow reduction of tariffs magnifies the impact of tariffication when tariffication is delayed. Tariffs applied at the time of the tariffication obligation pursuant to the tariff reduction schedule would have worked if the tariffication had been implemented. In other words, a lower tariff is applied when tariffication is delayed further. So, the impact of tariffication to the market will be bigger by adopting a lower tariff when tariff systems are finally introduced.

3.1.3.3. Subsidy Policy

As shown in Table 1-12, in the 1996 notification under the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), Korea listed 26 programmes, divided into six categories.⁹⁷ While manufacturing accounted for the largest number of measures, agriculture represented the greatest share by value. Of the 26 programmes, five reportedly involved prohibited subsidies, 17 concerned actionable subsidies and four were considered nonactionable subsidies.⁹⁸ An additional 72 non-actionable subsidies were not included in the notification. Korea phased out the prohibited subsidies by 2002, under the developing country provisions of the SCM Agreement.

97. WTO, G/SCM/N/3/KOR/Rev.1 (April 25, 1996).

98. Korea Herald, April 26, 1996. Among the subsidies not included in the notification are those related to energy and the environment.

Table 1-12 | Subsidies Notified under WTO Provisions, 1992-95

(Unit: W billion)

| | Subsidy amount | | | |
|---|----------------|---------|---------|------|
| | 1992 | 1993 | 1994 | 1995 |
| 1. Agriculture | | | | |
| Food Grain Management Programme | 1,810.0 | 1,796.5 | 1,805.5 | ... |
| Livestock Support Programme | 0.4 | 10.6 | 12.6 | ... |
| Sericulture Development Programme | 2.5 | 3.0 | 3.0 | ... |
| Government Purchase of Rapeseed | 3.2 | 1.6 | 1.5 | ... |
| Marketing Improvement Programme for Fruits and Flowers | 0.8 | 0.5 | 1.2 | ... |
| 2. Forestry | | 0 | 0.4 | ... |
| Plywood and Board Assistance Programme | 0 | 0.3 | 0.3 | ... |
| Forest Products Utilization Assistance Programme | 0.3 | | | |
| 3. Fishery | | | | |
| Support for Development of Deep-Sea Fishery | 0.8 | 1.8 | 2.9 | ... |
| Support for Fish Products Processing Development | 1.2 | 2.6 | 2.7 | ... |
| Fund for Supporting Fishing Activities | 19.2 | 20.9 | 22.5 | ... |
| Support for Developing Aquaculture Fishery | 0.7 | 0.7 | 2.4 | ... |
| Reduction in Local Taxation on Building and Acquisition of Vessels for Deep-Sea Fishery | ... | ... | ... | |
| 4. Coal Industry | | | | |
| Support Programme for the Coal Industry | 444.6 | 575.4 | 528.6 | ... |
| 5. Manufacturing Industry | | | | |
| Reserves for Export Losses | 23.4 | 25.4 | 30.3 | ... |
| Reserves for Overseas Market Development | 30.2 | 23.2 | 36.3 | ... |
| Facility Investment Loans Provided by the SMEs Foundation Formation Fund | n.a. | n.a. | 17.6 | 15.2 |
| Tax Credit for Investment in Facilities | 35.1 | 56.3 | 102.6 | ... |
| Tax Reduction and Exemption for Foreign Invested Enterprises | 9.1 | 13.6 | 1.6 | ... |
| Reduction in Customs Duty on Parts of Aircraft and Vessels | 15.8 | 15.1 | 5.1 | ... |
| Support Programme for Maintenance of Farm Machinery | 1.0 | 1.0 | 1.3 | ... |
| Assistance Programme to Promote the Spread of Domestically Produced Mini-Computers | n.a. | 1.1 | 1.1 | ... |
| Supporting Fund for Quarrying Industry | 0.7 | 0.5 | 0.9 | ... |

| | Subsidy amount | | | |
|---|----------------|------|-------|------|
| | 1992 | 1993 | 1994 | 1995 |
| 6. Research and Development | | | | |
| Research and Development Activities for Low Emission Vehicles | n.a. | n.a. | 1.0 | ... |
| Research and Development Activities Supported by the Information and Communication Promotion Fund | n.a. | 3.0 | 6.8 | ... |
| Environment Engineering and Technological Development Programme | 3.9 | 8.7 | 12.9 | ... |
| Promotion Fund for Science and Technology | ... | 59.3 | 112.5 | ... |

... Not available.

n.a. Not applicable.

3.1.3.4. Services Market Liberalization

Although it was the first time for Korea to embrace comprehensive service market liberalization mandated by an international agreement, the government was generally favourable to GATS commitments. However, the liberalization commitments were mostly a codification of the existing measures with many limitations. Commitments under GATS yet served as the important basis to use trade policies for the purpose of enhancing the competitiveness of services industries.

Korea's Schedule of Specific Commitments under the GATS covered 78 service activities, incorporating many of the liberalization measures undertaken since the 1980s. The liberalization, however, was subject to a variety of horizontal limitations. For example, under commercial presence, Korea scheduled limitations on the acquisition of domestic companies; individual foreign investors could hold up to 3 per cent of an existing company's stock, with total foreign investment not to exceed 15 percent (10 percent in the case of the Pohang Iron and Steel Company and the Korea Electric Power Corporation).⁹⁹ The acquisition of domestic corporate bonds was also restricted, and the minimum FDI level per investment was set at 50 million won. Foreign acquisition of land was unbound, as was access to research and development subsidies. The establishment of corporate branches and representative offices of financial service firms must be approved under the Foreign Exchange Management Act.

For a significant number of sectors, Korea assumed no bindings with regard to the cross-border supply of services. This included most construction, tourism and travel services (hotels

⁹⁹. The Schedule states these limits would be raised in 1996-97.

and restaurants) as well as transport activities (most maritime auxiliary services, some air transport and auxiliary services), due to lack of technical feasibility. The presence of natural persons was generally unbound; exceptions included certain executives, senior managers and specialists. The only MFN exemption applied to computerized flight reservation systems.

Korea did not include the following sectors or subsectors in its GATS Schedule: real estate business; postal and courier services; education; environmental sanitation; tourist guide services; health; recreational services; and internal waterways, space, rail and pipeline services. Within the professional services subcategory, no commitments were made for legal, medical and dental services.¹⁰⁰

Financial Services

Among many services sectors, financial and telecommunications services became the focal point of the GATS negotiations. Korea scheduled a variety of limitations on market access and national treatment for the financial services sector. For example, cross-border supply of financial services might not be effected in Korean currency; management and operation of assets of a financial institution were restricted, and a financial institution might not own non-business real estate; assets owned by branches must be kept within the territory of Korea, and the capital of the head office was not recognized as the basis for determining the funding and lending activities of branches; interest rates on certain loans were regulated; and some new financial products (e.g. derivatives) were subject to approval. In addition, cross-border supply, consumption abroad and presence of natural persons (except as noted under the horizontal commitments) were unbound for all 12 financial services categories; and commercial presence was unbound for leasing, claim settlement and actuarial business categories.¹⁰¹

According to Korea's initial GATS Schedule, the establishment of a commercial presence in major insurance sectors was based upon an "economic needs test". Under the test, which was abolished in January 1997, the authorities considered the situation of the domestic insurance market before issuing a licence. For the life and non-life sectors, the Schedule stated that the recruitment and employment of insurance personnel was restricted, and that the top executives of each establishment had to reside in Korea. In the life insurance sector, multiple foreign shareholdings in joint ventures were not allowed. In the non-life sector, the quotation of rates

100. Although not included in its GATS Schedule, Korea opened 11 medical sectors in 1995 to foreign participation, according to the authorities.

101. Liberalization measures specified in Korea's GATS Schedule included the expansion in 1994-95 of the maximum limit of foreign equity participation for securities investment trust services and for investment advisory services. As part of new commitments under the Second Protocol, Korea removed a reciprocity-based MFN exemption affecting market entry and provision of financial services in the event of future liberalization measures.

from abroad was generally subject to restrictions,¹⁰² and foreign equity participation was possible only in existing domestic insurance companies.

Under the Second Protocol, Korea agreed to allow cross-border sales of marine import cargo and aviation insurance, and removed the limitation on the number of sales offices that could be established annually by life and non-life insurance companies. Also, it permitted dual agency in life insurance in addition to non-life insurance.

Under commercial presence, Korea's initial GATS Schedule stated that only branches and representative offices of the world's top 500 banks, in terms of assets, were permitted. The issuance of debentures was prohibited, and strict regulations applied to foreign exchange positions. Specific limitations were placed on deposit and related services, loan and related services, foreign exchange services, and trust services. Under loan and related services, for example, foreign currency loans were subject to ceiling levels and restrictions on uses, and mandatory lending regulations applied in respect of small and medium-sized enterprises. The Korean government undertook a number of liberalization measures in 1996-97: all deposit rates, except on demand deposits and their equivalents, would be deregulated; foreign financial institutions would be allowed equity participation in existing domestic banks; the minimum denomination for certificates of deposits would be lowered and the maturity expanded; and the mandatory purchasing ratio for Monetary Stabilization Bonds, applicable to trusts, would be lowered.

The Second Protocol embraced these liberalization measures. In addition, Korea removed the requirement on banks and security companies to open representative offices before establishing branches, and reduced the limit of 8 percent on an individual person's equity ownership of a bank to 4 percent.

Telecommunications Services

Korea's GATS Schedule of commitments covered various advanced telecommunications services. Participating in the negotiations on basic telecommunications, Korea did not include voice telephone services, packet and circuit-switched data transmission services, telex services, telegraph services, facsimile services and private leased circuit services.¹⁰³ For the services covered, such as electronic mail and voice mail, the main limitation applied to the presence of natural persons. Korea offered in the negotiations on basic telecommunications to open 12

102. Restrictions on the quotation of rates in long-term non-life, workers' accident compensation, cargo, surety and fidelity insurance were removed in April 1996.

103. Postal and courier services were also not included. See generally Keuk-je Sung, "WTO Negotiations on Basic Telecommunications and Domestic Regulatory Reforms" (1997, Kyunghee Univ. Press).

additional sectors to foreign participation in 1998.¹⁰⁴ Foreign equity ownership was allowed up to 20 percent for Korea Telecom and 33 percent for other facilities-based operators. Moreover, full competition was permitted for the non-facilities based provision (resale) of all telecommunications services, except for local voice transmission which would be liberalized in 2001.¹⁰⁵

3.1.3.5. Intellectual Property Protection

Korea is a member of the World Intellectual Property Organization (WIPO) and the Paris Union, and has signed a variety of international conventions governing the protection of intellectual property rights.¹⁰⁶ The administration of these rights falls within the competence of several ministries and agencies. While the Korean Industrial Property Office (KIPO)¹⁰⁷, under MOTIE, was responsible for patents, trademarks and other industrial property rights, copyright was under the authority of the Ministry of Culture and Sports, and computer programme protection under the Ministry of Information and Communications.

The Korean government undertook major legislative reforms that covered virtually all areas of intellectual property protection.¹⁰⁸ Amendments in July 1994 to the Copyright Law included extending the protection for neighbouring rights from 20 to 50 years. This allowed introducing rental rights for sound recordings, extending explicit protection to data bases, and raising the penalty ceiling for infringements from 3 million to 30 million won. Subsequent revisions extended copyright protection for foreign works and phonograms from 1987 back to 1957, expanded protection of neighbouring rights for foreign performance and broadcasting, and abolished compulsory licensing provisions for translations.¹⁰⁹ Under the revised Patent Law, effective from July 1996, patent duration was extended from 15 years from publication to 20

104. The sectors are regular telephone services, packet and circuit-switched data transmission services, telex services, telegraph services, facsimile services, private leased circuit services, digital cellular, paging, personal communication services, trunked radio system, wireless data transmission and satellite telecommunication services. The number of service providers would be limited only by spectrum availability.

105. For local voice communications between closely related parties, e.g. a corporate headquarters and subsidiaries, the 1998 date is applicable.

106. Korea became a party to the Paris Convention for the Protection of Industrial Property in 1980, followed by the Patent Cooperation Treaty (1984); the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1987); the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (1988); and the Berne Convention for the Protection of Literary and Artistic Works (May 1996). Korea has not yet become a party to the Rome Convention (International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations) and the Treaty on Intellectual Property in Respect of Integrated Circuits.

107. Now, KIPO stands for the Korean Intellectual Property Office.

108. Revisions were made to the Patent Law, Utility Model Law, Design Law, Trademark Law, Copyright Law, Agrochemicals Management Act, Seed Industry Law and the Computer-Software Protection Act.

years from application. Under trademark legislation, colours were covered as a component of trademarks. In general, Korea successfully implemented the TRIPS Agreement as a developing country,¹¹⁰ and had no dispute yet in relation to intellectual property protection matters.

3.1.3.6. Trade Policy Making in Korea under the WTO System

The executive branch of the government made most of the non-legislative trade policy decisions. The major trade policies were deliberated at the Economic Ministers' Meeting chaired by the Deputy Prime Minister, who was concurrently the Minister of Finance and Economy (formerly the Economic Planning Board). Some policy matters were referred to the State Council presided by the President.

The major administrative agencies which participated in the formulation of trade policies were the Ministry of Foreign Affairs and Trade, Ministry of Finance and Economy, Ministry of Commerce, Industry and Energy (MOCIE)¹¹¹, and the Ministry of Agriculture. Aside from the Ministry of Foreign Affairs and Trade, other ministries had domestic policy responsibilities over trade-related issues in various industrial sectors. However, the role and the relative importance of these ministries in trade policy making had evolved over time in accordance with the changing nature of trade problems.

In the earlier years of economic development, when trade policy issues centered around manufactures, major roles had been played by MOCIE. For many years, the negotiating functions tended to be divided among three ministries. The Ministry of Foreign Affairs (MOFA) took the lead in multilateral negotiations, with the MOCIE taking the lead on sectoral negotiations, and the Ministry of Finance and Economy being responsible for tariff policy and negotiations.

When trade issues diversified into other areas, a new institutional arrangement was required. The new International Policy Coordination Office was created in 1986 in the Economic

109. The revised Copyright Law provides for grace periods: reproductions of works (whose protection has been restored) made prior to January 1, 1995 may be distributed until end-1996, and derivative works (using restored works as originals) made prior to January 1, 1995 may be circulated until end-1999. Right holders have the right to claim equitable remuneration for use after these periods.

110. According to Article 65(1) of the Agreement, no Member is obliged to implement before January 1, 1996, while developing country Members are afforded an additional four years. Interestingly, in the context of a 1996 Framework Agreement between the EU and Korea, the parties agreed to implement the TRIPS Agreement not later than July 1, 1996, except for the Agrochemicals Management Law and Seedlings Management Law which, due to legislative procedures, would enter into force on January 1, 1997 and July 1, 1998, respectively.

111. The MOCIE is often denoted as Ministry of Trade, Industry and Energy due to different literal translation even in government documents.

Planning Board with the mandate of formulating long term international economic policy and coordinating the government's positions on bilateral and multilateral economic issues.¹¹² The reorganization, however, remained silent on who should take the lead in trade negotiations. As a result, the negotiation functions were divided mainly between the MOFA and the MOCIE, with the former usually taking the lead on multilateral trade issues, and the latter on bilateral and sector specific issues in manufacturing products.

The organizational ambiguity on trade policy formulation and negotiation had been a subject of much criticism in Korea and the source of controversial inter-agency rivalry on trade policy questions since the late 1980s.¹¹³ Under the administration of President Young Sam Kim (1993-1998), the name of the Ministry of Industry was officially changed to the Ministry of Commerce and Industry, but this change did not affect the status quo on trade policy functions. Therefore, a considerable debate and fractious maneuvering normally preceded the decision on which ministry should take the lead in trade negotiations. For many years since 1986 until the late 1990s, the Ministry of Commerce and Industry (later, MOCIE) usually represented Korea in major bilateral and multilateral trade negotiations, including in the Uruguay Round.

Aside from the economic ministries, independent commissions such as the Fair Trade Commission and the Korea Trade Commission took part in the formulation of trade policies. While the Fair Trade Commission regulated unfair business practices, the Korea Trade Commission was in charge of trade remedy measures.

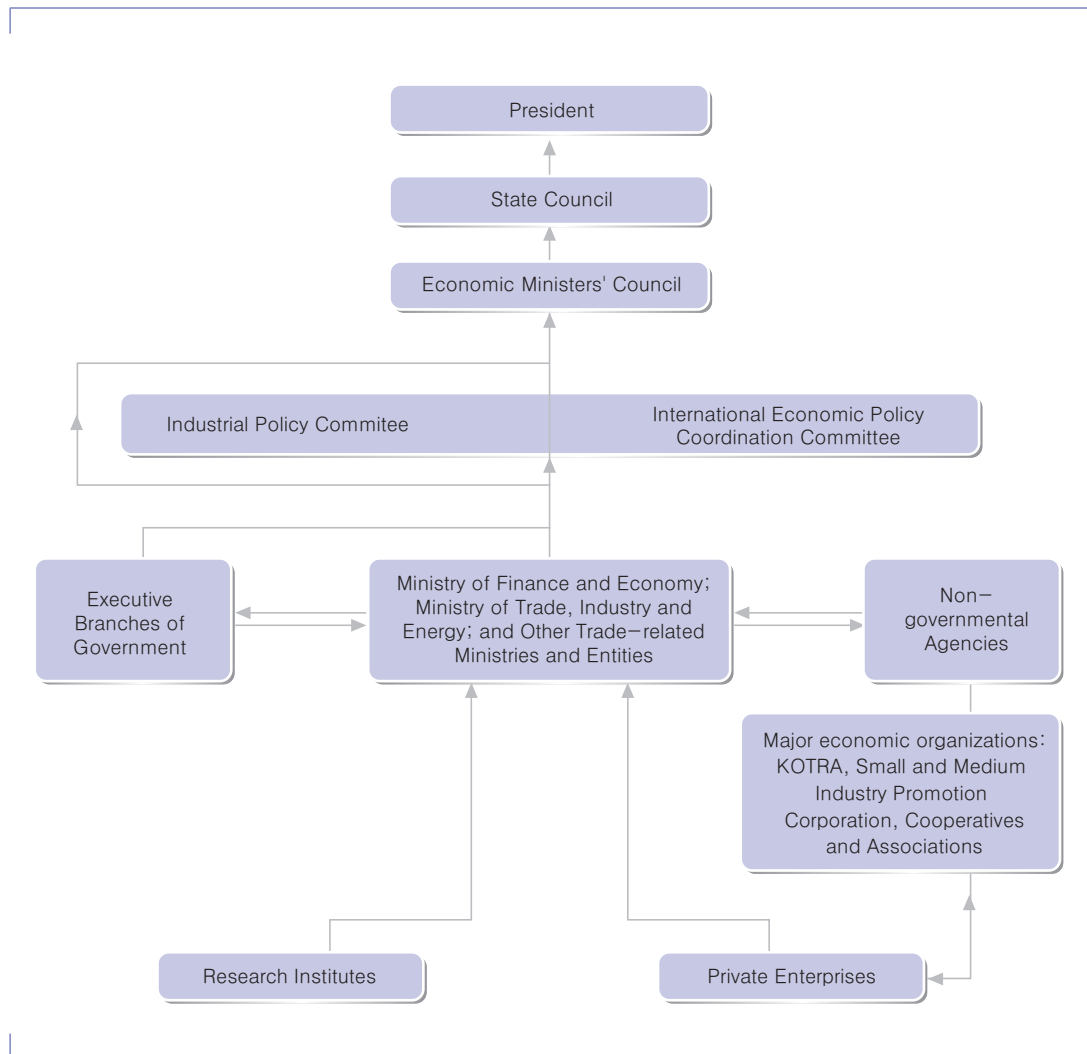
After President Dae-Joong Kim came into power in early 1998, the trade policy functions of the government agencies were reorganized. The trade negotiation functions, which were then dispersed widely among the MOFA, the Ministry of Commerce and Industry, and the Economic Planning Board, were handed over to the MOFA, which changed its name to the Ministry of Foreign Affairs and Trade (MOFAT). The latter ministry was given the responsibility over the conduct of the overall trade policy, including policy formulation, coordination and negotiation. The trade policy functions were carried out by the Office of Trade Negotiations established within the MOFAT, headed by the Minister for Trade. The ultimate policy coordinating authority for economic policies including trade policy was given to the Prime Minister's Office.

In early 2001, in accordance with the reorganization of the administration, the Minister of Finance and Economy was elevated to the status of Deputy Prime Minister. The economic policy coordination functions were re-entrusted to the Deputy Prime Minister, as the Chairman of the Economic Policy Coordination Meeting. In July 2001, the government announced that a

112. WTO, C/RM/G27 (June 12, 1992), 21.

113. Chang-soo Kim, "The Evaluation and the Reform of Korea's Trade Administration", *IRI Review*, Vol.3, No.1, (Spring 1998), 31-68.

Figure 1-4 | Decision Making Process in Trade Related Policy Areas¹¹⁴



special ministerial level meeting dealing with international economic policy would be inaugurated under the Chairmanship of the Deputy Prime Minister and composed of Minister of Agriculture, Minister of Commerce, Industry and Energy, Minister of Administrative Coordination, Minister for Trade, and the Chief Economic Secretary to the President.¹¹⁵ This meeting replaced the International Economic Policy Coordination Meeting chaired by the Prime Minister. The International Economic Policy Coordination Meeting was supported by a vice ministerial level meeting headed by the Minister for Trade.

114. WTO, WT/TPR/S/19, 25 (1996).

115. Press Release, Ministry of Finance and Economy, July 17, 2001.

The political parties and the NGOs also played more important roles in trade policy formulation in Korea. The government and the ruling party consulted on major trade policies. The ruling party often made inputs in trade policy, particularly in the areas of political sensitivity, through the Party-Administration Policy Coordination Meeting. In addition, government think-tanks, business associations, labor unions, consumers, environmental and farmers' organizations got more actively involved in developing trade policy strategies and tried to convey their views to the government in these areas.

On important trade policy matters, inter-agency committees have been normally formed to develop, coordinate and establish trade policies. One such example was the Standing Committee on New WTO Round established in 1998. Headed by the Deputy Minister for Trade in the MOFAT, the Committee was created to prepare Korea's positions in the new round. Five subcommittees on manufacturing products, agricultural products, rules, and new issues were also organized to facilitate the work of the Committee. The government officials, business representatives, and trade policy experts were included in these subcommittees. The Committee organized many public hearings for civic, social and economic groups in order to properly reflect diverse views in the negotiation process.

3.2. Dispute Settlement

Although Korea's role was very limited in terms of the dispute settlement mechanism in the GATT system, it became remarkably more active on judicial process of the WTO system. After the initial "learning" period, Korea did not hesitate to bring legal claims against major trading partners with which political or diplomatic consideration conventionally prevailed over commercial calculation. Korea is nowadays regarded as one of the most exemplary cases in which a developing country member utilizes the dispute settlement system very effectively to assert and protect its own legal rights in the WTO system.¹¹⁶

The first five complaints against Korea were settled by mutually agreed solutions or informal compromises. The fear to be litigated in the newly established dispute settlement procedures of the WTO was generated from the GATT experience. The experience in the GATT system intimidated the Korean government so much, so that it sought to avoid actual litigation after the WTO was established due to its more complicated procedures and legally

116. See more generally Dukgeun Ahn, "Korea in the GATT/WTO Dispute Settlement System: Legal Battle for Economic Development", *Journal of International Economic Law*, Vol.6, No.3, 597-633 (2003); S. Pekkanen, H. Gao, and D. Ahn, "From Rule Takers, Shakers to Makers: How Japan, China and Korea Shaped New Norms in International Economic Law", *Proceedings for Asian Society of International Law* (August 2009).

binding nature. The fact that the early cases touched on mostly unfamiliar subjects such as sanitary and phytosanitary measures, technical regulations, and government procurement also explains Korea's rather passive attitude towards dispute settlement.

It was only in the Korea-Alcoholic Beverages case¹¹⁷ that the Korean government determined for the first time to litigate the merits of the legal argument. The possibility for defending the domestic discriminatory tax system appeared very low particularly after the Japan-Alcoholic Beverages case¹¹⁸ in which a similar tax system was ruled to be WTO-inconsistent.¹¹⁹ However, unlike the previous cases, the Korean government could not simply modify the tax laws, because the amendment of the laws required approval of the National Assembly. Sentiment of the National Assembly towards the WTO, however was still very hostile due to the agricultural market liberalization measures undertaken on the basis of the

Table 1-13 | WTO Disputes involving Korea as Respondent: 1995-2010

| Cases Name | Complainant | Dispute Number |
|---|-----------------|----------------|
| Korea - Measures Concerning the Testing and Inspection of Agricultural Products | U.S. | DS3 & DS41 |
| Korea - Measures Concerning the Shelf-Life of Products | U.S. | DS5 |
| Korea - Measures Concerning Bottled Water | Canada | DS20 |
| Korea - Laws, Regulations and Practices in the Telecommunications Procurement Sector | EC | DS40 |
| Korea - Taxes on Alcoholic Beverages | EC, U.S. | DS75 & DS84 |
| Korea - Definitive Safeguard Measure on Imports of Certain Dairy Products | EC | DS98 |
| Korea - Measures Affecting Imports of Fresh, Chilled and Frozen Beef | U.S., Australia | DS161 & DS169 |
| Korea - Measures Affecting Government Procurement | U.S. | DS163 |
| Korea - Measures Affecting Trade in Commercial Vessels | EC | DS273 |
| Korea - Anti-dumping Duties on Imports of Certain Paper from Indonesia | Indonesia | DS312 |
| Korea - Measures Affecting the Importation of Bovine Meat and Meat Products from Canada | Canada | DS391 |

117. WTO, *Korea - Taxes on Alcoholic Beverages*, WT/DS75,84/R & WT/DS75,84/AB/R (adopted on Feb. 17, 1999).

118. WTO, *Japan - Taxes on Alcoholic Beverages*, WT/DS8,10,11/R & WT/DS8,10,11/AB/R (adopted on Nov. 7, 1989).

119. For the experience of the Korean government in dealing with this first WTO dispute settlement case, see Hyun Chong Kim, "The WTO Dispute Settlement Process: A Primer", *Journal of International Economic Law*, Vol. 2, No.3, 457-476 (1999).

WTO commitments. Therefore, the Korean government probably needed at least a recommendation by the WTO Dispute Settlement Body that was in the nature of an international obligation to persuade the National Assembly to approve the amendment. After losing the case at a panel proceeding, the decision to appeal to the Appellate Body was also controversial, because the chances of the adverse panel ruling being reversed appeared even lower. Moreover, due to the Asian financial crisis of 1997-1998, the Korean government was under heavy financial burden which the cost of hiring international lawyers was less attractive. Despite such concerns, the Korean government did make the first appeal to the Appellate Body, but only to lose virtually all the claims it raised.

This first experience of the WTO dispute settlement procedure led the Korean government to dramatically change its approach on trade conflicts. Firstly, since the *Korea-Alcoholic Beverages case*, the Korean government has always made an appeal on a ruling even it did have a realistic chance of winning. It is apparent that Korea does not attach any non-legal sentiment, or meaning in the face of losing a WTO dispute any more. Although there was no public remark by any high ranked official as in the Chinese case¹²⁰, exhausting all legal procedures available under the WTO dispute settlement system seems preferable or even required before any recommendation by the WTO. This is formally considered by government bodies or the National Assembly in Korea.

