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**Korea-U.S. Trade Negotiation on Market Access:  
Dispute over the Korean Shelf-Life Regulations  
for Food Products**

**University of Kent at Canterbury**

***Korea-U.S. Trade Negotiation on Market Access:  
Dispute over the Korean Shelf-Life Regulations  
for Food Products***

A Dissertation Submitted to  
The Faculty of the Department of Politics and  
International Relations  
In the Division of the Social Sciences

In Candidacy for the Degree of  
Doctor of Philosophy

International Relations

by Kee Deok Kim

Rutherford College  
Canterbury  
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## ABSTRACT

This study questions the salient variables in the settlement of trade disputes arising from the market access problem between Korea and the United States. An examination of previous research on Korea-U.S. trade disputes finds that no single research approach provided a complete explanation of them. Examination of the bilateral negotiations left some unexplained 'black boxes.' This study therefore develops a synthesised framework for analysis that combines distinct levels of analysis: state power (structural); institutional frameworks (the state); and lobby groups (public choice). Furthermore, it operationalises the new framework for analysis by identifying the following three variables within the trade dispute between the two countries: *negotiation power, government trade agencies, and interest groups.*

Part I outlines the historical evolution of the economic relations of the two countries in the context of the way in which the relations have changed over the years. This section provides the theoretical framework for the following case study.

Part II traces the negotiation process of the case in greater detail. It begins with a brief account of the case. It shows the basic positions of the four actors involved in the case: the two main interest groups and the two governments. Subsequent chapters respectively trace the negotiations under the informal diplomatic process, Section 301 procedure, and the WTO dispute settlement procedure. Particular attention is given to the interactions between the actors in the bilateral negotiation process as well as in the domestic process of each country. The deadlocks and success of the negotiations are analysed in the context of the three variables. The case analysis finds that all the three variables influenced the process and outcomes of the negotiations, and further shows the basic mechanism of the interrelationship of the variables. This study concludes that in order to gain a clearer picture of Korea-U.S. market access disputes, it is necessary to see them at least through the different angles of the three variables. Based on this conclusion, this study proposes some policy alternatives to strengthen the negotiation power of Korea.

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## TABLE OF CONTENTS

Tables and Figures.....	iv
Abbreviations .....	vi

### PART I

Introduction .....	1
<b>Chapter 1 Economic Relations Between Korea and the United States.....</b>	<b>10</b>
1.1 Introduction	
1.2 From Patron to Partner .....	11
1.3 Trade Frictions .....	15
1.4 Conclusion .....	26
<b>Chapter 2 Theoretical Concerns .....</b>	<b>29</b>
2.1 Introduction	
2.2 Realism .....	32
2.2.1 Assumptions	
2.2.2 Odell's Research	
2.3 Liberalism .....	41
2.3.1 Assumptions	
2.3.2 Aggarwal, Keohane, and Yoffie's Research	
2.4 Institutionalism .....	55
2.4.1 Assumptions	
2.4.2 Ryan's Research	
2.5 Conclusion: What Analytical Framework for the Shelf-Life Case? ....	68
2.5.1 Nature of International Trade Negotiation	
2.5.2 Uses and Limits of the Three Approaches	
2.5.3 A New Approach for the Case Study of this Thesis	
<b>Chapter 3 Three Factors of the New Approach .....</b>	<b>88</b>
3.1 Introduction	
3.2 Negotiation Power .....	89
3.2.1 A New Approach for Negotiation Power	
3.2.2 Interdependence of Korea-U.S. Economy	
3.2.3 Section 301 and DSU	
3.3 Interest Groups .....	121
3.3.1 Interest Group Theory and Collective Action	
3.3.2 Interest Group Politics in the United States	
3.3.3 Interest Group Politics in Korea	
3.4 Trade Organisations .....	133
3.4.1 The Causal Position of Political Institutions	
3.4.2 The Office of the United States Trade Representative	
3.4.3 The Trade Negotiation System of the Korean Government	
3.5 Conclusion .....	145

## PART II

<b>Chapter 4</b>	<b>Korea-U.S. Positions to the Shelf-Life Dispute</b>	<b>148</b>
4.1	What is the Case?	
4.2	U.S. Industry Interests	150
4.3	U.S. Government Position	159
4.4	Korean Government Position	163
4.5	Korean Interest Groups' Interests	168
4.6	Implications	173
<b>Chapter 5</b>	<b>Negotiation Under Diplomatic Process</b>	<b>177</b>
5.1	Introduction	
5.2	The Beginning of the Dispute	179
5.2.1	Actions of the United States	
5.2.2	Responses of Korea	
5.2.3	The GATT Council Meeting	
5.2.4	Unbending Assertions of the Two Sides	
5.3	Enlargement of the Dispute	196
5.3.1	Tougher stance of the United States	
5.3.2	Inflexibility of Korea	
5.3.3	Concession and Disappointment	
5.4	Conclusion: Intermediate Assessment	217
<b>Chapter 6</b>	<b>Negotiation Under Section 301</b>	<b>229</b>
6.1	Introduction	
6.2	Petition and Comments	232
6.2.1	Launching of Section 301 Investigation	
6.2.2	Petition and Comments	
6.2.2.1	Major Issues in the Petition	
6.2.2.2	Whether the Korean Practices Violate the Korea-U.S Bilateral Trade Agreements?	
6.2.2.3	Whether the Korean Practices Violate Section 301 or GATT?	
6.3	Negotiations Under Section 301	252
6.3.1	The First Consultation	
6.3.2	Ministerial Meetings	
6.3.3	Pressure From the U.S. Congress	
6.3.4	U.S. Warning and Korean Concession	
6.3.5	Other New Frictions over Agricultural and Food Products	
6.3.6	The 18 <sup>th</sup> Trade Sub-Group Meeting	
6.4	Conclusion: Two Options of the Two Governments	277

<b>Chapter 7 Negotiation Under the WTO and Agreement .....</b>	<b>290</b>
7.1 Introduction	
7.2 Negotiations Under the WTO .....	294
7.2.1 Other Message of the U.S. WTO Card	
7.2.2 Announcement of a New Plan by Korea	
7.3.3 The First Consultation in Geneva	
7.4.4 Towards a Resolution	
7.3 Agreement and Responses .....	312
7.3.1 The Agreement	
7.3.2 Responses of the United States	
7.3.3 Responses of Korea	
7.4 Implementation Issues .....	319
<b>Chapter 8 Conclusion .....</b>	<b>323</b>
8.1 Negotiation Power .....	324
8.2 Interest Group .....	327
8.3 Government Institution .....	332
8.4 Combination of the Three Factors .....	336
8.5 Policy Proposals .....	343
<b>APPENDIXES.....</b>	<b>348</b>
1. The Petition and the Comments .....	348
2. Questions of USTR for the WTO Consultations.....	373
3. The Shelf-Life Agreement, Republic of Korea and United States of America .....	378
<b>INTERVIEWEES AND BIBLIOGRAPHY.....</b>	<b>382</b>



## LIST OF TABLES AND FIGURES

Table 1-1	Evolution of U.S. Import Restraints on Korea .....	24
Table 1-2	Evolution of Korean Exports under U.S. Import Restraints .....	24
Table 2-1	Trade Disputes Classified According to Their Outcomes .....	39
Table 2-2	301 Implementation Model and Findings .....	67
Figure 2-1	Interactions of Two Politics .....	72
Figure 2-2	Mechanism of the Trade Policymaking Process .....	74
Figure 2-3	Policymaking Process of the Realist Approach .....	75
Figure 2-4	Policymaking Process of the Interest Group Liberal Approach ...	77
Figure 2-5	Policymaking Process of the Institutional Approach .....	80
Figure 2-6	Policymaking Process of the Government Officials-Oriented Approach .....	81
Figure 2-7	A New Approach for the Case Study of This Thesis .....	83
Figure 2-8	Transformation of the New Approach in Terms of System Model .....	86
Figure 3-1	Two Different Dimensions of Power .....	93
Figure 3-2	Static Aspects of Negotiation Power .....	95
Figure 3-3	Dynamic Aspects of Negotiation Power .....	97
Table 3-1	Korea's Trade with the United States .....	101
Table 3-2	Order of US Trade with Major Countries .....	103
Table 3-3	Major Korean Exports to the United States, 1995 .....	104
Table 3-4	Major Korean Imports from the United States, 1995 .....	104
Table 3-5	Investment of the U.S. and Korea .....	105
Table 3-6	Pay-Off Structure of a Collective Good .....	126
Figure 3-4	Structure of Korea's Trade Negotiation .....	144
Table 4-1	Korean Trade-Restrictive Practices Alleged by the Petitioners .....	157

Figure 4-1	Zero-Sum Game .....	175
Figure 6-1	Section 301 Legal Procedure .....	230
Table 6-1	Differences on Each Issue Between Korea and the United States...	275
Figure 6-2	Two Options of the Two Governments .....	279
Figure 7-1	WTO Dispute Settlement Procedures and Deadlines .....	292
Table 7-1	Comparison of the Agreement on the Shelf-Life Dispute .....	313
Figure 8-1	Integration of the Three Factors .....	337
Figure 8-2	Distributive Issue .....	341
Table A-1.	Distribution Periods of Meat and Meat Products .....	349

## LIST OF ABBREVIATIONS

AMI	American Meat Institute
APEC	Asia Pacific Economic Cooperation
BATNA	Best Alternative To a Negotiated Agreement
BFE	Board of Finance and Economy
CCEJ	Citizens' Coalition of Economic Justice
DOC	Department of Commerce
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
EC	European Community (EU from 1 January 1994)
EEC	European Economic Community
FDA	Food and Drug Administration
FECC	Foreign Economy Coordination Committee
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNP	Gross National Product
GSP	Generalised System of Preference
HS	Harmonised System
IIE	Institute for International Economics
ITC	International Trade Commission
KMIA	Korean Meat Industries Association
MAFF	Ministry of Agriculture, Forestry and Fishery
MDSL	Manufacturer-Determined Shelf Life
MFA	Ministry of Foreign Affairs
MIC	Ministry of Information and Communications
MITPC	Meat Industry Trade Policy Council
MNC	Multinational Corporations
MOHW	Ministry of Health and Welfare
MTI	Ministry of Trade and Industry
NACF	National Agricultural Cooperative Federation
NCBA	National Cattlemen's Beef Association
NEC	National Economic Council
NLCF	National Livestock Cooperative Federation
NPPC	National Pork Producers Council
NTB	Non-Tariff Barrier
OECD	Organisation for Economic Cooperation and Development
OMA	Orderly Marketing Agreement
SBS	Simultaneous-Buy-Sell
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TPRG	Trade Policy Review Group
TPSC	Trade Policy Staff Committee
US	United States of America
USDA	United States Department of Agriculture
USTR	United States Trade Representative
VER	Voluntary Export Restraint
WTO	World Trade Organisation

## Introduction

The aim of this research is to explore a trade dispute concerning non-tariff barriers between Korea and the United States. More specifically, this research seeks to demonstrate that the process and outcomes of the negotiations to resolve a market access dispute between the two countries can be explained by a combination of the three factors: negotiation power, interest groups, and government trade agencies. Recently, non-tariff barriers have been the main issue in trade disputes throughout the world after border measures such as tariffs and quotas have been reduced substantially through successive multilateral trade negotiation (MTN) 'Rounds' of the General Agreement on Tariffs and Trade (GATT). The shelf-life dispute under examination took place in 1994. The dispute resulted from a relatively insignificant event,<sup>1</sup> and developed a serious trade friction between the two countries. The dispute was settled in January 1996 after a negotiation of about two years.

In February of 1994, the Korean government prohibited U.S. *cooked* sausages from being circulated in a *frozen* condition because they had been wrongly classified over the past four years as products with a 90 days shelf-life due to fraudulent documents submitted by importers. According to the Korean Food Safety Code, *cooked* sausages should be circulated in a *chilled* condition with a 30 days shelf-life, while non-cooked sausages should be circulated in a frozen condition with a 90 days shelf-life. As a result, 37 containers of U.S. frozen, cooked sausages were stranded in a Korean port, valued at \$1.3 million. This Korean government's measure caused the U.S. meat industry to believe that Korea had used a non-tariff barrier to block the U.S. sausage imports. Despite many

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<sup>1</sup> The Embassy of Korea in Washington, *Comments to the Section 301 Petition Submitted by the National Pork Producers Council, the American Meat Institute, and the National Cattlemen's Association*, December 14, 1994, USTR Reading Room, pp.12-4.

informal consultations through diverse diplomatic channels, the dispute was not resolved. In November of 1994, the U.S. meat industry filed a petition to the United States Trade Representative (USTR) under Section 301 of the U.S. trade law, along with other issues covering most of meat products. The industry asserted that Korea restricted U.S. meat imports and abrogated three bilateral agreements. After bilateral consultations broke down at the end of April, the United States requested consultations under Article XXII of the World Trade Organisation (WTO) on May 3, 1995. The case under the WTO finally covered all the Korean practices relating to food products. By analysing the negotiation process of this dispute, this research operationalises a synthesised framework for analysis that combines distinct levels of analysis: state power (structural); institutional frameworks (the state); and lobby groups (public choice).

With the globalisation of the world economy, whether or not a firm or an industry succeeds in business is subject to its ability to market products throughout the world. Supporting firms and industries in marketing products has become an important task of governments. Governments consequently engage in increasingly frequent bilateral trade conflicts. Particularly, since the mid-1980s, the large U.S. trade deficit caused the U.S. government to employ its full arsenal of policy tools such as Section 301 in order to open foreign markets.

Economic relations between Korea and the United States have undergone drastic changes. Until the 1960s, Korea's economic relations with the United States were mainly that of the recipient-donor type. During the past three decades, however, Korea has achieved a remarkable economic record. By the mid 1990s, Korea was the fifth largest producer of automobiles, the second largest ship-building country, and the major producer of semiconductors. As Korea developed, there was growing economic interaction between the two countries. Consequently, the bilateral economic relations have become

increasingly contentious. It was from the 1980s that the trade friction of the two countries became more strained, especially with regard to Section 301 of the American use to exert pressure on Korea to open its markets. The trade disputes between the two countries started with the U.S. import restraints. American industries, which were faced with economic distress from Korea's import penetration, demanded protection. The U.S. government was generally sympathetic towards their demands, and supplied protection for some industries such as textiles, footwear, and TV receivers. However, recently the focus on the bilateral trade disputes has been transferred from the protection of the U.S. market to the opening of the Korean market (market access).

Until now, in constructing explanations of Korea-U.S. trade disputes, the following three *research programmes* have been significant: realism, liberalism, and institutionalism, although they have mainly focused on American trade policy behaviours. Realist approaches offer system-centred explanations, whereas liberal approaches produce society-centred explanations. Institutional approaches mainly emphasise government's role and efficacy.<sup>2</sup> However, no single approach seemed able to provide a complete explanation of Korea-U.S. trade disputes. This is because previous studies focused on a specific part of the disputes, such as outcomes or initiations, and most focused on the American side. Both realist and liberal approaches have treated the policymaking process of each government as a black box.<sup>3</sup> They have failed to analyse the policymaking process of each government. On the other hand, driven by an emphasis on the institutional structures of the United States, institutional approaches have treated the international negotiation process as a black box. Institutionalists gave little importance to tracing the

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<sup>2</sup> M.P. Ryan, 'USTR's Implementation of 301 Policy in the Pacific,' *International Studies Quarterly*, Vol.39, 1995, pp.338-9.

<sup>3</sup> G.J. Ikenberry, D.A. Lake, and M. Mastanduno, 'Introduction: Approaches to Explaining American Foreign Economic Policy,' *International Organisation*, Vol.42, No.1, 1988, p.2.

evolution of interactions of the negotiating countries. Therefore, in order to gain a more complete understanding of the intricacies of Korea-U.S. trade negotiations, we have to dismantle all the black boxes in the two processes and see how domestic and international forces and constraints, such as interest groups' activities or trade interdependence, are transmitted through the black boxes.

By so doing, this research intends to find out the extent to which the three approaches explain the recent market access disputes. So far, no research has attempted to analyse a market access dispute between Korea and the United States through the different angles of the three approaches at the same time. Furthermore, given that the shelf-life dispute was the first dispute ever to have been brought to the new dispute settlement procedures of WTO, it would be significant to examine the role of the new WTO procedure as well. By tracing the negotiation process of this case, disassembling the black boxes, and focusing on the interaction between the actors, this research attempts to answer these questions: (1) What are the salient variables in the settlement of a trade dispute arising from the market access problem between Korea and the United States? (2) Why and to what extent do these variables affect differently the two countries? (3) What is the role of the new WTO dispute settlement procedure in the asymmetrical negotiation between Korea and the United States? This research is divided into eight chapters.

The analysis begins with Chapter 1 entitled, "Economic Relations of Korea and the United States." In general terms this chapter aims to avoid the situation in which we can see only the trees without seeing the wood. No trade dispute can exist in a vacuum. It has indissoluble connections with its economic environment from which it is generated. Moreover, in the context of time, it is also related with the past economic relations between the disputing countries. Therefore, this chapter provides the historical evolution of the economic relations of Korea and the United States in terms of the development of

bilateral trade as well as the nature of trade disputes. Thus, the chapter highlights the way in which the relations have changed over the years. This historical sequence is crucial to the understanding of a specific trade dispute at a specific moment.

Chapter 2 introduces Theoretical Concerns, and asks by what method we can most fruitfully analyse the case. For this purpose, it offers the basic assumptions of the three *research programmes* which have been used in analysing previous trade disputes between the two countries. The explanation of each *research programme* is followed by a brief review of a typical research project performed within it. This review enables us to look at scholars' analytical approaches and their research focus, and finally to suggest that each approach is complementary in explaining trade negotiations. The last section of this chapter goes on compare these different research approaches. It argues that no complete picture of the case can be drawn unless it is examined through the different angles of the three approaches since each one shows only one aspect of it. Finally, this chapter presents *a new framework for analysis* for the case by integrating the three approaches.

Chapter 3 begins to operationalise the framework for analysis by identifying the salient variables within the trade dispute between Korea and the United States: *negotiation power, interest groups, and government trade agencies*. It tackles the questions: What is power in the context of trade negotiation? How can it be perceived in the negotiation process? What are the differences between the two countries in terms of interest group politics? Which government agency is responsible for trade negotiations in each country, and what is its status within each government? To answer these questions, negotiation power is appreciated in terms of the economic interdependence between the two countries, Section 301 of the U.S. trade law, and the WTO dispute settlement procedure. This chapter also provides a brief review of interest group theories including collective action of Mancur Olson, and then proceeds to examine the interest groups politics of the two



countries. Lastly, this chapter explains the causal position of political institutions and identifies the two governments' agencies charged with trade disputes.

Chapter 4 begins the detailed analysis of the case study. Before tracing the negotiation process, this chapter analyses the *basic* positions of the four actors involved in the case: *the two main interest groups* and *the two governments*. In conjunction with the discussions of the previous chapter, this chapter deals with the following questions: Which specific interest groups are involved in the case in each country? What are their interests in the case? What are the positions of the two governments vis-à-vis their own interest groups and the other country? By answering these questions, this chapter highlights key issues of the case as well as the different actors' positions towards them. Without a clear understanding of the initial positions of the four actors, it is impossible to explain the process through which the actors' controversies converge on an agreement. This chapter begins with a brief account of the case.

The following Chapter 5, 6, 7 trace the negotiation process of this case. Chapter 5 describes the informal diplomatic negotiation process, and then examines to what extent the three variables (negotiation power, interest groups, and government trade agencies) influenced the negotiation process. It also analyses the deadlock of the informal negotiations in terms of the three variables. Chapter 6 traces the negotiations under Section 301. Allegations of both the petitioners and the Korean government are clarified by each issue. This chapter analyses the final result of the negotiations under Section 301 by tackling the question: Why did the two governments take this case to the WTO instead of resolving it within the Section 301 procedure? What factors prevented them from resolving it? The WTO option is examined in terms of *the two governments' policy choices*. In so doing, it clarifies how the three factors led to the decision. Chapter 7 traces the negotiations under the WTO procedure which finally led to an agreement. It also

provides the responses of the two countries to the agreement and identifies issues that were raised in the course of implementing the agreement.

The concluding chapter evaluates the whole negotiation process of the case in terms of the three variables. By so doing, it demonstrates that all the three variables influenced the process and outcomes of the negotiations. It further shows the basic mechanism of the interrelationship of the three variables by using our new approach to negotiation power. Based on our conclusion of this research, this chapter finally suggests some policy options to strengthen the negotiation power of the Korean government.

## **Methodology**

The first part of this research draws from a wide selection of books and articles on the subject of Korea-U.S. economic relations, trade policymaking, and trade negotiation. In order to find an appropriate approach for the case, this research reviewed previous research cases concerning trade disputes between Korea and the United States. For part II of the case analysis, a number of newspaper and other media sources were used. In Particular, *Inside US Trade* was very useful in tracing the internal process of the United States. Open materials in the Reading Room of USTR made it possible to access primary sources of the case. USTR provided documents concerning the case in response to my request under the Freedom of Information Act. Korean officials allowed me to look through some relevant documents of the case. Diverse papers issued by the two governments' agencies made significant contributions as well. I also conducted interviews with individuals currently or previously responsible for Korea-U.S. trade relations. In order to accommodate the wishes of some of those individuals to remain anonymous, they are referenced in this work by a letter designation.

## Originality

This research expects to contribute both theoretically and empirically to the existing literature on trade negotiation, especially on Korea-U.S. trade negotiations. The framework of analysis presented here devises a new analytical approach through the synthesis of diverse research programmes. Previous research left some black-boxes in exploring bilateral trade negotiations. But, this research attempts to disassemble them by opening the bilateral negotiation process as well as the internal process of each country. By revealing the internal (domestic) process and combining it with the external (international) process, this study offers a clearer picture of the case.

The second area of interest lies in the case itself. The case has some special characteristics. It is concerned with the problem of non-tariff barriers, which have become dominant issues in recent trade disputes all over the world. Moreover, it raises many issues which cover most of Korean practices for food import. Indeed, as this research shows, what began as a dispute over shelf-life for meat sausages became enlarged during the course of the negotiations to cover a wide variety of sanitary inspection practices and other domestic practices in Korea under the framework of technical barriers to trade. As states become ever more interdependent through trade, they also experience ever greater pressures for harmonisation of a wide range of practices that once were considered purely 'domestic' issues. This research therefore also contributes to an understanding of the process of adjustment in the domestic context, as market access issues require that our focus shifts from international harmonisation (i.e., tariff schedules) to deeper standardisation of domestic practices (health and safety policies).

Finally, this study started in 1997, the case was the only dispute between the two countries settled under the new WTO procedure. No one has yet examined it as a case

study. Thus, this research seems to give useful information to researchers and government officials who are interested in trade negotiations on market access dispute.

## *Part I*

# **Chapter 1 Economic Relations between Korea and the United States**

## **1.1 Introduction**

This study examines a recent market-access dispute between Korea and the United States, namely, the “shelf-life” dispute from 1994 to 1995. Before we begin, it is necessary to contextualise this particular dispute within the overall economic relationship between Korea and the United States in that trade disputes are closely connected with present and past economic environments. In the perspective of system models, a trade dispute as a system has a variety of environmental factors ranging from an industry to international economic conditions. Those factors have different effects on the trade dispute. And the economic relations of the disputing countries is the direct environmental factor in the negotiation system to resolve the dispute. By surveying the evolution of the economic relations of the two countries, we attempt to answer the questions: (1) why the case under examination occurred *in 1994*, i.e., what is the historical background to it, as well as; (2) what are the characteristics of the dispute that distinguish it from other disputes in the past?

This chapter is divided into two sections. The first section provides a brief historical review of the economic relations between Korea and the United States. It is undeniable that the Korean economy has relied heavily on the United States in that the United States still remains the leading trade partner of Korea. However, Korea-U.S. economic relations have undergone fundamental changes in volume as well as in structure

for the last three decades. As Korea has developed,<sup>4</sup> the economic relationship has become less one-sided. The growing interdependence between the two economies however has brought about new trade frictions. Now, the United States does not allow Korea “to enjoy free riding anymore and forces the client to bear the costs of being a symmetric partner, fuelling bilateral trade conflicts between the two countries.”<sup>5</sup>

The second section of this chapter therefore examines the Korea-U.S. bilateral trade disputes. As the background of the disputes, the evolution of trade policies of the two countries is examined and then we focus on recent trade disputes of the two countries.

## 1.2 From Patron to Partner

Economic relations between Korea and the United States date back to 1882, when the two governments signed the Treaty of Peace, Amity, Commerce, and Navigation. In May 1884, Walter Townsend, an American businessman, arrived at the Korean treaty port of Inchon. Representing an American firm in Yokohama, he established his trade competing against Chinese and Japanese merchants.<sup>6</sup> A century later, in 1983, trade in goods between the two countries surpassed \$14 billion.<sup>7</sup> Trade in goods in 1995, in which the shelf-life dispute under examination took place, reached \$54.5 billions. Yet many Americans charge that Korea maintains unfair trade barriers. On the other hand, many

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<sup>4</sup> “By the mid 1990s, Korea was the fifth largest producer of automobiles, the second largest ship-building country, the dominant producer of 4 megabyte DRAM semiconductors, and the third largest developing economy following China and Brazil.” See Byung-nak Song, *The Rise of the Korean Economy*, 2<sup>nd</sup> edition, Oxford, Oxford University Press, 1997, in Preface.

<sup>5</sup> Chung In Moon, ‘Irony of Interdependence: Emerging Trade Frictions Between South Korea and The U.S.’ in Manwoo Lee, Ronald D. McLaurin, and Chung In Moon, *Alliance Under Tension*, The Institute for Far Eastern Studies (IFES) International Relations Series No.16, Seoul, Kyungnam University Press, 1988, p51.

<sup>6</sup> Karl Moskowitz, ‘Issues in the Emerging Partnership’ in Karl Moskowitz (ed.), *From Patron to Partner*, Lexington, D.C. Health and company, 1984, p.1.

Koreans think that the United States maintains extensive barriers of its own, and blames Korea unfairly for its own shortcomings.<sup>8</sup>

U.S.-Korean economic relations did not develop in a direct line once Townsend had set up his business in Inchon and the Korean diplomatic mission to the United States in 1883 went on a shopping expedition in Manhattan.<sup>9</sup> In the final years of the Chosun dynasty more American traders joined Townsend, and others obtained concessions such as the Seoul-Inchon railroad, but they were overshadowed by the Japanese who had bought most American concessions long before Japan's annexation of Korea in 1910.<sup>10</sup>

The current relationship between Korea and the United States started with Japan's collapse in the aftermath of World War Two. The emerging superpowers, the United States and the Soviet Union, agreed to divide the Korean peninsula into two zones of occupation in order to accept the surrender of Japanese forces and maintain security until Korea's future course as an independent nation could be decided. American forces under General John R. Hodge established a military government known by its acronym, USAMGIK, in the zone allocated to them.<sup>11</sup> Under the USAMGIK framework, the Government Appropriations for Relief in Occupied Areas Programme supplied more than five hundred million dollars worth of aid - mainly basic commodities, but also chemical fertilisers to increase agricultural production and machinery and assistance aimed at building the economy.<sup>12</sup>

The Korea-U.S. diplomatic relationship was officially resumed in 1948 when the United States recognised Korea following general elections in the country that led to the

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<sup>7</sup> *Ibid.*

<sup>8</sup> Thomas O. Bayard and Soo-gil Young (eds.), *Economic Relations Between the United States and Korea: Conflict or Cooperation?*, Washington, Institute for International Economics, 1991, in Preface.

<sup>9</sup> Karl Moskowitz, *op.cit.*, pp.1-2.

<sup>10</sup> *Ibid*, p.2.

<sup>11</sup> *Ibid.*

establishment of the Republic of Korea (Korea). However, the United States continued to play a critical role in the Korean economy, not only as the authority deciding economic policies but also as the provider of massive amounts of economic aid.<sup>13</sup>

In June of 1950, continuing confrontation between Korea and the Democratic Peoples Republic of Korea (North Korea) blew up into full-scale conventional war. The Korean War put the U.S. Army back in charge of much of the Korean economy. With the termination of the War, the United States assumed responsibility for Korea's economic reconstruction parallel to and independently of the multilateral structures of the United Nations.<sup>14</sup> Both the defence commitment and the economic commitment entailed massive transfers from the United States.

According to Edward Mason, "during the period 1953 through 1962, foreign aid (to Korea), 95 percent of which came from the United States, amounted to some 8 percent of Korean GNP, 77 percent of fixed capital formation, and financed about 70 percent of imports. Until 1965 almost all U.S. economic assistance was in the form of grants."<sup>15</sup>

In 1960 the Korean government fell due to its corrupt and short-sighted policies. A new government emerged, but it lasted only nine months before there was a military take-over by General Chung Hee Park in 1961. This represented a fundamental turning point in post-war Korea. President Park set Korea on a new course, establishing economic development as the foremost national goal. An ambitious five-year economic development plan was announced, and within a few years a broad realignment of economic policies had taken effect. Backed by institutional reforms and a new increasingly effective government

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<sup>12</sup> *Ibid*, p.3.

<sup>13</sup> *Ibid*.

<sup>14</sup> *Ibid*, p.4.

<sup>15</sup> Edward S. Mason, Mahn Je Kim, Dwight H. Perkins, Kwang Suk Kim, and David C. Cole, *The Economic and Social Modernisation of the Republic of Korea*, Cambridge, Mass., Harvard University Press, 1980, p.455.



bureaucracy, these policies had positive results.<sup>16</sup> The primary goal of economic policy was export expansion. An incentive system was established to channel resources into export-oriented activities. Exporters received direct cash payments and were allowed to retain foreign exchange earnings in order to purchase imports. They were also exempted from almost all import controls and tariffs. Export performance became the criterion of credit worthiness for the government-controlled banking system, which provided financial support at preferential rates for exports.<sup>17</sup> During this period, the United States' support took the form of economic aid and close co-operation in the economic planning process.<sup>18</sup>

Karl Moskowitz pointed out that:

It is from the new polices instituted in Korea at the beginning of the 1960s that the contemporary U.S.-Korea business relationship has grown.....These new polices opened the way for foreign investor participation in the Korean economy, and the flow of private capital and technology began almost immediately..... The new polices quickly bore fruit.<sup>19</sup>

Although most aspects of the present business relationship originated in the early 1960s, it was only in the 1970s that the business relationship grew to contemporary dimensions. Bilateral trade began the decade at about \$1 billion in 1970 and ended at the \$9 billion level in 1979. By the early 1980s, Korea had joined the ranks of the largest trading partners of the United States.<sup>20</sup>

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<sup>16</sup> Karl Moskowitz , *op.cit.*, p.5.

<sup>17</sup> OECD, *OECD Economic Surveys: Korea*, 1994.

<sup>18</sup> Karl Moskowitz, *op.cit.*, p.6.

<sup>19</sup> The overall intent and effect of the economic polices was to turn outward for capital and technology, for markets, and to dismantle the elaborate, costly exchange rate and import control polices that had previously separated the Korean market from competitive world prices. See *ibid*, p.6.

<sup>20</sup> *Ibid*, pp.6-7.

It is important to point out that until the 1970s, the Korea-U.S. security relationship dominated over economic concerns. Korea was on the front line of the democratic camp during the Cold War, and was faced with an unpredictable and antagonistic North Korea. Thus, the two countries paid attention at high-levels to the security problem. According to Karl Moskowitz,

The Korean public mind, as reflected in the Korean press, gives priority to the security relationship, despite great public interest in Korea's economic affairs and international economic relationships. At higher policy levels in the United States government, obsession with the security relationship seems to push everything else aside; Korea's economic success and growing U.S.- Korea trade are given dutiful mention.<sup>21</sup>

However, since the 1970s, in both countries, problems in the bilateral economic relationship have attracted concerns. These problems are discussed in the next section.

### **1.3 Trade Frictions**

#### **Background: the Evolution of Trade Policy**

World War Two had a disruptive effect on all of the leading pre-war economies except that of the United States. The United States turned into the major source of capital goods for reconstruction, and the U.S. dollar became the major source of liquidity on a global scale in the immediate post-war period.<sup>22</sup> Consequently, the new rules of a liberal international economic order - the world economic system after World War Two - could

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<sup>21</sup> Karl Moskowitz, *op.cit.*, pp.7-8.

<sup>22</sup> J. Mitchell, 'The Nature and Government of the Global Economy' in A.G. McGrew and P.G. Lewis (eds.), *Global Politics*, Cambridge, Polity Press, 1995, pp.178-9.

be created and enforced by the United States.<sup>23</sup> The new liberal economic order prevailed during the 1950s and 1960s.

However, by 1971, the international economy was already undergoing significant structural changes. In particular, both Europe and Japan had recovered fully from the economic ravages of World War Two and were rapidly invading what until then had been America's reserve domains in international trade.<sup>24</sup> In fact, the United States spent the first twenty-five years after World War Two unequivocally subordinating trade policy to geopolitical objectives although it acted as an ardent advocate of the liberal economic order.<sup>25</sup> But, by the early 1970s, the Nixon Administration was faced with many problems: stagflation at home, large trade deficits, enormous defence expenditures to protect its allies, and currency crisis. The Administration announced the New Economic Policy in August 1971, which imposed a 10 percent surcharge on all import duties and the termination of the U.S. obligation to convert dollars held by foreign central banks into gold at a fixed price.<sup>26</sup>

Since 1970 the United States has consistently made exceptions to liberal trade. The 1974 Trade Act was a turning point in U.S. trade policy. The Act granted the Administration broad authority to retaliate against foreign-government trade barriers that violated U.S. rights, or more subjectively, that the Administration deemed to be unreasonable. In what was basically a compromise between the unilateral protectionism of

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<sup>23</sup> According to the theory of Hegemonic Stability, what makes an international economic order possible is the presence of an hegemonic country which establishes and underwrites public goods of order and openness. See R.O. Keohane, *After Hegemony, Cooperation and Discord In the World Political Economy*, Princeton, Princeton University Press, 1984.

<sup>24</sup> The European Economic Community (EEC) was slowly but steadily challenging the United States and, furthermore, was using its customs-union to diminish the access of American goods to West European markets. On an extra-European front, Japanese export industries were beginning to threaten seriously the U.S. exclusivity. See Walter S. Jones, *The Logic of International Relations*, 8<sup>th</sup> ed., New York, Longman, 1996, p.318.

<sup>25</sup> Stephen D. Cohen, Joel R. Paul and Robert A. Blecker, *Fundamentals of US Foreign Trade Policy*, Colorado, Westview Press, 1996, p.43.

the 1930s and the enthusiasm for liberalisation of the 1960s, the United States became the pioneer of what is widely known as “the new protectionism.”<sup>27</sup> Although more than twenty years have passed, many contemporary U.S. trade policy issues are rooted in the innovative provisions of the Act. This initial surge in the 1970s toward legislated protectionism was further enhanced by the following two developments: the value of the dollar moved persistently downwards during the early 1970s; secondly, the Administration demonstrated a willingness to impose *ad hoc* import restraints on numerous products, both on a unilateral and a negotiated basis.<sup>28</sup>

The Omnibus Trade and Competitiveness Act of 1988 was another notable development in U.S. trade policy. Most notable was the “Super 301” measure, an enhancement of the Section 301 of the 1974 Act dealing with overseas discrimination against U.S. exports. Foreign countries criticised the aggressive unilateralism of Super 301, arguing that the U.S. government, arrogantly and against GATT rules, had established itself as trade policy judge, jury, and executioner.<sup>29</sup> Cohen explained why foreign countries no longer considered the United States as an advocate of trade liberalisation:

The first reason for the tarnished reputation of the United States as liberal trade champion has been its frequent willingness to restrict the further growth of selected imports when the market mechanism works to the disadvantage of domestic producers. This perceived tendency manifested itself in the 1970s and 1980s largely through demands that other countries “voluntarily” restrain their exports; in the 1990s the principal manifestation has been allegedly overly vigorous enforcement of the U.S. antidumping statute. The second factor debasing the U.S.

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<sup>26</sup> *Ibid*, p.39.

<sup>27</sup> *Ibid*, p.41

<sup>28</sup> *Ibid*.

image has been the repeatedly loud demands on major trading partners (most notably Japan and China in 1995) either to eliminate trade practices the United States finds odious or face retaliation..<sup>30</sup>

By contrast, the Korean government has consistently liberalised its trade policies.

The last fifty years can be divided into five distinct eras:<sup>31</sup>

1. Import Substitution (1948-1961)
2. Export Promotion (1962-1972)
3. Industrial Promotion (1973-1979)
4. Economic Liberalisation (1980-1993)
5. Globalisation (after 1994)

The trade and industrial policies rooted in the 1960s and 1970s enabled Korea to nearly reach the ranks of an economically advanced country.<sup>32</sup> During the 1960s and 1970s, although the Korean government implemented, to some extent, trade liberalisation policies through major economic policies, the basic model of Korean protectionist policies remained unchanged.<sup>33</sup> The government focused on increasing exports to developed countries without concern about possible retaliation and on maintaining foreign exchange reserve levels to sustain the planned economic growth. It is well known that Korean economic development was accompanied by extensive government intervention in the

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<sup>29</sup> *Ibid*, p.43.

<sup>30</sup> *Ibid*.

<sup>31</sup> Chan-Hyun Sohn, Junsok Yang, and Hyo-Sung Yim, *Korea's Trade and Industrial Policies:1948-1998*, Korea Institute for International Economic Policy (KIEP) Working Paper 98-05, Seoul, Korea Institute for International Economic Policy, 1998, p.11.

<sup>32</sup> *Ibid*.

<sup>33</sup> Young-Suk Ohm, 'Defining National Trade Policy Objective and Trade Diplomacy, in The Sejong Research Institute, *Korea's Economic Diplomacy*, Seoul, The Sejong Research Institute, 1995, p.495.

form of trade restrictions, subsidies and credit allocation. These protectionist policies went on until the 1970s.

By the 1980s, the government recognised the distortion created by its excessive interference into the economy during the 1970s - the so-called Heavy and Chemical Industry Promotion Policies - and then announced the Comprehensive Measures for Economic Stabilisation Programme to cure the distortion.<sup>34</sup> The Programme attempted to initiate a new direction away from simple growth maximisation and heavy intervention towards a more market oriented system. This was a radical departure from the previous forms of economic management and continues to this day. Liberalisation of imports and direct foreign investment was carried out to promote the more efficient allocation of resources. The government tried to give more autonomy to the private sector by establishing a competitive economic environment. However, there were substantial differences of opinion regarding the speed of liberalisation. The government adopted a gradual liberalisation to avoid political problems and adjustment costs which could have resulted from sudden liberalisation.<sup>35</sup> The government decreased the number of goods subject to trade restrictions as well as tariff rates, while maintaining the pace of liberalisation. By 1996, the number of restrictions and the average tariff rates for manufacturing goods were equivalent to those of most industrialised countries.<sup>36</sup>

On the other hand, import liberalisation for agriculture goods was not as successful because of domestic political reasons, but the pace of liberalisation even for agricultural goods has been steady.<sup>37</sup>

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<sup>34</sup> The programme included a wide range of market liberalisation policies. Its basic tenets consisted of attaining price stability, establishing an unbiased incentive structure, and promoting competition within the domestic market and from abroad. Chan-Hyun Sohn, Junsok Yang, and Hyo-Sung Yim, *op.cit.*, p.41.

<sup>35</sup> *Ibid.*, p.42.

<sup>36</sup> *Ibid.*, p.45.

<sup>37</sup> *Ibid.*, pp.45-6.