Secondly, the Korean government became much more aggressive in bringing cases against other WTO members. As shown in Table 1-14, trade remedy actions, especially anti-dumping actions, of the United States still remain the major issues for WTO complaints. In addition, the Korean government brought two cases against the EC subsidy policies for the shipbuilding industry when its own program was sued by the European Communities. Regarding the indirect subsidy issues concerning a semi-conductor manufacturing company, Hynix, Korea brought cases against all three WTO members imposing countervailing duties - the United States, European Communities and Japan.

It is noted that the Korean government brought the import quota program of sea laver in Japan to the WTO while they struggled on this issue in FTA negotiations. The Japan-Laver Quota case¹²¹ can be a good example to demonstrate how far the WTO dispute settlement system can be utilized in relation to trade policies. A WTO complaint against an FTA partner in the middle of the negotiation would not be a normal policy option unless the impartiality and neutrality of the WTO dispute settlement system is seriously taken. The other interpretation of

120. China openly claimed that seeking an Appellate Body procedure was basically a tactic to delay implementation of the DSB recommendation. S. Pekkanen et al., *supra* note 116, at 16.

121. WTO, *Japan - Import Quotas on Dried Laver and Seasoned Laver*, WT/DS323/R (circulated on Feb. 1, 2006).

Table 1-14 | WTO Disputes involving Korea as Complainant: 1995-2011

| Cases Name | Dispute Number |
|--|----------------|
| U.S. - Imposition of Anti-Dumping Duties on Imports of Color Television Receivers from Korea | DS89 |
| U.S. - Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or above from Korea | DS99 |
| U.S. - Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea | DS179 |
| U.S. - Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea | DS202 |
| Philippines - Anti-Dumping Measures regarding Polypropylene Resins from Korea | DS215 |
| U.S. - Continued Dumping and Subsidy Offset Act of 2000 | DS217 |
| U.S. - Definitive Safeguard Measures on Imports of Certain Steel Products | DS251 |
| U.S. - Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea | DS296 |
| EC - Countervailing Measures on Dynamic Random Access Memory Chips from Korea | DS299 |
| EC - Measures Affecting Commercial Vessels | DS301 |
| EC - Aid for Commercial Vessels | DS307 |
| Japan - Import Quotas on Dried Laver and Seasoned Laver | DS323 |
| Japan - Countervailing Duties on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea | DS336 |
| U.S. - Use of Zeroing in Anti-dumping Measures Involving Products from Korea | DS402 |
| U.S. - Anti-dumping Measures on Corrosion-resistant Carbon Steel Flat Products from Korea | DS420 |

this dispute is that the WTO dispute settlement might work as the solution to resolve the political stalemate in regards to bilateral negotiations. For Japan, it would be politically almost impossible to make a concession for sea laver markets as part of FTA negotiations, because political influence from affected fishery industries was disproportionately strong. So, the WTO recommendation might be the only plausible excuse to its domestic constituents for modifying the existing import restriction. In fact, Japan and Korea reached a mutually agreed solution right before the panel report was issued. The fate of the currently suspended FTA negotiation between Japan and Korea is not yet clear. However, the outcome from this WTO dispute will clearly make a significant contribution towards FTA negotiations, if it can be resumed in the future.

Thirdly, the Korean government became considerably more confident with the WTO dispute settlement procedure after it won – or at least it thought it won – the most recent three consecutive cases challenged by other Members. In the *Korea-Government Procurement* case¹²², the panel ruled that the entity at issue in charge of the new airport construction was not a covered entity for Korea under the Agreement on Government Procurement. The U.S. did not pursue an appeal when its company, OTIS, acquired the Korean company, LG Elevator, and thus indirectly won the bid for the airport construction contracts. The panel in the *Korea-Commercial Vessels*¹²³ case found that the actual granting of pre-shipment loans and advance payment refund guarantees by the Export-Import Bank of Korea were subsidies prohibited under the SCM Agreement. However, those measures were already terminated at the time the final ruling was issued. Therefore, although Korea did not make an appeal, Korea did not have to modify or repeal any existing measures in practice. In the *Korea-Paper* case¹²⁴, the panel found the methodology and practices adopted by the KTC for an anti-dumping investigation mostly consistent with the Anti-dumping Agreement, except for minor procedural matters. Korea did not make an appeal for this case, either. However, Indonesia went as far as to initiate an Article 21.5 panel procedure that was the first compliance panel proceeding for Korea. Again, the panel ruled WTO inconsistency on a minor procedural aspect of the review process, but rejected other substantive claims.

This result is indeed unusual and rather coincidental. There is no special reason or reasonable pattern for Korea to win - or maybe not to badly lose - these recent challenged cases. The vastly different nature of the three cases made it difficult to draw any general conclusion on the legal capacity in terms of the WTO dispute settlement. However, this experience obviously emboldened the Korean government on utilizing the WTO dispute settlement system, which, in turn, substantially helped to ensure that government policies were implemented in line with the WTO.

Lastly, Korea also became more active in the third party participation of the WTO dispute settlement system compared to the GATT period. As of December 2010, Korea joined as a third party in 53 disputes which involve, inter alia, many anti-dumping cases, environment related cases, and agricultural cases.

122. WTO, *Korea - Measures Affecting Government Procurement*, WT/DS163/R (adopted on June 19, 2000).

123. WTO, *Korea - Measures Affecting Trade in Commercial Vessels*, WT/DS273/R (adopted on April 11, 2005).

124. WTO, *Korea - Anti-dumping Duties on Imports of Certain Paper from Indonesia*, WT/DS312/R (adopted on Nov. 18, 2005).

3.3. Doha Negotiation

Certainly, Korea has been a strong supporter of a new round of trade negotiations since the very early stages of the discussion. Korea's role in the WTO became much more visible, particularly in the area of rules negotiation in the Doha Development Agenda (DDA).¹²⁵ For example, Korea, along with Japan, has led the so called "Anti-dumping Friends Group", in which Brazil, Chile, Colombia, Costa Rica, Hong Kong/China, Israel, Mexico, Norway, Separate Customs Territory of Taiwan Penghu Kinmen and Matsu (Chinese Taipei), Singapore, Switzerland, Thailand, and Turkey often worked together to make various proposals for amending the current Anti-dumping Agreement. Generally speaking, Korea's interest lies in the elimination of ambiguities in the agreement and stemming the abuse of anti-dumping measures by WTO Members, because it is still the most frequent target for anti-dumping actions on the basis of trade weighted terms.¹²⁶ Therefore, at the initiation of DDA, Korea proposed that the "negotiations for reviewing the AD Agreement should be conducted in the new round, with a view to preventing the abuse of anti-dumping measures, thereby achieving a new balance of interests among all Members."¹²⁷

Another area in which Korea has worked visibly in terms of WTO rule making is negotiations on fishery subsidies. The development of new rules for fishery subsidies has been controversial from the very beginning. In this rule making negotiation, Korea took center place, working closely with Japan, as opposed to the "Friends of Fish" group that includes the U.S., Argentina, Chile, Iceland, New Zealand, Norway and Peru. Korea and Japan have rarely taken such major roles in rule making negotiations under the auspice of the GATT/WTO. After the EC joined the "Friends of Fish", albeit weak in disciplining fishery subsidies¹²⁸, Korea and Japan, together with Chinese Taipei, turned out to be the last hurdle in establishing the new rules. The situation for Korea in this negotiation is completely opposite from the AD negotiation.

125. As of December 2010, the Korean government submitted about 120 proposals in relation to the DDA, many of which were prepared along with other like-minded WTO Members or "friends". Among them, 66 submission were for rules negotiations. All the official submission can be downloaded at <<http://www.wtodda.net/our.php?menu=02&submenu=01>> (visited on December 19, 2010).

126. Between 1995-June 2010, China was subject to 784 antidumping investigations whereas Korea was targeted by 268 investigations. But, considering the China's export volume four times larger than Korea's, Korea's export appears the most frequent victim of the antidumping action. <http://www.wto.org/english/tratop_e/adp_e/adp_e.htm> (visited on December 17, 2010).

127. Preparations for the 1999 Ministerial Conference, Agreement in Implementation of Article VI of the GATT 1994, Communication from Korea, WT/GC/W/235/Rev.1 (July 12, 1999).

128. WTO, TN/RL/W/82.

3.3.1. Agriculture

In the built-in agenda for agriculture negotiations, Korea has taken a defensive position as in the Uruguay Round. Korea is interested in maintaining the basic framework of the Agreement on Agriculture and supports a flexible gradual approach to liberalization considering the special nature of agriculture. It hopes to broaden the exceptions related to non-trade concerns such as food security, environmental protection and rural development. Korea also takes the position that the principle of special and differential treatment should be strengthened. In this regard, one of its earlier proposals in this sector stated that “Members must refrain from bringing radical change to the Agreement.”¹²⁹ It also stated that “non-trade concerns, especially the multi-functionality of agriculture should be fully taken into account in continuing the reform process,” and that “ways to make provisions on special and differential treatment of developing countries more operational should be discussed.”¹³⁰

On the other hand, Korea has insisted on the status of developing country for the purpose of the WTO agriculture negotiation in spite of many other WTO Members’ disagreements. Since the decision to treat Korea as developing country requires consensus from the WTO Members, it remains to be seen how Korea is classified for the purpose of agriculture negotiations until the end of the DDA.

3.3.2. Services

In services, Korea is in favor of including all sectors, reducing MFN exemptions in the existing agreement, and promptly concluding the on-going work on rule-making in services trade. Korea’s proposal stated that “it is essential that no service sector be *a priori* excluded”, and that “the scope of MFN exemptions should be progressively reduced.”¹³¹ In terms of rule making in services, it stated that “the Members should promptly conclude the works on rule making mandated by the GATS in the area of safeguard measures, domestic regulations, subsidies and government procurement.”¹³²

In June 2005, Korea submitted the revised offer on services that substantially improved market access by eliminating many existing limitations.¹³³

129. WTO, WT/GC/W/170 (April 16, 1999).

130. *Id.*

131. Preparations for the 1999 Ministerial Conference, Communication from Korea, Services WT/GC/W/169 (April 16, 1999).

132. *Id.*

133. WTO, TN/S/O/KOR/Rev.1 (June 14, 2005).

3.3.3. Market Access for Manufacturing Goods

Concerning market access for manufacturing goods, Korea supports substantial cuts in tariff rates and reduction or elimination of non-tariff barriers. It also supports higher tariff bindings and a formula approach for tariff reductions, with credits for unilateral tariff cuts. The Korean proposal stated that “...high tariff rates, tariff peaks, and tariff escalation still exist in many countries, impeding market access and slowing down the expansion of world trade,” and that “...another round could be an ideal forum to remedy this situation.”¹³⁴ The proposal called for the tariff reduction objectives “similar to those of the Tokyo and the Uruguay Round.”¹³⁵ It also argued that all industrial products should be covered but fishery and forestry products should be discussed separately from the tariff negotiations on industrial products.¹³⁶

In a separate proposal, Korea called for a different treatment of fishery and forestry products from industrial products and that the WTO take account of the specificity of this sector during the next round and proposed that a separate negotiating group be set up in the next negotiations.¹³⁷ It also called for the negotiation in non-tariff barriers, “particularly non-transparent, [which] demand as much attention as tariffs in the new round.”¹³⁸ Korea also made the submission in regards to various other issues such as transparency on export licensing¹³⁹ and sectoral negotiation¹⁴⁰.

3.3.4. Anti-dumping

As in the Uruguay Round, Korea is at the forefront of those Members who support the amendment of the AD Agreement. Korea’s main aims are to strengthen and clarify the rules in order to discipline abusive anti-dumping practices. Korea proposed that the “negotiations for reviewing the AD Agreement should be conducted in the new round, with a view to preventing abuse of anti-dumping measures, thereby achieving a new balance of interests among all Members.”¹⁴¹ In terms of the topics to be tackled, the Korean proposal so far called for the consideration of further clarification of rules in, inter alia, initiation of investigation, prohibition of zeroing, causation analysis and review procedures. It also called for “new disciplines” to avoid unnecessary trade obstacles caused by unjustified anti-dumping actions.¹⁴²

134. Preparations for the 1999 Ministerial Conference, Market Access for Industrial Goods, Communication from Korea, WT/GC/W/284 (August 3, 1999).

135. *Id.*

136. *Id.*

137. Preparations for the 1999 Ministerial Conference, Proposal for Negotiating Group on Fishery products Communication from Korea, WT/GC/W/368 (October 12, 1999).

138. *Id.*

139. WTO, TN/MA/W/15/Add.4/Rev.6 (Sep. 27, 2010).

140. WTO, TN/MA/W/97/ Rev.1 (Dec. 20, 2007).

141. Preparations for the 1999 Ministerial Conference, Agreement in Implementation of Article VI of the GATT 1994, Communication from Korea, WT/GC/W/235/Rev.1 (July 12, 1999).

142. *Id.*

3.3.5. Regional Trade Agreements

As a non-member of any regional trade agreement (RTA), Korea had a long standing concern on the proliferation of regional trade agreements.¹⁴³ Korea also proposed that the new round should address this issue. It stated that “Article 24 [of the GATT 1994] suffers from a conspicuous lack of clarity that prevents members from reaching a common understanding on their exact meanings,”¹⁴⁴ and that the Committee on Regional Trade Agreements in the WTO “has yet to adopt a single examination report, and the systemic issue discussion has made little progress.” Korea thus suggested that “Members review the WTO rules on regional trade agreements in order to clarify and strengthen them as necessary.” Korea’s “indicative list of particular interest” included, among others: developing yardsticks for “substantially all trade”; establishing the scope of “other regulations of commerce” ; developing ways to measure “level of duties and other regulations of commerce,” ; considering the relationship between Article 24 of the GATT 1994 and Article 5 of the General Agreement on Trade in Services.¹⁴⁵

Ironically, since the early 2000s, Korea became one of the most active FTA negotiating countries as of December 2010 by concluding FTAs with the U.S., EC, ASEAN, and India. This led Korea to substantially change its initial position on RTAs. In fact, discussion on RTAs in the DDA has not shown much progress yet.

4. Assessment

The impact of the GATT/WTO development on Korea has been significant since its accession to GATT in 1967. However, these impacts had not been widely perceived by the general public until quite recently. The GATT was important only to a handful of trade policy makers in the economic ministries of the government until the late 1980s. When a country tends to rely on trade for economic development, trade has been an important matter for many of its citizens. However, GATT seems to leave few imprints in the minds of Koreans in the development years. That was probably due to the fact that the GATT was not perceived as a strong international institution effectively addressing the concerns of Korea in the world trade system. Also, as a poor developing country, its trade policies were little affected by the GATT

143. Korea was a member of the “MFN Friends Group” that was an informal group among the WTO Members opposing FTAs such as Australia, Japan, New Zealand, and Singapore.

144. Preparations for the 1999 Ministerial Conference, Proposal on Regional Trade Agreements, Communication from Korea, WT/GC/W/171 (April 16, 1999).

145. *Id.*

obligations in the early years of accession. In fact, for many years, bilateral trade issues were regarded as much more important than multilateral trade issues.

While there is no question that the multilateral initiatives in the GATT were important in terms of increasing market access for Korean industrial products in the 1970s and the 1980s, the Korean participation and influence in these initiatives were insignificant. Korea reaped considerable benefits from the GATT system, but, as a typical developing country, it did not have to make similar contributions in return. These benefits, therefore, were taken for granted. The GATT was also ineffective in addressing market access concerns of Korea in the 1970s. Soon after it joined the GATT, Korea was forced to accept the MFA regime as one of the most important export products at the time. Protectionism spread to other areas in the form of safeguard actions, gray-area measures such as voluntary export restraints, and anti-dumping and countervailing duties. The GATT, having failed to grapple effectively with these issues, was not perceived as an effective organization in Korea, empowered with the ability to deal with protectionist policies of trading partners. Therefore, during the 1970s, bilateral trade issues dominated Korea's international trade policy agenda. Korea tried to deal with the protectionist policies of its major trading partners without recourse to the GATT, and negotiated bilateral trade deals with them to ensure continued market access for the affected products.

The bilateral thrust in Korea's trade policy continued through much of the 1980s but with different emphasis. The emergence of Korea as an advanced developing country and a major trading nation shifted its trade issues on a different plane. Korea's trading partners, particularly the United States, began to demand greater market access for their products and services, and considerable national tensions were created in the process of resolving these bilateral trade frictions. As a result, greater public awareness and interest had developed over trade issues.¹⁴⁶

The launching of the Uruguay Round in September 1986 did not attract much public attention initially in Korea. However, as the round proceeded, the public interest and roles of civic societies had grown. The balance of payments consultations in 1987 and 1989 and the beef panel in the same year demonstrated clearly how the GATT forced Korea to make difficult decision of opening up its agricultural market. As the final phase of the Uruguay Round approached, it was clear to the Korean public that the Uruguay Round would have significant impact in defining Korea's trade position in the world. The GATT was, then, come at the forefront of Korea's public attention.

The impact of the GATT/WTO and the Uruguay Round on Korea has been substantial. Their economic effect should be considered perhaps most significantly. In addition, its political

146. See, Chulsu Kim, "Super 301 and the World Trading System : A Korean View", in Jagdish Bhagwati and Hugh Patrick, *Aggressive Unilateralism* (1990), 253-255.

implications have also been considerable, particularly since the Uruguay Round. There has been relatively less social impact, although increasing numbers of NGOs have begun to express views on WTO related matters since the WTO Ministerial Conference in Seattle in 1999.

4.1. Economic Impact

The Korean economy has benefited immensely from the GATT/WTO system. The open, liberal and the rules-based GATT/WTO system has provided a favorable external environment for the outward development strategy adapted by Korea since the early 1960s. The main features of the GATT/WTO system, such as non-discrimination, transparency and predictability, have helped to safeguard Korea's trading interest throughout the crucial development years. The GATT/WTO system therefore must be seen as one of the major contributing factors in the transformation of Korea to the 13th largest trading nation in the world from one of the poorest agrarian economies in less than four decades. Peter Sutherland, the former Director General of the GATT, stated most clearly the benefits Korea received as a GATT Contracting Party:

Korea's success has been built with hard work and skilful marketing; but its foundations are the market access opportunities and legal security provided by the GATT. One could almost say that the multilateral system had been tailored to Korea's needs, especially during the period of rapid industrial expansion from the early 1960s. Having secure access to the world market has encouraged the economies of scale and rapid reallocation of resources that have spurred Korea's phenomenal growth.¹⁴⁷

The benefits of the Uruguay Round are seen as falling mostly on the manufacturing sectors in Korea. With the 38 percent overall reduction agreed during the round, the average tariff rates of industrial countries were dropped down to 4 percent, and the proportion of manufacturing products entering duty-free to developed countries has more than doubled from 20 to 43 percent. At the same time, the overall reductions and the increase in tariff bindings undertaken by developing countries, particularly in Southeast Asia, Latin America and Central Eastern Europe were seen as new export opportunities for Korean exporters. Sectoral tariff cuts negotiated in the chemical, steel and electronic industries were seemed to be particularly helpful in Korea; the proportion of trade in the chemical sector entering developed-country markets free of duty was to more than double; for steel, tariffs were to be eliminated in such markets as U.S., Australia, Canada, Japan, the EU and EFTA countries; in electronics, while tariffs were not eliminated, they were substantially reduced in Korea's major markets, 47 percent in the EU, 67

147. Peter Sutherland, "Korea and the New World Trading System," Address by Peter D. Sutherland, Director-General, GATT to the Korea Institute of International Economic Policy, Seoul, July 20, 1994.

percent in the U.S., and 97 percent in Japan.¹⁴⁸

Another significant aspect of the Uruguay Round market-access results in Korea was the phase-out of gray-area measures such as voluntary export restraints. Korea had been adversely affected by these arrangements in footwear, electronics and steel sectors in some major markets. The elimination of grey-area measures in addition to market-access results led research institutes in Korea to predict that the full implementation of the industrial package would add between three to five billion dollars to Korea's export value.¹⁴⁹ An OECD paper (1993.12) concluded that there will be an additional economic growth impact by 2002 for Korea at 2.3 percent.¹⁵⁰

The other Uruguay Round results, such as the strengthened rules, more effective dispute settlement system and the establishment of the WTO as a stronger institution, were considered" critical advantages to Korea. The perception was widespread in government, business and academic circles that, Korea as a heavily trade dependant country, was in need of better protection of multilateral rules, and the Uruguay Round results in these areas provided the best solution. It was believed that the multilateral rules should work more effectively to restrain unilateral and discriminatory practices and provide better legal safeguards against such practices.

4.2. Political Impact

The positive evaluation of the GATT/WTO as well as of the Uruguay Round in general was, however, seriously overshadowed by the stormy political reactions in Korea against the agricultural negotiations, which were concluded in December 1993. While these results were seen internationally as relatively favorable results for Korea,¹⁵¹ they were severely criticized and strongly opposed by well organized farmer groups and the opposition political parties, both of which demanded renegotiations of the agreement. The violent nation-wide demonstrations by farmers followed political turmoil in the National Assembly.

The most controversy was the tariffication of all agricultural products agreed in the negotiation. Korea had opposed such results until the very end of the negotiation, but accepted it

148. *Id.*

149. See, Choi, Nakgyoon, "Trading Opportunities in the Post-UR Regime: Korea's Perspective", KIET Occasional Paper No.19 (1996), 13.

150. Economic Planning Board, et.al, Policy Responses to the Launching of the WTO (1994).

151. Exemption of rice from tariffication requirement and recognition as a developing country were viewed by many WTO Members as preferential treatment for Korea. See also, Peter Sutherland, *supra* note 146, at 4.

only when all other countries did so. Korea had succeeded in exempting rice from tariffication until 2004, but agreed to open up the rice market under the minimum market access arrangement. The domestic opposition was so strong that President Young Sam Kim had to appear on national television to formally apologize for negotiation outcomes. In his statement of December 9, the President apologized for the failure of his government to resist market opening for rice in the Uruguay Round negotiations. However, after much soul-searching, he had decided that the acceptance of such results was a better alternative for Korea than refusing it and thereby being isolated from the GATT system.¹⁵² The Prime Minister and the Minister of Agriculture resigned subsequently to take responsibility for the Uruguay Round results in agriculture.

In the spring of 1994, another domestic political controversy erupted over Korea's Country Schedule on agriculture. Certain aspects of the schedule submitted by Korea in March were not accepted by its trading partners. They argued that it did not accurately reflect the original agreement and contained more favorable terms for Korea. When this was known, the political criticism was leveled on Korean negotiators for their ineptness and failing to have its schedule accepted in its entirety. The Minister of Agriculture and Fisheries were fired abruptly due to this scandal.

Given the political backlash on the Uruguay Round results in agriculture, the ratification process for the WTO Agreement in late 1994 was relatively smooth. The government introduced the ratification bill in the National Assembly on June 28, 1994. The minority opposition Democratic Party refused to participate in the discussions until late November when it made four public "preconditions" of participation in the ratification procedures. These preconditions called for the passage of special implementation legislation in the National Assembly. These are the renegotiation of certain market opening conditions in the Uruguay Round with the United States, a unilateral declaration that trade between North and South Korea is considered as internal trade, and finally a new economic support policy for agriculture.

The ruling party and the government accepted the idea of the special implementation legislation as the United States and some other countries had similar legislation in place. The framework of the support package for the agricultural sector had already been announced in June. The government decided to implement structural adjustment programs on agriculture in the amount of 42 trillion Korean won (about \$42 million) until 1998. In addition, 15 trillion Korean won (about \$15 million) would be raised to enhance the competitiveness of agriculture and to improve the standard of living in the rural areas. As to the preconditions of renegotiation

152. Quoted in Ministry of Foreign Affairs, *Ratification Proposal for the WTO Agreements (1994)*, 205-216.

and unilateral declaration, the government replied that there was no such possibility. This is because the Uruguay Round had ended, and that the unilateral declaration on inter-Korea trade would only complicate Korea's obligation toward the GATT as it was already agreed as such between North and South Korea in 1991.¹⁵³ Therefore, the Korean government insisted that the matter should not be raised in connection with the ratification of the WTO Agreement.

On December 15, 1994, the Foreign Affairs and Unification Committee of the National Assembly approved the WTO Agreements by 18 to 3. Three opposed were all opposition Democratic Party members, but three out of six Democratic Party members in the Committee voted in favor of ratification. Along with the WTO Agreements, the Special Implementation Act for WTO Agreements¹⁵⁴ was approved unanimously after the original bill, which contained many provisions conflicting with the WTO duty, was amended to comply with the WTO Agreements.¹⁵⁵ While the remaining provisions are mostly statement of principles, there is legal controversy surrounding Article 5 of the Act stipulating that “the transactions between the North and South Korea are internal transactions, and therefore, are not considered as trade between countries stipulated in the WTO Agreement.”¹⁵⁶ On December 16, the bill passed the Plenary Session of the National Assembly by 152 to 58, with one abstention. The Special Implementation Act also was approved by a greater margin.

5. Implications for Other Developing Countries

5.1. Improving Policy Coordination System

One of the typical problems developing countries face in international trade negotiations is the lack of proper policy coordination systems that deal with many different government ministries, agencies and even NGOs. In particular, policy coordination in the WTO system has become much more important and difficult due to the wide scope of the WTO agreements. By embracing services trade and intellectual property protection, trade policies of developing

153. 1991 South-North Korea Basic Framework Agreement, Article 15.

154. Public Law, No.4858. This law was slightly amended in 2007. Public Law, No. 8681.

155. See generally Moon-Soo Chung, “Implementation of the Results of the Uruguay Round Agreements: Korea”, in *Implementing the Uruguay Round*, 365-398 (eds. by J. Jackson & A. Sykes, 1997, Oxford Univ. Press).

156. For a more detailed discussion on potential legal problems concerning MFN issues, see Dukgeun Ahn, “WTO Legal Issues for North-South Korean Trade”, in *Multilateral and Regional Frameworks for Globalization: WTO and Free Trade Agreements* (eds. by Lim and Torrens, 2005, KDI).

countries involve numerous ministries that have little experience and exposure to international negotiation. This situation has made inter-ministry coordination increasingly controversial in most developing countries.

Although the policy coordination system in Korea has not been always perfect, it has worked very effectively throughout the Uruguay Round negotiation, albeit at a lesser degree, under the WTO system.¹⁵⁷ In that regard, the role of the EPB during the Uruguay Round negotiation should be emphasized for policy planning and coordination.¹⁵⁸ Unlike the other ministries that were supposed to promote and protect pertinent industries under their own jurisdiction, the EPB was not bound by such a government-business relationship. Thereby, its policy decisions tended to be more neutral and reasonable in terms of overall economic welfare. In other words, the policy decisions by the EPB could be supported by wider policy maker groups and social constituencies. Moreover, the EPB had budgetary authority for all government ministries which worked sometimes as a very strong tool to pressure reluctant or opposing ministries. This mixture of confident policy decisions and powerful tool to implement those policies turned out to be the critical factor for the Korean government to navigate through turbulent trade negotiations towards a focused direction of market liberalization.¹⁵⁹

In many developing countries, trade negotiations causing diverse policy conflicts suffer either from the lack of neutrality heavily influenced by political decisions or the lack of policy coordination. What kind of institutional arrangement and how such an institution should be built to facilitate trade policy coordination will be a crucial task for a developing country government to cope with the increasingly complicated WTO system.”

5.2. Developing the Trade Remedy System

Developing a trade remedy system has been an important issue for developing countries to address rapidly liberalized domestic markets under the auspices of the WTO. The necessity of trade remedy systems nowadays reaches even to services trade, although rules for trade remedy systems under the GATS have not yet been established.