Due to the Programme, Korean exports started to rise when the worldwide recession ended in 1983, and Korea recorded its first trade account surplus in 1986. The government, more confident of its economic outcome, increased its pace of import liberalisation, not only to appease foreign pressure, but also to increase domestic competition so that consumers would benefit and production efficiency would increase.<sup>38</sup> As a result, the ratio of import liberalisation in 1994 when the dispute under examination occurred was 91.8% for agricultural products and 99.9% for industrial goods.<sup>39</sup> Furthermore, the trade surpluses during the 1980s and over-publicised image of Korea's economic potential led other industrialised countries, especially the United States, to consider Korea as an equal partner, or as the second Japan.<sup>40</sup>

Trade disputes between Korea and the United States could be easily understood in the historical context of their trade policies. Roughly, until the 1980s, trade friction was mainly caused by border measures. Since the 1990s, a new type of trade friction along with the traditional ones has emerged.<sup>41</sup> The new friction is the technical barriers related to access to Korean markets. As a matter of fact, trade disputes between the two countries were not serious until 1979. Major disputes until then arose mainly in three sectors: textiles and apparel, footwear, and colour television receivers; they involved Korean access to the U.S. market, and all began with an American action.<sup>42</sup> But, after 1979, U.S. trade policy to Korea changed rapidly. Quotas, tariffs and anti-dumping duties were imposed such that by 1985 thirty seven percent by value of Korean exports to the United

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<sup>38</sup> *Ibid.*, p.49.

<sup>39</sup> Korea Foreign Trade Association, *Trend of Korean-U.S. Trade Negotiation and Policy Agenda in the Future*, Seoul, 1994, p.43. [In Korean]

<sup>40</sup> Young-Suk Ohm, *op.cit.*, p.496.

<sup>41</sup> Kihwan Kim, 'Korea's "Globalisation" Policy and its Implications for Korea-U.S. Relations', in C.Fred Bergsten and Il Sakong, (eds.), *The Korea-United States Economic Relationship*, Washing D.C., Institute for International Economics, 1997, p.46.

States were under some form of restrictions.<sup>43</sup> A number of products were removed from eligibility under the “generalised system of [tariff] preferences(GSP)” scheme.<sup>44</sup> Considerable pressure was placed on Korea to open its market, re-value its currency, and adhere to international conventions covering intellectual property rights.<sup>45</sup> The United States has used the threat of retaliatory action under Section 301 of the 1974 Act and the so-called ‘Super 301’ provisions of the Omnibus Trade Act, unless its requests are satisfied.<sup>46</sup> K.A. Elliott pointed out that

Using a successful industrial policy was a factor in Korea’s success, but once Korea became relatively successful, Korea began to be seen as a free rider on the international system and as Korea matured, that policy needed to change. I think that has been the source of the tension between the U.S. and Korea in the last, say, fifteen to twenty years.<sup>47</sup>

The recent trade disputes between the two countries are described in terms of two categories: import restraints and market opening.

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<sup>42</sup> John S. Odell, ‘Growing Trade and Growing Conflict Between the Republic of Korea and the United States’ in Karl Moskowitz (ed.), *From Patron to Partner*, Massachusetts, D.C. Health and company, 1984, p.124.

<sup>43</sup> Ministry of Trade and Industry (MTI) of the Korean Government, *The Present Situation of U.S.- Korean Economic Relations*, 1997, p.89. [In Korean]

<sup>44</sup> The GSP scheme aims to stimulate exports from developing countries by charging lower tariffs or granting duty free entry to the developing countries' exports. See, WTO, <http://www.wto.org/wto/archives/qadev.htm>

<sup>45</sup> Brian Bridges, *Korea and the West*, London, Royal Institute of International Affairs, 1986, p.62.

<sup>46</sup> Masahide Shibusawa, Zakaria Haji Ahmad and Brian Bridges, *Pacific Asia in the 1990s*, London, Royal Institute of International Affairs, 1992, p.72.

<sup>47</sup> Personal Interview, Kimberly Ann Elliott(16 April, 1999 in Washington D.C.), a research associate at the Institute for International Economics, coauthor of *Reciprocity and*



## Import Restraints

In general, governments take diverse measures to protect domestic producers and workers from *fair* foreign competition. Tariffs constitute the main instrument for protecting domestic employment, or adjusting import prices that are otherwise deemed “unfair” to domestic competitors.<sup>48</sup> Governments, however, increasingly depend on non-tariff barriers (NTBs) to discourage imports. NTBs may operate through a quota or a voluntary restraint agreement which is negotiated with the exporting countries aiming either to limit the quantity of imported goods or to prohibit imports altogether.<sup>49</sup> Even though the GATT explicitly prohibits the use of quotas, except under specific circumstances, quotas have continuously existed.<sup>50</sup>

The United States controls by statute the quantity of imported sugar and has negotiated voluntary limits on steel, automobiles, and textiles that are imported from abroad.<sup>51</sup> Based on GATT’s escape clause,<sup>52</sup> the U.S. government provides relief to its domestic industries that are injured by imports under Section 201 of the 1974 Trade Act.

As far as *unfair* forms of foreign competition are concerned, there is the question of dumping;<sup>53</sup> in this case, the importing country can impose a dumping duty equal to the difference between the “fair value” and the price at which goods are sold for export to its own country.<sup>54</sup> Another form of unfair import pricing may result when governments grant producers subsidies. The importing country’s consumers may then benefit from the

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*Retaliation in U.S. Trade Policy* (1994), *Measuring the Costs of Protection in the United States and Japan* (1994), *Economic Sanctions Reconsidered* (second edition 1990).

<sup>48</sup> Stephen D. Cohen, Joel R. Paul and Robert A. Blecker, *op.cit.*, p.142.

<sup>49</sup> *Ibid.*, p.143.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> Article 19 of GATT enables countries to respond to the needs of their domestic industries by temporary adjustment to foreign competition.

<sup>53</sup> Imports are sold either at a lower price than those goods are normally sold in their home market or at a price below production costs.

<sup>54</sup> Stephen D. Cohen, Joel R. Paul and Robert A. Blecker, *op. cit.*, pp. 146-147.

exporter's subsidy, but its workers and producers may be harmed by unfair prices.<sup>55</sup> In order to neutralise the effect of the subsidy, the importing country usually imposes a countervailing duty on imports which is approximately equal to the net amount of the subsidy. The countervailing duty neutralises the effect of the foreign subsidy by raising the import price to the estimated price it would have been without a subsidy.<sup>56</sup> In the United States, Section 337 of the 1930 Tariff Act provides against unfair methods of import competition that threaten to or do indeed injure U.S. industry as well as the import of goods that infringe on U.S. patents, copyrights, or trademarks.<sup>57</sup>

The trade conflicts between Korea and the United States started with such import restraints. The U.S. import restraint measures imposed on Korea expanded from a quota and the escape clause to a dumping duty, countervailing duty, and finally the Section 337(infringement of U.S. patents, copyrights, or trademarks).<sup>58</sup>

Table 1-1 shows the evolution of U.S. import restraints on Korea over the last two decades. In the 1980s, American import restraints were decreased because the focus of the country's trade policy moved in the direction of opening the Korean market, as the Korean trade surplus with the United States was increasing. After the Super 301 negotiations in 1989 for a more open Korean market, the U.S. import restraints, mainly targeted to such goods as steel and semiconductors, has been increasing again.<sup>59</sup> At present dumping duties or countervailing duties are the main American tools to discourage Korean exports. Table 1-2 shows the percentage of Korea's exports under the U.S. import restraints.

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<sup>55</sup> *Ibid*, p.149.

<sup>56</sup> *Ibid*, pp. 149-150.

<sup>57</sup> Section 337 is popular due both to its versatility for relief and to the expedient process for obtaining relief, namely, "a U.S. industry can file a Section 337 complaint with the International Trade Commission (ITC). Within twenty days the ITC must decide whether to refer the matter to an administrative law judge employed by the commission for investigation or to dismiss the complaint." See *ibid*, p.151.

<sup>58</sup> Ministry of Trade and Industry of the Korean Government, *op.cit.*, p.88.

<sup>59</sup> *Ibid*, p.89.

**Table 1-1 Evolution of U.S. Import Restraints on Korea**

	Anti-Dumping	Countervailing Duty	Section 337	Section 201	Government Agreement	Total
1976	0	0	0	1	0	1
1980	3	1	0	4	0	8
1985	7	4	1	3	3	18
1986	10	1	1	1	3	16
1987	11	1	1	0	3	16
1988	5	1	2	0	3	11
1989	6	1	2	0	3	12
1990	8	1	0	0	3	12
1991	9	1	2	0	2	14
1992	11	1	2	0	2	14
1993	14	2	2	0	1	19
1994	14	2	2	0	1	19
1995	14	2	2	0	1	19

Source: MTI, *The Present Situation of U.S.- Korean Economic Relations*, 1997, p.88, [In Korean]

**Table 1-2 Evolution of Korean Exports under U.S. Import Restraints**  
( U.S. million dollars)

	89	90	91	92	93	94	95
Total exports to the U.S.(A)	20,991	19,360	18,599	18,090	18,138	20,553	24,131
Exports under import restraints(B)	4,425	3,994	3,597	2,895	4,506	5,401	6,859
B/A (%)	19.7	20.6	19.3	16.0	24.8	26.3	28.4

Source: MTI, *The Present Situation of U.S.- Korean Economic Relations*, 1997, p.89.

## Market Opening

The impact of export policy is at least as important as that of import policy on domestic employment.<sup>60</sup> As a rule, export policy is formulated on a case-by-case basis and is highly dependent on political relations, security considerations and economic interests.<sup>61</sup> The U.S. government has a variety of programmes for promoting U.S. exports. With respect to the market-opening laws, Section 301 of the 1974 Trade Act is a powerful tool for opening foreign export markets to U.S. producers. Section 301 authorises the United States Trade Representative (USTR) to retaliate against policies that hurt American exports. This retaliation can vary from suspending or withdrawing from trade agreements, to imposing tariffs or quotas on foreign imports, and negotiating new agreements in order to eliminate the offending policies.<sup>62</sup>

Faced with the twin deficits of trade and the budget in the 1980s, the American government emphasised the need for balanced and fair trade, and pressured Korea to open its market comprehensively by liberalising imports and reducing tariffs.<sup>63</sup> The Americans even went as far as to threaten retaliation under Section 301 unless their demands were met. The Korean government accepted,<sup>64</sup> but it did so very reluctantly and only after many quarrels.<sup>65</sup> The Korean government proceeded with the adjustment and implementation of

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<sup>60</sup> Stephen D. Cohen, Joel R. Paul and Robert A. Blecker, *op.cit.*, p.152.

<sup>61</sup> *Ibid*, p.152.

<sup>62</sup> Significantly, when Japan refused to import a minimum of U.S. automobiles and automotive parts, President Clinton threatened in May 1995 that the United States impose 100 percent tariffs on a number of Japanese cars and car parts on the basis of Section 301. See *ibid*, p. 152. p.154.

<sup>63</sup> Ministry of Trade and Industry of the Korean Government, *op.cit.*, p. 96.

<sup>64</sup> "Many Koreans were convinced that they had been victimised although they had been a loyal ally of the United States. A number of moves, such as the imposition of a duty of 64 percent on Korean photo albums, in October 1985, or the July 1986 package of measures allowing tobacco imports and agreeing to strengthen patent and copyright protection were strongly criticised in the Korean press." See Brian Bridges, *op.cit.*, p. 62.

<sup>65</sup> Soo-Gil Young, 'Korean Trade Policy: Implications for Korea-U.S. Cooperation', in Thomas O. Bayard and Soo-Gil Young, (eds.), *op.cit.* p.120.

the Import Liberalisation Plan, which included those items that the U.S. government demanded for its exporting industries.<sup>66</sup> According to the five-year tariff reduction plan (1989-1993), Korea reduced tariffs on industrial products from 20.6 percent in 1984, to 6.25 percent in 1994, which was lower than the 6.4 percent of Japan in 1990.<sup>67</sup>

More recently, the focus on the trade conflicts between both countries was transferred from market opening to market access. The basic concern of market access is to lift certain restrictions related to administrative regulations, import processes such as customs clearance or sanitary inspection, and the system of domestic distribution of products in Korea.<sup>68</sup> What constitutes the U.S. ultimate goal is to overcome the technical barriers to trade. Measures like austerity campaigns, tax investigation, and the restriction of advertisement opportunity have also been dealt with as invisible trade barriers during the 1990s. The shelf-life trade dispute, which is examined in this study, occurred in the context of this trend. So far the major trade disputes regarding the opening of the Korean market have been about the following: cigarettes, wine, beef, film, communication, insurance, automobiles, alignment of currency, intellectual property rights, and Super 301 negotiation.<sup>69</sup>

## 1.4 Conclusion

Although there is a matter of degree, any international economic dispute is related to numerous factors. Insofar as we attempt to examine an economic dispute between Korea and the United States, it is essential to review the overall economic relations

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<sup>66</sup> Ministry of Trade and Industry of the Korean Government, *op.cit.*, p.96.

<sup>67</sup> Chung In Moon, 'US Trade Policy and US-Korea Trade Relations', in Ki Soo Kim (ed.), *Understanding of US Trade Policy*, Seoul, Sejong Research Institute, 1996, p.220. [In Korean]

<sup>68</sup> *Ibid*, pp. 219-222.

between the two countries. This enables us not only to draw an outline of the issue but also to capture the distinctive features of it. The aim of this chapter is to avoid the situation in which we can see only the trees without seeing the wood by providing the shelf-life dispute under examination with a proper historical background.

From 1945 to the early 1970s, the economic relationship between the two countries was asymmetrical. Korea was clearly the client. The United States was the patron, supporting its client because of the importance of the Korean commitment to its regional and global policies.<sup>70</sup> In the 1970s the relationship between the two countries started to lose this asymmetrical, patron-client character. Economic aid finally ended with Korea shouldering most of the burden of its own defence. In trade relations and, to a certain extent, in the security area, the relationship became more symmetrical.<sup>71</sup> In the 1980s, Korea-U.S. trade relations were very strained. From the U.S. point of view, the most troublesome aspect of the relationship was the rapid surge of Korean imports which not only led to structural adjustments in the United States, but also appeared to aggravate the country's balance of payments deficit. In order to deal with these problems, the U.S. government had to employ its full arsenal of policy tools: antidumping charges, countervailing duties, voluntary exports restraints, and Section 301 actions.<sup>72</sup> In the 1990s, the Korean economy emerged as an industrial powerhouse. In such industries as consumer electronics and memory chips, Korea has managed not just to enter but also to excel in international competition.<sup>73</sup> Furthermore, Korean exports have depended far less on the U.S. market. While in the mid-1980s, nearly 40 percent of Korea's exports went to the

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<sup>69</sup> Ministry of Trade and Industry of the Korean Government, *op.cit.*, pp.97-105.

<sup>70</sup> Karl Moskowitz, *op.cit.*, p.7.

<sup>71</sup> *Ibid*, p.7.

<sup>72</sup> Kihwan Kim, *op.cit.*, p.45.

<sup>73</sup> Joseph Stiglitz, 'Challenges for the U.S. and Korean Economies', in C. Fred Bergsten and Il Sakong (eds.), *The Korea-United States Economic Relationship*, Washing D.C., Institute for International Economics, 1997, p.124.

United States, in the mid-1990s, the corresponding figure dropped to less than 20 percent. More importantly, Korean exports to the United States as a percentage of total U.S. imports fell from a peak of 4.6 percent in 1988, to 3.2 percent in 1995.<sup>74</sup>

Based on this historical context, what implications could be given to the shelf-life dispute under examination? First, when the dispute took place, economic relations between the two countries were more symmetrical than in the past. Korea in 1995 was already the fifth largest market for U.S. exports and the third largest market for American agricultural products with total annual purchases of more than 30 billion dollars.<sup>75</sup> Moreover, in the early 1990s, the trade balance between the two countries was maintained, but Korea again recorded a trade deficit of 1 billion dollars in 1994, and 6.3 billion dollars in 1995. Thus, there would be a possibility for more balanced discussion by the two countries. Second, the shelf-life dispute concerns the technical barriers related to access to the Korean meat market. This kind of dispute resulted from structural differences in the two economies. Thus, it would require much more time and efforts to settle the dispute compared with traditional disputes due to border barriers.<sup>76</sup>

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<sup>74</sup> Kihwan Kim, *op.cit.*, p.45.

<sup>75</sup> *Ibid*, p.37.

<sup>76</sup> *Ibid*, p.46.

## Chapter 2 Theoretical Concerns

### 2.1 Introduction

As national governments have increasingly found themselves involved in international trade disputes, scholars have attempted to analyse this form of conflict. In analysing the settlement of trade disputes, a range of analytical and theoretical frameworks based on various *research programmes*<sup>1</sup> have been used. Some of them may provide us with more persuasive explanations than others. With time, however, any programme might lose its validity as international trade disputes themselves change continuously. In that case the programme will disappear as a degenerating scientific research programme, and a new one will replace it. So far realism, liberalism, and institutionalism have been used in analysing the causes and effects of trade disputes between Korea and the United States, especially focusing on American trade policy behaviour. The three research programmes all are progressive problem solvers and no dogmatic choice should be made among them.<sup>2</sup> Given that there is no general theory of international trade negotiation and these research programmes give some insights in understanding this field, it is useful to review the research programmes in order to find an appropriate *framework for analysis* (approach)<sup>3</sup> for the case under examination.

In examining the previous trade disputes between Korea and the United States, the programmes, specifically research approaches derived from them, focused on a specific part of the disputes such as outcomes or initiatives and explained mainly on the basis of one of them. However, it is more fruitful to view these research approaches as

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<sup>1</sup> M.P. Ryan, 'USTR's Implementation of 301 Policy in the Pacific,' *International Studies Quarterly*, Vol.39, 1995, pp.338-9.

<sup>2</sup> *Ibid*, p.338.

<sup>3</sup> In this study, "approach" means a framework for analysis.



complementary even if they are often considered mutually exclusive. The realist and liberal approaches could be enhanced by focusing more explicitly and positively on government officials and institutions and their role in the policy process.<sup>4</sup> The assumptions underlying this chapter therefore are threefold: (1) trade negotiation characteristics can be analysed in the context of the above three approaches; (2) in terms of the outcome of negotiations, the realist approach seems more progressive, whereas in terms of the domestic process of negotiations, the other two approaches become more relevant; and, (3) therefore, a thorough analysis of a negotiated trade case requires all three approaches. The balance among them in terms of importance varies depending on the country, the issue or the historical period.

This chapter is divided into four parts. Each of the following three sections looks at one of the research programmes. With respect to the scope of explanation of research programmes, a detailed discussion is not necessary because our concerns are not the research programmes themselves but their analytical approach, and more precisely whether or not the approaches could provide a complete explanation of trade negotiations. In the context of our purpose to find an appropriate approach to investigate the case of this thesis, it is more important to derive basic assumptions from scholars sharing the same research programme rather than to divide them. Thus, this study only focuses on the basic assumptions<sup>5</sup> of these scholars. In addition, these assumptions should be viewed as an ideal and pure type in that they come from what a number of seemingly diverse theoretical

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<sup>4</sup> G.J. Ikenberry, D.A. Lake, and M. Mastanduno, 'Introduction: Approaches to Explaining American Foreign Economic Policy,' *International Organisation*, Vol.42, No.1, 1988, pp.2-3.

<sup>5</sup> From the standpoint of methodology, assumptions should be viewed not in terms of descriptive accuracy but, rather, in terms of how fruitful they are in generating insights and valid generalisations about international relations. In this respect, "assumptions are neither true nor false; they are more or less useful in helping the theorist derive testable propositions or hypotheses about international relations. Once hypotheses are developed,

approaches have in common.<sup>6</sup> As time goes on, research programmes will evolve into progressive scientific ones, by adding a new concept or broadening the meaning of existing concepts.

After discussing the assumptions of each research programme, there follows a brief review of research performed within the research programme in order to see how scholars derived their analytical approaches. It is difficult however to find ideal or typical researches within each research programme because scholars often have chosen the approaches transformed from an ideal form according to their research goals. Scholars have tried to prove some hypotheses derived from their basic assumptions. For example, John Odell applied the power theory of realism in explaining the results of trade negotiations between Korea and the United States. The research projects are selected by the following criteria; first, whether they are about trade disputes between Korea and the United States, or alternatively, we select trade disputes between the United States and East Asian countries including Korea.

The same framework of explanation applies to the following two sections: liberalism and institutionalism. In order to compare these research approaches, they are dealt with *altogether in the last section*. We attempt to assess them in terms of their usefulness and limits by focusing on to what extent they cover diverse aspects of trade negotiations. Finally, it is suggested that we cannot draw a complete picture of the case of this thesis unless we see it from the different direction of all the three approaches since each approach shows only one aspect of it. As a conclusion, an approach for our case study is presented.

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they are tested against the real world.” See P.R. Viotti and M.V. Kauppi, *International Relations Theory*, 2<sup>nd</sup> ed., Boston, Allyn and Bacon, 1993, p.36.

<sup>6</sup> *Ibid*, p.11.

## 2.2 Realism

Realism has been a dominant research programme in international relations theory at least since the Second World War. Realists argue that international anarchy promotes competition and conflict among states, and prohibits their willingness to cooperate even in the face of common interests.<sup>7</sup> As will become apparent, proponents of the other two research programmes have to a certain degree been forced to come to terms with this long-established tradition. Indeed, many of their arguments are addressed directly to the strengths and weaknesses of realist work.<sup>8</sup> After discussing the assumptions of realism, we look at the research results by Odell who analysed 13 commercial disputes between Korea and the United States from 1960 through 1981 on the basis of this research programme. In particular, among the following assumptions of realism, *power* is the core of our concerns in the view of the analysis of the case under examination. In international trade negotiations - in which the objective of a country will be to achieve its economic interests - power should be understood as negotiation power. The discussion about negotiation power as an important factor of trade negotiations is presented in the next chapter.

### 2.2.1 Assumptions

Realism is a set of theories associated with a group of thinkers who emerged in the late interwar period, distinguishing themselves from idealists in that they believed in the centrality of power for shaping politics, the prevalence of power politics, and the danger of

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<sup>7</sup> J.M. Grieco, 'Anarchy and the Limits of Cooperation: a Realist Critique of the Newest Liberal Institutionlism,' *International Organisation*, Vol.42, No.3, Summer 1988, p.485.

<sup>8</sup> P.R. Viotti and M.V. Kauppi, *op.cit.*, p.5.

making foreign policy based on morality or reason rather than interest and power.<sup>9</sup> The realist research programme refers to the shared fundamental assumptions realists make about the world. The key assumptions are four.<sup>10</sup> First, *states are the principal or most important actors*, and the study of international relations focuses on these units.<sup>11</sup> Realists who use the concept of system in terms of interrelated parts refer to an international system of states. Nonstate actors such as multinational corporations or transnational organisations are decidedly less important. They may aspire to the status of independent actor, but this aspiration has not been fulfilled to any significant degree because the international system is composed of sovereign, independent, and autonomous states which determine the environment in which they act.<sup>12</sup> In some cases, nonstate actors are acknowledged by realists, but their position is definitely one of less importance. For realists the focus is on states and interstate relations.

Second, the state is viewed as *a unitary actor*.<sup>13</sup> Any differences of view among political leaders or bureaucracies within the state are ultimately resolved so that the government of the state speaks with one voice for the state as a whole.<sup>14</sup> A state faces the outside world as an integrated unit. If there are exceptions-if a foreign ministry expresses policies different from statements of the same country's defence ministry- corrective action is taken in order to bring these alternative views under a common and authoritative statement of policy.<sup>15</sup> 'End running' of state authorities by bureaucratic and

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<sup>9</sup> J.A. Vasquez, 'The Realist Paradigm and Degenerative versus Progressive Research Programs: An Appraisal of Neotraditional Research on Waltz's Balancing Proposition', *American Political Science Review*, December 1997, Vol.91, No.4, p.899.

<sup>10</sup> The realist assumptions are explained differently by scholars. Here, they are mainly introduced on the basis of the explanation of Viotti and Kauppi. See P.R. Viotti and M.V. Kauppi, *op.cit.*, pp.5-7, pp.35-66.

<sup>11</sup> *Ibid*, p.5, p.35.

<sup>12</sup> *Ibid*, p.35.

<sup>13</sup> *Ibid*, p.6, p.35.

<sup>14</sup> *Ibid*, p.35.

<sup>15</sup> *Ibid*, p.6.

nongovernmental, domestic, and transnational actors is also possible, but it only occurs when the stakes are low.<sup>16</sup> The realist thus assumes that the state, as a unitary actor, has one policy at any given time on any particular issue.

Third, realists also assume *that the state is essentially a rational actor*.<sup>17</sup> States consider feasible alternatives to achieve their goals in the light of their existing capabilities. They recognise problems of lack of information, uncertainty, bias, and misperception, but they assume that decision makers strive to achieve the best possible decision even within these constraints.<sup>18</sup> To be sure, the realist is aware of the difficulties in viewing the state as a rational actor: government decision makers may not have all the factual information or knowledge of cause and effect they need to make value-maximising decisions.<sup>19</sup> However, although the choice made is not always the best or value-maximising one, it is perceived to be at least a satisfactory one in terms of the objectives sought.

Fourth, among the array of world issues, *national security* tops the list for states.<sup>20</sup> Military and related political issues dominate world politics. To the realist, military security or strategic issues are sometimes referred to as high politics, as opposed to economic and social issues that are viewed as less important or low politics. The former is often understood to set the environment within which the latter occurs. States seek to maximise what is often called the national interest. They use the power they have to serve their interests or achieve their objectives. To most realists, the struggle for power among states is thus at the core of international relations. According to Morgenthau, “International politics, like all politics, is a struggle for power. Whatever the ultimate aims

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<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid*, p.6, p.35.

<sup>18</sup> *Ibid*, pp.35-6.

<sup>19</sup> *Ibid*, p.6.

<sup>20</sup> *Ibid*, p.7.

of international politics, power is always the immediate aim.”<sup>21</sup> Although some realists have been concerned with values, norms, and formal rules agreed on by states, most realists place a greater emphasis on power and power politics among states.<sup>22</sup> Thus, *power is a key concept*. As a result of these assumptions,<sup>23</sup> realism does not admit trade negotiations as an interesting empirical problem and in fact has little to say about it. However, realists have changed to theorise about international political economy because it had to change in order to continue to be a progressive research programme capable of solving new emerging problems.<sup>24</sup>

According to Ryan, realist political economy assumes that (1) states are the only meaningful actors in the world political economy; (2) the goals of actors are relative gains in wealth and power, so states will seek not to achieve absolute gains for the world economy but relative gains which will come at the expense of its partners; (3) economic sanction is the most effective instrument of policy, and (4) shifts in the structure of international economic wealth and power set the agenda.<sup>25</sup> In this context, realist political economy concludes that international structure determines state policy choices.<sup>26</sup> This point has been demonstrated to a large extent by Odell’s research that has established that the structure of bilateral state power broadly determines winners and losers in the

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<sup>21</sup> H.J. Morgenthau, *Politics Among Nations*, 4<sup>th</sup> ed., New York, Knopf, 1966, p.25.

<sup>22</sup> P.R. Viotti and M.V. Kauppi, *op.cit.*, pp.36-7.

<sup>23</sup> Grieco summarises the assumptions of realism as follows: “First, states are the major actors in international relations. Second, ..... states are “sensitive to costs” and behave as unitary-rational actors. Third, international anarchy is the principal force shaping the motives and actions of states. Fourth, states in anarchy are preoccupied with power and security, are predisposed towards conflict and competition, and often fail to cooperate even when they share common interests. Finally, international institutions affect the prospects for cooperation only marginally.” See, J.M. Grieco, *op.cit.* p.488.

<sup>24</sup> M.P. Ryan, *op.cit.*, p.338.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

settlement of bilateral trade disputes.<sup>27</sup> That is, the power structure is the salient determinant to explain the variations of bilateral trade negotiation outcomes.

Thus, if we want to understand the bilateral trade negotiations from the perspective of realism, we have to investigate the power structure of two countries. According to realists, the power structure is the only salient determinant to explain the variation of bilateral trade negotiation outcomes. Interest groups and institutions within states have no importance to shaping the outcomes of trade negotiations. States are supposed to make optimal solutions regardless of the domestic policymaking process within them. Whether or not states can achieve their objectives depends on the power structure. When these realist assertions apply to the case of Section 301 of the U.S. Trade Act, we can safely argue that the United States is not likely to take up a case against a country over which it has no trade leverage, whereas it will take up the cases of industries which are commercially competitive so that it can enhance its own state power and wealth in the world political economy.<sup>28</sup> In addition, it can be predicted that the United States will always be a winner in the Section 301 trade negotiation in that it has powerful economic capacities and its own retaliation power in the case of the failure of the negotiation. These points could be examined through our case analysis. Now, we look at the typical realist research project conducted by Odell.

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<sup>27</sup> J.S. Odell, 'The Outcome of International Trade Conflicts: The US and South Korea, 1960-1981', *International Studies Quarterly*, Vol.29, 1985, pp.263-286.

<sup>28</sup> M.P. Ryan, *op.cit.*, p.338.

### 2.2.2 Odell's Research<sup>29</sup>

Odell focused on the experiences of Korea and the United States from 1960 through 1981, in an effort to establish firmer knowledge on trade conflicts between the United States and industrialising countries. His key question was "what explains the outcomes and their variations? In short, who 'wins', to what extent, and why?"<sup>30</sup> He intended to explore the value of power theories of international political economy, saying that:

Observers often suspect that power structures and differences are important at least in some loose sense, and careful work has also established some effects. But there is still a wide gap between power theories and the vast range of concrete experience. Studies of concrete economic conflict outcomes should illuminate the strengths and limits of these ideas.<sup>31</sup>

According to Odell, although it could be suggested that power differences are always not all-determining, and that there are tactics that might have been used to escape from relative weakness, how do developing countries react when faced with trade demands from a stronger country? And does it matter what they do?<sup>32</sup>

Based on these perceptions, he examined 13 significant trade disputes between Korea and the United States, spanning three industrial sectors. In this research, four general hypotheses were proposed for explaining variations in the bilateral trade negotiation outcomes, and a technique for comparing outcomes was devised. The

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<sup>29</sup> This following summary draws from J.S. Odell's research; *The Outcome of International Trade Conflicts: The US and South Korea, 1960-1981* (in *International Studies Quarterly*, Vol.29, 1985).

<sup>30</sup> J.S. Odell, *op.cit.*, p.263.

<sup>31</sup> *Ibid*, p.264.



negotiation outcomes varied in the degree to which each government achieved its initial objectives. The pattern of variations was explained in terms of interstate power structure, domestic distribution of power among industries in the United States, international bargaining process, and to some extent sectoral market conditions.<sup>33</sup> In selecting the 13 significant trade disputes, disputes were included in this study if the value of trade at stake was more than US\$50 million in the year prior to the outcome. Also included were cases of smaller current trade value if the trade at stake amounted to 10 percent or more of either country's exports.<sup>34</sup> Outcomes were compared on a nine-point ordinal scale developed for classifying each outcome relative to the initial positions of the two governments. The procedure assumed that an outcome, from the viewpoint of state A, consisted of a combination of concessions A demanded and B yielded, and concessions B demanded and A yielded. The ideal result for A would be the one with all its requests granted and no concessions yielded, and the least favourable outcome would be the reverse. Ordinal number one is taken to represent the most favourable outcome for the United States and nine for Korea.<sup>35</sup>

Table 2-1 shows the record of important trade disputes between the two countries. They all were conflicts over access to the U.S. market for Korean products. Nine of the 13 cases had arisen in the textiles/apparel sector, and four other disputes had concerned footwear and colour television receivers. None of these outcomes was highly favourable to Korea. Three were classified as intermediate and ten were more favourable, by varying degrees, to the U.S. initial position than to that of Korea.<sup>36</sup>

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<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*, p.263.

<sup>34</sup> *Ibid.*, p.265.

<sup>35</sup> *Ibid.*, pp.265-70.

<sup>36</sup> *Ibid.*, p.272.

**Table 2-1. Trade Disputes Classified According to Their Outcomes**

Outcome category	Dispute
9	None
8	None
7	None
6	None
5	1974 textiles and apparel
4	1972 textiles and apparel 1977 footwear orderly marketing agreement
3	1967 textiles and apparel 1979 textiles and apparel 1980 colour television receivers
2	1963 textiles and apparel 1976 footwear countervailing duty case 1977 textiles and apparel 1979 colour television receivers 1980 textiles and apparel 1981 textiles and apparel
1	1965 textiles and apparel

Source: J.S. Odell, 'The Outcome of International Trade Conflicts: the US and South Korea, 1960-1981' in *International Studies Quarterly*, Vol.29, 1985, p.267.

In order to explain variations in these bilateral conflict outcomes, Odell's research proposed four hypotheses:

- Sectoral market conditions: *greater import penetration will imply a bargaining outcome closer to the opening position of the importing state.*
- Domestic political structure; *settlements should be more favourable for Korea when it is facing a domestically weaker U.S. interest group.*

- International power structures: *the stronger will prevail more often and to a greater extent than the weaker.*
- The interstate bargaining process: *If an actor uses specified strategies or tactics, the outcomes will be more favourable to that party than what would have been expected on structural grounds.*<sup>37</sup>

This research concluded that the bilateral power imbalance strongly shaped negotiation outcomes. The outcomes were usually closer to Washington's initial objectives than to those of Seoul, but they also varied significantly from case to case. Based on that, Odell asserted that this analysis demonstrated how structures of economic power imprint themselves on day-to-day reality, and confirmed the utility of power theories of the world political economy and negotiation. Furthermore, he argued that the superpower did clearly come out ahead of the weaker power in many cases, as a traditional power analyst would have predicted.<sup>38</sup> Of course, he pointed out that power structures were not all-determining, saying that negotiation strategy and tactics could make a difference in concrete outcomes. He also proved that the import penetration hypothesis contributed little in the interpretation of these Korea-U.S. outcomes. Their variations were also virtually irrelevant to the domestic political clout of the American import-competing industries. These negative results represented a very small number of sectors, and as such were inconclusive.<sup>39</sup>

When we think of these research results, however, the two countries during the period from 1960 to 1981 were very asymmetrical in terms of power or economic volume, so there was no room for other factors to affect the negotiation outcomes.<sup>40</sup> Thus, it is

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<sup>37</sup> *Ibid*, pp.272-76.

<sup>38</sup> *Ibid*, p.283.

<sup>39</sup> *Ibid*, pp.283-4.

<sup>40</sup> In 1980 Korea's GDP still totalled only about one forty-fifth that of the United States. In the same year Korean exports to the United States amounted to about 7 percent of Korea's

likely that the recent improvement in Korea's relative economic power could allow other factors to affect trade negotiation process and outcomes. Nevertheless, Odell's research seemed to confirm the value of a traditional power perspective, that is, the economic power<sup>41</sup> structure of the two countries could shape trade negotiation outcomes.

In the following section, we look at liberalism. Liberals examined other aspects of the same disputes from a different angle of interest group politics.

## 2.3 Liberalism

A common denominator of various liberal approaches is an interest in the individual or group as unit of analysis. Some American scholars have seen international relations through domestic political lenses. They view interest groups as the important determinant of trade policy, and focus on the domestic policymaking process. Many U.S. trade disputes have been analysed from this perspective. Thus, here liberalism in fact means interest group liberalism. But, as far as it is concerned with its assumptions, we use the term liberalism in some broad sense to include all the liberal approaches as well as pluralism, as opposed to the unitary state which is the centre of realist writings.<sup>42</sup> All of

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GDP, while the United States relied on Korea to buy exports equivalent to only 0.18 percent of its GDP. See, *ibid*, p.274.

<sup>41</sup> According to Odell, economic power means "the ability to influence policies and conditions abroad, and to resist influence from abroad, by means of economic policies and resources." See, *ibid*, p.274.

<sup>42</sup> According to Viotti and Kauppi, the intellectual precursors of pluralism consist of two themes: liberalism as a political philosophy and interest group liberalism as an approach to the study of domestic politics. What the group is to the interest group liberal, the individual is to the liberal philosopher. In any event, what they have in common is agreement on the fragmented nature of the state and society and the potential for harmony to develop out of competition and conflict. The primary function of the state is as arbiter of conflicting demands and claims, or as an arena for the expression of such interests. Moreover, the focus of analysis is less on the state and more on the competition among individuals and groups. In this sense, here we see liberalism as the broadest meaning to

the liberal approaches seem to start from the same assumptions. Furthermore, pluralism of international politics held by many American international relations scholars in fact can be understood as a projection of American political processes onto the entire globe.<sup>43</sup>

Liberalism contrasts with realism in that the state should be disaggregated into component parts or becomes the battleground for competing interests.<sup>44</sup> According to liberalism, state-society relations-the relationship of states to their domestic and transnational social context- have a fundamental impact on state behaviour in international relations; societal ideas, interests, and institutions influence state behaviour insofar as they shape state preferences.<sup>45</sup> Although relations among states can be charted without ever looking “inside” the states, liberalism argues that a complete understanding of these relations requires an analysis of the domestic process of each country.<sup>46</sup> Andrew Moravcsik points out that: “For liberals, the configuration of state preferences matters most in world politics-not, as realists argue, the configuration of state capabilities and not, as institutionalists (that is, regime theorists) maintain, the configuration of information and institutions.”<sup>47</sup>

This section first looks at the assumptions of liberalism, then at a research based on this research programme.

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contain the three concepts: pluralism, liberalism, and interest group liberalism. See P.R. Viotti and M.V. Kauppi, *op.cit.*, pp.7-8, pp.228-250.

<sup>43</sup> *Ibid.*, p.232.

<sup>44</sup> *Ibid.*, pp.229-30.

<sup>45</sup> A. Moravcsik, ‘Taking Preferences Seriously: A Liberal Theory of International Politics’, *International Organisation*, Vol.51, No.4, Autumn 1997, p.513.

<sup>46</sup> P.R. Viotti and M.V. Kauppi, *op.cit.*, p.234.

### 2.3.1 Assumptions

Although various assumptions have been suggested depending on the preference of liberals,<sup>48</sup> here we only focus on those aspects of liberalism that lead to the rejection of the state as a unitary and rational actor. Viotti and Kauppi point out the four key assumptions of liberalism. First, *nonstate actors* are important entities in international relations that cannot by any means be disregarded.<sup>49</sup> Liberals view the state as “essentially passive; it acts as a disinterested referee for competing groups, and supplies policies to satisfy the demands of successful domestic players.”<sup>50</sup> Liberal approaches attribute little importance to policymakers and political institutions in trade policy.<sup>51</sup> International organisations are more than mere forums within which states compete or cooperate with one another, rather, they can be perfectly independent actors in their own right. The organisation’s own decision makers, bureaucrats, and other associated groups exert considerable influence in areas such as agenda setting-determining politically important issues. Other actors, such as industry associations and multinational corporations (MNCs), can not be ignored either, given an increasingly interdependent world economy. Indeed, on several occasions they

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<sup>47</sup> A. Moravcsik, *op.cit.*, p.513.

<sup>48</sup> As liberal IR theory’s fundamental premise, Moravcsik suggests three assumptions which specify the nature of societal actors, the state, and the international system as follows: “(1) The Primacy of Societal Actors: The fundamental actors in international politics are individuals and private groups, who are on the average rational and risk-averse and who organise exchange and collective action to promote differentiated interests under constraints imposed by material scarcity, conflicting values, and variations in societal influence..... (2) Representation and State Preferences: States (or other political institutions) represent some subset of domestic society, on the basis of whose interests state officials define state preferences and act purposely in world politics..... (3) Interdependence and the International System: The configuration of interdependent state preferences determines state behaviour.” See, *ibid*, pp.516-520.