157. For example, even EPB could not easily persuade the Ministry of Finance in relation to the financial service market liberalization. From interviews with Professors Taeho Bark and Keuk-je Sung who assisted the government during the Uruguay Round negotiation as a special adviser. This reluctance by the Korean government, along with several other major developing countries, on financial services liberalization led the US government to put this service categorically on the MFN exemption list.

158. For a more detailed account on the EPB during the Korea's economic development period, see Kwangwha Kang, et al., Policy Decision Structure of Korea's Economic Growth Period: EPB and Other Policy Institutions (Korea Development Institute, 2008).

159. Heung-ki Kim, Rise and Fall of Korean Economy, Ch. 28 (Maeil Daily, 2007).

Under the GATT system in which contracting parties tended to maintain numerous ex ante import constraining measures, developing countries had typically controlled imports through surveillance, monitoring, or licensing. Korea basically followed the same pattern as other developing countries. Since imports into the Korean market were generally controlled by ex ante import limitation, there was not much of a need for a trade remedy system to address ex post import problems. It explains why Korea established the Korea Trade Commission as the main trade remedy authority only in 1987 despite accession to the GATT in 1967.

The effectiveness of a trade remedy authority in dealing with domestic market injury appears to be vastly different since the frequency of utilizing the trade remedy system differs among developing countries. However, the importance of a trade remedy authority continues to increase as the scope of market liberalization continues to grow. This includes not only trade in goods covering manufacturing and agricultural products but also trade in services which expand the coverage and depth of liberalization. Accordingly, the usefulness of the trade remedy system as the last resort for import injury has been seriously considered by many developing countries.

The difficult practical problem for developing countries is that most of those trade remedy systems have not been refined or articulated on the basis of the recent WTO jurisdictions. The WTO trade remedy rules have been substantially improved with a considerable number of rulings by the panels and particularly the Appellate Body.¹⁶⁰ Therefore, it is imperative for developing countries to improve the general capacity as well as expertise of their own trade remedy authorities, so that they can utilize such systems effectively in line with the WTO.

The development of the Korean trade remedy system also followed the typical pattern of developing countries. Initially, Korea relied heavily on safeguard actions to protect import markets as observed in the many developing countries under the current WTO system.¹⁶¹ However, after serious trade conflicts caused by the safeguard actions against China in 1999 and the WTO dispute on the safeguard actions against dairy products, Korea has virtually stopped using safeguard actions that often cause overly excessive import restrictions. In addition, the very first anti-dumping measure was brought to the GATT dispute settlement procedure by the United States. Losing this first anti-dumping case in the GATT also became an important opportunity to significantly revise rules and procedures related to anti-dumping investigation. In the only WTO anti-dumping case brought against Korea so far, the WTO dispute settlement body found almost all aspects of the KTC's decisions and procedural practices to be consistent with WTO obligations.

160. For the recent issues and jurisprudence of the WTO trade remedy systems, see for example, M. Matsushita, D. Ahn & T. Chen, *The WTO Trade Remedy System: East Asian Perspectives* (Cameron May, 2006).

161. Dukgeun Ahn, "Restructuring the WTO Safeguard System", in the *WTO Trade Remedy System: East Asian Perspectives* (eds. by M. Matsushita, et al., Cameron May, 2006).

Based on this kind of general capacity building, the Korean government introduced the TAA system in 2007 for which the KTC plays the key role of determining the eligibility of the TAA benefits. Although the trade remedy system in Korea cannot be the panacea for import injury, the relatively strong confidence it has gained has allowed the Korean government to accept market liberalization more aggressively. The Korean government has even tried to modify the trade remedy rules through FTA negotiations, which can have important implications for the WTO trade remedy system.¹⁶²

The experience of the Korean government establishing and developing its trade remedy system may shed light on other developing countries that need to articulate their trade defense mechanisms. In addition to institutional expansion, technical expertise and political neutrality of trade remedy authorities in developing countries become increasingly important to make the trade remedy system more effective. More effective trade remedy systems, in turn, permit the governments – particularly, of developing countries – to become more open for market liberalization, regardless of whether the trade remedy systems are used or not. Often, the existence of a reliable trade remedy systems itself can be a good political defense to accommodate more liberal trade policies. Therefore, the initiative to further develop trade remedy systems should be seriously taken by developing countries as a prerequisite for any serious market liberalization policies.

162. Dukgeun Ahn (2008), “Foe or Friend of GATT Article XXIV: Diversity in Trade Remedy Rules”, *Journal of International Economic Law*, Vol. 11, 107-133.

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Despite accession to the GATT in 1967, the Korean government maintained various import restraints primarily due to its balance-of-payments problems. The chronic foreign debt problems aggravated by the heavy chemical industry promotion policy starting from 1973 and the first oil shock in 1974 continued to strengthen import restrictions for certain sectors. It was only in 1977, when the total value of exports exceeded \$10 billion, that a serious effort to liberalize imports was undertaken.¹⁶⁴ In 1978, three major import liberalization measures were implemented in May, July and September.

In May 1978, as a safeguard mechanism for major import liberalization, the Korean government officially applied the Import Diversification Program that was first introduced informally for seven product items in July 1977.¹⁶⁵ Subsequently, the Executive Order of the Trade Transaction Act was amended to include Article 21:3 that stipulated discretionary import restriction of products from countries with which Korea had trade deficits.¹⁶⁶ The legal foundation for the Import Diversification Program was later replaced with Article 19.2 of the Foreign Trade Act.¹⁶⁷ Article 35.5 of the Executive Order of the Foreign Trade Act provided a more specific legal support for the Programme that was employed to address country specific trade imbalances.¹⁶⁸

The Import Diversification Program basically targeted Japanese imports. After liberation from colonial occupation in 1945, Korea resumed economic relations with Japan in 1965. Bilateral trade with Japan, however, caused huge chronic trade deficits for Korea that often intensified political tensions rooted in the colonial past. The Import Diversification Program was, therefore, devised from its inception to address the issue of potentially becoming too dependent on Japanese imports. When Korea experienced its largest trade deficit with Saudi Arabia in 1982, the Import Diversification Program was modified in 1983 to apply to the country with the largest trade surplus “in the past five years”. This amendment sought solely to single out Japan as the potential target for the system. As a result, products from countries other than Japan had never been subject to the Import Diversification Program.

163. This part is mainly based on Dukgeun Ahn, “WTO Disciplines under the IMF Program: Conflict or Congruence: From the Korean Experience” in *WTO and East Asia: New Perspectives*, 29-33 (eds. by Mitsuo Matsushita and Dukgeun Ahn, 2004, Cameron May).

164. The overall trade balance in 1977 was still in deficit at some \$764 million.

165. Public Notice by the Ministry of Commerce and Industry, No. 78-8.

166. Executive Order of the Trade Transaction Act (Presidential Decree No.10057, Nov. 1, 1980), Art.21:3, para.2.4.

167. Public Law No. 3895 (Enacted on Dec. 31, 1986; entered into force on July 1, 1987).

168. Executive Order of the Foreign Trade Act (Presidential Decree No.12191, June 30, 1987).

Table 1-15 | Number of Items Subject to the Import Diversification Program

| Year | Number of Items | | | Liberalization Rate |
|------|-----------------|--------------|---------------|---------------------|
| | CCCN 4 level | CCCN 8 level | CCCN 10 level | |
| 1980 | 195 | | | 69.3 |
| 1982 | 209 | 913 | | 76.6 |
| 1984 | 168 | 590 | | 84.9 |
| 1986 | 159 | 414 | | 91.5 |
| 1988 | | | 344 | 94.8 |
| 1990 | | | 268 | 96.3 |
| 1991 | | | 258 | 97.2 |
| 1992 | | | 258 | 97.7 |
| 1993 | | | 258 | 98.1 |
| 1994 | | | 230 | 98.6 |
| 1995 | | | 204 | 99.0 |
| 1996 | | | 162 | 99.3 |
| 1997 | | | 127 | 99.9 |
| 1998 | | | 88 | 99.9 |

Source: Ministry of Commerce and Industry.

Note: The increase in the number of the items subject to the Import Diversification Program is due to the amendment of HS code on January 1, 1990.

Although the Import Diversification Program began with 7 product items in 1977, it soon included 100 additional items by May 1978 and 107 more items by the end of 1978. However, the problem of the Import Diversification Program became apparent when its application to intermediary products and machinery harmed the competitiveness of domestic production. Accordingly, the product coverage under the Import Diversification Program was focused on final consumer products, rather than intermediary products that were used in subsequent manufacturing process. The Korean government also allowed various exceptions to the Import Diversification Program. These have been granted for production facilities, parts and components in connection with the Foreign Investors Industrial Parks; sample products for domestic production; and materials for producing exports. In addition, the Import Diversification Program also covered divergent products for which import substitution policies were undertaken. This function of the Import Diversification Program, however, did not play a crucial role in addressing the imbalance in the trade deficits.

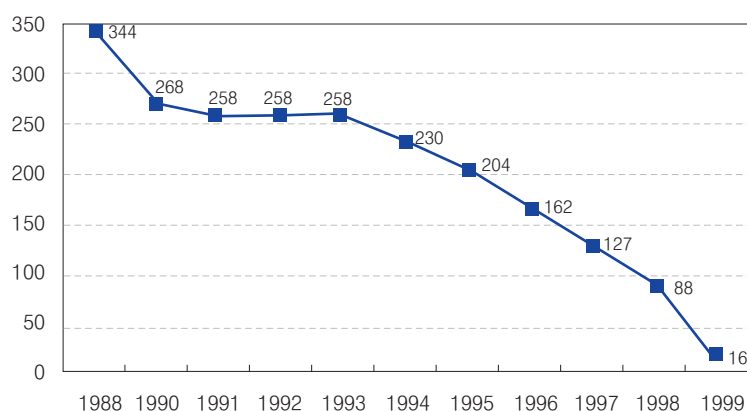
The product coverage was continuously increased until 1981¹⁶⁹ and then gradually reduced

169. The product coverage in 1981 on the basis of the CCCN 8-digit reached about 924 items.

until it was phased out in June 1999. The Import Diversification Program was formally terminated when the last 16 product items including VCRs, mobile phones, colour televisions, automobiles, and camera were removed from the list.

The Japanese government had repeatedly requested the repeal of the Import Diversification Program, alleging violation of GATT obligations particularly, under Articles I, XI and XIII. Since the Korean government revoked Article XVIII:B for its import restrictive measures in 1990¹⁷⁰, the legitimacy of the Import Diversification Program under GATT obligations was indeed questionable. However, the Japanese government never brought a formal complaint against the Program to the GATT dispute settlement system, probably due to the massive amount of bilateral trade surplus. Instead, the Japanese government relied more on political and diplomatic channels, for example, by raising the issue at the ministerial level.

Figure 1-5 | Number of Product Items under Import Diversification Program



As an effort to improve bilateral economic relations and also to cope with a new trading system established by the Uruguay Round negotiations, the Korean government decided to reduce the product coverage of 258 items by half during the five year period beginning in 1994.¹⁷¹ The long term plan for the Import Diversification Program prepared in December 1993 was left open for further reforms in 1999 and thereafter.

170. Ahn, *supra* note 33, 603-606.

171. MITI, 1999 Report on the WTO Consistency of Trade Policies by Major Trading Partners 55 (1999).

However, with accession to the OECD in 1996, Korea agreed to eliminate the Import Diversification Program by the end of 1999. The negotiations for OECD accession took place between November 1995 and July 1996, which had seven evaluation sectors and four policy review areas. As one of the policy review areas, the issue of trade was discussed and the Import Diversification Program was scheduled to be phased out by the end of 1999.

In addition, at the end of 1997, when the Korean government reached an agreement with the IMF on an economic reform program for financial support, it committed to repealing the Import Diversification Program by the end of June 1999. After the Korean government reached a stand-by arrangement with the IMF in an effort to overcome a financial crisis on December 3, 1997, eleven “Letters of Intent” were exchanged to elaborate the structural reform programs in the course of the restructure and recovery process. By the Letter of Intent dated December 18, 1997, the Korean government committed to accelerate the phase-out of the Import Diversification Program by June 1999, which was six months earlier than the due date committed to the OECD and subsequently the WTO. Pursuant to this agreement, the Korean government removed 25 items by the end of 1997, 40 items by the end of July 1998, 32 items by the end of 1998, and finally the remaining 16 items – primarily in industrial machinery, electrical and electronic equipment, and automotive sectors – by the end of June 1999. As part of a restructuring program committed to the IMF, the Korean government successfully implemented the scheduled liberalization or the complete phase-out of the Import Diversification Program.

| Area | Timeframe | | Long-term |
|-------------------------------------|---|--|---|
| | Short-term(1997-2000) | Medium-term(2001-05) | |
| Tariffs | Implementation of Korea's UR concessions. Tariff elimination for 28 items (HS-4digit) by 1999. Regularly updates of Korea's tariff data base (immediate announcement of changes to the public). | Review possibility of revising scheduled tariff concessions. | |
| Non-tariff measures | Gradual reduction of quota items. Elimination of subsidies by 1998. Elimination of the Import Diversification Programme by 1999. | Complete elimination of remaining quotas by 2001. | |
| Customs procedures | Complete the electronic data interchange system of UN/EDIFACT standards for export- and importclearance. Active participation in the revision of the Kyoto Convention. | Continuous improvements in customs procedures according to Guiding Principles (FACTS). | |
| Rules of origin (RO) | Active participation in the WTO/WCO harmonization work on rules of origin. Faithful implementation of the relevant WTO Agreement. Publication of guides. | Implementation of harmonized RO on adoption by the WTO. Review of the implications of RO on trade and investment. | Efforts to establish an international régime relieving distortions in trade and investment caused by preferential RO, inclusion of preferential rules into the WTO framework. |
| Standards and conformity assessment | Progressive alignment of standards for capital goods with international standards. Efforts to enter into mutual recognition agreements on conformity assessment with APEC members. Expansion of Korea's participation in ISO, IEC, Codex Alimentarius and | Efforts to align with international standards, where appropriate, in regulated and voluntary sectors. Continued participation in bilateral or multilateral mutual recognition agreements, consultations in APEC/SCSC and other specialized regional bodies. | |

172. WTO, WT/TPR/S/19, 18 (1996).

| Area | Timeframe | | Long-term |
|-------------------------------------|---|--|--|
| | Short-term(1997-2000) | Medium-term(2001-05) | |
| Standards and conformity assessment | <p>other relevant international organizations.</p> <p>Enhanced transparency of standards and conformity assessment regulations. Development of technical infrastructures to facilitate broad participation in mutual recognition arrangements.</p> | | |
| Government procurement | <p>Accelerated information on procurement opportunities and contact points through databases and Internet services on tendering opportunities.</p> <p>Further domestic reforms to harmonize with the WTO/GPA regime.</p> | | <p>Information on tenders via APEC Home Page.</p> <p>International co-operation to achieve comprehensive liberalization of government procurement.</p> |
| Intellectual Property Rights (IPR) | <p>Protection of breeder's rights under the Seed Industry Law from 1998.</p> <p>Protection of trade secrets regarding experimental statistics under the Agrochemical Management Law from 1997.</p> <p>Amendments of the Copyright Law in response to new technological developments around 1998.</p> <p>Accession to the UPOV Convention in 1999.</p> | <p>Up-dating of IPR legislation in response to international trends and technical developments.</p> <p>Continued provision of adequate and effective civil administrative procedures and remedies.</p> | |
| Telecommunications services | <p>No limitations on the number of service suppliers (except limitations required by the availability of radio frequencies) from 1998.</p> <p>Liberalization of foreign investment in facility-based basic telecom carriers of up to 33%. (Korea Telecom: 20%).</p> | <p>Free resale of voice telephone services connected to the PSTN from January 2001.</p> | |

FTA Strategies: The Korean Case and Its Implications

1. Introduction
2. Background to Korea's FTA Policy
3. FTA Roadmap and Strategies
4. Practice of the FTAs
5. Governance of the FTA Policy
6. Conclusion and Implications

FTA Strategies: The Korean Case and Its Implications

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HongShik Lee(Korea University)

<Summary>

Under the world's multilateral trade system, the global economy has achieved significant economic growth over the decades. This multilateral system provided Korea, a country with an export-oriented economic policy, a great chance to record high growth rate. In the mid-1990s, however, the country faced challenges both at home and from abroad. Regionalism has emerged as a new axis of the global trade system and an increasing number of countries are concluding FTAs in response, which in turn has widened and intensified the trend. After the Asian financial crisis in 1997, issues on inefficiency and declining growth potential of the Korean economy came to the fore. To enhance its economic efficiency and growth potential and address the changing trade environment, pursuing FTAs was regarded as inevitable for Korea.

Korea concluded its first FTA with under "The Review Report on Free Trade Agreement Promotions with Major Countries" in 1998. Based on the experience of concluding a FTA with Chile, the Korean government realized that the country needed to create a more concrete and systematic FTA Roadmap. Thus, a FTA Roadmap was set up in 2003. With some limitations suggested, it was revised in 2004, aiming to maximize the economic benefits rather than minimize the economic costs. The main points of the revised Roadmap are: 1) Simultaneous FTA promotion, 2) FTA with advanced and large economies, 3) High-level and comprehensive FTAs, and 4) Implementing effective domestic countermeasures to mitigate negative effects on certain domestic industries.

Under the roadmap, the Korean government targeted countries considering 1) Economic benefits and costs, 2) Industrial development, 3) Vulnerability of agro-fishery market to openness, 4) Institutional innovation in domestic market, and 5) Political circumstances. With

these evaluation criteria, it was concluded that FTAs with large economies, the U.S., EU, ASEAN, China and Japan, would be significantly beneficial to Korea. Also, it turns out that “Package and Combination Strategy” would be needed to counterbalance potential negative impact of FTAs. It means that when signing a FTA with a large country, complementary FTAs should be also promoted to minimize expected losses in domestic market.

Korea has concluded FTAs so far with Chile, Singapore, EFTA, ASEAN, India, the U.S., and EU, and all of them ratified and in force, except for FTAs with the U.S. and EU. In addition to the eight FTA negotiations, seven joint research studies are under way now. These FTAs share some characteristics. First, Korea has tried to expand its FTAs by securing footholds in almost all the continents in the world. The export-oriented country has put its efforts to carry out negotiations for FTAs in the continent of Asia, Americas and Europe. By concluding such intra-continental FTAs, Korea has been able to establish a global FTA network. Second, the WTO-Plus approach helps FTAs to be more comprehensive and high-level. The level of tariff elimination is higher than tariff concessions under the WTO, and the negotiations cover various fields such as non-tariff barriers, service, investment, intellectual property right, safe guard, competition, dispute settlement, labor, environmental issues, and so on.

Despite the Fact that Korea negotiated large numbers of FTAs in such a short time, Korea has undergone various trials and errors, but these mistakes allowed the country to re-organize its institutions and modify related laws. The administrative organizations that handle free trade agreements are now separated into two parts: the Trade Ministry under the Ministry of Foreign Affairs and the FTA Policy and Promotion Adjustment Authority under the Ministry of Strategy. The Ministry of Foreign Affairs is responsible for trade negotiations at the international level, and the Ministry of Strategy deals with domestic countermeasures. The Foreign Trade and Economy Ministers’ Meeting led by the Minister of Strategy and Finance is responsible for coordinating related ministries and deliberating important FTA issues. Under this decision making structure, the government introduced the *Regulations on Procedure of the FTA Promotion*, which stipulates the rights and obligations of the FTA. These are related to the organizations and procedures for the promotion of FTAs in order to improve efficiency and to encourage the participation of the private sector in the process. This policy decision structure still needs to be improved by strengthening the function of mediating different interests.

Efforts have been made to assist those sectors that are suffered from the FTAs. In order to, domestic countermeasures are implemented based on the Law on Trade Adjustment Assistance for manufacturing goods and services and the Special Law on Assisting Farmers and Fishermen for Damages as a result of FTA for agro-fishery industries. But these laws should be amended to avoid impeding industrial restructuring or causing adverse choice by simply providing financial support. Additionally, the countermeasures should be focused on workers rather than firms by means of a social safety net.

Korea's experience can provide meaningful implications to other countries, particularly developing countries which are trying to deal with rapidly changing economic trend and to keep or accelerate its economic growth through FTAs. From Korea's experience, it can be inferred that FTAs could have positive effects on a country's economy if negotiations with countries are carefully prepared and FTA-related domestic policies and laws are properly implemented.

1. Introduction

Korea, once an underdeveloped agricultural country a half-century ago, has achieved remarkable economic growth for the past decades, going from being an aid recipient to donor country. The economic achievement has been largely led by the country's outward-looking trade policy. As a small economy with a lack of resources, Korea has been highly dependent on international trade, and the country's externally oriented trade policy has played a vital role in both economic growth and the industrialization of the Korean economy. As seen in Table 2-1, Korea's real GDP increased by more than 27 times from 1960 to 2009. Trade volume sharply increased as exports soared from 30 million USD in 1960 to some 364 billion USD in 2009 during the same period.

The multilateral trade system, which strengthens free and fair trade, provided a favorable environment for Korea to pursue the export-oriented trade policy. The country also took advantage of its status as a developing country under the GATT/WTO regime, which grants differential and more preferential treatment for developing countries. Under the multilateral trade system, Korea enjoyed quantitative economic growth as a developing country, tapping into a global market for export and, at the same time, minimizing market openness for its domestic industries in the name of protecting infant industries.

As global competition has become fiercer since the Washington Consensus and the Korean economy has been rapidly growing, it is hard for the country to enjoy the status of developing country and even harder to maintain its growth momentum with government-led and quantitative development policy. Moreover, the Asian financial crisis in 1997 exposed the problems of Korea's economic development policy and industrial structure. Additionally, regionalism has increasingly emerged as a new regime in the global trade system, becoming one of the two axes along with multilateralism. Facing the internal and external challenges, Korea had to reorganize its economic policies to overcome the crisis, secure qualitative economic growth in the future, and to actively deal with the changing global trade environment. To this end, the nation realized that it was time to carry out wider and deeper liberalization. Thus, it set up the FTA policy and has vigorously pursued FTAs.

Table 2-1 | Korea's Economic Indicator (1960-2009)

| | 1960 | 1980 | 2009 | Average annual growth rate | | |
|---|------|---------|----------|----------------------------|---------|---------|
| | | | | '60~'80 | '80~'09 | '60~'09 |
| 1. Population (million) | 25.0 | 38.1 | 48.7 | 2.1 | 0.9 | 1.4 |
| 2. GDP (trillion Won)* | 34.7 | 139.0 | 942.4 | 7.2 | 6.3 | 6.7 |
| 3. GNI per capita (\$)** | 79.0 | 1,645.0 | 17,175.0 | 16.4 | 8.3 | 11.6 |
| 4. GDP weight by industry (%) | | | | | | |
| Primary | 47.3 | 16.2 | 3.0 *** | | | |
| Manufacturing (including mining industry) | 10.1 | 26.4 | 28.3 *** | | | |
| Service | 42.6 | 57.4 | 68.7 *** | | | |
| 5. Employment weight by industry (%) | | | | | | |
| Primary | 63.0 | 34.0 | 7.4 *** | | | |
| Manufacturing (including mining industry) | 8.7 | 22.5 | 17.6 *** | | | |
| Service | 28.3 | 43.5 | 75.0 *** | | | |
| 6. Export and Import | | | | | | |
| Export in goods (\$ 0.1 billion)**** | 0.3 | 1.73.1 | 3,635.3 | 37.4 | 11.3 | 21.4 |
| Import in goods (\$ 0.1 billion)**** | 2.0 | 219.5 | 3,230.8 | 26.5 | 10.0 | 16.4 |
| 7. Investment and Saving | | | | | | |
| Saving rate (% , against GDP) | 10.0 | 32.9 | 30.0 | | | |
| 8. Unemployment rate | 8.2 | 5.3 | 3.6 | | | |

Source : The Bank of Korea, (<http://ecos.bok.or.kr/>).

Note : *Based on fixed price in 2000.

** Based on current price.

***Here, 2007 data are used.

****Based on f.o.b. price.

This paper first overviews the background to Korea's FTA policy in Section 2. Then, Section 3 outlines the goals and strategies of the policy and how the country targeted countries for FTAs. How the policy has been practiced will be assessed afterwards in Section 4. By examining the FTA status of Korea, the paper will also analyze the characteristics and detailed commitments of Korea's FTAs. Also the challenges faced by Korea and the lessons learned from promoting FTAs will be discussed. In Section 5, examining the governance of the FTA policy, this paper discusses the policy-making structure, process of FTA promotion and domestic countermeasures. Lastly, summarizing the FTA policy and its challenges in Korea, the paper draws possible implications for developing countries.

2. Background to Korea's FTA Policy

Under the world's multilateral trade system, the global economy has achieved significant economic growth over the decades. This multilateral trade system provided Korea, a country with an export-oriented economic policy, a great chance to record high growth rates. In the mid-1990s, however, the country faced challenges both at home and from abroad. Regionalism has emerged as a new axis of the global trade system and an increasing number of countries are concluding FTAs in response, which in turn has widened and intensified this trend. It was in the early 1990s that the need to pursue FTAs was first raised in Korea when NAFTA was being actively promoted. But the FTA issue could not get momentum at that time in Korea due to political and economic circumstances. After the Asian financial crisis in 1997, when issues on inefficiency and declining growth potential of the Korean economy came to the fore, the need to pursue FTAs was regarded as inevitable for Korea to enhance its economic efficiency and growth potential and respond to the changing trade environment.

2.1. Changes in Global and Domestic Economic Environment

2.1.1. Changes in Global Trade Environment

While globalization is getting intensified, global competition has become more and more severe. BRICs, whose economies were stagnant due to their closed economic strategy, are implementing open market policies, escalating the global competition. As globalization has progressed, the movement of capital, technology, labor as well as goods has become freer, and the so called global network has been rapidly established. Under this global competition, a country cannot improve its economy without actively participating in this global trend and enhancing its competitiveness.

While globalization has advanced, the world economy has increasingly regionalized at the same time. Although the World Trade Organization (WTO) pursues multilateralism and guarantees Most-Favored-Nation (MFN) Treatment to all contracting parties, it also allows the parties to conclude regional trade agreements (RTAs). These are made on a regional or bilateral basis, under certain conditions in accordance with Article XXIV of the General Agreement on Tariffs and Trade 1994, and Article V of its Understanding on the Interpretation and General Agreement on Trade in Services. The WTO considers Regional Trade Agreements (RTAs) as ways to eventually expedite free trade over the world by eliminating trade barriers. Regional trade agreements (RTAs) are a wider umbrella concept that includes free trade agreements (FTA) to custom unions (CU). FTAs account for most of trade agreement that make up RTAs in the world for now.