<sup>49</sup> P.R. Viotti and M.V. Kauppi, *op.cit.*, p.7, p.228.

<sup>50</sup> G.J. Ikenberry, D.A. Lake, and M. Mastanduno, *op.cit.*, pp.7-8.

<sup>51</sup> E.D. Mansfield and M.L. Busch, ‘The Political Economy of Nontariff Barriers: a Cross-National Analysis,’ *International Organisation*, Vol. 49, Autumn 1995, p.724.

even circumvent the authority of the state. Liberal theory rests on a “bottom-up” view of politics according to which individuals and societal groups are treated as prior to politics.<sup>52</sup>

Second, *the state is not a unitary actor acting with single-minded determination and in a coherent manner.*<sup>53</sup> Authority is decentralised within modern states as well as the international area.<sup>54</sup> The state is a multiplicity of competing individuals, interest groups, and bureaucracies that attempt to formulate or influence trade policy. Different organisations may see a particular trade policy issue from a different angle. Competition, coalition-building, and compromise among different actors will eventually lead to a decision which is then announced in the name of the state.<sup>55</sup> In other words, the state decision may be the result of lobbying carried out by interest groups, or multinational corporations, or by something as amorphous as public opinion.<sup>56</sup> Liberalism breaks the state into its component parts, thus offering greater complexity than the relatively simpler image of states as unitary actors interacting with one another.

Third, liberals *challenge the utility of the realist assumption of the state as rational actor.*<sup>57</sup> Within the state, there are sub-systemic forces undermining states’ rationality such as organisational and bureaucratic politics, small group dynamics, and individual psychology.<sup>58</sup> Trade policies are the products of competition among interest groups and other nonstate actors that are affected by commerce.<sup>59</sup> Thus, the policymaking process may not yield a best or optimal decision. In some cases, a particular policy may be suggested aiming to enhance the bureaucratic power, prestige, and standing of one

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<sup>52</sup> A. Moravcsik, *op.cit.*, p.517.

<sup>53</sup> P.R. Viotti and MV. Kauppi, *op.cit.*, p.7, p.228.

<sup>54</sup> J.M. Grieco, *op.cit.*, p.489.

<sup>55</sup> P.R. Viotti and MV. Kauppi, *op.cit.*, p.228.

<sup>56</sup> *Ibid*, pp.228-9.

<sup>57</sup> *Ibid*, p.8, p.229.

<sup>58</sup> G.T. Allison, *Essence of Decision: Explaining the Cuban Missile Crisis*, Boston: Little, Brown, 1971, cited in J.M. Grieco, *op.cit.*, p.489.

<sup>59</sup> E.D. Mansfield and M.L. Busch, *op.cit.*, p.724.

organisation at the expense of others. Misperception or bureaucratic politics may dominate the policy-making process.<sup>60</sup> The pursuit of individual, value-maximising strategies can lead to collective disaster at the state level. All such factors undermine the concept of a rational decision-making process.

Finally, for liberals, *the agenda of international politics is extensive*.<sup>61</sup> As international tensions decrease after the Cold War, economic, social, and environmental issues tend to come to the forefront of international debate. While states become less concerned about power and security affairs, the increasing economic contacts leave them dependent on one another in accomplishing their economic growth, employment, and price stability.<sup>62</sup> Foreign affairs agendas have both expanded and diversified. Some liberals emphasise trade, monetary issues and how these issues have come to be placed high on the international agenda, whereas others deal with the politics of international pollution and the general degradation of the environment.<sup>63</sup> Therefore, the high versus low politics dichotomy is rejected.<sup>64</sup>

On the other hand,<sup>65</sup> Ryan also suggests the four assumptions of liberal political economy:

- (1) international economic organisations and regimes, individual government agencies, multinational corporations and labour group are meaningful actors in the

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<sup>60</sup> P.R. Viotti and M.V. Kauppi, *op.cit.*, p.229.

<sup>61</sup> *Ibid*, p.8, p.229.

<sup>62</sup> J.M. Grieco, *op.cit.*, p.489.

<sup>63</sup> P.R. Viotti and M.V. Kauppi, *op.cit.*, p.229.

<sup>64</sup> *Ibid*.

<sup>65</sup> According to Keohane and Nye, liberalism in contemporary international relations assumes that (1) non-state entities such as sub-national groups, international governmental and non-governmental organisations, and multinational corporations are meaningful actors (2) goals of states vary according to the issue area, (3) instruments of policy vary according to the issue area (4) shifts in international power within issue areas, mediated by international regimes, set agendas, (5) absence of issue linkage diminishes hierarchy of security, military power, and strong states. See, R.O. Keohane and J.S. Nye, *Power and Interdependence: World Politics in Transition*, Boston, Little Brown, 1977, p.37.



world political economy, (2) absolute gains in wealth are the goals of actors, (3) norms are an instrument of policy, and (4) shifts in international economic power, mediated by international economic regimes, set agendas.<sup>66</sup>

In short, liberal approaches to the study of trade policy concentrate on the effects of demands for protection by interest groups.<sup>67</sup> They assert that international economic regimes and domestic political economic factors influence state policy choices, and trade policy explanations cannot be reduced to international structures.<sup>68</sup> Liberal political economy therefore has studied US trade policy by examining the domestic interest groups that pressure for state trade policy positions and the inter-branch relationship between the President and Congress.<sup>69</sup> But, whether it is a trade policy or a trade negotiation, a complete understanding could not be obtained unless the structural position of the country is considered. Next, we look at recent research conducted from the liberal perspective.

### **2.3.2 Aggarwal, Keohane, and Yoffie's Research<sup>70</sup>**

According to the research, American protectionism during the 1970s and 1980s had taken the form of negotiated barriers to trade, such as voluntary export restraints (VERs). These barriers were designed to appease domestic industries, overcome the transparent inflationary consequences of quotas, and counterbalance for the high foreign-

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<sup>66</sup> M.P. Ryan, *op.cit.*, p.338.

<sup>67</sup> E.D. Mansfield and M.L. Busch, *op.cit.*, p.724. And in relation to the case of this thesis, the coalition of three U.S. meat industry groups filed the case to the USTR, alleging that Korean practices of meat foods violated the Section 301 of the U.S. trade law. Thus, interest groups are important factors in our case.

<sup>68</sup> M.P. Ryan, *op.cit.*, p.338.

<sup>69</sup> *Ibid*, pp.338-9.

policy costs of directly violating GATT. Over time, these barriers tend to evolve and display mainly three patterns: institutionalised, temporary, and sporadic protectionism.<sup>71</sup>

The logic underlying this research is relatively simple: if protection fails to raise profits for a domestic industry, then, *ceterus paribus*, firms are expected to increase their demand for future trade barriers and the U.S. government will generally be sympathetic towards supplying additional protection. On the other hand, if trade barriers improve an industry's economic health, firms in that industry will reduce accordingly their lobbying efforts, and the U.S. government will be less receptive to those pleas.<sup>72</sup> This research intended therefore to find out what happened to negotiated protectionism in the United States *after* agreements had been reached in five industry cases.

To support this logic, this research made the following assumptions<sup>73</sup> about when firms demand trade barriers and under what conditions the United States government will be disposed towards supplying protection:

- On the demand side, the *demand* for protection intensifies when industries are faced with economic distress due to growing import penetration.
- Large industries with high levels of resources in votes, campaign funds, or political organisation can afford to pay more for protection than less well-endowed industries.
- The more difficult it is for firms to leave industry - that is, the higher the barriers to exit - the more the industry will be willing to invest resources in protection.

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<sup>70</sup> The following summary draws from V.K. Aggarwal, R.O. Keohane, and D.B. Yoffie, 'The Dynamics of Negotiated Protectionism,' (in *American Political Science Review*, Vol.81, No.2, June 1987).

<sup>71</sup> *Ibid*, pp.345-7.

<sup>72</sup> *Ibid*, p.350.

<sup>73</sup> The researchers believe that the assumptions are plausible and consistent with the existing literature on the politics of U.S. trade policy even if they will not provide empirical support for the assumptions. See, *ibid*, p.348.

- On the supply side, the willingness of the U.S. government to offer protection will be a function of (1) the economic and foreign-policy costs of trade barriers and (2) the values of government officials who have their own policy preferences.<sup>74</sup>

Using these assumptions about the supply of and demand for protection, this research devised an interpretative model to be able to explain the varying patterns of U.S. protection since World War Two. The model put special emphasis on the size of the industry and two additional variables which were not often stressed in the discussion of protectionism: (1) the height of economic barriers restricting entry of foreign producers into an industry and (2) the exit of adjustment strategies of the domestic firms.<sup>75</sup>

Through examining the U.S. protectionism in textiles and apparel, steel, footwear, televisions, and automobiles, this research concluded that the dynamics of negotiated protectionism would depend on three variables: the barriers to entry into an industry, the size of the domestic industry,<sup>76</sup> and the exit barriers for domestic firms.<sup>77</sup> Low barriers to entry led to institutionalised protectionism when the domestic industry was large and the exit difficult; temporary protectionism occurred when the domestic industry was small and the exit easy; and finally sporadic protectionism was likely when barriers to entry were

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<sup>74</sup> In the governmental values, the United States has been predominantly liberal in the post-war period. American protection, therefore, should be accorded solely to firms and industries in distress, as manifested by low profitability and decline in employment that appear to derive largely from imports, and should be temporary, enabling industries to adjust, and should be quickly terminated for a industry that regains profitability. See, *ibid*, p.348.

<sup>75</sup> *Ibid*, p.347, p.364.

<sup>76</sup> *Ibid*, p.364. In this research, the industries' total revenues and employment were used as proxies for industry size. Revenue and employment data for the five cases at about the time of the first VER in the industry are as follows:

	Employment	Revenues (\$)
Textiles and Apparel (1958)	1,842,274	25.9b
Steel (1969)	436,400	22.3b
Colour Televisions (1976)	26,967	2.1b
Footwear (1977)	225,000	6.8b
Autos (1981)	1,205,000	118.3b

<sup>77</sup> *Ibid*, p.345.

high.<sup>78</sup> The following five cases were summarised in the context of the influence of industries on government policy.

#### ***A. Institutionalised Protectionism: Textiles and Apparel***

With more than two million workers in the mid-1950s, textiles and apparel combined were the largest employers in the manufacturing sector in the United States. The textile and apparel industries, though strikingly different in their industrial characteristics, have pursued a joint strategy of protection from imports since the late 1950s.<sup>79</sup> The coalition strategy started to pay off in 1957, when the government reached an agreement with Japan that limited textiles and apparel exports for a period of five years. However, because both industries had relatively low barriers to entry and low profitability in the 1950s, non-Japanese manufacturers would capture any scarcity rents that might be generated by the proposed cartel, thus making it difficult to protect the U.S. market effectively. Imports would increase, the profitability of U.S. firms would still be low, and the demand for protection would rise. Low profitability and rising import penetration provided the textile-apparel coalition's pleas for further protection with the necessary legitimacy.

The Kennedy administration expanded the cartel to incorporate new players.<sup>80</sup> Yet, given the industry's structure, even this arrangement did not prove stable. New players were entering and import penetration continued to increase from 6% of the cotton market in 1960 to 12% in 1969. For all the protectionist measures, the industry's return on sales and return on equity rarely climbed above 50% of the manufacturing average. Increased imports strengthened the unity of the textile-apparel coalition largely because the players

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<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid*, p.353.

<sup>80</sup> *Ibid*, p.355.

had limited exit or adjustment options. The government's increasing willingness to supply protection and the demands for trade barriers eventually led to the Multifiber Arrangement (MFA) of 1974. Subsequent renewals of the MFA in 1977, 1981 and 1986 transformed the regime into one of the most protectionist instruments of the post-war era.<sup>81</sup>

### ***B. Temporary Protectionism: Colour Television***

Japanese companies possessed 15% of the colour television market in the United States in 1975. One year later, imports had surged to 33% of the market, Japan alone taking a 30% share. Pressure for protection had been mounting since 1970, when Zenith Corporation first filed a countervailing duty suit. Over the next seven years, various legal suits were filed by Zenith and other industry and labour groups, but none yielded any immediate benefits. The government kept refusing to supply protection to this relatively small industry with 40 thousand workers in 1973 and only 26 thousand in 1976. The Carter administration altered this position, however, when the International Trade Commission (ITC) recommended tariffs in response to a Section 201 complaint, and negotiated a three-year Orderly Marketing Agreement (OMA) with Japan that began on 1 July 1977. The agreement limited Japanese exports to 1.56 million units per year.<sup>82</sup>

Barriers to entry in the industry were higher than in textiles and apparel, but surmountable. In 1978, Korea exported 437,000 sets to the United States and Taiwan shipped 624,000 sets.<sup>83</sup> As a result, both benefits and worker employment in the domestic industry continued to drop. Moreover, within four months of the OMA, Zenith decided to close its domestic plants, move offshore, and lay off one-quarter of its labour force. This action decisively weakened the protectionist coalition. As a result, the major remaining

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<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*, pp.356-7.

<sup>83</sup> *Ibid.*, p.357.

supporters of protection in the United States were labour, and firms that supplied TV components.

By late 1979, the United States dropped the OMA with Japan. Zenith, formerly the major force for protection, increased its overseas activities and diversification efforts, and in the process became a more profitable company involved in the production of computers and computer accessories. By 1984, 17 producers were assembling televisions in the United States, of which 12 were foreign-owned.<sup>84</sup> The government had little incentive to supply protection, and the relocation of production weakened demands for trade barriers.

### *C. Temporary Protectionism: Footwear*

The footwear industry, like the colour TV industry, had been petitioning the government for protection for almost 10 years before it achieved any substantive results. When imports reached almost 50% of the market in 1977, the ITC recommended that tariffs be raised on nonrubber shoes. The Carter administration decided to seek OMAs with Korea and Taiwan.<sup>85</sup> The footwear industry, like textiles and apparel, has very low barriers to entry. Therefore, it was hardly surprising that unrestrained countries such as Hong Kong and the Philippines increased their exports by 225% and 800% respectively from 1977 to 1978.

The critical difference between footwear and textiles lay in their industrial structures and the strategies available to major firms. The 20 largest footwear firms, representing about 50% of the production, had viable exit strategies enabling them to profit during the OMAs. Although profits of smaller firms suffered under the OMAs, large firms pursued strategies of forward integration into the highly fragmented retailing business and began importing footwear they could not produce competitively. While

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<sup>84</sup> *Ibid.*

manufacturers of less than one-half million pairs of shoes earned only a 4% return on sales in the late 1970s, profits of producers of more than two million pairs rose from about 6% return on sales before the OMAs to 9.4% by 1980.<sup>86</sup> These differences in performance split the industry and reduced the aggregate demand for protection when the OMAs came up for renewal in 1981.

On the supply side, the belief that protection should be temporary and terminated - once profitability was restored - undermined the case for more protection. The Reagan administration allowed the OMAs to lapse in 1981.<sup>87</sup> Between 1981 and 1985, imports consequently grew from 50% of domestic consumption to almost 80%. Nonetheless, the industry was unsuccessful in its efforts to regain protection. Divisions within the footwear industry weakened both the demand and the resources that the industry was able to mobilise.

In sum, the demand for protection in these two sectors was not as strong as in textiles and apparel. Not only were these industries relatively small, but lower barriers to exit weakened the industries' case for protectionism and reduced corporate demand for trade barriers over time.

#### ***D. Sporadic Protection: Steel***

The U.S. steel industry first faced import competition in the late 1950s. Imports captured an increasing share of the U.S. market, rising from 4.7% in 1960 to 12.2% in 1967 and surging to 16.7% in 1968. Growing imports and declining profitability forced the industry to seek protection. In 1969, the United States negotiated three-year VERs with the

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<sup>85</sup> *Ibid*, p.358.

<sup>86</sup> *Ibid*.

<sup>87</sup> *Ibid*.

two major exporters, i.e. Japan and the EEC.<sup>88</sup> But this did not protect the industry from financial hardship. The 1970 recession cut the average return on equity in steel to 4.3%, less than half the average of manufacturing. This poor performance combined with an increase in imports from a few unrestrained European countries in 1971 strengthened the demand for protection; the administration responded and extended the VERs in 1972 for three more years. The industry, however, had made no fundamental adjustment in six years of protection, and, as a consequence, imports increased.

The addition of 67,000 steelworkers to the unemployment lines between mid-1976 and mid-1977 raised demands for protection once again. Furthermore, the industry's resources and organisational strength allowed it to demand a high level of protection with a very strong congressional support. The Carter administration devised a solution called a Trigger Price Mechanism (TPM).<sup>89</sup> Carter pushed the EEC and Japan to accept the imposition of this system in return for the manufacturers dropping their antidumping petition. Yet, an effective cartel could not last as barriers to entry had effectively fallen by the late 1970s.

After the TPM was dropped in the early 1980s, trade restrictions have been maintained nearly continuously. The steel industry has become increasingly differentiated. Some producers have reorganised, reduced wage costs, and a few have become profitable with a greatly reduced product line. Some U.S. steel producers have begun importing steel products. As the industry splinters, its efforts to expand protectionism will be less likely to

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<sup>88</sup> *Ibid*, p.359.

<sup>89</sup> TPM sets a minimum price based on Japanese production costs, below which there would be an automatic presumption of dumping with a threat of countervailing duties. See, *ibid*, P.360.



succeed. If the diversification strategies falter, steel will most probably follow the path of textiles and apparel.<sup>90</sup>

### *E. Sporadic Protection: Automobiles*

Historically, U.S. car manufacturers and workers have been in favour of free trade. But, labour shifted its view in the early the 1970s, and the firms' position changed in 1979. In the wake of the second oil shock, U.S. citizens suddenly began to purchase small fuel-efficient cars, which Detroit was unable to provide. Japanese manufacturers filled the gap and Japan's market share jumped from 12% of consumption in 1978 to 20% in 1980. In 1979-80, the big three auto manufacturers closed 23 plants and sustained collective losses of four billion dollars. Auto unemployment increased to 26% in the same period.

By late 1980, the auto industry had formed a united front in favour of protection. The United Auto Workers (UAW), Ford Motor, and Chrysler led the charge, while General Motors, the firm best positioned to deal with the Japanese, reluctantly joined the coalition. Despite a rejection of an UAW-Ford Section 201 petition by the ITC, the industry used its considerable resources to pressure the administration to negotiate a VER with Japan in 1981. Japan agreed to cut back its exports 8% from the previous year to 1.68 million cars.<sup>91</sup>

The barriers to entry in autos were extremely high because technology and capital requirements were very large, and new firms required marketing and servicing capabilities to enter the United States as well. As a result, the cartel was effective in raising the

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<sup>90</sup> In January 1999, a draft law was submitted to the United States Congress, aimed at stemming the flood of steel exports coming into the country from Korea, Japan, Russia and Brazil. Senators representing states with large steel producers submitted the draft, which demands that a special duty be imposed on steel products from those countries. The number of workers employed by the U.S. steel industry had been as high as 500,000 at one point, but that figure has been cut by a third due to increased imports. See, *Chosun Ilbo*, January 21, 1999, <http://www.chosun.com/w2data/html/news>

profitability of both the Japanese and the U.S. manufacturers. Japanese manufacturers raised the prices on their cars, which allowed U.S. producers to increase their prices by an average of \$2,000 per vehicle. Profits for the big three auto manufacturers rose from a \$4 billion loss in 1980 to a \$ 7.7 billion profit in 1983, and a \$10 billion in 1984 - their best year in history.<sup>92</sup> Most Japanese auto manufacturers also achieved record profits in the United States during this period. The record profits on both sides of the two countries reduced the demand for protection by U.S. manufacturers. When General Motors abandoned the protectionist coalition in 1985, it was only a matter of time before the Reagan administration abandoned the VER in May 1985. As in steel, the barriers to entry are increasingly being overcome by new entrants such as Korea and Yugoslavia.<sup>93</sup> If U.S. firms fail to improve their competitiveness, then the demand for trade barriers will again intensify, profits will fall, and protection is likely to be renewed.