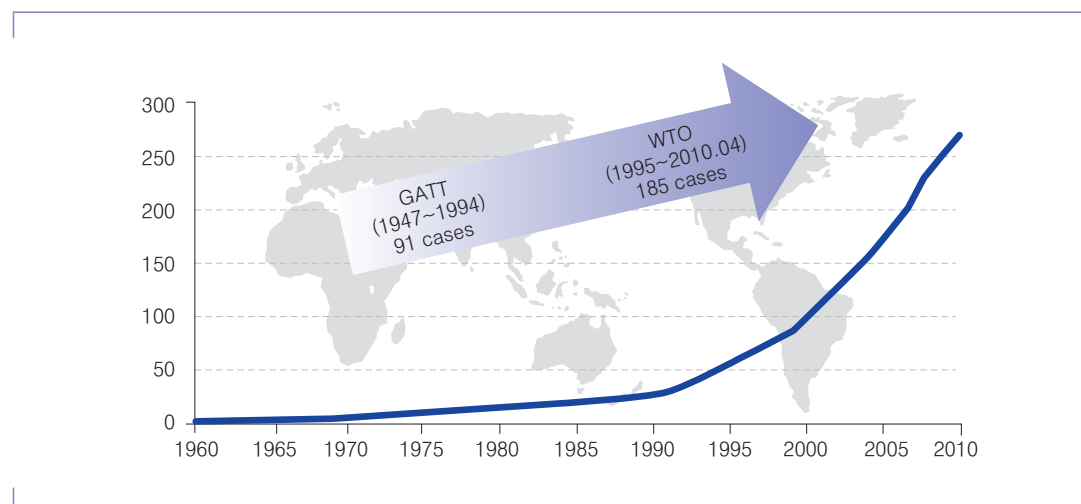
There are some reasons that countries have sought free trade agreements. Firstly, under the multilateral trade system, it takes longer and is much harder to conclude an agreement due to the increasing number of contracting countries and their conflicting interests, and some WTO/GATT regulations remain obscure. By concluding a FTA, countries can reach an agreement more easily, reflecting specific needs and considering certain situations in a region. Secondly, a FTA is believed to increase a nation's economic benefits by securing a wider market with no or lower tariffs. Although regionalism may cause trade diversion effects due to differential treatments between contracting parties and non-contracting ones, it is widely believed that the trade creation effect is larger than the diversion effect. It is also expected that participating countries of a regional trade agreement would enjoy economy of scale, more foreign direct investment and sound competition. Thirdly, since the 1990s, many economies have signed FTAs to protect their market share from other countries which already have FTAs. Table 2-2 depicts an increasing number of RTAs. It can be seen that RTAs concluded since 2001 amount to 177 as of June 2010, which means that the trend has rapidly spread in the recent years. Given that the DDA negotiations have come to a standstill for the moment, RTAs are expected to increase further in the future.

Table 2-2 | Number of RTAs

| | 1955-60 | 1961-70 | 1971-80 | 1981-90 | 1991-2000 | 2001-2010 June |
|-------|---------|---------|---------|---------|-----------|----------------|
| New | 3 | 3 | 11 | 10 | 72 | 177 |
| Total | 3 | 6 | 17 | 27 | 99 | 276 |

Source: WTO (www.wto.org).

Figure 2-1 | Number of RTAs



Source: Ministry of Foreign Affairs and Trade (www.mofat.go.kr).

2.1.2. Internal Challenges

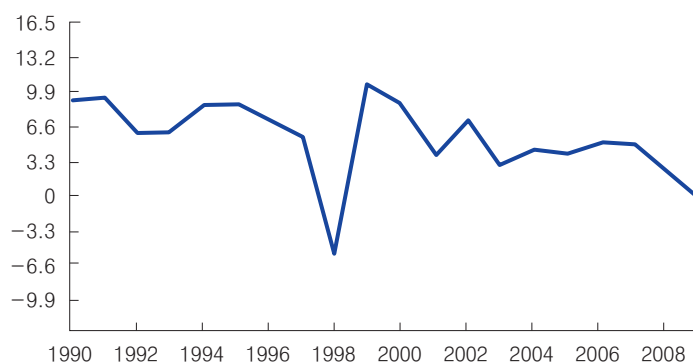
The Asian financial crisis in 1997 hit the Korean economy hard, but it also provided an opportunity for the country to examine hidden problems that were exposed: lax management, overlapping investment, moral hazard and so on. More importantly, the crisis put the country's structural problems front and center: Korea had maintained a top-down, state-directed approach to economic policies which hindered its ability to compete in the highly competitive world. The country needed to carry out more market-oriented policy along with the industrial restructuring and open up more to meet the global standard.

The structural problem was undermining the country's growth potential. Figure 2-2 shows that Korea's annual growth rate has steadily declined since the crisis in 1997. Before the crisis, the country posted annual growth of about 8% but it has decreased to less than 5% in recent years. This means that state-led economic model could no longer ensure continued economic growth, and thus, it was imperative for Korea to implement more market-friendly policies and adjust to the fast changing global economic system. The world's economy has been changing from one that is driven by the manufacturing industry to one that is driven by the service industry. After undergoing industrialization, Korea, unlike most advanced economies, needs to strengthen its competitiveness in the service sector as an engine for a new growth.

Furthermore, as investment has shrunk overall, the Korean economy has lost vitality. Figure 2-3 depicts the percentage changes in gross fixed capital formation and facility investment since 1990. While gross fixed capital formation has been maintained a 10% rate of increase before the financial crisis in 1997, it has been declining since then. The facility

Figure 2-2 | Economic Growth Rate (1990-2009)

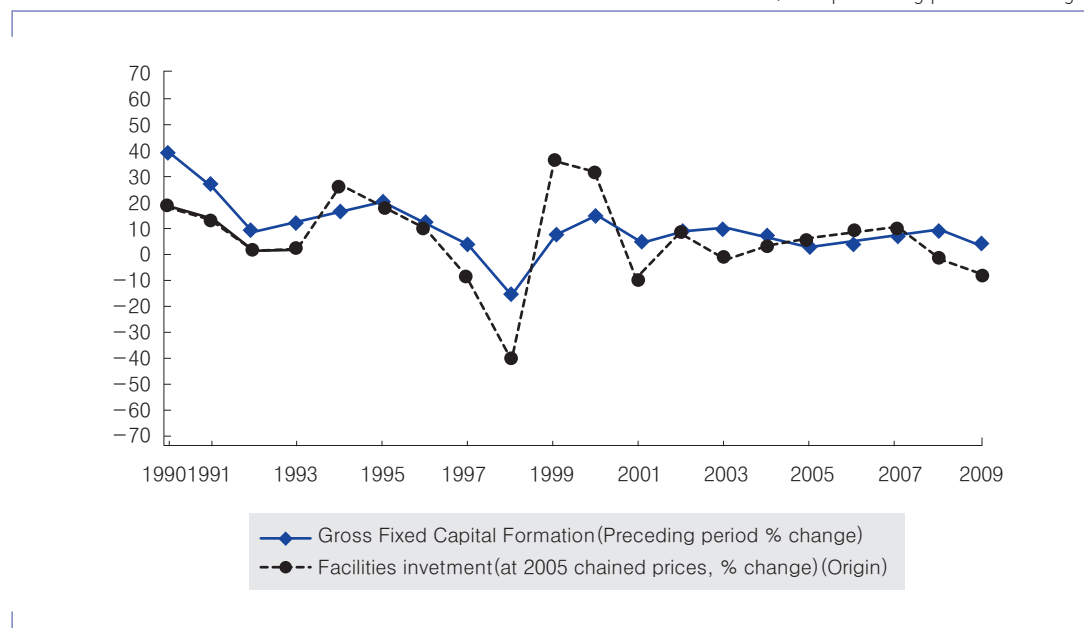
[Unit: %]



Source: The Bank of Korea.

investment trend decreased sharply to a low in 2001, before recovering again but only to fall again in 2009. Despite the overall drop in investment, foreign direct investment has been rising but it is still low compared to other competing countries. In 2008, Korea was ranked No. 130 on FDI Performance Index, which was estimated on the basis of FDI inflow to GDP, whereas it was ranked 19th on the FDI Inflow Potential Index. This means that FDI inflow to Korea has been less than what it could be.

Figure 2-3 | Gross Fixed Capital Formation and Facilities Investment (Unit: preceding period % change)



Source: The Bank of Korea.

Table 2-3 | Ranking of FDI Inflow Performance Index and FDI Inflow Potential Index

| Countries | FDI Inflow Performance Index | FDI Inflow Potential Index |
|-----------|------------------------------|----------------------------|
| Korea | 130 | 19 |
| China | 88 | 32 |
| India | 3 | 12 |
| U.S. | 115 | 1 |
| Japan | 135 | 24 |
| France | 57 | 18 |
| Germany | 108 | 6 |
| UK | 29 | 3 |

Source: UNCTAD, World Investment Report, 2008.

2.2. Necessity of FTA Policy

With these external and internal challenges, Korea realized that it was the time to proactively address global economic changes and find ways to ensure further economic growth for the future. Under this understanding, Korea formulated a FTA policy for the following reasons:

2.2.1. Response to Regionalism

Korea has maintained policy emphasis on multilateral trade systems such as the GATT and the WTO until the mid 1990s. As regionalism emerged as a new axis of the global trade system after the mid 1990s amid the rapidly increasing number of bilateral free trade arrangements between other countries, Korea sought to open its economy through bilateral mechanisms as well to avoid economic isolation. Moreover, Korea's main export competitors, including Japan, China, and Taiwan, shifted toward more FTAs. As such, Korea had to push ahead with the FTA policy in the face of fierce competition from other countries. A FTA basically provides various preferential treatment including lower tariffs, thus Korean goods would stand to lose price competitiveness and eventually market share in the world if Korea did not engage in FTAs and competing countries did. As the Japanese economy started to recover and the Chinese economy grew at a remarkable pace in the mid 1990s, there were concerns that Korea might face difficulties in keeping its global market share. If Korea had not responded to regionalism under these circumstances, the damage to the Korean economy would have been even larger.¹ Therefore, Korea being an export-oriented economy had but not choice to pursue a FTA policy.

2.2.2. Expansion of Export Market

Since it is important for Korea to secure stable overseas markets for economic growth, the country needs to negotiate FTAs actively to expand its export market. FTAs with large economies are believed to bring economic benefits. With the emerging of BRICs, Korea also needs to enter FTA negotiations with the newly emerging economies as well.

2.2.3. Heightening Industrial Structure and Enhancing Competitiveness

Since the financial crisis in 1997, Korea was forced to raise its credit rating by opening the market more, improving its economic efficiency and conducting restructuring. The FTA policy was adopted as a means of boosting Korea's economic efficiency. Once the market is opened via FTAs, it is inevitable for Korean firms to encounter increased competition and then try to enhance its competitiveness. The entire economy would also shift toward heightening its

1. It was expected that the opportunity cost in the case of Korea not engaging the regionalism amount to 1.3% of its GDP and 19.2%(or 34.4 billion USD) of the total export. (KIEP,2007)

industry structure in response to the global competition. This is important in that the driver of economic productivity is not the government, but the market itself. The openness and market reforms would provide a strong signal to the global market, thus leading to a higher national credit rating.

2.2.4. Inducing Foreign Direct Investment and Technology Transfer

As Korea has seen investments declining, it is important to attract more FDI via FTAs to grow the economy. In addition, FDI is the shortcut to facilitating technology transfer. By stipulating principles and requirements on investment through the FTA, foreign direct investment would increase. According to a study on relations between some major FTAs and FDI (Korea Institute for International Economic Policy, 2005), FTAs result in an increase in FDI by 24-70% total: 14-35% from bilateral inflows and 28-35% from other external countries. The annual increase in FDI to Mexico only totaled about 4 billion USD from 1989 to 1993, when NAFTA had not launched, but it soared to 15 billion USD in 1991 when NAFTA was initiated.

2.2.5. Settling Trade Conflict

No longer a developing country, Korea has been involved in more trade disputes. The number of disputes involving Korea through the WTO Dispute Settlement Body (DSB) amounted to 29 as of August in 2009. Although the WTO's Dispute Settlement Understanding (DSU) can be used, the process is still relatively slow. The promotion of FTAs and harmony between contracting countries would reduce the possibility of trade conflicts. In addition, by stipulating a process for conflict settlement, countries are able to resolve trade problems faster.

2.2.6. Political Reasons

When a political or economic crisis occurs, international aid and cooperation is more forthcoming. FTAs can be used to strengthen economic and political relations. In this perspective, the Korea-U.S. FTA and Korea-Japan-China FTA are important in securing political stability in Northeast Asia.

3. FTA Roadmap and Strategies

3.1. FTA Initiatives and Roadmap

Recognizing the necessity of FTAs in the rapidly changing world, the Korean government

sought to pursue free trade agreements and targeted Chile as its first country in 1998. The country's first FTA negotiation with Chile was conducted by trial and error. Reflecting on the lessons from the Korea-Chile FTA, the government set up a FTA Roadmap, which sets out the goals and strategies of FTA.

3.1.1. FTA Initiatives and Roadmap

The *Review Report on Free Trade Agreement Promotions with Major Countries*, released in 1998, set out four criteria for selecting countries to establish with: (1) trade and investment market size, (2) industrial complementarity, (3) economic and political stability, and feasibility as a regional foothold, (4) target country's willingness to conclude FTA with Korea. According to the report, Chile was chosen as the first country because it had already concluded FTAs with most of the Latin American countries and Canada in the early 2000s. Thus, it was believed that Korea could conclude the FTA with Chile as a platform for future FTAs but also gain knowledge from Chile's abundant experience in FTAs.

The Korea and Chile FTA was finally concluded in 2002. Korea, indeed, did gain valuable knowledge and experiences from the whole negotiation process. When Korea carried out the country's first FTA negotiations, Korea did not have a well-organized process and faced difficulties at each phase of the negotiations due to lack of experience and insufficient information on negotiations. In addition, it was insufficient just having directly-affected interest groups participate in the FTA negotiations. During the Korea-Chile FTA, the Korean government realized that it needed to create more concrete and systematic approach to FTA: a roadmap. In September 2003, a year after the Korea-Chile FTA was concluded, the Korean government released a FTA Roadmap reflecting the lessons of Korea-Chile FTA.

The Roadmap outlined the reason and economic effects of free trade agreement, documenting how target countries would be selected. The roadmap outlined the following criteria for selecting target countries: (1) economic feasibility, (2) political and diplomatic implications, (3) countries with a positive view on FTAs with Korea, (4) countries which could serve as a bridgehead for Korea to pursue FTAs with advanced and large economies. Under the standards, the government sought FTAs with Japan and Singapore as short-term target countries, ASEAN, Mexico, EFTA as mid-term target countries, and the U.S., China, and the European Union as mid to long term targets.

This roadmap was much more substantive in laying out Korea's FTA policy than the *Review Report on Free Trade Agreement Promotions with Major Countries*, but there were rising opinions that the FTA Roadmap should be supplemented in two points. Firstly, the roadmap was fairly passive simply focusing on minimizing economic costs from restructuring and dislocations that some industries, including the agricultural industry, might have. Based on this

approach, some large or advanced countries like the U.S., China, and the EU, were determined as mid to long term target countries even though Korea had the most to gain economically from the FTAs with these economies. In addition, since the agreement on DDA negotiations were effectively suspended in the 5th WTO Cabinet Meeting at Doha in September 2003, FTAs have been increasing at an ever fast pace. In the Americas and Europe, the economic integration has accelerated: East Europe countries decided to join the EU while CAFTA was concluded between the U.S. and five Central American countries. East Asian countries including Japan and China also have moved toward FTAs. In order to maximize the economic benefits and cope with increased competition in global trade, the Korean government needed to take a more proactive approach to its FTA policy.

Secondly, the roadmap formulated in 2003 presented basic approach and vague direction on policies. As such, a more comprehensive analysis of the economic effects and industrial restructuring cost of FTAs were needed. By analyzing each FTA scenario with target countries, the government would be able to have a more thorough analysis of the needs and situations of both Korea and target countries, which would make the Korean government easier to formulate an FTA scheme. Amid the rising voices to take a more proactive stance on FTAs and accelerate the FTA promotion scheme, it was important to precisely analyze the expected economic effects.

Considering these points, the trade ministry decided to pursue more proactive FTAs rather than simply defensive and re-active ones, and thus revised the roadmap and presented it at the minister meeting on foreign policy for economy in May 2004.

3.1.2. The Revised FTA Roadmap: from Reactive to Proactive

Unlike the initial version, the revised roadmap (2004) recognized that FTAs were tools to maximize the economic benefits and to enhance and strengthen the economy. At the same time, the government emphasized the importance of building social consensus and implementing domestic countermeasures, reflecting lessons from the Korea-Chile FTA.

3.1.2.1. Simultaneous FTA Promotion

To catch up to the other competitors, the Korean government has been pursuing a multi-track approach, conducting simultaneous FTA negotiations under the slogan of “simultaneous FTA promotions”. Korea was late in joining the global trend toward FTAs, concluding its first one with Chile in April 2004. Within a short period, Korea has signed relatively large number of trade deals. There are some reasons why Korea has implemented a simultaneous FTA promotion policy. First of all, Korea needs to catch up with other competitors so that it can minimize the opportunity cost of starting late. Secondly, being highly dependent on foreign

markets, Korea needs to secure as much of the foreign market as possible. Thirdly, the country also needs to consider the impact of FTAs on its industries: if Seoul concluded a one-sided free trade agreement, which is only with either developing or advanced countries, the impact on industries would be disproportionate.

3.1.2.2. FTAs with Large and Advanced Economies and Newly Emerging Economies

Korea has been preparing to negotiate FTAs with most of its major trade partners, which could offer greater economic effects. In order to advance the Korean economy and maximize the economic benefits of FTAs, Korea sets up another goal, which was to enter into free trade agreements with advanced economies like the U.S. and the European Union. As a part of achieving the goal, some FTAs have been concluded with neighboring countries of advanced or large economies, which could serve as bridgeheads. Korea sought to engage newly emerging markets, aiming to negotiate FTAs with these newly rising countries. These FTAs would help to secure new engines for economic growth in the future.

3.1.2.3. Comprehensive and High-Level FTAs

When it comes to content, Korea has tried to push forward comprehensive and high-level FTAs. While country's potential growth is getting smaller, Korea is putting efforts to maximize benefits of FTAs to accelerate its market competition and raise economic efficiency. Thus, it is important for each FTA to contribute to promoting efficiency and competitiveness. FTAs should be a form of WTO-Plus, however, a FTA should not lower the level or range of the market openness that the WTO already stipulates. In other words, FTAs have to result in more liberalization than the WTO/GATT. By doing so, Korea can still support the multilateral trade system and its industrial strategies to raise its competitiveness. Recent FTAs sometimes include partial liberalization of the service sector and investment as well as abolishing tariffs. These high level FTAs will enhance country's competitiveness through FDI which can bring about effects like reforms and increased productivity.

3.1.2.4. FTAs in line with Domestic Countermeasures

The Korean government is also making efforts to form a social consensus on the FTA policy. Since the trade policy would inevitably cause negative impacts on some industries, it is important to help people understand the reason why Korea needs to promote FTAs and work out measures to support the industries that might be negatively impacted. Therefore, the government implemented the Comprehensive Countermeasures for FTAs in 2007, planning to provide 21.1 trillion KRW of support for the next 10 years. It also has put emphasis on pursuing FTAs in a transparent and systematic way to gain social consensus on the policy.

3.2. Formulating the Roadmap: Target Countries

Based on comprehensive analysis of the expected economic effects and costs of each FTA, the revised FTA outlines the method for selecting target countries. When Korea first pushed ahead with FTAs, selecting which country they should sign its first FTA was critical. Certainly, the first FTA sets precedence, and the order of the countries in which Korea proceeds to conclude subsequent FTAs also significantly affects its economic structure and growth. According to endogenous economic growth theories and neo-economic geographic theories, a country's economic structure displays a path-dependency. Once an economy sets out on a certain path, it is self-reinforcing, and thus, the path of a country's economic development becomes permanent.

3.2.1. Classifying Target Countries

Seoul classified the target countries into three groups according to Korea's export volume to each target country, their market size and other economic and political factors.

- ① Group A: Large scale economies that are Korea's major export markets: the United States, China, Japan, the European Union, ASEAN.
- ② Group B: Economies that could contribute to offset possible negative effects from FTAs with large economies (A group). That is, emerging economies with great potential, which have resources or a comparative advantage, including MERCOSUR, India, Russia, Canada, Mexico, and Australia.
- ③ Group C: Economies for maintaining its FTA momentum and other small economies such as EFTA, Singapore and New Zealand. More importantly, FTAs with these countries can be used as a bridgehead or leverage for FTAs with large economies.

3.2.2. Categories and Considerations

Since the economic effects of FTAs are various, the target countries have to be evaluated both quantitatively and qualitatively in various aspects.

① Economic Benefits

Several key considerations were studied including a country's GDP, income and trade volume to examine the economic effects. Basically, a FTA aims at expanding trade and promoting economic growth by eliminating tariff and non-tariff barriers. Economic growth would bring job creation effects, too. The economic scale of a target country and its geography and industry structure were also considered to compare with Korea.

② Economic Costs: Restructuring Cost

Being a part of liberalization, FTA inevitably causes restructuring costs. When FTAs cause a decrease in productivity of inefficient industries that are protected by the government, the industries would face large layoffs and unemployment until workers find a new job. This can be used as a proxy variable for estimating the costs.

③ Industry Development

This category estimates whether FTA contributes to improve a country's industry structure or not. In order to examine the market structure and export-import structure of target companies, several factors are analyzed. This includes comparison of similarities in the industrial structure, identification of possible sectors that present competition, and evaluation of the impact on industry development.

④ FDI and Technology Transfer

A FTA can contribute to attract more FDI, and facilitate faster technology transfer. An increase in FDI and technology transfer acts as a vital standard.

⑤ Improving Domestic Institutions

More markets in the service sector like legal, medical, educational and media services could provide a better chance for a country to improve its institutions. Thus, FTAs should be evaluated on possibility to advance and strengthen its global competitiveness in the service industry.

⑥ Sensitivity of the Argo-Fishery Market

As agriculture and fishing industry, which are expected to be negatively impacted from FTAs, it is necessary to estimate the extent of the damage, and also food security should be considered.

⑦ Other Considerations

There are other considerations like politics, the strategic interests of target countries, leverage effects and feasibility.

3.2.3. Evaluations of the target countries

Based on the basic guidelines mentioned above, the Korean government concluded:

① Economic Benefits

Since the Group A countries are five of Korea's biggest trade partners, the impact of the FTAs with these countries is greater than Group B on its GDP, per capita income, employment and export.

Table 2-4 | Considerations to Evaluate Target Countries

| Considerations | Details | |
|--|---|---|
| Economic Benefits | - Effects on GDP, income - Job creation - Industry structure | - Expansion in trade - Market scale - Geographic adjacency |
| Economic Costs | - Restructuring cost | - Job reduction |
| Industrial Development | - Target country' market structure - Target country' trade structure - Possible competition in a new area of growth | |
| FDI and Technology Transfer | - Increase in FDI through FTA | - Expected Technology Transfer |
| Improvement in Domestic Institution | - Possibility of improvement in the service industry | |
| Sensitivity of the Argo-Fishery market | - Extent of the damage in the agricultural and fishing industry | |
| Others | - Leverage effects - Target country's interests | - Political and diplomatic reasons - Capability of fulfillment |

Since ASEAN countries had relatively high tariff rates before the FTA, impacts after FTA would be larger. A positive impact of the Korea-U.S. FTA on the service industry is expected to contribute the most in job creation. The Korea-Japan FTA would contribute to promoting intra-industry trade due to the competitive industry structure of the two countries, and this will help to achieve faster economic growth.

Although the effects are lower than those of Group A, FTAs with Group B countries are still necessary to bring positive effects on the Korean economy.

② Economic Costs

It was hard to directly estimate the economic cost of the FTAs, even though an estimate was made, using a proxy variable for potential loss of jobs. Resulting from FTAs with Group A countries, generally, it was concluded that the economic costs in terms of unemployment and restructuring, will be the greatest.

③ Industry Development

When it comes to industry development, it is necessary to carry out both statistic and dynamic analysis. According to traditional trade theories emphasizing comparative advantage of inter-industry trade, the more complementary the industry structure between trade partners is, the more benefits the FTA would bring. New trade theories, however, state that FTAs between countries with a similar industry structure would trigger intra-industry trade, and so the countries can enjoy economy of scale, which eventually brings economic

growth. Empirical studies show that FTAs between countries with similar industrial structures promote more economic growth (Lee Hongshik, 2004). Lederman et al(2003) and Sohn and Lee (2004) reported that one percent increase in intra-industry trade will lead to an increase in per capita GNP by 0.13-0.18 percent.

Suitability : Target Countries' Market Structure and Korea's Industry Structure

When a target country's import structure by items is similar to Korea's total export structure, the target is regarded as a suitable and vital target. Among Group A countries, China showed the strongest suitability, and the U.S. and the EU were moderately suitable, while Japan was least suitable. Among the Group B countries, Mexico and Australia were evaluated as strongly suitable, while Canada and Mercosur were moderately suitable.

Similarity: Target Countries' Export Structure and Korea's Industry Structure

When the export structure between Korea and a target country is similar, they would get greater benefits from improving competitiveness. Among Group A countries, Japan showed the highest similarity, while ASEAN, the U.S., and the EU were moderate similar, and China had the least similarity. Group B countries were estimated to have relatively low similarity. All of them possess a complementary industry structure in respect to Korea.

Table 2-5 | Suitability and Similarity

| | ASEAN | The U.S. | China | Japan | The EU |
|-------------|--------|----------|--------|-----------|--------|
| Suitability | ** | ** | *** | * | ** |
| Similarity | ** | ** | **** | ** | |
| Mercosur | Mexico | India | Canada | Australia | |
| Suitability | ** | *** | * | ** | *** |
| Similarity | * | * | * | * | * |

Note : *** high , ** moderate, * low

Possible Competition in the industry picked as a Korea's new growth engine

If a target country is highly competitive in the industry, which Korea fosters as a new economic engine, a FTA with that country would threaten Korea's new growth industries. In this respect, China showed to have the fewest competing industries, and ASEAN, the U.S. and the EU showed to have a moderate amount, while Japan had the most competing industries. While Mexico was assessed to impose a moderate threat to Korea, other Group B countries were not.

④ Sensitivity of the Argo-Fishery Market

Agricultural Goods

Korea's agricultural industry is expected to be negatively impacted by the FTAs. Income reduction and food instability could be the examples for potential negative effects. Among Group A countries, China and the U.S. were anticipated to cause the largest harm to Korea's agricultural industry. Since China has price competitiveness in agro-goods such as rice, Korea's staple crop, a FTA with China could trigger agricultural value-added to decline by 60%. A FTA with the U.S. could negatively affect the rice, meat and fruit industries. FTAs with the Group B and C countries were expected to cause relatively small negatives effects in terms of agricultural goods, except for Mercosur, Australia and New Zealand, which are big agricultural exporters.

Marine Products

At the same time, FTAs could bring an increase in imports. China and ASEAN would be classified as countries that would have great impact on Korea's fishing industry. China has substitute goods and shares in fishing resources with Korea. It is also geographically close to Korea, which makes it easy for China to export goods to Korea. ASEAN is Korea's third largest trade partner in this industry, so a FTA with the region would increase imports of marine goods.

⑤ Improvement in Domestic Institutions

Korea will be able to improve its domestic institutions in the legal, medical, and education sectors through FTAs with advanced countries. Service industries in advanced countries, including the U.S. and the EU, are already significantly developed, it is important to conclude FTAs with those countries. On the other hand, FTAs with ASEAN or China were estimated to be less advantageous in this aspect.

⑥ Other Considerations

Considering military and political security, the Korea-U.S. FTA is the most beneficial when the agreement could strengthen economic cooperation. In terms of regional security, China and Japan are also critical target countries.

Based on this assessment, it was concluded that the Korea-U.S. FTA would have the largest positive effects while the Korea-ASEAN FTA would have the second largest as seen in Table 2-6. A FTA with China would provide huge economic benefits, but it would also have a huge impact on the agro-fishery market. The Korea-EU FTA was evaluated to have an advantage in improving domestic institutions and a low impact on the agro-fishery industry.

Most countries in Group B were estimated to be suitable in terms of industrial development. A FTA with Mercosur was expected to have high economic benefits but it might have a high restructuring cost and a high sensitivity in Korea's agro-fisheries industry. Concluding a FTA with Canada would be helpful in enhancing Korea's institutions in the service industry.

Table 2-6 | Overall Evaluations

| Considerations | The U.S. | China | Japan | The EU | ASEAN |
|--|----------|-------|-------|--------|-------|
| Economic Benefits | 4 | 3 | 1 | 2 | 5 |
| Suitability in Industry Development | 2 | 5 | 1 | 3 | 4 |
| Sensitivity in Agro-Fisheries Industry | 2 | 1 | 5 | 4 | 3 |
| Improvement in Domestic Institutions | 5 | 1 | 3 | 4 | 2 |
| Political Reasons (Security) | 5 | 4 | 3 | 1 | 2 |

Note: the most beneficial (5), relatively less beneficial (1).

3.3. Strategies for FTAs

As mentioned above, the Korean government conducted a more systematic and detailed analysis in formulating a FTA strategy under the roadmap. Korea's FTA strategy was to simultaneously promote FTAs, where the goal was to maximize their economic benefits, and not simply be influenced by the potential economic costs on the country's industry. Thus, the target countries need to be large and advanced countries, which can bring large positive economic effects and help Korea heighten its industry structure, and improve its domestic institutions. Although the goal is to maximize the economic benefits, countermeasures to support vulnerable industries, particularly the agro-fishery industry, were prepared. So, when it comes to dealing with vulnerable industries including the agro-fishery industry, the government proposes plans to offset or minimize the negative impacts through domestic countermeasures.

Table 2-7 | FTA Roadmap

| | |
|---------------------------------|--|
| Policy slogan | - Simultaneous FTA promotion |
| Target Countries | - FTAs with advanced and large economies - FTAs with emerging economies |
| Contents | - High-level and comprehensive FTAs - WTO Plus rule |
| Domestic Countermeasures | - Comprehensive Countermeasures for FTAs - Transparent and systematic process |

Based on the evaluation on FTAs, Korea sought to pursue FTAs with Group countries, which could bring significant benefits to Korea, especially the U.S. Understanding that FTAs

also have negative effects, the Korean government was required to implement the so-called ‘Package and Combination’ strategy; that is, a measure to simultaneously push ahead with a FTA with a country from Group B or C that can help mitigate the negative effects from a FTA with a country from Group A.

4. Korean FTAs

4.1. Status of FTAs

Under the FTA Roadmap, Korea has concluded seven FTAs, and five of them have been effectuated. Additionally, there are eight FTAs under negotiation and seven under review via joint studies as of July 2010. Table 2-8 shows the status of the FTAs.

Table 2-8 | The Current Status of Korea’s FTA

| | Counterpart | Notes |
|-------------|-------------|--|
| Effectuated | Chile | - Effective on Apr.1, 2004 - Free Trade Committee meetings held for reviewing implementation of the FTA |
| | Singapore | - Effective on Mar. 2, 2006 - Meetings held for reviewing the FTA |
| | EFTA | - Effective on Sep. 1, 2006 - Meetings held by Korea-EFTA joint committee and of the subcommittee on customs and origin matters |
| | ASEAN | - Korea-ASEAN FTA Framework Agreement, Dispute Settlement Agreement, and Trade in Goods Agreement entered into force on Jun.1, 2007 - Korea-ASEAN FTA Trade in Services Agreement entered into force on May 1, 2009 - Korea-ASEAN FTA Investment Agreement entered into force on Sep.1, 2009 |
| | India | - Effective on Jan.1, 2010 |
| Concluded | U.S. | - Concluded in Apr. 2, 2007. - Submitted to the National Assembly in Korea and the Congress in the U.S. for ratification. |
| | EU | - Concluded in Oct. 15, 2009. |

| | Counterpart | Notes |
|---------------------|-------------------|---|
| Under Negotiation | Canada | - Began in Jul. 2005 - 13th round of Korea-Canada FTA negotiations in Mar. 2008 |
| | Mexico | - Began in Feb. 2006 - 2nd round of FTA negotiations (Seoul, Korea) in Jun. 2008 |
| | GCC | - Began in Jul. 2008 - 3rd round of Korea-GCC FTA negotiations (Seoul, Korea) in Jul. 2009 |
| | Australia | - Began in May 2009 - 5th round of Korea-Australia FTA negotiations (Canberra, Australia) in May 2010 |
| | New Zealand | - Began in Jun. 2009 - 4th round of Korea-New Zealand FTA negotiations (Wellington, New Zealand) in May 2010 |
| | Peru | - Began in Mar. 2009 - 4th round of Korea-peru FTA negotiations (Lima, Peru) in Oct. 2009 |
| | Colombia | - Began in Dec. 2009 - 3rd round of Korea-Colombia FTA negotiations (Seoul, Korea) in Jun. 2010 |
| | Turkey | - Began in Apr. 2010 |
| Under Consideration | Japan* | - Working level consultations under way starting from Jun. 2008 |
| | China | - Joint Study under way starting from Mar. 2007 |
| | Korea-China-Japan | - Joint Study under way starting from May 2010 |
| | Mercosur | - Joint Study began in May 2005 - Signed the MOU for the "Establishment of a Joint Consultative Group to Promote Trade and Investments between the Republic of Korea and MERCOSUR" |
| | Russia | - Joint Study under way starting from Oct. 2007 |
| | Israel | - Launched a joint feasibility study on Korea-Israel FTA in Aug. 2009 |
| | SACU | - Agreed to launch a joint feasibility study on the Korea-SACU FTA |

Source: Ministry of Foreign Affairs and Trade website (<http://fta.go.kr>).

Note: * Negotiations with Japan were carried out six times from December 2003 to November 2004, but for political reasons, it suspended. In 2008, Korea and Japan started to review re-negotiations for free trade agreement.

While all of Korea's FTAs are different from each other depending on the trading country, there are some common features, as seen below.

4.1.1. Concluded FTAs

After initiating the FTA policy in 1998, Korea has concluded FTAs with Chile, Singapore, EFTA, ASEAN, the U.S., India, and the EU. The Korea-Chile FTA, which was Korea's first bilateral market liberalization initiative, was concluded in October 2002. In terms of trade liberalization for goods, the immediate elimination of tariffs on imports from Chile covers 87.2 percent of the total tariff line. After tortuous and painful public debate on the future of the Korean agricultural industry, the Korea-Chile FTA was barely ratified in the National Assembly in February 2004, and went into force on April 1, 2004. Contrary to many of the concerns, the Korea-Chile FTA has brought about a substantial increase in bilateral trade and has hardly affected Korea's agricultural sector. Korea's exports to Chile have increased 32 percent during the five years after the FTA went into effect, while imports from Chile have increased 14.8 percent over the same period.

Korea also signed a FTA with Singapore in April 2005, which went into force in March 2006. This FTA went beyond tariff elimination; covering freer movement of goods, services, investment, intellectual property rights, competition, government procurement, electronic commerce, SPS, TBT, MRA, and dispute settlement. Despite the fact that Korea and Singapore already maintained low tariff regimes, the FTA has expanded the trade in goods. Korea's exports to Singapore have increased 24.8 percent during the three years after the effectuation of the FTA, while imports from Singapore have increased 17.5 percent.

Korea also concluded a FTA with EFTA on July 2005, which went into force in September 2006. The Korea-EFTA FTA covers not only elimination of tariffs on industrial goods but also comprehensive liberalization in other areas such as trade in services, investment, government procurement, intellectual property rights, competition, and cooperative measures in broadcasting services. Since the FTA began in September 2006, Korea's exports to EFTA increased significantly by 47.5 percent, while imports from EFTA increased 17.2 percent over the three-year period.

The Korea-ASEAN FTA is the first FTA that Korea concluded with one of its five largest export markets. In December 2005, Korea and ASEAN, excluding Thailand, signed the Framework Agreement, the basis of the Korea-ASEAN FTA. Under this framework, Korea and the ASEAN member countries signed the Agreement on Trade in Goods that took effect on June 2007. In addition to trade in goods, the Korea-ASEAN FTA also covered trade in services and investment. The Agreements on Trade in Services and Investment entered into force in May 2009 and September 2009, respectively. Unexpectedly, however, Korea's exports to ASEAN

decreased by 2.7 percent during the two years after the FTA went into effect, and imports from ASEAN decreased by 4.4 percent. However, this phenomenon seemed to be temporary, when it was mainly attributable to the economic recession in the region as a result of the U.S. financial crisis in 2008.

The negotiations on the Korea-India CEPA (Comprehensive Economic Partnership Agreement) started in March 2006, and were concluded in September 2008, going into effect on January 1, 2010. The CEPA is similar to an FTA, covering the trade in goods and services and investments, as well as intellectual property rights. However, both countries agreed to set aside the farm and forestry sector at a “low-level” of market opening to protect vulnerable farming and forestry sectors. By establishing a FTA with the U.S., Korea aims to upgrade its current economic structure and improve the nation’s competitiveness. After 14 months of negotiations, the Korea-U.S. FTA was concluded in April 2007, but has not yet come into force. This agreement is comprehensive in scope, covering a full range of trade-related areas from goods and services to intellectual property rights, government procurement, competition, labor, environmental issues, SPS, TBT, and dispute settlement. When the Korea-U.S. FTA was implemented, it was expected to build on a longstanding and robust trade and investment relationship between two countries. The FTA will bring significant and tangible economic benefits to both countries by promoting bilateral trade and investment. According to estimates by KIEP, the FTA would increase the Korea’s GDP by between 0.32 and 5.97 percent.

Negotiations on the Korea and EU FTA commenced in May 2007, and it was concluded in October 2009. If the agreement was ratified, it would be the second largest free trade agreement, following the North American Free Trade Agreement (NAFTA). The Agreement not only addresses trade in goods such as manufactured and agricultural products, but also covers service transactions and intellectual property rights.

Table 2-9 | Trade Performance of Korea’s FTAs

| FTA Partner | Effectuation | One year before the effectuation(Change, %) | | After the Effectuation [Average Annual Change, %] | | |
|-------------|----------------|---|---------|---|---------|---------------------------------|
| | | Exports | Imports | Exports | Imports | Period |
| Chile | April 2004 | 9.6 | 63.7 | 32.0 | 14.8 | For 5 years (Apr. 4 to Mar. 9) |
| Singapore | March 2006 | 38.0 | 23.9 | 24.8 | 17.5 | For 3 years (Mar. 6 to Feb. 9) |
| EFTA | September 2006 | 46.9 | 11.3 | 47.5 | 17.2 | For 3 years (Sept. 6 to Aug. 9) |
| ASEAN | June 2007 | 23.0 | 10.6 | -2.7 | -4.4 | For 2 years (Jun. 7 to May 9) |

Source: Calculation based on the trade statistics from KITA (Korea International Trade Association).

4.1.2. FTAs under Negotiation

Korea is currently engaged in negotiations with Canada, Mexico, GCC, Australia, New Zealand, Peru, Colombia and Turkey. In July 2005, Korea and Canada agreed to launch official FTA negotiations, and have held fourteen rounds of negotiations so far. In September 2005, Korea and Mexico agreed to launch Strategic Economic Complementation Agreement (SECA) negotiations. Since then, three rounds of negotiations have been held, but the talks stalled in June 2006 due to wide differences in the level of tariff elimination. In August 2007, Korea and Mexico officially agreed to resume their negotiations for a high-level and comprehensive FTA, and have held two rounds of negotiations so far. Following a preliminary meeting in November 2007, Korea and the GCC have held three rounds of negotiations until July 2009. Negotiations for the Korea-Australia FTA began in May 2009 and the third round of negotiations was held in December 2009. Korea and New Zealand began the first round of the FTA negotiations in June 2009 and held three rounds of negotiations until December 2009. Negotiations on the Korea-Peru FTA began in March 2009 and the fourth round of negotiations was held in October 2009. Recently, Korea and Colombia started the first round of their bilateral FTA negotiations in December 2009.

4.1.3. FTAs under Examination

Korea is also exploring possibilities for an FTA with other major trading partners such as Japan², China, MERCOSUR, Turkey, Russia, Israel, and SACU. Korea and Japan had so far held six rounds of negotiations. Even though Japan is one of Korea's key trading partners, talks have been deadlocked due to differences over the level of market access in agriculture and fishery sectors, public procurement, non-tariff barriers (NTBs), and industrial cooperation. Both countries agreed to consider a resumption of FTA negotiations and create a favorable environment for resumption. Working-level consultations to resume the talks were held four times from June 2008 to December 2009. Korea and China have held five meetings on a joint study attended by government officials, businessmen, and academics. Also, Korea, China, and Japan have agreed to launch a joint study group on a trilateral FTA involving government officials, businessmen, and academics. Korea has held meetings on a joint study with Mercosur, Russia, and Israel. Additionally, Korea and SACU have agreed to begin a joint study between private sectors.

2. Negotiations with Japan were carried out six times from December 2003 to November 2004, but for political reasons, they were suspended. In 2008, Korea and Japan started to negotiate again for the free trade agreement.

4.2. Characteristics of Korea's FTAs

4.2.1. General Characteristics

Despite late start, Korea has strongly pushed ahead with the FTA policy, preparing to negotiate FTAs with more than twenty economies under the slogan of 'simultaneous FTA promotions'. Here, we will overview the characteristics of Korea's implementation in its FTA policy.

4.2.1.1. Intra-Continental FTAs and the Global FTA Network

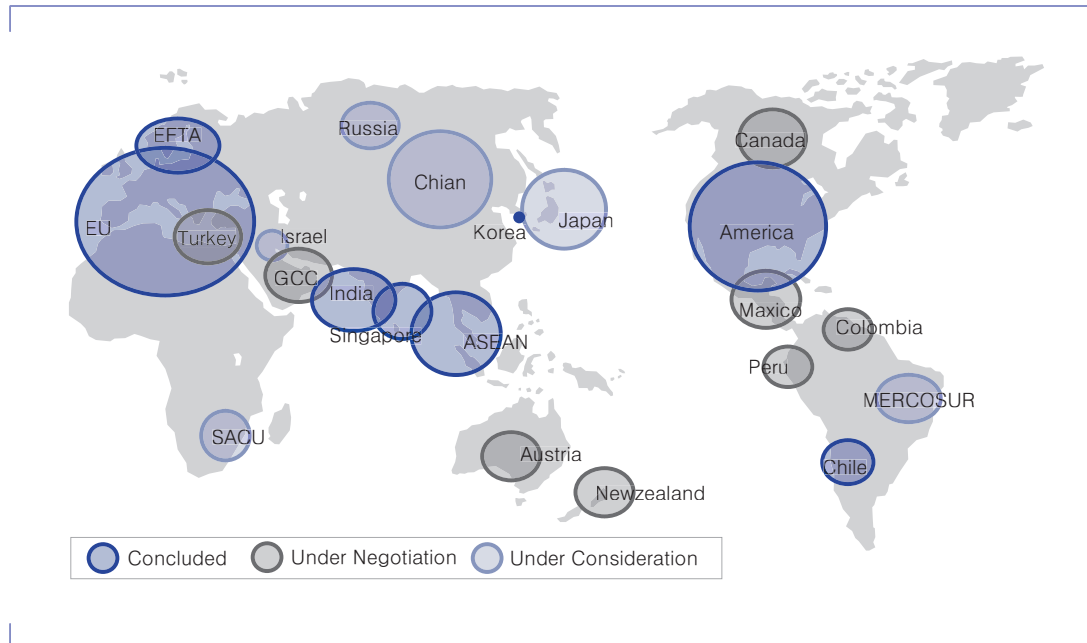
Korea has tried to expand its FTAs by securing footholds in all the continents over the world. The export-oriented country has sought FTAs with countries in the continent of Asia, Americas and Europe. To get a strong foothold in each of the regions, Korea quickly signed FTAs with so-called bridgehead countries such as Chile for the Americas, Singapore for Asia, and EFTA for Europe. This was the first step of the FTA policy, leveraging off to negotiate FTAs with the U.S., ASEAN and the EU from Korea's five biggest trade partners. As a result, Korea was, in part, able to achieve its goal of concluding FTAs with large and advanced economies.

Among the seven concluded FTAs, four (the Korea-Chile, Korea-EFTA, Korea-U.S. and Korea-EU FTA) are intra-continental FTAs. In particular, the Korea-Chile FTA was the first intra-continental free trade agreement signed between two countries across the Pacific Ocean. In fact, FTAs were mainly concluded between neighboring countries in the past. However, recently, intra-continental FTAs have been rapidly increasing over the world in recent years, while development in technology has reduced transportation costs, helping to create friendly environment with regard to intra-continental FTA. Korea also has pursued intra-continental FTAs as a part of effort for faster participation to the global trend of regionalism, while minimizing the costs of disadvantages from the late entry. Considerations on geographical adjacency are less important as current FTAs deal with a wider range of sectors and trade related issues including trade in service, intellectual rights, government purchase and trade relief measures.

This is different from FTAs, concluded by other Northeast Asian countries like China and Japan, which focused more on the Asian Continent. China's first FTAs were with its special administrative regions (Hong Kong and Macao) and neighboring countries such as Pakistan and ASEAN, while Japan has focused its efforts on ASEAN countries.

Conclusions of the intra-continental FTAs allowed Korea to establish a global FTA network. This network has helped Korea not only to realize quantitative and qualitative

Figure 2-4 | The Global FTA Network of Korea



Note: The size of circle is reflecting the scale of each country's import market from Korea.

Source: Ministry of Foreign Affairs and Trade.

economic development, but also to alleviate negative impacts on domestic industries. It is normally believed that the industrial structure between neighboring countries and economies far apart by a long distance tend to be more complementary. Thus, by setting up such a global FTA network, Korea has been able to mitigate losses in a certain industry with a neighboring country by gains from other intra-continental FTAs, and vice versa.

4.2.1.2. Comprehensive FTAs

Korea has pursued comprehensive and high-level FTAs to maximize its economic benefits in accordance with its FTA Roadmap. It also seeks to adopt the WTO-Plus way, which practically implies a wider coverage on trade related issues or greater commitment on FTAs. Korea's current FTAs cover a wide range of sectors from trade in goods to trade in service, intellectual rights, government purchase and dispute settlement. Most commitments under the FTAs to liberalize is an expansion of the parties' WTO commitments. For example, the level of liberalization for merchandise trade under the FTAs goes beyond WTO commitments in terms of tariff concessions. Although eliminating tariffs has been at the heart of FTAs so far, some FTAs are dealing with regulations that are not covered under the WTO regime. Competition policy is stipulated in the Korea-Chile, Korea-U.S., Korea-EU FTA, e-commerce in Korea-Singapore, Korea-U.S., and Korea-EU FTAs, while environmental and labour issues

Table 2-10 | Commitment Areas under the FTAs

| | Korea- Chile | Korea- Singapore | Korea- EFTA | Korea- ASEAN | Korea- India | Korea -U.S. | Korea -EU |
|--|-----------------|---------------------|----------------|-----------------|-----------------|----------------|--------------|
| Tariff Elimination | ○ | ○ | ○ | ○ | ○ | ○ | ○ |
| Non Tariff Barriers | | | | △ | △ | ○ | ○ |
| Elimination of Quantitative Restrictions | ○ | ○ | ○ | ○ | | ○ | ○ |
| Safe Guard | ○ | ○ | ○ | ○ | ○ | ○ | △ |
| Anti-dumping and Countervailing Measure | ○ | ○ | ○ | | ○ | △ | ○ |
| Rule of Origin | ○ | ○ | ○ | ○ | ○ | ○ | ○ |
| Investment | ○ | ○ | ○ | ○ | ○ | ○ | ○ |
| Customs Administration | ○ | ○ | ○ | ○ | ○ | ○ | ○ |
| Service | △ | △ | △ | ○ | ○ | ○ | ○ |
| MRA | △ | ○ | ○ | △ | | ○ | △ |
| SPS | ○ | ○ | △ | △ | | ○ | ○ |
| TBT | | ○ | △ | △ | | ○ | ○ |
| Government Procurement | ○ | ○ | △ | | | ○ | ○ |
| Intellectual Property Rights | △ | △ | △ | ○ | ○ | ○ | ○ |
| Competition Policy | ○ | △ | △ | | ○ | ○ | ○ |
| Dispute Settlement | ○ | ○ | ○ | ○ | ○ | ○ | ○ |
| E-Commerce | | ○ | | | | ○ | ○ |
| Movement of Personnel | ○ | △ | | | ○ | | ○ |
| Environment | | | | | | ○ | ○ |
| Labour | | | | | | ○ | ○ |

Note: ○ reflected, △ partly reflected or agreed on further discussion.

are included in the Korea-U.S. and Korea-EU FTAs. Table 2-10 shows the categories of commitments included in the FTAs.

4.2.2. Detailed Commitments

4.2.2.1. Tariff Concession

Tariff elimination is still the main issue of the FTAs³. Countries that take party seek to negotiate concession and a schedule. Each FTA has a different schedule based on each country's economic situation and the relations with the target country. Korea's concession rate in each FTA concluded is generally over 90%, with 100% for industrial goods in most of its past FTAs. Due to concerns about the potential impacts of liberalization on its agricultural sector, Korea has sought to alleviate the impacts for highly sensitive agricultural and fishery industries.

According to the tariff schedule, tariffs on some items are immediately eliminated and tariffs on others are removed in stage over a period of time. As to the Korea-Chile FTA, Korea agreed to remove its tariffs on 99.8 percent of all the items and 87.2 percent was immediately lifted once the agreement was effectuated in 2004, while the remaining tariff was agreed to be gradually lifted in 5, 7, 9, 10, 16 years. Chile eliminated its tariffs on the 99 percent of all the goods and allowed duty-free for 41.8 percent goods in 2004. While goods excluded in the tariff binding are mostly farm goods, Korea agreed with a much lower rate for immediately liberalizing agricultural products (15.6%), considering the impact on the domestic industry.

Under the Korea-Singapore FTA, Korea eliminates tariffs on 91.6 percent of all goods within ten years, while Singapore eliminates tariffs on 100 percent of all goods immediately upon the implementation of the agreement. Korea's relatively low concession rate stems from the low rate in agricultural and fishery industry with 56.2% and 66.6%, respectively.

EFTA agreed with 100% concession rate and immediately eliminated its tariffs except for some agricultural goods, while Korea promised to lift tariffs on 10,091 items, 99.1% of the goods. Since EFTA had stronger competitiveness in fishery and agricultural goods than Chile and Singapore, Korea's immediate liberalization rate in these areas was relatively low. In particular, when it comes to the tariff schedule of marine goods, most of the goods were scheduled to be removed in 5 or 10 years.

The Korea-ASEAN FTA divided all items into two categories: the Normal Track and Sensitive Track. A lower liberalization rate is applied to goods in the Sensitive Track, which are mostly agricultural goods. Korea and ASEAN are expected to eliminate tariffs on products constituting 90 percent of their respective imports until 2010. Tariffs on the other 7 percent of imports are expected to be lowered by 0 to 5 percent until 2016.

3. WTO 2004

Under the CEPA, India will eliminate duties on 75 percent of imports from Korea during eight years after the CEPA becomes effective. Korea will remove duties on 93 percent of imports from India during the same period. In terms of the effects on the domestic industry, both sides agreed to maintain a low-level of liberalization on marine and agricultural goods, with a concession rate of 55.2% for Korea and 59.2% for India. Due to this low level, Korea's policy was doubted whether it could achieve the goal of 'high-level' FTAs or not.

About 94 percent of Korea-U.S. trades in consumer and industrial products are expected to be duty-free within three years after the agreement becomes effective. In addition to the agreement, it will immediately eliminate duties on 37.9 percent of Korea's agricultural imports from the United States. The rate increases to 56 percent if the accounting is based on the imported amount. Korea's main export goods such as cars under 3.000cc, car parts, and LCD monitors belong to the items whose tariffs are immediately eliminated. Thus, it is expected that the Korea's global market share in these goods would increase.

Korea and the EU will eliminate or phase out tariffs on 96 percent of EU-made products and 99 percent of Korean goods within three years after the agreement goes into effect. While the liberalization schedule of import from the EU is slower than that of the U.S., the EU schedule for Korean goods is faster than that of the U.S. However, the total concession items of the EU are fewer than those of the U.S.

Table 2-11 | Concession Rate and the Rate of Year0

(Korea: HS 10 base, %)

| FTA | | Tariff Elimination | Total | Industrial Goods | Forest Goods | Marine Goods | Farm Goods |
|-----------------|-----------|--------------------|-------|------------------|--------------|--------------|------------|
| Korea-Chile | Korea | Concession | 99.8 | 100.0 | 100.0 | 100.0 | 98.5 |
| | | Year0 | 87.2 | 99.9 | 58.2 | 69.5 | 15.6 |
| | Chile | Concession | 99.0 | 99.8 | 100.0 | 100.0 | 94.2 |
| | | Year0 | 41.8 | 30.6 | 100.0 | 99.0 | 92.9 |
| Korea-Singapore | Korea | Concession | 91.6 | 97.4 | 82.9 | 56.2 | 66.6 |
| | | Year0 | 59.7 | 68.8 | 53.7 | 13.8 | 16.0 |
| | Singapore | Concession | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| | | Year0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Korea-EFTA | Korea | Concession | 99.1 | 100.0 | 100.0 | 88.4 | 84.2 |
| | | Year0 | 86.3 | 92.3 | 45.5 | 27.1 | 15.8 |
| | EFTA | Concession | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| | | Year0 | | 100.0 | 100.0 | 100.0 | 35-55 |

| FTA | | Tariff Elimination | Total | Industrial Goods | Forest Goods | Marine Goods | Farm Goods |
|-------------|-------|--------------------|----------|------------------|--------------|--------------|------------|
| Korea-ASEAN | Korea | Concession | 99.2 | 100.0 | 100.0 | 100.0 | 94.1 |
| | | Year0 | 90.8 | 96.6 | 60.4 | 60.8 | 63.2 |
| | ASEAN | Concession | 99.2-100 | | | | |
| | | Year0 | 89.9-100 | | | | |
| Korea-India | Korea | Concession | 93.2 | | | 80.3 | 55.2 |
| | | Year0 | 88.6 | | | 10.3 | 7.7 |
| | India | Concession | 85.3 | | | 92.8 | 59.7 |
| | | Year0 | 71.5 | | | 0 | 2.1 |
| Korea-U.S. | Korea | Concession | 99.8 | 100.0 | 100.0 | 100.0 | 99.0 |
| | | Year0 | 78.2 | 90.6 | 26.8 | 25.4 | 37.9 |
| | U.S. | Concession | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| | | Year0 | 81.3 | 87.9 | 73.0 | 72.8 | 58.7 |
| Korea-EU | Korea | Concession | 99.6 | 99.5 | | 93.7 | 97.2 |
| | | Year0 | 81.7 | 90.7 | | 12.3 | 42.1 |
| | EU | Concession | 99.6 | 100.0 | | 100.0 | 98.1 |
| | | Year0 | 94.0 | 97.3 | | 40.8 | 91.8 |

Note: Concession means the rate of concession based on the number of items. Year0 means the rate of concessions that are liberalized at the entry into force of each agreement.

4.2.2.2. Tariff Concession on Agricultural and Fishery Goods

The Korean government considered the vulnerable agricultural and fishery industries for conducting FTA negotiations. The government has tried to alleviate the impact on the industries by excluding them from liberalization, negotiating partial reductions of tariffs, tariff rate quotas (TRQs) or a longer phasing-out period.