In sum, all of the above cases support fairly well the liberal assumption of the disaggregated state in which the policymaking process is the result of clashes, bargaining, and compromise among different actors.

## 2.4 Institutionalism

There are diverse branches of institutionalism.<sup>94</sup> Roughly, institutionalism rejects the assumptions of realism, thus it does not regard the state as the only major actor in international relations. Although institutionalism and liberalism to a large extent share the same assumptions, they are different in the focus of their research analysis. This section

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<sup>91</sup> V.K. Aggarwal, R.O. Keohane, and D.B. Yoffie, *op.cit.*, p.362.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*, p.363.

<sup>94</sup> W.W. Powell and P.J. DiMaggio (eds.), *The New Institutionalism in Organisational Analysis*, Chicago, The University of Chicago Press, 1991.

seeks to analyse the claims of institutionalism compared to those of liberalism. The liberal approach, as discussed above, attributes trade policy to a product of domestic interest group politics and provides the “demand side” explanation of protection. The institutional approach, on the other hand, focuses on the preferences and the role of governments in the formulation of trade policy and provides the “supply side” explanation of protection. In the institutional approach, the state has emerged as an active actor from the passive forum of societal negotiation with no independent voice or role.<sup>95</sup> However, although institutionalism views the state as an important actor in international relations, it argues that, contrary to realism and in accordance with liberalism, international institutions play a major role in facilitating international cooperation.<sup>96</sup> This section examines the basic claims of institutionalism and reviews Ryan’s research conducted from this perspective.

#### **2.4.1 Assumptions**

What are the differences between institutionalism and the former two research programmes? Interest group liberalism considers the formulation of trade policy to be the product of competition among interest groups and focuses primarily on the effects of demands for protection by interest groups. Although liberalism has been successful in explaining the U.S. domestic political dynamics of trade policy, it has also been criticised by many scholars.<sup>97</sup> James G. March and Johan P. Olsen, for example, argue that policy outcomes do not merely result from instrumental behaviour by groups nor can they be

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<sup>95</sup> D.A. Lake, ‘The State and American Trade Strategy in the Pre-Hegemonic Era,’ *International Organisation*, Vol. 42, No.1, Winter 1988, p.33.

<sup>96</sup> J.M. Grieco, *op.cit.*, pp.492-4.

<sup>97</sup> E.D. Mansfield and M. L. Busch, *op.cit.*, p.727.

comprehended in terms of functional or efficient social processes.<sup>98</sup> More importantly, liberalism attaches too little importance to policymakers and political institutions in formulating trade policy and therefore underestimates the importance of two factors which regulate the provision of protection: state interests and domestic institutions.<sup>99</sup>

On the other hand, compared to realism, institutionalism views the state as neither the only significant actor, nor necessarily the most important one. Besides, it does not assume that the state always behaves as a rational, unified entity.<sup>100</sup> In the narrow context of the studies of trade negotiations, realism is oriented towards external politics among states, whereas liberalism and institutionalism are oriented towards internal politics within a state.<sup>101</sup> Given the different research focus of each research programme, indeed, it is not fruitful to merely compare them to each other at the same dimensions. Each of them is in a position to account for certain aspects of trade disputes.

In his work, G. John Ikenberry explains three basic claims of institutionalism.<sup>102</sup> First, *institutional structures shape and constrain the capacity of groups and individuals within them*. Institutional structures refer both to the organisational characteristics of groups and to the rules and norms guiding the relationship between actors.<sup>103</sup> Institutions are not mere reflections of social forces; rather, they have their own structural characteristics. Thus, the state, as an organisational structure, or a set of laws and institutional arrangements shaped by previous events,<sup>104</sup> determines, to a considerable extent, the capacities of actors within it. In this sense, institutionalism considers the state

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<sup>98</sup> J.G. March and J.P. Olsen, 'The New Institutionalism: Organisational Factors in Political Life,' *American Political Science Review*, Vol.78, September 1984, p.735.

<sup>99</sup> E.D. Mansfield and M. L. Busch, *op.cit.*, p.724. p.727.

<sup>100</sup> G.J. Ikenberry, D.A. Lake, and M. Mastanduno, *op.cit.*, p.12.

<sup>101</sup> *Ibid*, p.3.

<sup>102</sup> G.J. Ikenberry, 'Conclusion: an Institutional Approach to American Foreign Economic Policy,' *International Organisation*, vol.42, No.1, Winter 1988, pp.223-6.

<sup>103</sup> *Ibid*, p.223.

<sup>104</sup> G.J. Ikenberry, D.A. Lake, and M. Mastanduno, *op.cit.*, p.10.

as an important actor. Moreover, as Peter Hall argues, the organisation does not only transmit the preferences of different groups: it further combines and ultimately alters them.<sup>105</sup> As a result, policy outcomes cannot and should not be seen as faithful reflections of struggles among competing groups.<sup>106</sup> The institutional features of states influence the policy process and in particular the ability of government officials in the conduct of trade policies.<sup>107</sup> States differ in the range of policy instruments available to government officials, and in the degree of autonomy government officials are allowed by societal forces.<sup>108</sup> Different states can be classified from weak to strong according to the relationships to their own societies.<sup>109</sup>

Second, *institutional change is episodic and occurs mainly at moments of significant crisis*, such as in instances of war or depression, when the existing institutions break down or become discredited and struggles over the fundamental rules of the game emerge.<sup>110</sup> Institutional structures, once formed, tend to endure even when the underlying social forces continue to change because individuals or groups that benefit from the existing institutions are resistant to changes in order to protect their interests. Furthermore, although an institutional change is inevitably carried out, it is most likely a partial one that by no means threatens the maintenance of the existing institutions. In a crisis, however, institutional change can be easily carried out because the crisis conditions make both individuals and groups more susceptible to changes in order to resolve the situation or

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<sup>105</sup> P. Hall, *Governing the Economy: The Politics of State Intervention in Britain and France*, New York, Oxford University Press, 1986, p.233.

<sup>106</sup> *Ibid*, p.233.

<sup>107</sup> G.J. Ikenberry, D.A. Lake, and M. Mastanduno, *op.cit.*, p.10.

<sup>108</sup> *Ibid*, p.10.

<sup>109</sup> *Ibid*, p.11.

<sup>110</sup>G.J. Ikenberry, *op.cit.*, pp.223-4.

structure that led to the crisis.<sup>111</sup> Thus, institutional change is not continuous and incremental.

This point is consistent with arguments that have been made at the international level for regime change and hegemonic systems. Stephen Krasner argues that the autonomy of international regimes becomes manifest when those regimes persist, even as the underlying distribution of power and interests that created them has changed.<sup>112</sup> Robert Gilpin also claims that change in the international system is likely to occur as the disjuncture grows between “the existing system of governance of the system” and the underlying “power in the system.”<sup>113</sup> The persistence of institutions, therefore, allows them to influence policy even after the social forces and circumstances that forged those institutions are no longer dominant.<sup>114</sup>

From this context, when we examine a certain policy outcome, it is essential, as the first step of research, to check whether there are gaps separating the underlying circumstances and the existing institution. If there is no gap between them, that is, if the existing institution is consistent with its social forces and circumstances, the policy outcomes might be appropriate to deal with the problems that need the policy. Conversely, if there is a gap, the policy outcomes might not be proper to deal with the problems because the institutions no longer represent the underlying social forces and circumstances exactly. In this case, the interactions between them seem to be unusually blocked. Although this is not usually the case, the situation might be cured by institutional changes. However, institutional changes are episodic so that undesirable policy outcome is

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<sup>111</sup> *Ibid*, p.225.

<sup>112</sup> S.D. Krasner, ‘Regimes and the Limits of Realism: Regimes as Autonomous Variables,’ in S.D. Krasner, ed., *International Regimes*, Ithaca, Cornell University Press, 1983, pp.359-61.

<sup>113</sup> R.Gilpin, *War and Change in World Politics*, New York, Cambridge University Press, 1981, p.186.

<sup>114</sup> G.J. Ikenberry, D.A. Lake, and M. Mastanduno, *op.cit.*, p.10.

continuously produced, which will result in a large-scale crisis. A crisis can get rid of such gaps through institutional reforms. In any case, it is clear that states or specifically government agencies, through their officials who work for them, can affect the policy outcomes regardless of the existence of gaps.

*A third claim of the institutional approach is causal complexity.* There is an interactive relationship of cause and effect between the social forces and circumstances and institutional structures. For example, political or economic crises at one moment are likely to have profound effects on the institutions of the state. Simultaneously, the institutions themselves can influence the efficacy of social forces.<sup>115</sup> Thus, historical sequence and phasing become crucial to the understanding of policy outcomes. A dependent variable at Time 1 may turn into an independent or intervening variable at Time 2.<sup>116</sup> Historical circumstance plays a critical role in deciding what is possible and what is perceived to be desirable at specific moments.<sup>117</sup> Distinctive national experiences determine to a large extent the institutional structures of countries.<sup>118</sup>

On the other hand, there is another view with a different angle, compared to the above. Although they are in the same position in linking the state to policy outcomes, the view places great emphasis on the independence of politicians and officials in the administration in the policy process separated from institutions. The focus here is directly on their behaviour, i.e., on the goal-oriented behaviour of government officials as they respond to internal and external constraints in their attempts to manipulate policy outcomes in accordance with their preferences.<sup>119</sup> These preferences presumed to be partially, if not wholly, distinct from the sectoral concerns of either societal groups or

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<sup>115</sup> G.J. Ikenberry, *op.cit.*, p.225.

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*, p.226.

<sup>118</sup> *Ibid.*, p.225.

<sup>119</sup> G.J. Ikenberry, D.A. Lake, and M. Mastanduno, *op.cit.*, p.10.

particular governmental institutions, and are related to conceptions of the so-called national interest or the maximisation of some social welfare function.<sup>120</sup>

Regarding the active roles of government officials, Ikenberry, Lake and Mastanduno suggest three strategies available to government officials for expanding their influence in the policy process.<sup>121</sup> First, government officials can build new institutions which will bring about a new distribution of power within the government or will achieve a specific goal. Second, the state is situated at the intersection of the domestic and international political economies and is the principal national actor charged with the overall conduct of foreign affairs. From this unique position of the state, government officials who work for the state have a special legitimacy in the formulation and implementation of trade policy. Officials can also use their position to join transnational coalitions, thereby improving the stakes and the outcome of the political debate.<sup>122</sup> Lastly, government officials could mobilise otherwise inactive societal groups, with interests that complement their own, into the policy arena to counterbalance their political opponents. All actors are capable of mobilising public support for their goals. However, government officials often have an advantage: as they are less often identified with partial interests, they are better justified to speak for the state as a whole.<sup>123</sup>

The difference between these two views of institutionalism is quite subtle indeed and concerns their respective views of the role of government officials. Ikenberry's view of institutionalism, which was explained earlier in this section, regards government officials as faithful implementers for the missions of institutions, whereas the other view focuses on their proactive role. In terms of policy instruments for the purpose of removing

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<sup>120</sup> *Ibid*, p.10.

<sup>121</sup> *Ibid*, p.12.

<sup>122</sup> *Ibid*, p.13.

<sup>123</sup> *Ibid*.



the undesirable policy outcomes, the former prefers a change of institutional structure, whereas the latter might prefer to control government officials' behaviours.

In the context of the case study of this thesis, however, both of these approaches are likely to be useful and can be integrated. In a broad sense, it can be suggested that the former includes the latter's assertion over government officials' autonomy: Given that environments tend to evolve very slowly, and institutions interact with environments and sometimes respond to the demands of their changes from environments, the gap between the institutions and their environments are in general terms not likely to be wide except during a crisis. In addition, government institutions are supposedly organised to meet the demands of the environment or to maximise the national interests. Thus, if there is no gap, the way for government officials to maximise the national interests is by carrying out their duties according to the rule and mission of each institution. Furthermore, it is very difficult, in practice, to distinguish the independent behaviours from the dependent behaviours of government officials.

*The organisational institutional approach* suggested by Michael P. Ryan also is a branch of the institutionalism.<sup>124</sup> According to Ryan, each government institution has a mission defined by the goals of the agency and by the tasks it is charged with carrying out.<sup>125</sup> The mission delineates a policy area that the agency aims to control. The agency struggles to maintain its autonomy and capability to carry out the mission. In doing so, the agency socialises the officials who work for it by shaping their views and behaviour.<sup>126</sup>

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<sup>124</sup> According to Ryan, there are two broad approaches within institutionalism according to two fundamental institutional variables-ideas, rules, norms, or beliefs and organisations. "Institutionalists who emphasise the former may be called 'idea institutionalists'; institutionalists who emphasise the latter may be called 'organisational institutionalists.'" See, M.P. Ryan, *op.cit.*, p.339

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

In conclusion, although there are several variants of explanations of institutionalism, the notion of the state as an organisational structure and an actor is important for understanding the dynamics of the trade policy process and the trade negotiation process.<sup>127</sup> For this reason, the government trade agencies of Korea and the United States are important for our case study, and will therefore be examined in detail in the next chapter. Ryan's research results obtained through the application of this institutional view will be reviewed.

#### **2.4.2 Ryan's Research<sup>128</sup>**

The United States Section 301 trade policy has embittered many countries around the world. Perhaps nowhere were feelings stronger than in Japan, Korea, and Taiwan.<sup>129</sup> The three countries have been accused repeatedly of "unfair" trade behaviour by the United States. Ryan examined the universe of American-initiated 301 trade disputes with these countries settled in the 1974-1989 period. He employed an organisational institutional approach, which views government as organisation, thus drawing from organisational theory as to how organisational missions and processes influence institutional behaviour.<sup>130</sup> Emphasis was placed on the Office of the U.S. Trade Representative (USTR)'s missions, structures, and decision-making procedures. USTR was considered as an organisation of individual policymakers who implement Section 301

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<sup>127</sup> G.J. Ikenberry, D.A. Lake, and M. Mastanduno, *op.cit.*, p.10.

<sup>128</sup> This section draws from Michael P. Ryan, 'USTR's Implementation of 301 Policy in the Pacific' (in *International Studies Quarterly*, Vol.39, 1995, 39, pp. 333-350).

<sup>129</sup> *Ibid*, p.333.

<sup>130</sup> *Ibid*, p.339.

trade policy deliberately. As such, USTR was capable of being a purposive, goal-directed organisation with its behaviour indicating its goals.<sup>131</sup>

On the premise that the outcomes of Section 301 trade disputes with these countries will be what the Americans want due to the asymmetry in the bilateral structures of power,<sup>132</sup> the aim of this research was to study initiation of bilateral dispute settlement and consequently answer the following questions: Which issues will the American government choose to pursue with the East Asian governments? All or selected issues? Who defines which issues to take up? Are there decision rules or is it a random exercise? In short, how is Section 301 policy implemented in the Pacific?<sup>133</sup>

To answer the above questions, the research made the following hypotheses recommended by realism and liberalism:

- Liberal political economy understands American trade policy on the basis of the pluralist nature of the American political economy, and therefore predicts the following:

**H1.** *USTR will initiate a 301 investigation if and only if a powerful domestic interest group requests it.*

- Realist political economy, on the other hand, contending that the domestic sources of foreign policy behaviour are irrelevant and interested in the U.S. relative position of wealth and power in the world economy, predicts the following:

**H2a.** *USTR will initiate a 301 investigation if and only if a commercially competitive domestic industry requests it.*

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<sup>131</sup> *Ibid*, pp.335-6.

<sup>132</sup> Japan, Korea, and Taiwan were during the study period, “substantially dependent upon exports to the United States, substantially dependent upon the U.S. security and diplomatic umbrella, and obliged to comply with GATT regime rules for the purpose of their relations with the United States.” See, *ibid*, p.340.

<sup>133</sup> *Ibid*, pp.333-4.

**H2b.** *USTR will initiate a 301 investigation if and only if a commercially competitive, high technology industry requests it.*

- Liberal political economy, according to which, states tend to cooperate and economic regimes influence behaviour, suggests the following:

**H3a.** *USTR will initiate a 301 investigation if initiation will not injure bilateral diplomatic relations.*

**H3b.** *USTR will initiate a 301 investigation if the respondent state's policy behaviour violates a rule of an international economic regime.*

**H3c.** *USTR will initiate a 301 investigation if the respondent state's policy behaviour may be related to multilateral trade negotiations within GATT.<sup>134</sup>*

On the other hand, the research devised the following three variables: commercially competitive industry, high-technology industry, and GATT regime utility.<sup>135</sup>

*Commercially competitive industry* is defined as an industry that can sell its goods and services in international markets on the basis of price and quality. An industry was coded here as a commercially competitive one if U.S. trade data demonstrated that it was a significant exporter. The Department of Commerce International Trade Administration defines *a high-technology industry* as one in which R&D expenditure constitutes a relatively high proportion of gross sales. An industry was coded as a high-technology one when it made the Commerce Department list. *GATT regime utility* is either (a) rule noncompliance or (b) multilateral trade negotiation rule-creation relatedness. A case was coded as involving GATT regime if USTR's General Counsel specified a GATT rule violation or if the issue was on

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<sup>134</sup> *Ibid*, pp.339-40.

<sup>135</sup> *Ibid*, pp. 341-2.

the agenda of either the Tokyo Round or the Uruguay Round multilateral trade negotiations.<sup>136</sup>

According to this design, the hypotheses were tested against the evidence of 40 cases involving Japan, Korea, and Taiwan. For example, with respect to the hypothesis H1, almost all the disputes involved industries with powerful domestic interests - pharmaceuticals, wood products, telecommunications, and beef. This is apparent evidence in support of the hypothesis. However, the Japanese leather, Japanese baseball bat, Korean steel, and the footwear cases contradicted the hypothesis. Neither Japanese leather nor Japanese baseball bat involved powerful industries, yet, USTR took up their cases. Thus, the research concluded that the request of big interest groups was neither necessary nor sufficient for the initiation of a 301 investigation.<sup>137</sup>

All of the hypotheses were tested against the evidence of 301 trade policy implementation in the three countries. Consequently, considerable support existed for the hypotheses H2a, H3b, and H3c.<sup>138</sup> What the research argues then was that the implementation of U.S. 301 policy in the three countries could best be explained with the use of two variables: the commercial competitiveness of the industry raising the complaint and the GATT regime utility of the three countries' policy in question. The argument is summarised with data findings in Table 2-2.<sup>139</sup>

USTR most often initiated a 301 investigation when the petitioning firm or industry group was commercially competitive and the dispute involved GATT regime utility. USTR occasionally initiated investigations when the petitioning firm or industry group was commercially competitive, though the dispute involved no relationship with

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<sup>136</sup> *Ibid*, p.341.

<sup>137</sup> *Ibid*, pp.342-3.

<sup>138</sup> *Ibid*, pp.342-6.

GATT regime rule creation activities. USTR sometimes also initiated investigations when the petitioning firm was commercially uncompetitive but the dispute possessed GATT regime utility. However, USTR never initiated negotiations that involved an uncompetitive industry and no GATT regime utility.<sup>140</sup> So, the research concluded that there were empirically derivable decision rules to explain the behaviour of USTR and 301 implementation was neither a random exercise in American trade power nor a process driven by big interest groups.<sup>141</sup>

**Table 2-2. 301 Implementation Model and Findings**

	High GATT Regime Utility	Low GATT Regime Utility
High commercial competitiveness	27/37	6/37
Low commercial competitiveness	4/37	0

Note: Total N = 40, but no action was taken in three cases. See, Michael P. Ryan, 'USTR's Implementation of 301 Policy in the Pacific' (in *International Studies Quarterly*, 1995, 39, p. 347.)

This research explained the observed pattern of 301 initiations through organisational institutionalism, that is, by the institutional mission and goals of USTR.<sup>142</sup> USTR's goals, as the President's top administrator of his trade policy, are identical to those of the President including augmentation of the country's national power, the promotion of national economic growth, and constituency support from vital economic interest groups. At the same time, because the President tends to keep as much authority over trade policy as possible as a matter of inter-branch domestic politics, an important USTR goal is to demonstrate to Congress that it is a good pursuer of American national

<sup>139</sup> *Ibid*, p.346.

<sup>140</sup> *Ibid*, p.346.

<sup>141</sup> *Ibid*, p.347.

interests in the world economy. From the 1970s to the 1980s, the salience of these goals rose as persistent recession, wounded manufacturing competitiveness, and large trade deficits eclipsed traditional presidential preference for good bilateral diplomatic relations. As a result, USTR was increasingly receptive to the complaints of commercially competitive industries, thereby telling Congress that it is “being tough with foreign trade barriers.”<sup>143</sup> USTR is also the President’s chief diplomat in GATT regime activities. It is therefore charged with promoting U.S. interests in the regime, and considering the relationship of the trade problem with the GATT regime. USTR favoured cases that alleged noncompliance with existing GATT rules or could be used concomitantly to USTR’s multilateral rule creation negotiation goals and shied away from cases that would undermine its leading position within GATT.<sup>144</sup>

In sum, the research argued that an organisational institutional analytic framework offered the most thorough explanation of the implementation of 301 policy in the Pacific by the United States.<sup>145</sup> As shown the mission of the government institution charged with carrying out 301 policy, USTR led it to initiate investigations according to two variables; i.e., the commercial competitiveness and the GATT regime utility. A closer examination of USTR led to the conclusion that it was mediating in demands by domestic interest groups, while at the same time projecting U.S. state power in the world political economy and creating or maintaining international regimes.<sup>146</sup>

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<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*, p. 335. p.347.

<sup>145</sup> *Ibid.*, p.348.

<sup>146</sup> *Ibid.*, p.348.

## 2.5 Conclusion: What Analytical Framework for the Shelf-life Case?

We have discussed the three research programmes used to analyse trade disputes: realism, liberalism and institutionalism. Ikenberry, Lake and Mastanduno have summarised these three paradigms as follows:<sup>147</sup> Realism as a basis of international, or system-oriented approaches broadly explains trade negotiations as a function of the attributes or capabilities of a country with relation to other countries. It claims that the outcomes of trade negotiations depend on the particular set of opportunities and constraints created by a country's position in the international arena at any moment in time.<sup>148</sup> Liberalism on the other hand as a basis of society-oriented approaches views trade negotiations as the result of the struggle for influence among various interest groups or political parties. It essentially focuses on domestic politics.<sup>149</sup> Finally, institutionalism as a basis of state-oriented approaches regards trade negotiations as highly constrained by domestic institutional relationships which have persisted over time, and also by the ability of government officials to achieve their objectives in light of international and domestic constraints. This approach focuses on the institutional structures of the country and the capabilities of political and administrative officials.<sup>150</sup>

All above three research programmes have some relevance in explaining complex trade negotiations. Each has strengths and weakness. Given that the international trade negotiation process is somehow entangled with domestic politics and international relations, no single paradigm can sufficiently explain the complex and fluid process of trade negotiations. In the following section, therefore, we will compare the three research programmes in terms of the decision-making process for trade dispute settlement and will

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<sup>147</sup> G.J. Ikenberry, D.A. Lake and M. Mastanduno, *op.cit*, p.1.

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*, pp.1-2.



account for each programme's inability to provide a complete explanation of the outcomes produced through both the domestic policymaking process and the international negotiation process. But, first we will examine the nature of international trade negotiations in terms of the complexity of these two processes. A new explanatory tool will thus be devised for the comparison or evaluation the three research programmes. Finally, an alternative approach will be suggested for application to the case study of this thesis.

### **2.5.1 Nature of International Trade Negotiation**

As in some cases the research object might restrict the utility of theoretical approaches, it is useful to look at the features of international trade negotiations as a research object. Two features have major significance: the political nature and the two-level process. To begin with, although international trade negotiations seem to be economic in nature, the processes of formulating negotiation proposals within one country and negotiating them with another country are essentially political in nature.<sup>151</sup> Policymakers or negotiators inevitably face a number of logical, competing economic arguments. Who gets production, jobs, and profits depends on their choices, so the process reveals itself as political in nature.<sup>152</sup> This political nature can be demonstrated in the context of the interactions between the actors of international trade negotiations.

A bilateral trade negotiation is basically composed of the issues under consideration and two governments as negotiators. International trade affairs by definition involve economic interests so that interest groups in both countries play a critical role to

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<sup>150</sup> *Ibid.*, p.2.

<sup>151</sup> S.D. Cohen, J.R. Paul and R.A. Blecker, *Fundamentals of U.S. Foreign Trade Policy*, Boulder, Colorado, Westview Press, 1996, p. 122.

shaping the outcomes of negotiation. To the extent that the international negotiation process is part of government policymaking, other participants such as legislators, parties, and even public opinion intervene in this process. They may also try to promote their interests as decision-makers or by pressuring the major decision-makers. The pursuit of domestic groups' interests in the trade negotiations is constricted by the countervailing factors on the other side. Although an internal policy is conducted through the domestic policymaking process, it enters the international negotiation process only as a draft proposal. The policy can be transformed during the negotiation process. Indeed, the trade negotiations must be seen as a political process.

On the other hand, it can be inferred that the trade negotiation process might be divided into two sub-processes, although they generally occur at the same time: the domestic policymaking process and the international negotiation process. Robert Strauss also pointed out these two processes by saying of the Tokyo Round trade negotiations: "During my tenure as Special Trade Representative, I spent as much time negotiating with domestic constituents (both industry and labour) and members of the U.S. Congress as I did negotiating with our foreign trading partners."<sup>153</sup> In other words, the politics of international negotiations are usually conceived as a two-level process.<sup>154</sup> At the national level, domestic groups pursue their interests by pressuring the government to adopt favourable policies. At the international level, governments seek to maximise their ability to satisfy domestic pressures, while minimising the adverse consequences of foreign

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<sup>152</sup> *Ibid.*

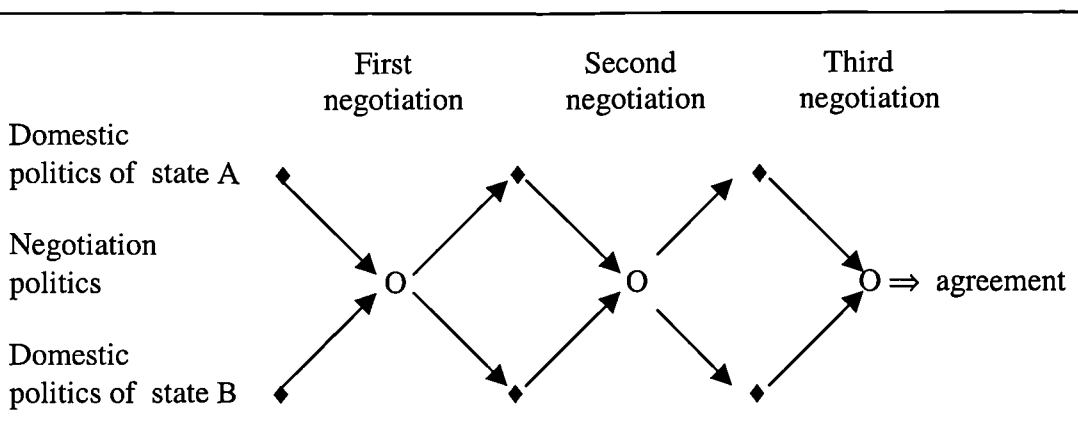
<sup>153</sup> R.S. Strauss, 'Foreword' in Joan E. Twigg, *The Tokyo Round of Multilateral Trade Negotiations: A Case Study in Building Domestic Support for Diplomacy*, Washington, D.C., Georgetown University Institute for the Study of Diplomacy, 1987, p.vii, as cited in R.D. Putnam, 'Diplomacy and Domestic Politics: the Logic of Two-Level Games', *International Organisation*, Vol.42, No.3, Summer 1988, p.434.

<sup>154</sup> *Ibid.*

developments.<sup>155</sup> Interestingly enough, in this two-level process, moves that are rational for one player in one country, such as opening the domestic markets, may be impolitic for the same player in the other country.<sup>156</sup>

Focused on the bilateral trade negotiations, the process takes place roughly according to the following procedure; each government shapes its policy through the domestic policymaking process and subsequently the policy is presented as a negotiation proposal. The two governments discuss their proposals with each other and revise them after having considered the other side's position. Then they present their revised proposals and discuss them again. This goes on until an agreement is reached. Throughout this process, all participants are expected to make efforts to maximise their interests. In short, there are two types of politics involved in the international negotiations. As illustrated in Figure 2-1, the first one is domestic politics of each country, and the second one is negotiation politics between governments.

**Figure 2-1. Interactions of Two Politics**



<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*

With respect to domestic politics, its determinants depend on the negotiating country. The U.S. government policymaking process differs from that of Korea. The participants and their role in both countries are different. Interest group theory might provide a good explanation for some aspects of the U.S. government policymaking process, but it may not work in the case of Korea. Although approaches from the three research programmes can efficiently explain some aspects of international trade negotiations, each of them cannot cover the dynamics of the two processes. Therefore, the case under consideration will be examined from all of the relevant angles. To do this, we need to analyse the approaches in terms of their strengths and weaknesses.

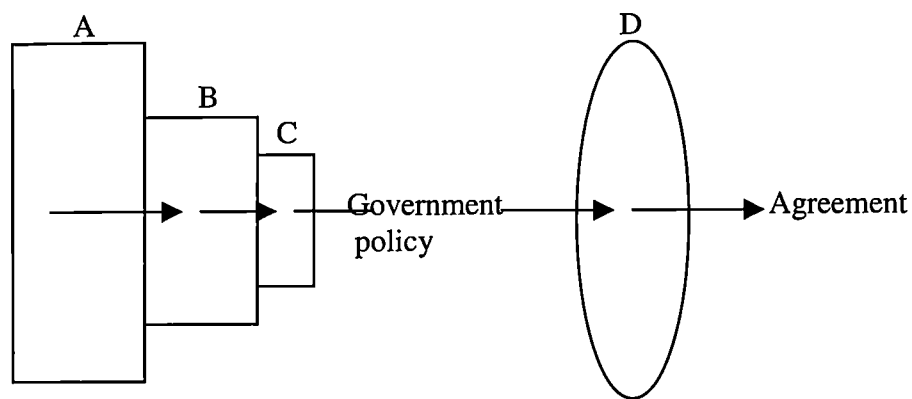
### **2.5.2 Uses and Limits of the Three Approaches**

The three research programmes have been supported by some scholars, but also criticised by others. It is beyond the scope of this thesis, however, to evaluate the three research programmes. To answer whether they provide the appropriate approach for the analysis of trade negotiations, we will only attempt here to compare each research programme in the context of bilateral trade negotiation. To make the comparison easier, we will illustrate the simple mechanism of the trade policymaking process shown in Figure 2-2.

In general terms, the government policymaking process may take the following steps: There are lots of problems in a state to be resolved at the individual, society or state level. One of them turns into a policy problem mainly depending on the demand of special groups or the perception of the government (agenda setting). Whether one problem can be a policy problem is mainly determined by the social forces and circumstances of the state. The policy problem enters the policymaking process of the state. The problem is always

transformed in each step (A, B, and C) of the process. The degree of transformation depends on the state. Different states have different policymaking processes in terms of the structure, the participants, and the role of government. Concrete solutions to sort out the problem are formulated in the course of the process that subsequently will be implemented by the government agencies involved.

**Figure 2-2. Mechanism of the Trade Policymaking Process**



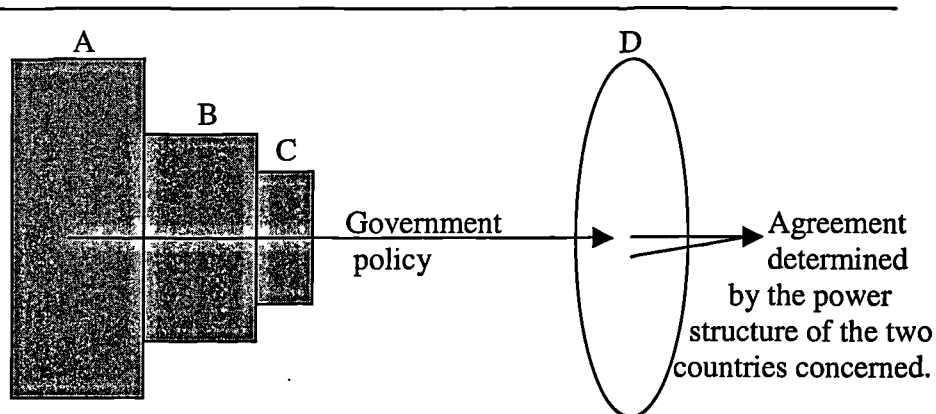
Domestic politics:    A: Social forces and circumstances  
                               B: Government as a set of institutions  
                               C: Government officials  
 International politics: D: International negotiation

What are the differences between general domestic policies and trade policies that deal with specific trade disputes? In the case of domestic policy, if a policy is formulated by the domestic process, it is implemented as it is. In the case of trade policy, however, the policy produced by the domestic process is only a draft proposal of several alternatives for future negotiations. After negotiating with other countries, an agreement as a final policy is reached and implemented in both countries. As mentioned above, the domestic process and the negotiation process are normally simultaneous. However, for the purpose of this

study, it is assumed that trade policymaking is divided into the domestic policymaking process and negotiation process. Figure 2-2 shows fairly well these two processes.

The above three approaches try to give a credible answer to questions such as; what are the factors to dominate the process and outcomes of trade negotiation? What is the mechanism through which a trade dispute is settled? *The realist approach* focuses on the negotiation process among countries, while the domestic policymaking process remains a black box as illustrated in Figure 2-3.

**Figure 2-3. Policymaking Process of the Realist Approach**



Domestic politics:    A: Social forces and circumstances  
                               B: Government as a set of institutions  
                               C: Government officials  
 International politics: D: International negotiation

The realist approach suggests that the government (state) can make an optimal policy to deal with trade problems based on the assumption that the state is a unitary and rational actor. This approach accounts for the variations of the negotiation outcomes mainly by way of the structure of states' powers. The country with a strong negotiation power is in a position to produce more favourable agreements to its initial objective. In

other words, the terms of the agreement will be determined approximately in proportion to the negotiation power of each country. Odell demonstrated this assertion using the U.S.-Korean trade disputes as an empirical case study.

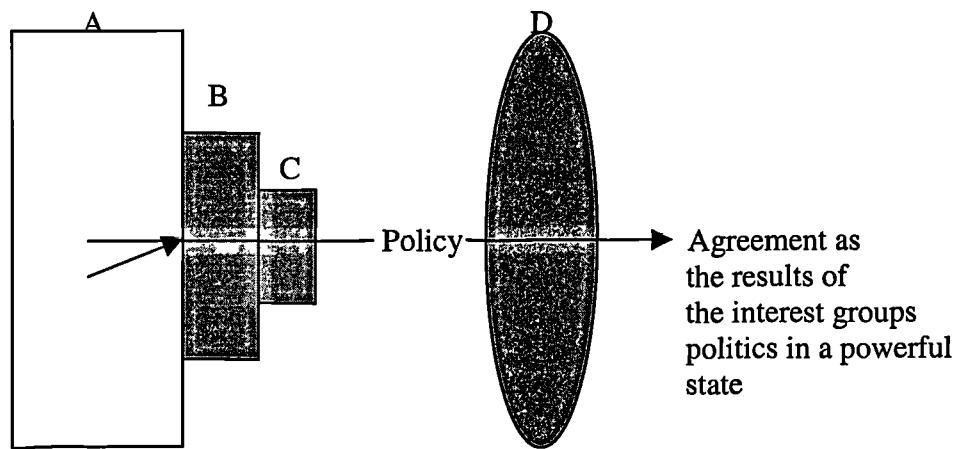
The realist approach is on the whole quite useful and persuasive in explaining the negotiation process among countries. The conception of the state as a unitary and rational actor, although the main target of many critics, could be considered acceptable to the extent that the negotiators around the table are the only representatives of the state and deliver the draft proposal already produced by the domestic policymaking process. On the other hand, a significant flaw of the realist approach is that it leaves the domestic policymaking process as a black box. It does not seem to take into consideration the fact that the outcomes of the agreement are considerably affected by the interaction of negotiators and domestic variables, such as interest groups or bureaucratic politics during the negotiation process. Consequently, unless this approach acknowledges the domestic process, it is not likely to provide a complete explanation. As shown in Figure 2-3, the arrow directly enters the international negotiation process without any refraction during the domestic process as realists assume. It is only refracted by the power structure of the negotiating countries in international negotiation process.<sup>157</sup> But, is it realistic to ignore the domestic process? The answer would be “no.”

On the other hand, *the interest group liberal approach* focuses on only interest group politics of the domestic policymaking process while leaving both the other steps of domestic process and the negotiation process as a black box as shown in Figure 2-4.

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<sup>157</sup> To indicate the refraction, another arrow is added in the Figure. In the following Figures, we will draw a straight line to indicate the non-refraction that occurs when the arrow passes black boxes. In the case of the refraction, we will add another arrow.

**Figure 2-4 Policymaking Process of the Interest Group Liberal Approach**



Domestic politics:    A: Social forces and circumstances  
                                   B: Government as a set of institutions  
                                   C: Government officials  
 International politics: D: International negotiation

Why has the interest group liberal approach in the United States only been concerned with the domestic process? It seems likely that because the United States was a hegemon in the world economy, it could achieve its goals to a large extent by its own will even if a certain policy was concerned with other countries' interests. The underlying assumption may be that the United States could force other countries to accept its proposals by virtue of its hegemonic status. In this sense or given that its core argument is that domestic policies are determined by the power structure of various interest groups within a state, the liberal approach seems to share the insight of the realist approach regarding power as an analysis tool. Thus, as far as the United States dominates the international economy, it needs not to pay attention to the international negotiations. The interest group liberal approach focuses on the domestic policymaking process, to the extent that the state is merely a battlefield for interest group politics, and government officials are referees with no voice or preferences of their own. In Figure 2-4, the



agreement is determined by the social forces and circumstances; precisely by interest group politics of the powerful negotiating country. As shown in the Figure, there is no transformation during the bilateral negotiation process. The arrow transmits the black boxes without any refraction.

Interest groups are in fact important participants in the policymaking process of almost all states. However, is it really possible to claim that the state does not affect policy outcomes? It may be said that the government of a plural society like the United States is relatively vulnerable to social forces. However, it is no exaggeration to say governments affect the entire economy and society as rule setter, regulator, educator, trainer, research funder, and infrastructure operator.<sup>158</sup> What is more, their officials not only make policy choices and implement them.<sup>159</sup> It is generally accepted that governments should take the initiative in order to develop their economies in the underdeveloped or developing countries. Even in the developed countries, the concept of “welfare-state” forces governments to a large extent to take the responsibility for economic growth and social security.<sup>160</sup> As the world economy becomes competitive and global, governments have increasingly found themselves in international economic affairs such as standards and regulations harmonisation, competition policy, and services. Government officials sometimes tackle policy questions directly. They, therefore, are in a good position to assert their interests and preferences on policy outcomes. Although interest groups play a critical role in shaping policies in some countries, it is reasonable to assume that policies are

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<sup>158</sup> Owen E. Hughes, *Public Management and Administration: an Introduction*, 2<sup>nd</sup> Edition, London, Macmillan Press LTD, 1998, p.82.