For instance, when it comes to tariff concessions on agricultural goods in the Korea-Chile FTA, Korea excluded 21 agricultural goods such as rice, apple and pear in its concession. Also, they negotiated tariff rate quotas (TRQs) on 18 items so that the tariff concessions on those items would be discussed when the DDA negotiations are concluded. For 795 goods, Korea gained some time to improve its competitiveness by taking a longer phasing-out period of 5, 10 and 16 years.

In the Korea-U.S. FTA, non-sensitive agricultural goods are expected to be duty free, whereas tariffs on less sensitive goods will be eliminated within ten years. The Korean government agreed to exclude sensitive goods from liberalization and to maintain the current

tariff rates, tariff rate quotas (TRQs), seasonal tariffs or a longer phasing-out period on the sensitive agricultural goods. Table 2-12 shows the tariff concession scheme on agricultural goods in the Korea-U.S. FTA.

Table 2-12 | Tariff Concession Scheme on Agricultural Goods in the Korea-U.S. FTA

| Staging | # of items | % | Imports (\$1,000) | % |
|----------------------|------------|------|-------------------|------|
| Exemption | 16 | 1.0 | 25,555 | 0.9 |
| Current +TRQs | 15 | 1.0 | 209,334 | 7.0 |
| 17, seasonal tariffs | 1 | 0.1 | 4,099 | 0.1 |
| 15, seasonal tariffs | 0(1) | 0.1 | 0 | 0.0 |
| 18+TRQ | 4 | 0.3 | 1 | 0.0 |
| 15+TRQ | 5 | 0.3 | 93,474 | 3.1 |
| 12+TRQ | 6 | 0.4 | 8,370 | 0.3 |
| 10+TRQ | 4(8) | 0.8 | 3,233 | 0.1 |
| 20 | 0(2) | 0.1 | 0 | 0.0 |
| 18 | 3 | 0.2 | 0 | 0.0 |
| 16 | 2 | 0.1 | 1057 | 0.0 |
| 15 | 103(2) | 6.8 | 353,289 | 11.8 |
| 12 | 34 | 2.2 | 353,289 | 0.5 |
| 10 | 332 | 21.4 | 13,504 | 4.1 |
| 9 | 1 | 0.1 | 121,840 | 0.0 |
| 7 | 41 | 2.6 | 0 | 2.0 |
| Until 2014.1.1. | 21 | 1.4 | 57,689 | 1.9 |
| 6 | 2 | 0.1 | 13,070 | 0.4 |
| 5 | 317(2) | 20.6 | 347,007 | 11.6 |
| 3 | 33 | 2.1 | 66 | 0.0 |
| 2 | 6 | 0.4 | 6,921 | 0.2 |
| Immediate | 585(2) | 37.9 | 1,665,517 | 55.8 |

Source: Website of Ministry of Foreign Affairs and Trade.

4.2.2.3. Rules of Origin

A rapid spread of regionalism made the rules of origin more important than ever. The Rules of Origin in a free trade agreement actually act as criteria to decide whether goods are entitled to enjoy preferential tariffs, while differentiating goods based on their origins. The rules of origin are also significant in that it can serve as a Double Lock to prevent trade aversion effect

that might be caused by a regional trade agreement. Trade aversion effect occurs when merchandise trade is diverted from a lower cost supplier to a higher cost supplier in a free trade area. This led both the importing country and the lower cost supplier to be worse off from the switch. Krugman (1999) mentioned that the rule of origin that causes such trade aversion effects is the “hidden protection”. Despite the importance of the rule, it is often complex and different among countries, which triggers an unnecessary non-trade barrier. Thus, it is vital to settle the criteria to determine a good’s origin, which would have a huge impact on industry, trade, and investment of the FTA countries. There are two criteria to determine origins: the “goods wholly obtained test,” which is used when the whole process of production of a good is entirely carried out in a country and the “substantial transformation test,” which is used to identify the country of origin of an imported product when the product is manufactured in more than one country and/or incorporates materials, parts, or components from more than one country. There are three methods to identify if a good has undergone substantial transformation: change in tariff classification method, value added test, criterion of specific manufacturing, and technical test method.

Rules of Origin in the FTA of Korea

Korea considers the rule very important, adopting the Rules of Origins in each FTA. Korea basically uses both completely obtained test and a substantial transformation test, and applies to the change in tariff classification method, the regional value content method, and the specified process method to identify substantial transformation. Also, the country also adopted a complementary rule to secure flexibility of the regulations.

Completely obtained test is stipulated in a similar way in the seven FTAs. Although the items that are applied to the test are limited, primary goods are still applied to the test.

The three different methods to identify substantial transformation are solely or jointly used. The change in tariff classification method is included in all the FTAs as a vital method. This is often used jointly with the other two methods, particularly in the Korea-ASEAN, Korea-EU, and Korea-EFTA FTAs. When its standard price, calculation method and regional value contents rate, varies the value added test is significantly different from the FTAs. As for the standard price, the Korea-Chile, Korea- Singapore, Korea-ASEAN FTA applies the FOB price while the Korea-EFTA applies the ex-works price and Korea-U.S. adjusted value price. The Korea-Singapore FTA requires a high level of regional value content, 45~55%, due to Singapore’s engagement in immediate trade. Table 2-13 depicts the differences in each FTA when it comes to technical terms used in regional value contents. The specified process method is often applied to apparel and clothing goods and jointly used with other two methods.

Table 2-13 | Difference in Each FTA in Technical Terms of Regional Value Contents (RVC)

| | | Korea-Chile | Korea-Singapore | Korea-EFTA | Korea-ASEAN | Korea-India | Korea-U.S. | Korea-EU |
|----------------|-----------------|------------------|------------------|----------------|-------------|-------------|----------------------|----------------|
| Standard Price | | FOB | FOB | ex-works price | FOB | FOB | Adjusted value price | ex-works price |
| Rate of RVC | Non-originating | Under 55% or 70% | | | | | | Under 40% |
| | Originating | Above 45% or 30% | Above 50% or 55% | 30~60% | Above 40% | Above 35% | Above 35% | |
| Level of RVC | | 45% | 45~55% | 40~70% | 35~60% | | 35~60% | |

The *de minimis* is applied to a complementary rule. That is, imported materials representing a small percentage do not alter a product's status of origin even if it does not satisfy the change in tariff classification criterion. All the rules that FTAs have adopted have different applications. Table 2-14 shows *de minimis* in each FTA.

Table 2-14 | De Minimis in Each FTA

| | | Korea-Chile | Korea-Singapore | Korea-EFTA | Korea-ASEAN | Korea-India | Korea-U.S. | Korea-EU |
|--|-----------|---------------|-----------------|---------------------------|-----------------|-------------|---|---------------------------|
| General Merchandise(based on standard price) | | Under 8%(FOB) | Under 10%(FOB) | Under 10%(ex-works price) | Under 10%(FOB) | | Under 10%(AV) | Under 10%(ex-works price) |
| Textile(based on weight) | | Under 8% | Under 8% | Under 10% | Under 10% | | Under 7% | 8~35% |
| Agro-Fisheries Goods | Raw | 8%+ CTSH | Non applied | 10%+ CTSH | Under 10% (FOB) | | Agreed not to apply to some agricultural goods (details in Annex) | |
| | Processed | 8%+ CTSH | 10%+ CTSH | 10%+ CTSH | | | | |

Note: CTSH: Change in Tariff Subheading (change in the first 6 digits).

Under these criteria, Korea, which has tried to protect vulnerable industries including the agricultural and fishery industries, tends to apply stronger methods to these industries such as the wholly obtained test and change in tariff classification method. Korean items that are subject to the CTC and the wholly obtained test account 41.6% and 20.2%, for the whole items respectively. It can be said that a relatively complex and high standard has been applied to goods with respect to its impact on the domestic industry. The complex rules of origin, however, leads to a thorough investigation on every case, which could result in trade disputes and economic cost, negating the initial intention of the FTA.

Moreover, since the rules and methods applied in each FTA are different from one another, there could be a spaghetti ball effect. As Bhagwati warned, the inconsistent and various rules of origin in a sector depending on the trade relations with partner countries would discourage producers and exporters to adopt a free trade agreement, raising the issue of having to comply with different FTA rules even on the same product. Analyzing the five FTAs with Chile, Singapore, EFTA, ASEAN and the U.S., there are only nine items that are subject to the same rules. It showed that different criteria were applied to goods of textile, clothes, machinery and electronics applications, in particular. Thus, the rules of origin need to be more simple, impartial and user-friendly.

Gaeseong Industrial Complex

One of the characteristics of Korea's FTAs is that goods produced in the Gaeseong Industrial Complex are considered as products originating from South Korea. This was possible in two ways: 1) by introducing an exemption clause for goods produced in the Gaeseong Industrial Complex, and 2) by the trade partners accepting an exemption on the principle of territoriality. A total five out of seven FTAs that Korea concluded (except the Korea-Chile and Korea-U.S.) were agreed on this.

4.2.2.4. Service

Since liberalization in the service sector is vital to enhance Korea's industry structure and economic competitiveness, Korea tried to liberalize the service sector through FTAs in a higher level than that of DDA negotiations. Korea improved upon its WTO commitments in services, providing meaningful market access commitments that extend virtually to all major service sectors.

In the Korea-Chile FTA, an institutional system will be implemented to ensure national treatment of service providers to prohibit restrictive measures and to facilitate service trade between the two countries. Although the agreement stipulates services in telecommunication, the range of the liberalization in the service sector is relatively limited excluding the financial and airline industries.

The Korea-Singapore FTA is regarded as a step to an advanced agreement. Under the agreement, contract manufacturers are free to provide services that support the manufacture of machinery, communications equipment, medical precision and optical instruments, and rubber and plastic products. Additionally, Korea agreed to provide market access in the areas of language education, corporate training and service quality programs. Korea also agreed to provide access to its courier services sector. In financial services, the Korean Stock Exchange (KSE) and the Singapore Exchange (SGX) promoted cooperation towards a KSE-SGX linkage that can enhance liquidity in both markets and extend the range of products available to investors in the two countries. Both countries also reaffirmed and strengthened their commitments to ensure that each country's telecommunication companies intending to operate is subject to non-discriminatory treatment, with specific obligations on the dominant suppliers in both countries.

The Korea-U.S. FTA and Korea-EU FTA largely reflect the country's vision of high-level FTAs. The FTAs will significantly improve Korea's current WTO-GATS commitments and position in the ongoing DDA negotiations. The agreement additionally covers the liberalization of investment in most of the services and non-service sectors. The scope of the FTAs includes diverse service sectors such as the transportation, telecommunications, finance, legal, environmental and construction service industries.

The Korea-U.S. FTA made a significant progress in express delivery services, where Korea provided greater and more secure access and charted a course for future domestic reform. Korea agreed to open its market for the first time to foreign legal consulting services and committing to phase in additional liberalization. This will permit foreign lawyers to more freely work with Korean lawyers and offer a broader range of services. Similar steps were taken in the accounting service industry. Korea offered improved access on other areas including research and development services, mining services, maintenance and repair of equipment, and environmental services. In the financial services, the FTA provides a temporal safeguard measure which controls the sudden and massive capital outflows in case of a financial crisis. Korea's state-run financial institutions such as Korea Development Bank, the Industrial Bank of Korea and the Korea Housing Finance Corporation are not on the list of the financial sector's agreement. In the telecommunication services, Korea will lift regulations that prohibit foreign investors from owning more than 49 percent of the country's major telecommunications firms, which provide core networks and services. This will happen by no later than two years after the FTA enters into force. However, the country did not fully liberalize public services such as education and medical care. Restrictions on foreign movies will be maintained, while requiring local theatres to run domestic movies for at least 73 days of the year. In the service market, the Korea-EU FTA is quite similar to the Korea-U.S. FTA in terms of the level of liberalization.

Despite the result of relatively low-level liberalization in merchandise, the Korea-India

CEPA promotes service liberalization in a fairly wide range of service sectors. The agreement allows the temporal movement of professional workers such as computer programmers and engineers etc. CEPA allowed 163 of such professions access to the Korean services market. This is the first time that Korea has agreed to such a commitment in a bilateral free trade agreement and opened up opportunities for Indian English teachers, software engineers to work in Korea.

Seeking high-level FTAs, Korea needs to move towards GATS-Plus. At the same time, a more comprehensive and high-level of liberalization in services needs to be achieved based on the Article 5 of GATS, which requires the substantial elimination of all preferential treatments in most sectors.

4.2.2.5. Others

Trade Remedies

Trade remedies are exceptional measures that the WTO regime allows for a short time to support countries' vulnerable industries that are significantly affected by market openness. However, these are often misused to protect industries, acting as a non trade barriers. Thus, it is important to regulate the details of the trade remedies. When it comes to anti-dumping measures, FTAs with Singapore, EFTA, India, Canada and U.S., are in line with WTO Plus. For Global Safe Guard, the Korea-India and Korea-U.S. FTA adopted WTO Plus, asking for mutual exclusion in global safe guard measures.

Investment

Korea has pursued a high level liberalization in investment along with TRIMs Plus. In the FTAs, Korea has created more stable, equitable, favorable and transparent investment conditions. Investment is defined as all forms of assets including pre-establishment investment as well as post-establishment investment. The pre-establishment investment gets subject to investor-state disputes. National Treatment is also applied to both pre- and post-establishment investments. FTAs stipulate prompt, adequate and effective compensation for expropriation.

Intellectual Property Rights

All FTAs that Korea has concluded have always had a separate chapter for Intellectual Property Rights. The Korea-Singapore FTA includes TRIPS Plus elements in the regulations, and the Korea-U.S. FTA is also expected to include such regulations. Other FTAs still maintain TRIPs level regulations. Providing TRIPs Plus protection in certain sectors would contribute to expansion and facilitation of trade and investment between two countries. Also, a joint

cooperative mechanism needs to be established for a more effective Intellectual Property Rights implementation. .

Government Procurement

Korea's FTAs also include regulations on government procurement. A higher level of concession than WTO GPA is expected among the member countries of Government Procurement Agreement (GPA), while concession levels of WTO GPA are maintained with non-members. It would be helpful to further improve access to the procurement market by sharing well developed procurement systems and exchanging procurement information.

Competition

Since competition is critical in securing the benefits of FTAs, Korea has dealt with this issue in a separate chapter. The chapter includes notification, consultation, cooperation and coordination, exchange of information and confidentiality and dispute settlement. When it comes to the competition, Korea has a basic principle that regulation of competition should be applied to public enterprises and to designated monopolies as well as private enterprises.

Economic Cooperation

The free trade agreements with Singapore and ASEAN have a separate chapter for comprehensive economic cooperation. The chapter mainly states principles of cooperation. The regulations on cooperation need to be more practical, focusing on key interests of the contracting countries.

SPS (Agreement on the Application of Sanitary and Phytosanitary Measures)

SPS regulations in the FTAs are consistent with WTO/SPS measures. The regulations are focused on a practical implementation of the regulations by improving cooperation in this measure.

TBT (Agreement on Technical Barriers to Trade)

TBT regulations on quality, safety and environmental impact often serve as technical trade barriers. For now, TBT measures in the FTAs are consistent with WTO/TBT, focusing on practical implementation by improving transparency and cooperation. The joint TBT committee might be expanded or replaced for implementation.

4.3. Difficulties in Promoting FTAs and Their Lessons

Although Korea has signed on several FTAs, including considerably high level FTAs, within relatively short time, it also has faced some difficulties, and these could offer valuable lessons to policy makers.

4.3.1. Domestic Negotiations: the Case of Korea-Chile

Although the Korea-Chile FTA was generally considered to have brought good results so far, the process of negotiation and ratification were not easy at all. Chile was regarded as an appropriate country for Korea's first FTA, when its industrial structure is complementary to that of Korea. Chile mainly exports raw materials and agricultural goods and imports manufacturing goods, which are Korea's main export goods. Additionally, Chile had many experiences of negotiating FTAs, so that Korea could study and leverage for future FTAs, and most of all, use it as bridgehead for South American markets. Lastly, the Chile government also strongly wanted to pursue the FTA with Korea. Choosing Chile as the first FTA partner seemed quite reasonable. In the process of pursuing FTA with Chile, however, the Korean government could have handled it much better. In the phases before and after the FTA was concluded, there were conflicts within the administrative ministries and between the Korean government and interest groups. Particularly, the agricultural industry had a serious conflict when the industry was expected to be negatively impacted by the FTA, and the government was not really equipped with an effective institution to deal with these conflicts.

The main conflict between the government and interest groups was dealing with the agriculture industry, which will be severely impacted by Chile's competitive advantage. Moreover, the government delivered insufficient preliminary explanation to the interested party, which raised excessive concerns on the potential economic loss and undermined the confidence of farmers in the government. These concerns and distrust brought about farmers' fierce protests. These conflicts directly reflected the position of related-ministries. While the Ministry of Foreign Affairs and Trade wanted to strongly push ahead with the FTA as the ministry in charge of FTA negotiations, the Ministry of Agriculture and Forestry tried to delay the liberalization in the agricultural sector. The difference of opinions on the FTA protracted the negotiations as the government was not able to coordinate its FTA concessions. As a result, the negotiations were actually suspended for almost two years.

It took almost two years to resolve the conflicts and reach coordinated concessions through a number of meetings of related parties and ministries. Nonetheless, the government encountered difficulty again in ratifying the agreement and formulating domestic countermeasures even after the FTA was concluded. It was highly political time, as the efforts to ratify it coincided with general elections. As farmers kept protesting against the agreement, it

was rejected twice in the National Assembly. In this situation, it was believed that the only way to settle the conflicts was to formulate domestic countermeasures. The countermeasures were revised three times in the face of more fierce protests. As such, the government had to pay a large amount of cost and somehow lost its public confidence despite its concerted efforts. The agreement was barely ratified in February 2004.

The Korean government's weaknesses and conflicts in conclusion of its first FTA were mediated through rigorous debate and discussion. From the whole process, Korea accumulated experience that would be helpful for future FTA negotiations. Most of all, the government recognized the importance of domestic negotiations with interested parties and among different ministries. Thus, the government has tried to set up institutions that mediate different opinions and canvass public views. As a part of the efforts, the Korean government revised the FTA roadmap in a more systematic way and enacted the Regulations on Procedure for Promoting FTA that stipulates mediating ministries and reflecting public opinion. Dealing with domestic countermeasures, the government set up the FTA Promotion and Policy Adjustment Authority and legislated on trade adjustment assistance to compensate those who are affected by FTAs. The procedure and domestic countermeasures will be discussed further in the Chapter 5.

4.3.2. Political Issues: the Case of Korea-Japan

When both Korea and Japan realized the importance of a FTA as early as 2000s, two countries had negotiations from December 2003 to November 2004. However, due to conflicts on the schedule and level of tariff concessions, negotiations came to a standstill. There were other reasons that prevent them from a smooth negotiation.

Japan was less willing to pursue the FTA with Korea after it started to put more focus on ASEAN countries. Thus, Tokyo did not rush to conclude the FTA with Korea, while taking the strong risk of domestic opposition. In addition, Japan had more interest in maintaining its technological and comparative advantage in technology-intensive goods, and this led the Japanese government to take the passive stance on high level openness through FTAs. Korea was also less willing to conclude the FTA. Japan was considered to be a short-term target in Korea's FTA roadmap in 2003, which showed that the Korean government emphasized the Korea-Japan FTA. As ASEAN countries and China emerged as great power in global landscape, the importance and urgency of the Korea-Japan FTA was weakened.

Additionally, there were trade disputes and political conflicts between the two countries including Japan's distortion of history textbooks and its claim of sovereignty over Dokdo. The relations between the two countries hit the low point and the FTA negotiations were finally suspended in November 2003. The political economy of the two trade partners could play a key role to bring them into the negotiation table. Moreover, political issues could serve as an

obstacle in the negotiations. This case provided a chance for the Korean government to consider political issues and economic effects when the government chooses a FTA partner and carries out FTA negotiations.

4.3.3. Appropriate Timing: the Case of Korea-Mexico

The Korean economy is highly dependent on exports, thus it is imperative for the country to expand its export market. Since many countries are competing for the same overseas markets by signing on RTAs, missing a chance to conclude a free trade agreement could bring a consequence of losing important abroad markets. The Korea-Mexico FTA negotiations show how important timing is.

By the end of 2002, Mexico had already concluded 32 FTAs, and sought to conclude one with Korea in 2002. When Korea was uncertain about a FTA with Mexico, Japan took this as an opportunity and acted quickly to start negotiations with Mexico. Korea began a joint study on the Korea-Mexico FTA, but the Mexican government declared a moratorium on FTA negotiations in 2003, facing domestic criticism from negative impact of FTAs.

In January 2004, Mexico increased its tariff rate on tires imported from non-FTA countries, including Korea, and subsequently, Korea's tire exports to Mexico declined sharply. Japan concluded an EPA with Mexico in March 2004, so Japanese companies have seen a huge rise in tire exports. The Korean government was pushed to pursue a FTA with Mexico by exporters. This was not in rush and thus, requested somewhat impractical conditions for the FTA. Despite the joint studies in 2004-2005, negotiations for the Strategic Economic Complementary Agreement (SECA) in 2006, and the 1st and 2nd negotiations for the FTA in 2007-2008, the Korea-Mexico FTA is still at a standstill.

Korea's experiences imply that it is vital to set up not only a proper FTA scheme based on an accurate assessment of the political economy of both countries, but also effective and legitimate governance of the FTA policy to ensure successful ratification and implementation.

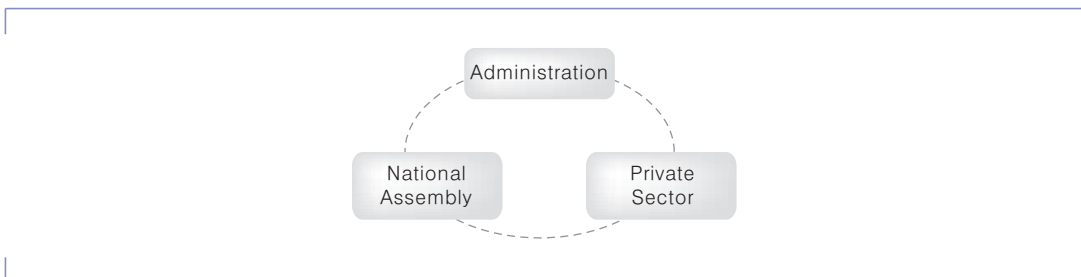
5. Governance of the FTA Policy

Intensified globalization and more advanced democracy allowed more blurred lines between foreign affairs and domestic issues. Pursuing free trade agreements is not only a country's foreign trade policy, but also a domestic issue that largely affects a country's industry. Although a free trade agreement helps the country achieve economic benefits, there are always benefits and losses. Since a democratic country is harder to pursue a FTA policy without broad social support, the government needs to consider different interests in different sectors and redistribute some of the benefits of FTAs. The governance of the FTA policy should consider domestic problems as well as international negotiations with a trade partner.

During the negotiation process at both the international and domestic level, the governance of the FTA policy is required to be both efficient and legitimate. Efficiency means that the policy goal should seek to minimize costs. In order to ensure legitimacy, the governance should be institutionalized in a transparent way and promote wider participation of interested parties. The interested parties include the administration, the National Assembly and private sectors. The administration consists of several ministries, which often have different opinions on a subject and the private sector, and a wide range of people having different interests. To enhance efficiency and legitimacy, the governance needs to include a process of mediating various interests between governmental ministries within the administration; between the administration and the National Assembly; between the government (administration) and the public. Figure 2-5 shows the internal negotiations of the administration, the National Assembly and the private sector.

The governance also needs to include domestic adjustment assistance for those who would be negatively impacted by FTAs. The assistance is imperative to mitigating strong opposition of industries that could delay FTA negotiations and ratification of the agreement, causing huge social costs. This chapter will discuss the governance of the FTA policy, focusing on the decision making structure and the institutional procedures in pursuing FTAs. Also, domestic

Figure 2-5 | Internal Negotiation among Administration, National Assembly and Private Sector



Source: The Trade Governance (Choi, KIEP, 2006).

countermeasures will be discussed as they are one of the key factors to secure the policy's efficiency and legitimacy.

This chapter explains the governance of FTA policy, in terms of the FTA policy-making structure and procedures for negotiations, and domestic countermeasures in respect to administrative and legal institutions.

5.1. FTA Policy-Making Structure and Procedures

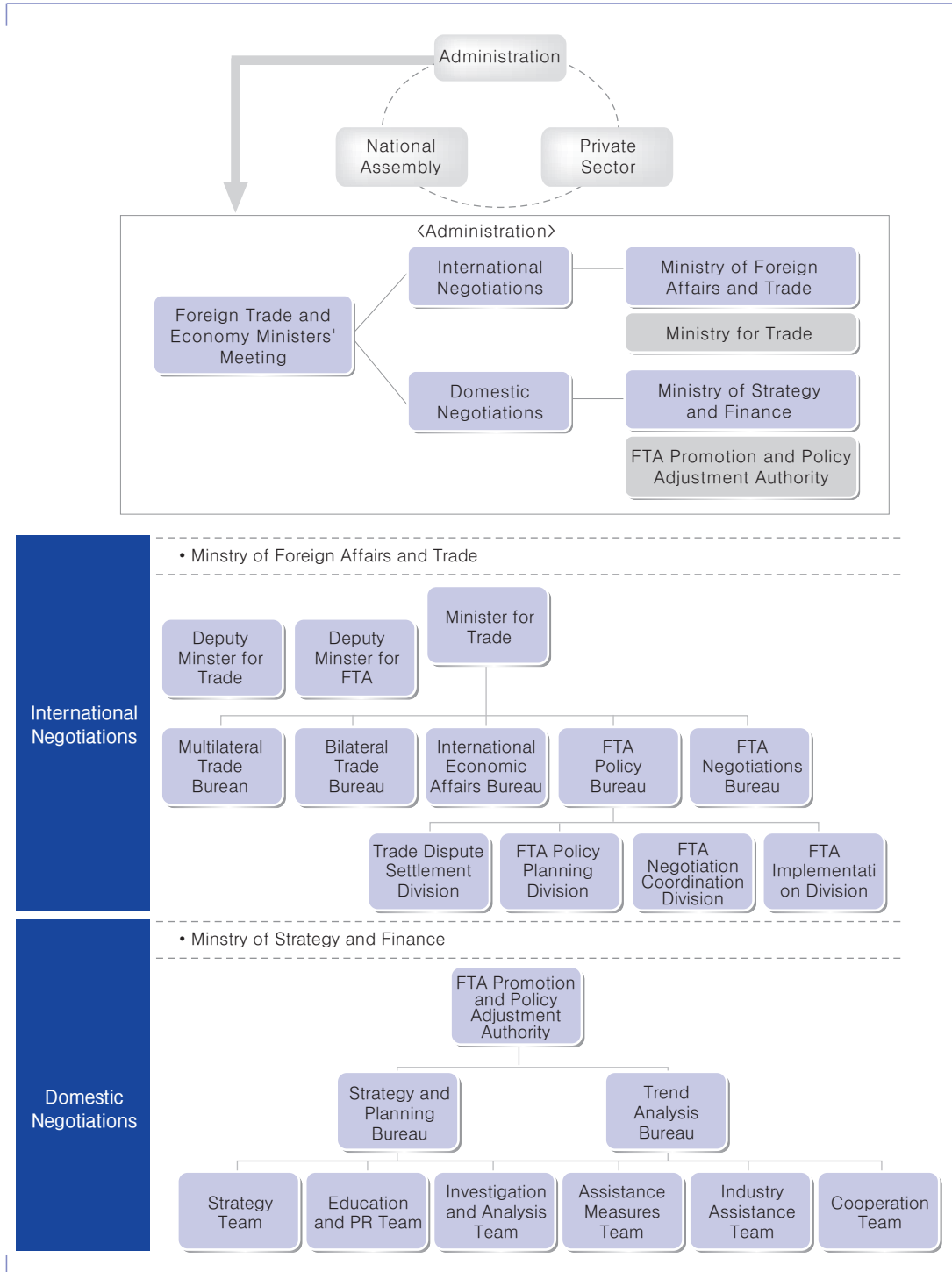
5.1.1. Policy-Making Structure

The administration is in charge of making plan and carrying out trade policies. The trade policies, however, encompass many topics including industry like agriculture, service and manufacturing, and issues like labor, the environment and intellectual property rights. Thus, related ministries, like the Ministry of Employment and Labor, Ministry of Knowledge Economy, Ministry of Agricultural and Forestry, are involved in the administration. Unlike these ministries, which tackle specific issues related to them, the Trade Ministry under the Ministry of Foreign Affairs and Trade sees these issues as a macro view of trade. The Trade Ministry was established in 1999 when the Kim Dae-Joong administration consolidated trade related functions. These were conducted separately by three different ministries, including the Ministry of Foreign Affairs, Ministry of Knowledge Economy and Ministry of Strategy and Finance. These ministries deal with the changing global trade system and enhance Korea's ability to negotiate at the international level. Also, the government set up the FTA Promotion Committee, which led by the Minister of Trade in the same year.

Although the status of the Trade Ministry has grown over regionalism's rapid rise, it cannot properly reconcile the different interests of each ministry due to the lack of authority to mediate. The meeting of Foreign Trade and Economy Ministers, led by Minister of Strategy and Finance, was set up in August 2001 to mediate economic issues that affected different ministries. However, the meeting was limited to deal with rapidly changing trade issues. Thus, the Foreign Trade and Economy Working Group Meeting led by the Vice-Minister of the Strategy and Finance was established under the Ministers' meeting.

Even though FTA-related organizations were established within the short time, their responsibilities and relationships to each other were not clear, and this often delayed the reconciliation of some FTA related issues. At the Ministers Meeting in 2006, it was decided that the Trade Ministry should lead FTA negotiations and the Ministry of Strategy and Finance should deal with domestic countermeasures.

Figure 2-6 | FTA Policy-Making Structure



Source: Ministry of Foreign Affairs and Trade and Ministry of Strategy and Finance.

Currently, the Trade Ministry under the Ministry of Foreign Affairs and Trade is responsible for negotiations at the international level, tabling agenda at the Foreign Trade and Economy Ministers' meeting. On the other hand, the Ministry of Strategy and Finance is responsible for conducting negotiations at the domestic level and reconciling different views of the ministries. Figure 2-6 shows the policy making structure for trade in Korea. Under the Ministry for Trade, the FTA Negotiation Bureau prepares and carries out negotiations, while the FTA Policy Bureau mainly formulates FTA strategies and deals with their implementation. The FTA Promotion and Policy Adjustment Authority, which belongs to Ministry of Strategy and Finance, carry out the FTA adjustment assistance to domestic industries.

When the Trade Ministry does not need to deal with the domestic countermeasures, it is easier to focus on promoting the FTA policy more efficiently based on its foreign policy goal. Under this structure, however, the Trade Ministry might go into negotiations even after sufficient internal discussions on the FTA have not been finished. When discussions have not been sufficiently and properly carried out, it becomes difficult to prioritize the various interests. This makes the goal of negotiations unclear, and even harder to draw public support for the FTA. As seen in the process of the Korea-Chile FTA and Korea-U.S. FTA, the lack of a social compromise has led to greater political costs.

In order to be effective, a FTA must be ratified by the National Assembly, and this acts as a check and balance on the trade policies of the administration. This role is important, because the National Assembly can act as a mediator reflecting the interests of different groups and mediating between the public and the administration. However, the role of the Assembly as a mediator presents difficulties partly due to inadequate institutions and lack of expertise. The regulations remain vague on when and how the Assembly can intervene in the FTA process. This has caused the Assembly to intervene during the ratification of a FTA, bringing with it partisan politics, which politicizes the FTA and results in huge social costs as seen in the ratification process of the Korea-Chile FTA. Therefore, it seems more desirable that the National Assembly discusses FTA related issues at the beginning of the negotiation process and takes a bipartisanship approach, considering both national interests and public opinions.

5.1.2. Procedure for Promoting FTAs: Regulations on FTA Procedure

As mentioned above, it is important to institutionalize the process of decision making and rights and obligations of interested parties. *Regulation on Procedure of Promoting FTA*, which was enacted in 2004 and revised in August 2008, stipulates the rights and obligations of the FTA related organizations and procedures for FTAs. This allows to improve efficiency and to encourage participation of the private sector. The regulation is striking as it reflected many of the problems in previous free trade agreements: it paved the road for considering opinions from various strata of society, and this requires the government to create an advisory committee in

the private sector and to encourage public participation in the policy debate. It also stipulates that the administration must provide information to the National Assembly by report of important issues related to FTAs.

5.1.2.1. Organization

FTA Promotion Committee

① Establishment of the FTA Promotion Committee

According to the regulation, the FTA Promotion Committee is established under Ministry of Foreign Affairs and Trade to deliberate FTA related issues.

② Roles of the FTA Promotion Committee

The committee deliberates following issues: FTA policy and strategies, feasibility of a free trade agreement, domestic countermeasures, efforts to build social consensus on a FTA and other related issues tabled by the committee chair.

③ Composition of the FTA Promotion Committee

The committee is composed of one chairman and 15 or fewer members. The Minister for Trade chairs the committee. The members of the committee consist of assistant deputy ministers or team director level public officials and recommended by the Ministry of Foreign Affairs and Trade, Ministry of Knowledge Economy, Ministry of Strategy and Finance, Ministry of Agricultural and Forestry, Ministry of Culture, Sports and Tourism, and appointed by the chairman. When the chair is not able to carry out his or her job, a previously designated member by the chairman chairs the committee. The committee has one assistant administrator who also acts as the deputy minister for FTA.

④ Request for Cooperation to Related Organization

The committee is allowed to request cooperation from other related administrative organizations or the heads of such organizations when it is deemed necessary by the chairman.

⑤ Working-Level FTA Promotion Meeting

The committee has a working level FTA subcommittee that provides support. The deputy minister for FTA takes on the chair of the working-level FTA promotion committee and the members of the committee consist of public officials who are team director level and recommended by Ministry of Foreign Affairs and Trade, Ministry of Knowledge Economy, Ministry of Strategy and Finance, Ministry of Agricultural and Forestry, Ministry of Culture, Sports and Tourism.

FTA Private Advisory Meeting

① FTA Private Advisory Meeting

The committee is required to hold private advisory meetings in order to hear opinions from

related businesses or related experts and to reflect their opinions in the process of concluding FTAs. The meeting deliberates on: (1) Directions for the FTA policy, (2) Feasibility of a FTA, (3) Impacts on domestic industry and domestic countermeasures, (4) PR measures to form a social consensus on FTA, (5) Other related issues tabled by the chair.

② Composition of the FTA Private Advisory Meeting

The meeting consists of thirty people including one chair, and one of the members chairs the committee.

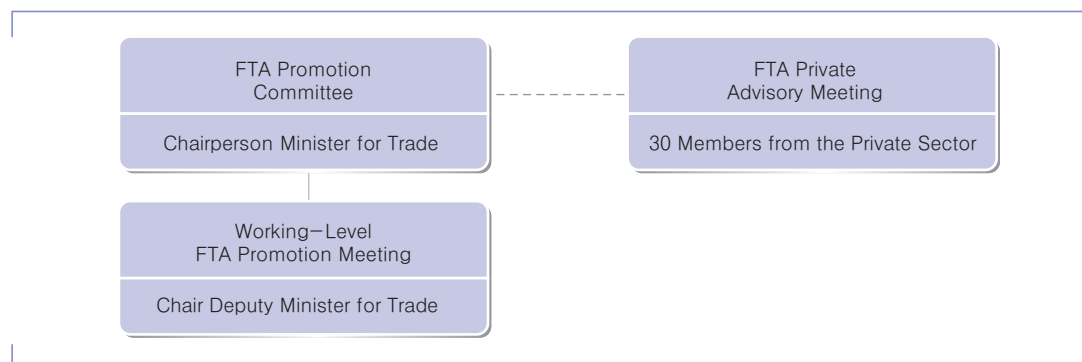
③ Operation of the FTA Private Advisory Meeting

The meeting is convened when more than one third of its members or chair calls a meeting. Committee members can also request consultation through documents, face-to-face-talks or other communications.

④ Public Hearing

The committee is allowed to hold a public hearing. It is required to hold the public hearing in advance when the committee plans to deliberate on the Foreign Trade and Economy Ministers’ meeting in regards to FTA negotiations. The result of the hearing is submitted to the Foreign Trade and Economy Ministers’ meeting.

Figure 2-7 | FTA Promotion Committee Structure



5.1.2.2. Procedure before the Negotiations

① Establishing Directions for the FTA Promotion

The FTA promotion committee is required to hold a meeting to formulate a strategy for the FTA and ask the Foreign Trade and Economy Ministers’ Meeting to approve the strategy.

② Review on Feasibility of FTAs

The chair of the committee is required to request that the working-level FTA promotion committee and the private advisory meeting examine the feasibility of a FTA. In this case, the committee chair is allowed to request that a feasibility study should be conducted by research institutions including state institutes and to have the working-level FTA promotion committee

and the private advisory meeting review the study.

③ Deliberation on Promotion of the FTA

When the FTA is evaluated to be feasible, the minister holds a FTA promotion committee meeting to deliberate the necessity and specific strategy of the FTA.

④ Request to Make a Decision on the Launch of Negotiations for the FTA

When a FTA is deemed to be feasible as a result of the FTA promotion committee meeting, the committee chair may request the Foreign Trade and Economy Ministers' Meeting to make a decision on whether to initiate negotiations or not. When the chair acknowledges that it needs to discuss (1) the effects and range of the FTA, (2) principles of concluding the FTA and strategies for negotiations, (3) institutions that help the FTA negotiations, (4) other related issues, the chair is allowed to request a decision on pre-consultations like joint studies with a perspective country.

⑤ Launch of Pre-Consultation

If there is a need for pre-consultations before the launch of the negotiations, the following are required to be discussed with the partner country: (1) the effects and range of the FTA, (2) principles of concluding the FTA and strategies for negotiations, (3) institutions that help the FTA negotiations, (4) other related issues.

5.1.2.3. Negotiation Procedures

① Trade Mission

The chair is required to form a trade mission whose members are recommended by head of the state administrative organizations and to launch FTA negotiations. The chief of state of the trade mission leads and supervises other state delegates.

② Deliberation on the Free Trade Agreement

When a decision has been made to launch negotiations, the FTA promotion committee holds a meeting. They deliberate important issues and requests that the issues be deliberated by the Ministers' Meeting. It is allowed to collect opinions from the private advisory meeting before the committee meeting.

③ Negotiations

The committee chair is required to lead the negotiations by providing instructions for an agreement and strategies to the trade mission. The chair has to report important points of the negotiations to the National Assembly and request the approval of the final agreement by the Ministers' meeting.

④ Report and Explanation of the Negotiations

The chair is required to report on the progress of the negotiations to the National Assembly, addressing important points. The chair is also required to discuss the negotiations and collect public opinion regularly.

⑤ Initialing

Once the final agreement is concluded, the negotiation is practically concluded with initialing.

5.1.2.4. Procedures after the Negotiations

① Report of the Negotiation Results

When the free trade agreement is concluded, it is required to report the agreement to the National Assembly and provide information to the public.

② Domestic Countermeasures

The committee chair is required to assess the need for domestic measures as a result of the agreement. If domestic measures are needed, the chair is required to make a request to the Ministers' meeting to formulate domestic measures.

③ Domestic Procedure

The Minister of Foreign Affairs and Trade has to table the agreement at the Council meeting, obtain presidential approval and request the National Assembly's ratification of the agreement. The Minister can ask the related ministries to submit proposals for domestic measures to the National Assembly when the agreement is sent for ratification.

Table 2-15 | FTA Negotiation Procedures

| | |
|---|---|
| Procedures before the Negotiations | Establishing FTA Promotion Strategy Direction |
| | Feasibility Study of FTAs |
| | Deliberation on Promotion of FTA |
| | Request Approval to Launch FTA Negotiations |
| | Initiation of Pre-Consultation |
| ↓ | |
| Negotiation Procedures | Composition of the Trade Mission and Initiation of FTA Negotiations |
| | Deliberation on the Free Trade Agreement |
| | Negotiations |
| | Report and Discussion of the Negotiations |
| | Initialing |
| ↓ | |
| Procedures after the Negotiations | Report of the Negotiation Results |
| | Domestic Countermeasures |
| | Domestic Procedure |
| | Preparation for Implementation |
| | Enforcement of FTA |

④ Preparation for Implementation

Before the agreement takes effect, the minister for trade is required to assist the interested parties. So, they could adjust to the changes required under the FTA, and this will be processed by holding briefing sessions on important issues like rules of origin and tariff schedule.

5.1.3. Case of Korea-U.S. FTA

FTAs in Korea are basically required to follow the procedure. Taking the example of the Korea-U.S. FTA, Table 2-16 describes the Korea-U.S. FTA process. Korea and the U.S. discussed different interests of the two countries on trade issues every quarter starting from 2001. After three meetings on conducting a joint feasibility study in 2005, a joint announcement was released when Korea-U.S. FTA negotiations were initiated in February 2006. After 8 rounds of negotiations and fine tuning, the FTA was finally concluded in April 2007. For now, the FTA is waiting to be ratified by the Korean National Assembly and the U.S. Congress.

Table 2-16 | Korea-U.S. FTA Process

| | | |
|----------------------------|--|----------------------|
| Advance Preparation | Korea and the U.S. agree to launch a joint feasibility study | Nov. 2004 |
| | 1st meeting of the joint feasibility study group (Seoul, Korea) | Feb. 3, 2005 |
| | 2nd meeting of the joint feasibility study group (Washington DC, U.S.) | Mar. 28-29, 2005 |
| | 3rd meeting of the joint feasibility study group (Washington DC, U.S.) | Apr. 28-29, 2005 |
| | Joint announcement on the launch of the Korea-U.S. FTA negotiations | Feb. 3, 2006 |
| | 1st meeting of the non-official preparatory consultation | Mar. 6, 2006 |
| | 2nd meeting of the non-official preparatory consultation | Apr. 17-18, 2006 |
| Negotiation | 1st round of Korea-U.S. FTA negotiations (Washington DC, U.S.) | Jun. 5-9, 2006 |
| | Public hearing on the Korea-U.S. FTA | Jun. 27, 2006 |
| | 2nd -8th round of Korea-U.S. FTA negotiations (Seoul, Korea) | Jul. 2006-Mar., 2007 |
| | Senior-level talks on the Korea-U.S. FTA (Washington DC, U.S.) | Mar. 19-22, 2007 |
| | Trade Ministers' meeting (Seoul, Korea) | Mar. 26-Apr. 2, 2007 |
| | Conclusion of the Korea-U.S. FTA negotiations | Apr. 2, 2007 |
| | Korea-U.S. FTA legal review meeting (Washington DC, U.S.) | May. 29-Jun. 6, 2007 |
| | Additional consultations on the Korea-U.S. FTA (Seoul, Korea) | Jun. 21-22, 2007 |
| | Additional consultations on the Korea-U.S. FTA (Washington DC, U.S.) | Jun. 25-26, 2007 |
| | Korea and the U.S. sign the Korea-U.S. FTA (Washington DC, U.S.) | Jun. 30, 2007 |

| | | |
|------------------------------|--|---------------|
| After Negotiation | MOFAT submits the Korea-U.S. FTA bill to the National Assembly for ratification | Sep. 7, 2007 |
| | MOFAT introduces the bill to the Unification, Foreign Affairs & Trade Committee of the National Assembly | Feb. 13, 2008 |
| | End of the 17th legislature term | May. 29, 2008 |
| | MOFAT resubmits the Korea-U.S. FTA bill to the National Assembly for ratification | Oct. 8, 2008 |
| | MOFAT introduces the bill to the Foreign Affairs, Trade & Unification Committee of the National Assembly | Oct. 10, 2008 |
| | The Judiciary Subcommittee passes the bill | Feb. 25, 2009 |
| | The Foreign Affairs, Trade & Unification Committee passes the bill | Apr. 22, 2009 |

Source: Ministry of Foreign Affairs and Trade.

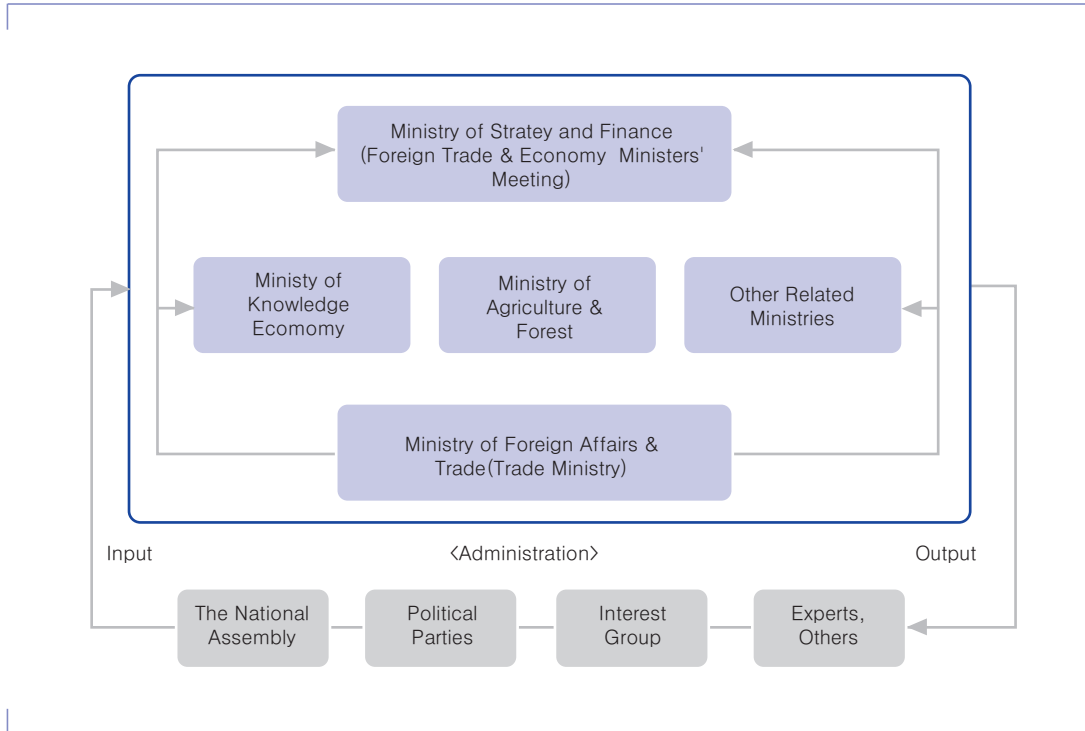
5.2. Domestic Countermeasures

Liberalization through FTAs including tariff elimination basically aims at increasing the economic benefits of a country from using resources more efficiently. Korea has tried to liberalize the market and heighten its industry structure's competitiveness of the economy. A more open market policy allows some industries to get benefits by entering into world markets, but, at the same time, others inevitably suffer from increased competition. The FTA policy has to include domestic countermeasures to assist vulnerable industries to market opening through redistribution of the benefits of FTA. Korea has implemented domestic countermeasures to address this possible remedy.

Since 2006, the Ministry of Strategy and Finance has taken responsibility for domestic measures. The Ministry lead the efforts on implementing domestic countermeasures and other related ministries like Ministry of Foreign Affairs and Trade, the Ministry of Agricultural and Forestry, Ministry of Knowledge Economy and so on, participated in the decision-making process. The Ministry of Strategy and Finance is also accountable for mediating such ministries. Since the domestic measures directly affect the interested parties, the National Assembly, political parties, interest group, other civic groups also participate in the process. The Figure 2-8 shows the governance system for domestic countermeasures, showing the interested parties' relations.

The FTA Promotion and Policy Adjustment Authority under the Ministry of Strategy and Finance practically deals with FTA related domestic countermeasures. In addition, the FTA

Figure 2-8 | Governance in the FTA-related Domestic Countermeasures



Source: FTAs and Countermeasures for the Service Industry-Measures for Restructuring in the Service Industry, W.M. Choi, Ministry of Strategy and Finance and KDI, 2006.

Domestic Countermeasures Committee, which consists of governmental and private members, was established in 2007 to deliberate on the countermeasures. Such domestic countermeasures are based on the Law on Trade Adjustment Assistance for manufacturing and services industries and on the Special Law on Assisting Farmers and Fishermen for Damages as a Result of FTA for agro-fishery industries.

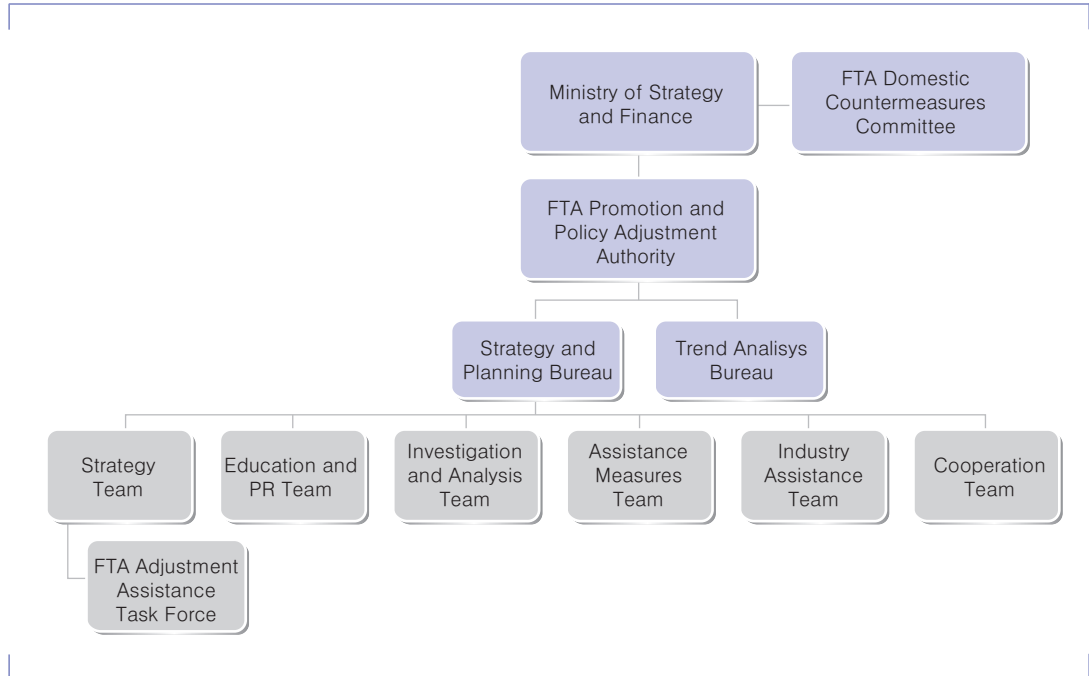
5.2.1. FTA Domestic Countermeasures

5.2.1.1. FTA Promotion and Policy Adjustment Authority

Organization

The FTA Promotion and Policy Adjustment Authority under the Ministry of Strategy and Finance are accountable for domestic countermeasures. The authority has two bureaus: six teams and one task force. This organization formulates a strategy, carries out the measures, and reviews the implementation by analyzing economic effects on each industry.

Figure 2-9 | Organization of the FTA Promotion and Policy Adjustment Authority



Source: Ministry of Strategy and Finance

Primary Responsibility

The authority's primary responsibilities are as follow.

① Promoting Domestic Countermeasures

The authority establishes countermeasures for impacted industries based an industry assessment of the economic effects of FTAs. The FTA Promotion and Policy Adjustment Authority formulated policy directions for comprehensive countermeasures in November 2007. This plans to deploy some 21.1 trillion KRW over ten years starting from 2008 and subsequently review the implementation every quarter. The authority has deployed about 1.3 trillion KRW as compensation for directly impacted industries like the agro-fisheries industry. To support each industry enhance its competitiveness, the committee has provided 19.8 trillion KRW of assistance. The domestic countermeasures are as below.

Table 2-17 | Domestic Countermeasures

| | Agro-Fisheries | Manufacturing and Service |
|---|---|--|
| Direct Assistance (27 tasks) | -Direct Payment -Support for closing business | -Trade Adjustment Assistance -Strengthening job security |
| Enhancing Competitiveness (181 tasks) | -High qualified products -Modernization of product line -Construct Infrastructure | -Expedite R&D -Support invigorating exports -Cultivate human resources |
| Expanding Income Foundations (16 tasks) | -Foster regional-specialized agro-fisheries industry -Boost tour industry | |
| Total 224 tasks | | |

Source: Ministry of Strategy and Finance.

The authority selected 224 tasks and has managed the tasks in cooperation with related ministries, and reviews the implementation of the tasks every quarter. Out of 224 tasks, one hundred have been completed. 23 tasks were completed within the second half of 2009 including direct assistance for livestock products; geographic identification; advancing GMP on medicine and medical supplies; support to small and medium firms to construct local networks; support to job seekers; support to the animation industry; support to export Korean movie industry and etc.

Table 2-18 | Tasks by Industry and Ministry

| By industry | No. of tasks | Ministry in charge |
|------------------------------|--------------|---|
| Agro-Fisheries | 127 | Ministry of Agricultural and Forestry (126) Ministry of Environment(1) |
| Manufacturing and Service | 43 | Ministry of Strategy and Finance(2) Ministry of Justice (2) Ministry of Culture, Sports and Tourism(17) Ministry of Knowledge Economy(10) Small and Medium Business Administration(2) Finance Services Commission(1) Korea Communications Commission(9) |
| Pharmaceutical Industry | 32 | Ministry of Education, Science, and Technology(1) Ministry of Health and Welfare(31) |
| Employment | 22 | Ministry of Employment and Labor |
| Total | 224 | |

Source: Ministry of Strategy and Finance.

② Promoting Use of FTAs

The authority is also helping firms, particularly small and medium sized companies, to take advantage of the FTAs more efficiently. Although the government is promoting FTAs simultaneously, the application rate of effected FTAs is low except the Korea-Chile FTA. If the private sector cannot take advantage of the agreements, well promoted FTAs are futile Table 2-19 shows the application rate of preferential tariffs of FTAs.

Table 2-19 | Application Rate of Preferential Tariffs on Imports

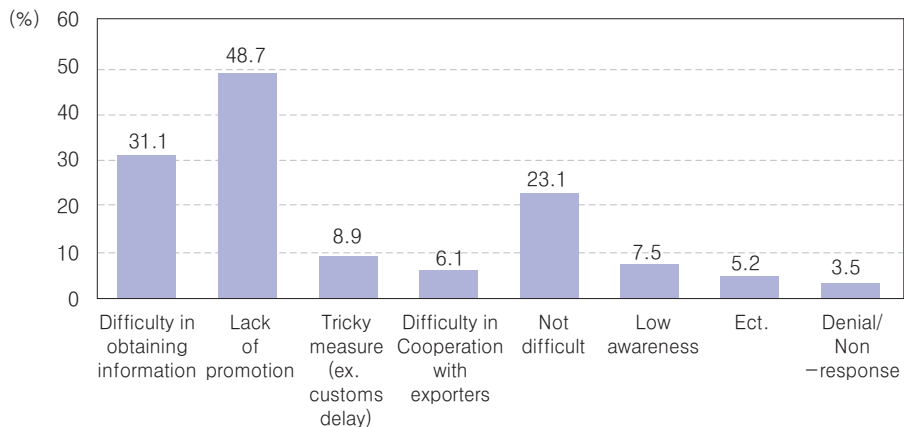
| | Korea-Chile | Korea-Singapore | Korea-EFTA | Korea-ASEAN |
|------------|-------------|-----------------|------------|-------------|
| 1st year | 77.7% | 28.2% | 43.2% | 27.0% |
| 2nd | 93.8% | 31.4% | 41.9% | |
| 3rd | 93.6% | | | |
| 4th | 93.3% | | | |
| Cumulative | 90.5% | 29.8% | 42.5% | 27.0% |

Note: As of May 2008.

Source: Characteristics of Rules of Origin in Korea's FTAs and Application Strategy(2008).

According to a survey by Korea Research, the low application rate for the Korea-ASEAN FTA mainly stems from a lack of awareness about the Korea-ASEAN FTA (48.7%) and lack of access to information (31.1%). Figure 2-10 shows the result of the survey.

Figure 2-10 | Difficulties in Application of Korea-ASEAN FTA



Source: Report on Application of Korea-ASEAN FTA(2009, Korea Research).

While demand for information has been increasing, efforts to provide information have been insufficient. Since FTAs include legal terms and some technical terms which ordinary people are not familiar with, there should be an education and awareness campaign. Thus, efforts are made to promote FTAs by providing information and education. Specifically, the authority established the FTA Adjustment Assistance Task Force to provide a more systematic support for the application of FTAs. The support includes practical education and consulting on HS code, rules of origins, mutual recognition and etc.

Not only the on-site presentations and consulting but also informational materials with details on the commitments of the FTAs are provided to firms. Also, an online education program with lectures by experts in each field has been set up for firms. To help the public and firms access to FTA related information more easily, a web site has been created. It also offers one-stop services on how to apply FTA regulations and submit application forms.

The organization takes measures to help firms to take advantage of FTAs by providing consulting, education and information to domestic firms. Since general support is crucial to the continuous promotion of free trade agreements, the authority has tried to enhance public understanding on policies by conducting public relations, education and survey activities.

③ Public Relations, Education and Survey

Public relations, surveys and educational activities about FTAs have been conducted to improve people's understanding. Since it is important to build a social consensus on FTA promotion, the authority has tried to enhance public understanding on the FTAs. Until 2008, public outreach efforts have focused on the Korea-U.S. FTA, and since 2009, the Korea-India CEPA and Korea-EU FTA has been added. The public relations have mostly focused on the benefits and implications of each FTA through TV documentaries and TV, radio and newspaper advertisements, and so on. In addition, the authority has tried to provide proper education to a wide range of people, including public officers, teachers, opinion leaders and entrepreneurs. The education is mainly about the necessity of the FTAs and general commitments of each FTA and the application plan.

④ Mediating FTA-related Conflicts.

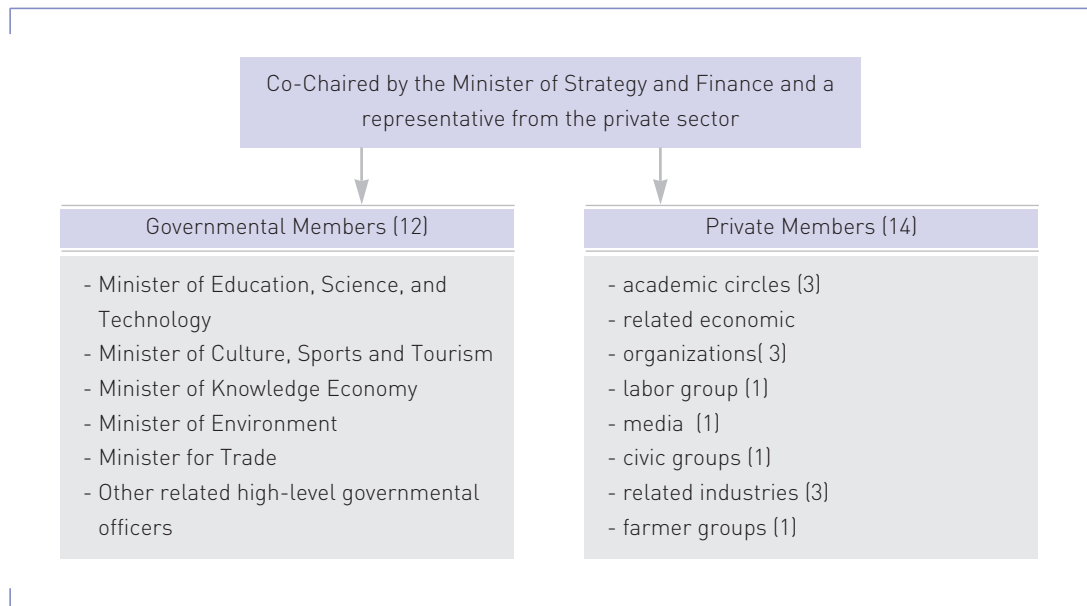
The organization has also established plans to mediate and coordinate social conflicts on free trade agreements. It supports the agreement to get ratified in the National Assembly and tries to form cooperative relations with the social community.

5.2.1.2. FTA Domestic Countermeasures Committee

Organization

The FTA Domestic Countermeasures Committee was established in 2007 to facilitate the smooth conclusion and ratification of FTAs based on national consensus. The committee consists of 12 members from government ministries; 14 members from academia economic organizations, labor groups, the media, civic groups, related industries and farmer groups; and two of chairs, one from the Minister of Strategy and Finance and one from the private sector.

Figure 2-11 | Organization of the FTA Domestic Countermeasures Committee



Responsibility

The committee plays a role in collecting extensive opinions from related fields. Since June 2007, the committee has held 17 meetings. The following are the main agendas tabled at the committee.

- ① Providing information related to FTAs to the public and collecting public opinions
- ② Mediating social conflicts related to FTAs
- ③ Supporting the National Assembly in concluding and ratifying an FTA
- ④ Taking domestic countermeasures and applying the FTA
- ⑤ Strengthening the competitiveness of domestic industries and improving domestic institutions

5.2.2. Trade Adjustment Assistance

Since the government budget is limited, assistance should be within budget parameters. If such assistance is conducted on a temporary basis every time a FTA is promoted, it would cause huge confusion and complaints. Thus, it is important to institutionalize the process of determining the impact groups and how impacted groups will be assisted. The countermeasures are based on the Law on Trade Adjustment Assistance and Special Law on Assisting Farmers and Fishermen for Damages as a Result of FTA. Although the WTO regime allows for trade remedies like safe guards, governmental subsidies and anti-dumping and countervailing measures in order to assist impacted groups, the remedies are assessed to be inadequate. In 2003, when the Korea-Chile FTA was being ratified, the Special Law on Assisting Farmers and Fishermen for Damages as a Result of FTA was legislated and enacted in March 2004 for Korea's first FTA related trade adjustment assistance. Discussions on trade adjustment assistance for the manufacturing and service industry were conducted, and the Law on Trade Adjustment Assistance was passed by the National Assembly in 2006 and went into force in 2007. The paper will discuss the two laws and the challenges posed by the laws.

5.2.2.1. Law on Trade Adjustment Assistance

The law, taken into effect in April 2007, aims to minimize the economic damages of firms and employees in the manufacturing and service industry, and to help the industry carry out restructuring smoothly by institutionalizing assistance measures. According to the law, the government is required to provide 2.6 trillion in assistance to firms and 2.1 trillion to workers that are impacted by FTAs. According to the law, the Trade Adjustment Assistance Committee was set up in Ministry of Strategy and Finance to formulate policy directions and institutions. The Ministry of Knowledge Economy is responsible for assisting firms, while the Ministry of Employment and Labor is accountable for assisting workers.

Assistance to Firms

In order to qualify for 'trade adjustment assistance,' firms must meet the following conditions:

- ① Firms which have or are likely to be impacted, and experience a decrease in sales or production by 25% or more for six straight months
- ② Firms that suffer economic loss mainly due to increased imports of goods or services from FTAs
- ③ Firms whose trade adjustment plan is suitable for ensuring competitiveness

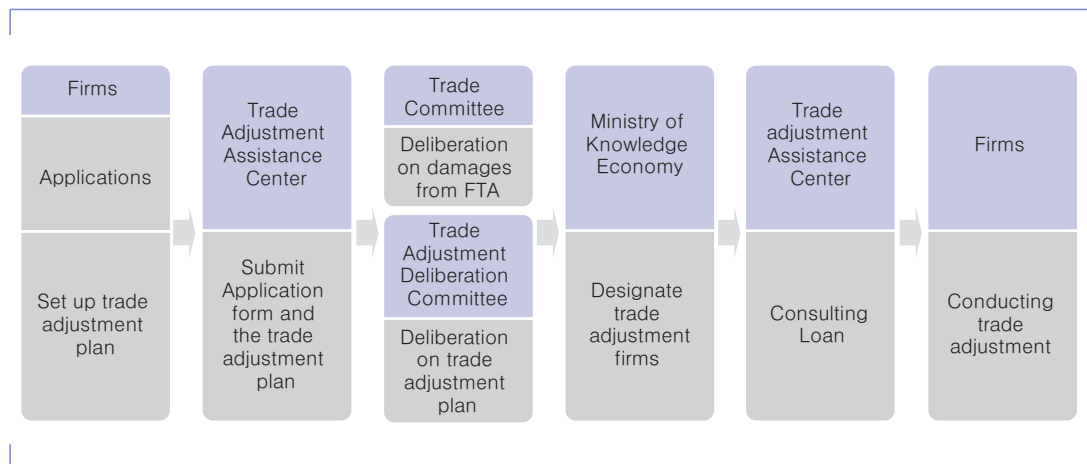
When it comes to the service industry, the imports are classified into four categories according to the WTO classification system: 1) Cross border supply; 2) Movement of

customers; 3) Commercial presence abroad; 4) Presence of natural persons abroad.

Condition ① and ② are deliberated by the trade committee while ③ is deliberated by the Trade Adjustment Plan Deliberation Committee, respectively.

Once a firm qualifies for ‘trade adjustment assistance,’ the firm is provided with information, short-term loans, consulting on management and technology, and capital to ensure its competitiveness in the process of restructuring. More specifically, firms are provided with information on capital, human resources, technology, and sales channels and location that are needed in the process of trade adjustment. Most importantly, such firms are financed with loans for technology development, facility investment, and human resource training that are required to go on the trade adjustment plan. Such firms are also provided with consulting on management, accounting, legal issues, technology and production for a smooth process of trade adjustment plan. The following outlines the process of what firms will undergo.

Figure 2-12 | Application Process for Designating Trade Adjustment Firm



Source: Im (2007).

Assistance to Employees

A worker who is laid off or is likely to be laid off, or is forced to reduce their working hours, can qualify for ‘trade adjustment assistance,’ if the worker is employed by a firm under following conditions:

- ① Firms given trade adjustment assistance
- ② Firms that supply to firms given trade adjustment assistance

- ③ Firms that have to relocate factories, face direct competition, or rely on import substitution due to increased imports
- ④ Firms that qualify for trade adjustment assistance but did not apply for the designation, and firms that are not suitable for the trade adjustment assistance

Employees can apply for assistance by submitting an application through their employer or representative, or by the Minister of Employment and Labor. Such employees are provided with information and consulting about industry trend, job market, job training and support to find a job or start-up their own business.

Evaluations and Challenges of the Law

Since it is too early to evaluate the performance of the law, this paper will concentrate on the law itself. Although the adjustment assistance is essential, the current law still could cause problems.

First, the law restricts the range of firms and employees to those impacted by FTAs, such as unfairly ignoring firms and workers affected by trade with non-contracting countries. It would be more desirable to include all firms and workers that are impacted by liberalization measures including liberalization under the WTO.

Second, Korea's trade adjustment assistance takes on the characteristic of an industrial policy, covering a wide range of support including financial supports as well as consulting and technology assistance. The U.S. TAA, unlike the Korean TAA, limits its supports to providing technology and consulting services. Due to this characteristic, the assistance can delay industry restructuring when inefficient firms take longer to exit. Focusing more on consulting and providing financial support for closing a business would be desirable.

Third, the measures under the law also overlap support to promote industry development. For example, assistance to small and medium-sized firms under the Trade Adjustment Assistance would overlap other support provided under the Special Law on Expediting Restructuring of Small and Medium Firms. This results in excessive support that might lead to adverse selection, rather than expediting industrial restructuring.

Fourth, although the law seeks to be compatible with the Marrakesh Agreement Establishing the World Trade Organization, there is a possibility that the law could conflict with the Agreement on Subsidies and Countervailing Measures. The law itself does not seem to conflict with WTO regulations, but the law leaves relatively large administrative discretion. Thus, it is still possible that the enforcement of the law could conflict with WTO rules.

Fifth, Korea's domestic countermeasures are more focused on support of firms rather than workers. In contrary, the U.S. TAA is more focused on assisting workers by allocating 91% of the budget to support workers. This is because TAA takes on a social safety policy rather than industrial restructuring policy like Korea. (Huh, 2007) Although the situations are different in each country, more assistance should be provided workers when the impact on workers is significant. In sum, the assistance needs to focus more on supporting workers and less on firms.

5.2.2.2. Special Law on Assisting Farmers and Fishermen Impacted by FTAs

Since the agro-fishery industry is sensitive to market opening, the government needs to determine how vulnerable the industry is when it comes to FTAs. The Special Law on Assisting Farmers and Fishermen for Damages as a Result of FTA, first enacted in 2004, and later revised in 2006, 2008 and in May 2009. It aims to implement effective countermeasures for farmers and fishermen who are impacted or likely to be impacted by FTAs. Since all the FTAs stipulate regulations on industrial and fishery sector, the law is applied to all FTAs.

Range of Assistance

To minimize the negative impact of FTAs and help enhancement of competitiveness, the law allows assistance to facilitate smooth restructuring and ensure stable management. The law stipulates six categories of support:

- ① Enhancing competitiveness in the agro-fishery industry
- ② Income compensation for stable management
- ③ Support for closing a business
- ④ Support for producers' unions
- ⑤ Assistance for processed agricultural and marine goods
- ⑥ Support for a local autonomous entity

The main assistance is in the form of a direct payment for income compensation and support for closing businesses. The direct payments cover domestic agro-fishery products that had or are expected to be negatively impacted by the elimination or lowering tariffs as a result of FTAs.

Fund Raising Plan

The law simply stipulates that 1.2 trillion KRW shall be raised over seven years starting from 2004 for the implementation of the Korea-Chile FTA. The fund raising plan should be altered when new FTAs are concluded. According to the law, the FTA implementation Support Committee and its working-level committee are required to set up the fund raising plan to implement the countermeasure for farmers and fishermen. The committee, led by the Minister

of Agriculture and Forest, is composed of 15 members, and deliberates related agendas to strengthen competitiveness in the industry and minimize the damages from liberalization. The working-level committee, led by the Deputy of Agriculture and Forest, deliberates management of the fund, and agendas tabled by the FTA implementation Support Committee.

Evaluations and Problems

Although the law provides support to lessen the negative impact on vulnerable industries, problems still exist. First of all, the adjustment assistance basically seeks to improve the competitiveness of the industry and to support a shift to an industry with a comparative advantage. However, the assistance system under the law could lead firms to stay in current industry, because more financial support could be provided. This twist could undermine the initial purpose of the law. As a result, the authorities reduce the amount of financial support.

Secondly, fund raising should be done on an ex ante based on economic effects not on an ex post and political one. When financial support was being mobilized after the FTA negotiations in the Korea-Chile FTA, it became a political issue in the process of ratification, and it led the National Assembly to demand an excessive amount of funding. The law stipulates that 1.2 trillion KRW of funding will be raised over seven years, starting from 2004 for the implementation of the Korea-Chile FTA. Also, the fund raising plan should be altered when new FTAs are concluded. This issue should be raised again and the problem should be fixed. The government needs to institutionalize fund raising process, so it could be conducted before negotiations conclude as just like in case of the U.S. TAA.

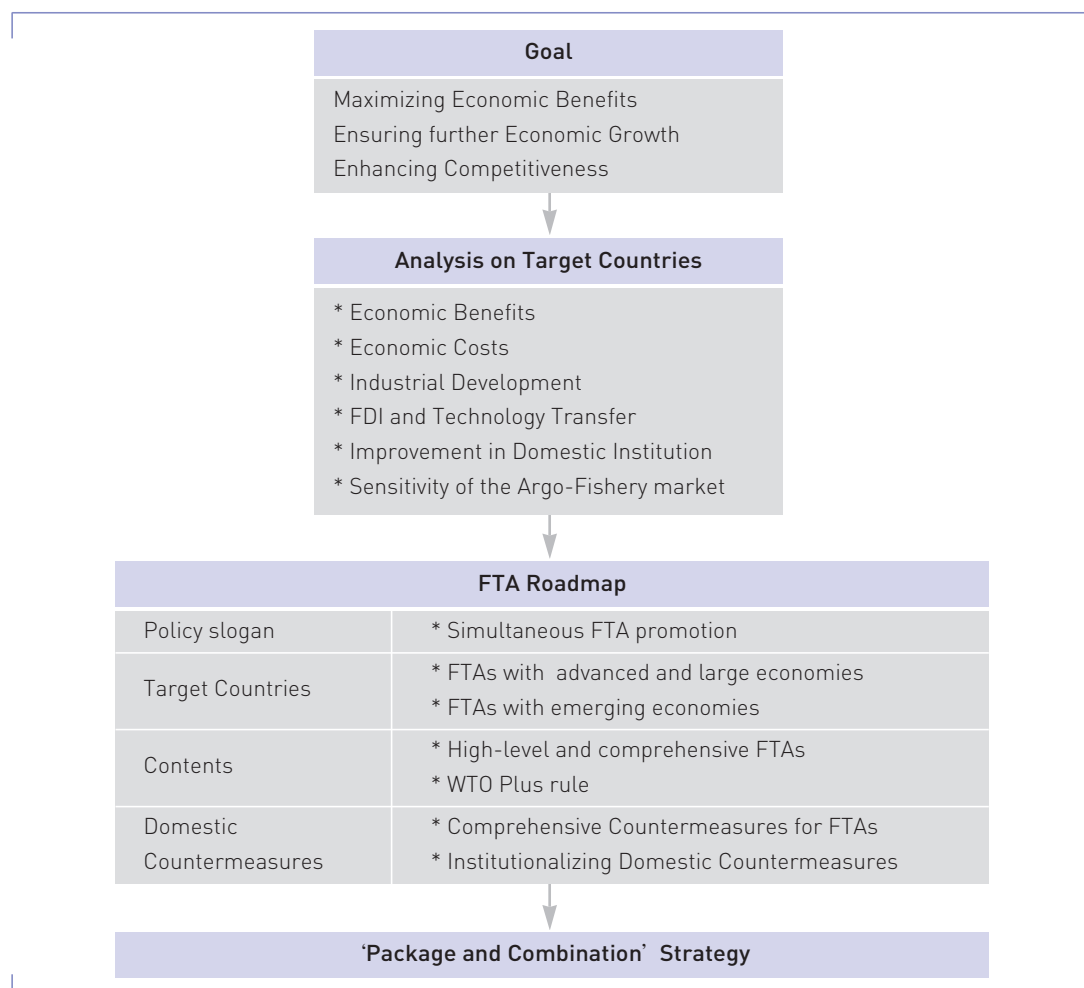
6. Conclusion and Implications

Facing global and domestic challenges, Korea took the way of further liberalization by actively promoting free trade agreements, and the government believed this would contribute to Korea's continuing economic growth. Pursuing FTAs for the past decade, the Korean government learned through trial and error. Sometimes, pursuing FTA brought significant social costs, but it also provided a chance for the country to set up its own strategies, re-organize its institutions and modify related laws through its FTA policy.

Even though Korea decided to take part in regionalism in the late 1990s, it was more of a passive reaction to changes in the global trading system, trying to minimize damages from future liberalization. As the global market became more competitive and regionalism became more entrenched, the Korean government took a more proactive stance on pursuing FTAs. The

government tried to leverage FTAs to maximize the country’s economic benefits and ensure a new engine of economic growth, rather than simply trying to minimize the economic costs. Under these goals, the government set up the FTA Roadmap based on systematic and comprehensive analysis on target countries. To keep up with other competitors and ensure future overseas markets, Korea, a country which is highly dependent on trade, has been pursuing a multi-track approach. This pursues simultaneous FTA negotiations under the slogan of “simultaneous FTA promotions.” As a result of the analysis conducted on target countries, it was concluded that FTAs with large and advanced countries would be significantly beneficial to Korea. However, such FTAs would also impact domestic industries which are vulnerable to market openings, such as agricultural and fishery industries. Thus, the Korean government was required to implement the so-called ‘package and combination’ strategy, to mitigate political opposition domestically and offset the negative effects of each FTA.

Figure 2-13 | Korea’s FTA Goal and Strategy



Under this strategy, the government aligned with administrative organizations, modified related laws and regulations. Going through years of trial and error, the administrative organizations related to free trade agreements have been separated into two parts: the Trade Ministry under the Ministry of Foreign Affairs and Trade, which is responsible for negotiations at the international level; and the FTA Policy and Promotion Adjustment Authority under the Ministry of Strategy and Finance, which implements domestic countermeasures. Also, the Meeting of Foreign Trade and Economy Ministers led by the Minister of Strategy and Finance are responsible for mediating related ministries and deliberating important FTA issues. Under this decision making structure, the government introduced the *Regulations on Procedure of the FTA Promotion*, which stipulates the rights and obligations of the FTA related organizations and procedures. This promotion of FTAs allows the private sector to improve efficiency and encourage participation. In addition, efforts have been made to assist those impacted by the FTAs. Although a free trade agreement helps the country achieve economic benefits, there are always winners and losers from such FTAs. The policy directions of the domestic countermeasures are listed below. Such measures are based on the Law on Trade Adjustment Assistance for manufacturing goods and services and the Special Law on Assisting Farmers and Fishermen for Damages as a Result of FTA for agro-fishery industry.

Table 2-20 | Domestic Countermeasures and Related Laws

| | Agro-Fisheries | Manufacturing and Service |
|------------------------------|---|--|
| | Special Law on Assisting Farmers and Fishermen for Damages as a Result of FTA | Law on Trade Adjustment Assistance |
| Direct Assistance | -Direct Payment -Support for closing business | -Trade Adjustment Assistance -Strengthening job security |
| Enhancing Competitiveness | -High qualified products -Modernization of product line -Construct Infrastructure | -Expedite R&D -Support invigorating exports -Cultivate human resources |
| Expanding Income Foundations | -Foster regional-specialized agro-fisheries industry -Boost tour industry | |

Despite the government’s efforts, the trade governance still has some problems. First of all, mediation and adjustment of the different interests between governmental ministries; between the administration and the National Assembly; among interest groups, need to be more strengthened in order to reduce transaction costs and political costs.

Second, the trade adjustment assistance system has flaws. Although the assistance system is able to lessen the negative impact from market opening, the system can result in inefficiencies,

while financial supports can delay industrial restructuring. Also, since the countermeasures seem to take on the characteristics of an industrial policy, the financial support may overlap with other types of financial support related to industrial development, causing adverse selection. The assistance is focused on assisting firms rather than workers, and this shows that it is still a weak tool for protecting individual workers.

Following implications can be drawn from Korea's experiences.

FTA as a Market-Friendly Trade Infrastructure

As the global economy has become more integrated due to multilateralism and regionalism, it is imperative for a country to establish a more market-friendly trade system to take advantage of such a global economic system. As seen in Korea's economic development, trade has played an essential role in the country's economic growth. The Korean government considers FTAs as a tool to keep its economic growth momentum and enhance its economic competitiveness, when it helps improving the industrial structure and increasing FDI inflow. A government should seek FTAs in this respect.

Timing and Political Leadership

When many countries wanted to sign more FTAs, it is important to decide when a country should conduct FTA negotiations with another country and choose which country to sign with. Since a FTA always brings benefits to some industries and costs to others, political leadership is necessary in promoting FTAs. Timing is also critical. When concluding a FTA results in preferential tariff reduction on goods, timing of FTA negotiations is important, and this could be directly related to the share of overseas markets. An example of the Korea-Mexico FTA negotiations shows that being passive could lead the country to lose important export markets in this highly competitive world. Thus, whether or not the country should sign FTA negotiation and when a country initiates FTA negotiations could determine benefits from preoccupying certain overseas markets.

Establishing Efficient and Legitimate Trade Governance

It is critical to establish efficient and legitimate trade governance. Korea has sought to formulate FTA strategies for years with a vision of advancing the economy. Only when the trade governance is able to perform efficiently, the goals of the policy can be achieved. In case of Korea, *Regulations on Procedure of the FTA Promotion* stipulates authorities and its obligations in pursuing FTA negotiations. However, the authority to mediate and adjust different ministries still needs to be institutionalized to facilitate a smooth process through reducing transaction costs of the policy.

In a democratic country, it is also vital to institutionalize how and when the National Assembly can intervene in the FTA negotiations. For instance, the U.S. Congress consistently influences FTA negotiations and implementation and it is institutionalized how and when Congress can engage in the FTA process. It is sometimes not proper to presume that a unilateral approach led by the government is more effective in negotiating FTAs. This is not true when it could lead to bigger political costs in the process of ratification in the National Assembly, such as in Korea's case. Thus, it is more desirable for Korea to strengthen the cooperative relations between the administration and the National Assembly. By law, the National Assembly should act as a check and balance, gathering the opinions of interested parties, and carrying out advanced discussions and special reviews on its impact on vulnerable industries. This implies that a trade procedure law needs to be established, so that it would play a vital role in improving the transparency of the FTA promotion process and securing procedural legitimacy.

Implementing Effective Domestic Countermeasures

Although free trade agreements can provide more economic benefits to a country, pursuing FTAs always brings both winners and losers. In order to keep pursuing a FTA policy, trade adjustment assistance should accompany FTAs. Even though the trade assistance has a role to play, it cannot be a cause of delays in industry restructuring or more costs which would outweigh the benefits of FTAs. In this regard, trade adjustment assistance system that would help facilitate restructuring should be established. For example, providing support to closing inefficient businesses or consulting will enhance the efficiency of the business, rather than simply giving financial support.

Establishing a Social Safety Net

It would be more desirable if the trade adjustment assistance system focused on supporting workers rather than firms. Also, assistance should be ex ante, serving as a social safety net in this highly competitive world. It is inevitable to provide financial assistance to impacted groups in the short-term, but the role of trade adjustment assistance should be extended as a social safety net to help market integration, the subsequent changes in the economic environment, and employees who actively deal with globalization.

In order to secure a social safety net, programs that assist workers find new jobs should be intensified. As stated in the Law on Trade Adjustment Assistance of Korea, such services are useful for workers, while providing a chance for workers to offset the cost of being laid off. The assistance system which provides information and consulting about industry trend and the job market can help workers actively cope with such effects of liberalization, and in turn, it would also help increase labor flexibility in the market.

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