<sup>159</sup> “The fact that between 80 and 90 percent of civil servants see their roles as ‘policymakers’ in the three European nations suggests that civil servants are prepared to admit that they make policy.” See Edward C. Page, *Political Authority and Bureaucratic Power: A Comparative Analysis*, 2<sup>nd</sup> edition, London, Harvester Wheatsheaf, 1992, p.50.

<sup>160</sup> “The government now undertakes a variety of functions which have extended very rapidly in the twentieth century to embrace many costly social welfare functions, in

generally produced through the interaction of governments and social forces even in the domestic policymaking process. In other words, this approach also provides only a limited understanding of international trade negotiations.

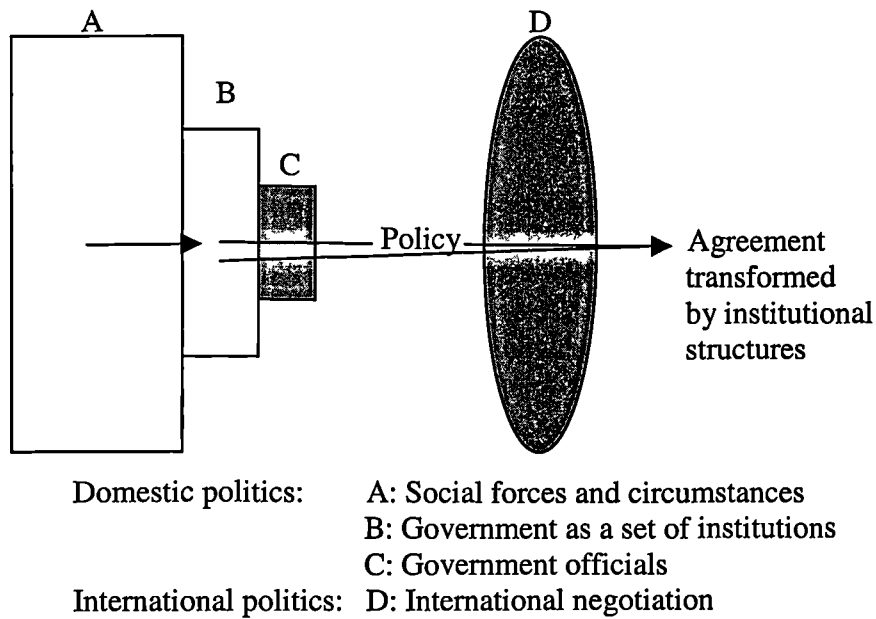
*The institutional approach* regards policy outcomes as the end-result of the interaction among multiple actors, as does the liberal approach; however it views the state as an independent actor and focuses on its institutional structure of the state as an important consideration in determining policy outcomes. The emphasis here is on the differences in the institutional structure of states, for example, whether the government agency responsible for trade negotiations has power over other agencies. In a general sense, if the parliament has hegemony over trade policy, the policy outcomes tend to be favourable to interest groups. If the president has hegemony, policy outcomes are affected by the president's policy preferences or other foreign policies.

When this approach was used to understand the Section 301 trade disputes, it also focused on the U.S. trade agencies for trade negotiations while leaving both the government officials' autonomy and the international negotiation process as a black box as shown in the above Figure 2-5. The reason is quite simple. In the trade negotiations under Section 301, the negotiation structure is asymmetric. If the United States could not make an agreement with its partner, it would retaliate against any trade fields of the partner regardless of the trade issue involved. Very few countries resist the demands of the United States. Due to the asymmetrical character of section 301, it is likely that any agreement may be reached closer to the U.S. initial position. Therefore, for the United States, it is less crucial to analyse the negotiation process; rather, the domestic policymaking process should contribute to the understanding of the settlement of trade disputes under Section 301.

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addition to the more traditional functions of defence, tax collection and road building.”

**Figure 2-5 Policymaking Process of the Institutional Approach**



In the above Figure 2-5, the demands of interest groups enter the government policymaking process and are then transformed by the institutional structure of the state. The final domestic policy will be produced through the filtering apparatus of government trade organisations. Until now, the individual government officials have been regarded as passive actors. This approach seems to be more realistic than the liberal approach in that it considers the government institutions to be independent actors. However, it still leaves both government officials and the negotiation process with other governments as a black box. It is therefore fairly impossible to have a complete explanation from this approach.

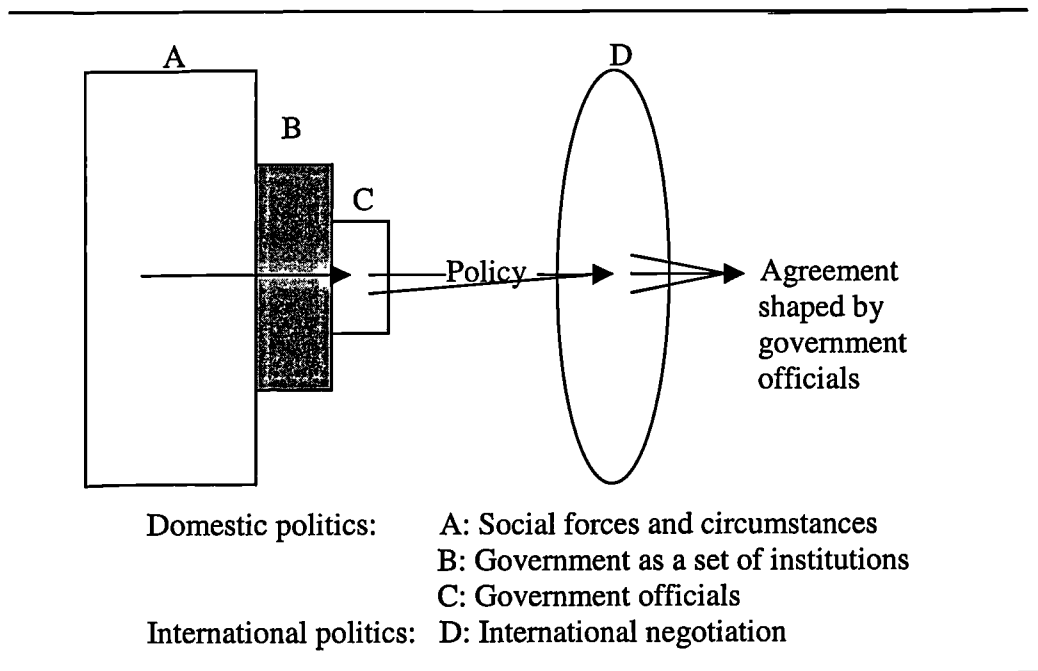
As mentioned in the previous section, there is another approach insisting on *the active role of government officials*. Although it fails to explain the relationship between the institutional structure and government officials, it examines the government officials' interests and preferences that are distinct from the sectoral concerns of either interest

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See, *ibid.*, p.33.

groups or particular governmental institutions. Government officials are supposed to exert themselves to achieve the national interest. The policymaking process of this approach can be seen in Figure 2-6.

**Figure 2-6 Policymaking Process of the Government Officials-Oriented Approach**



This approach seems to be open, compared to the other approaches. It accepts various actors and the negotiation process, therefore its interpretation seems to be fairly comprehensive. However, too much emphasis is placed on the role of government officials, whereas interest groups and institutions are of little importance in constructing government policies. This approach leaves the institutional characteristics of government agencies untouched and concentrates instead on the independence of government officials who pursue policy outcomes according to their preferences. Although there is a number of policy areas where government officials are the most important decision-makers, these cases are not common. In a democratic society, although government policies that are not supported by its people still exist, in the long run they have to be consistent with people's

demands. If the inconsistency continues, as the institutional approach asserts, social forces will inevitably come to change the institutional structure that constrains government officials' discretion. Another drawback of this approach is that it is very difficult to distinguish the individual initiatives from the institution's missions. Which will be then the approach we should use to examine the case study of this thesis? The answer to this question will be discussed as a conclusion to this chapter.

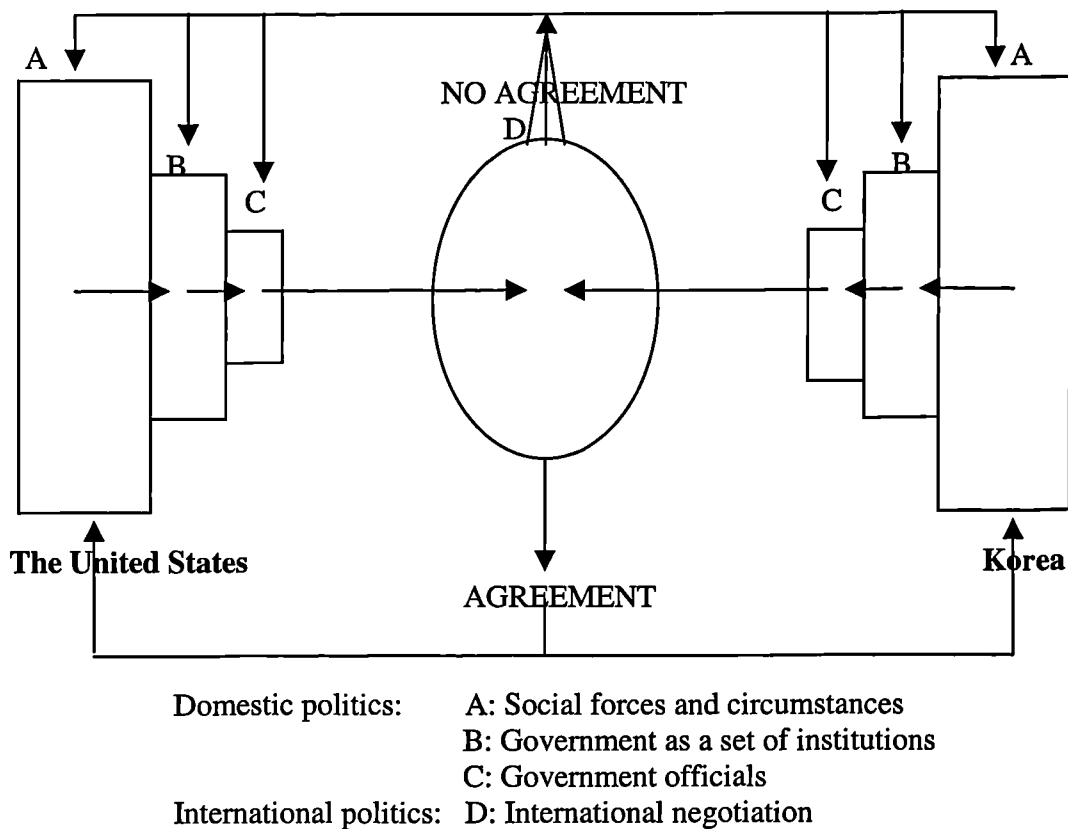
### **2.5.3 A New Approach for the Case Study of this Thesis.**

Although each of the three approaches cannot provide a comprehensive framework to understand all aspects of bilateral trade negotiations, each has considerable explanatory power. As the trade disputes are so diverse in terms of fields, issues, and countries, one approach cannot possibly cover all aspects of negotiations to deal with the various trade disputes. This has led scholars to focus on one part of the process in order to find out general rules by comparing different cases. In the study of bilateral trade disputes, liberals and institutionalists have mainly focused on the domestic policymaking process: through what mechanism is trade policy formulated? what is the best account for the behaviour of a government?, and what makes the trade policymaking process "tick"? On the other hand, realists have focused on the politics of the negotiation process: how do governments fulfil their negotiation objectives? what explains the variations in negotiation results? In my view, for a detailed understanding of the intricacies of international trade negotiations, one needs to view the three approaches as complementary. Furthermore, the relevance of each approach depends on the negotiating country, issues, and the steps of negotiation.

It is particularly insufficient to depend on only one approach in the case of a complex or a new trade dispute. The dispute should then be examined from more than one

angle. The case study of this thesis is a new trade dispute over “market access” in the form of non-tariff barriers and is a fundamentally different dispute compared to past disputes between Korea and the United States. While the disputes in the past were mainly over the protection of American markets from Korean exports, this one is over the opening of Korean markets to American food exports. The integrated approach, as illustrated in Figure 2-7, will be used in order to examine the case. By integrating the realist, liberal, and institutional approaches, we will be able to understand all aspects of the case and further improve our understanding of other cases with similar characteristics.

**Figure 2-7 A New Approach for the Case Study of This Thesis**



As Figure 2-7 illustrates, there is no black box in the new approach. All the steps as a variable affect the dispute at stake. The dispute is destined to be transformed when it passes from one step to another step (A→B→C→D). The degree of transformation

depends on the negotiating country and the bilateral negotiation structure. For example, social groups would have a loud voice if the state were decentralised in every field. Conversely, government officials will enjoy their discretion in a society in which interest groups are not well organised. All steps may be independent variables and have some potential influence on the outcomes.

What are the independent variables of this new approach? First, the negotiation power closely related to the dispute at stake is derived from realist assertions. Second, the interest group involved in the dispute is derived from interest group liberalism. Third, the government trade organisation directly dealing with the dispute is derived from the institutional approach. Finally, government officials in charge of the dispute as negotiators are derived from the government officials-oriented approach. Indeed, whether or not these factors can be independent variables has already been examined respectively in other scholars' work.

Furthermore, the validity of this new approach can be proved by the idea of system models as follows: a system is broadly defined as a set of interrelated elements. A system is separated from the environment by its boundary and is a sub-system of a broader system, an example being the way in which a faculty in some universities is a sub-system of a college and a college is a sub-system of the university. Systems nestle inside each other like a set of Chinese boxes or Russian matrioshka dolls.<sup>161</sup> The concept of a system might therefore be applied at any level of analysis. In so far as an object can be distinguished from its environment and the boundaries are clear, any individual or organisation can be seen as a system. Thus, governments, international organisations such as the WTO, the European Union, and all the states in the world and their interactions can be treated as system. John Lovell cites the following as the core elements in a system: (1)

a set of component parts which together can perform some purposeful activity, (2) the functional interrelationship of the parts, and (3) an ongoing interrelationship between this set of component parts and the environment.<sup>162</sup> The components of a system work together to achieve the system's goal. If some components are absent or do not function properly, the system will fail to work to its capacity or might even break down. In this sense, although the bilateral trade negotiations between Korea and the United States such as the Section 301 negotiations are asymmetrical and distributive,<sup>163</sup> the negotiation system of the two countries has to produce a solution through mutual collaboration, or the system will be replaced by another one. In our case, the two governments negotiated the shelf-life dispute through various negotiation procedures to settle it, in other words, to maintain the bilateral negotiation system between the two countries.

The concept of a system will allow the application of many theoretical approaches and research methods.<sup>164</sup> What is considered as a system always depends on the research objective. Bilateral trade negotiations, which are the focus of this thesis, can be considered as a system. The goal of this system is to sort out the trade frictions occurred in the bilateral trade relations. This system interacts continuously with the environment. As Morgan suggests, this system monitors its environment, responds to it, and may even be able to influence it.<sup>165</sup> However, it is difficult to decide upon the scope of the environment. The system model usually views as environment the upper-system that directly surrounds the system. Thus, the environment in the present case study is trade relations between

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<sup>161</sup> P.M. Morgan, *Theories and Approaches to International Politics*, fourth edition, New Brunswick, New Jersey, Transaction Books, 1987, p.131.

<sup>162</sup> J. Lovell, *Foreign Policy in Perspective*, New York, Holt, Rinehart and Winston, 1970, pp.211-16.

<sup>163</sup> Distributive negotiation is the process by which each party attempts to maximise its own share in the context of fixed sum pay-off, See R.E. Walton and R.B. McKersie, *A Behavioural Theory of Labor Negotiations*, New York, McGraw Hill, 1965, p.13.

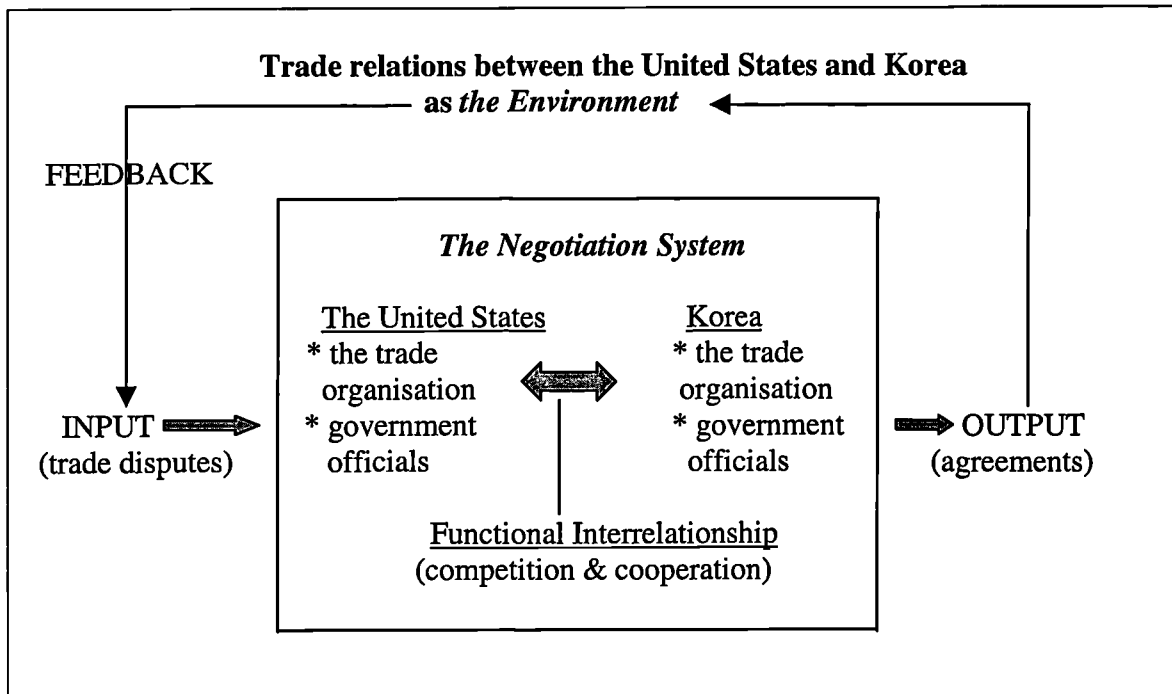
<sup>164</sup> P.M. Morgan, *op.cit.*, p.131.

<sup>165</sup> *Ibid*, p.130.



Korea and the United States from which the dispute of this case was directly generated. The trade relations of the two countries give legitimacy to the system. The interest groups associated with the dispute are the most salient environmental factors in each country. To be sure, other social forces can put their demands on the system, but their influences will most likely be weak compared to those of the interest groups. In this respect, Figure 7 can be transformed into Figure 2-8.

**Figure 2-8 Transformation of the New Approach in Terms of System Model**



When viewed as a system, this case is composed of two sub-systems: the United States and Korea. Each has its trade organisations and government officials as important components, which work together to resolve the trade disputes occurred in the environment. An important characteristic of this system is the existence of the two conflicting countries that face different demands from their own environments. As a result, the functional relationship between them is likely to be competitive or a zero sum game.

Accordingly, the power structure between them might dominate the relationship. Thus, power could be an important factor in this system model as well. From the above discussion, we conclude that the system model also selects the same variables in examining the bilateral trade negotiation as does the new approach. It also emphasises their interactions. Therefore, the new approach shares the ideas of the system model.

On the basis of the above new approach, as a synthesis of the three previous approaches, we will trace the negotiation process and disassemble the black boxes as much as we can, focusing on the interaction between the variables. By doing so, we can answer the questions: (1) What are the salient factors in the settlement of a new form trade dispute occurred by the market access problem, especially in the asymmetrical trade negotiation between Korea and the United States? (2) Why and to what extent do these factors affect the two countries differently? (3) What is the role of the new dispute settlement procedure of the WTO in the asymmetrical negotiations? - this case is the first dispute ever between Korea and the United States, which was settled under the new dispute settlement procedures of WTO.

In the next chapter, we will address the factors selected in this new approach: negotiation power, interest group, trade organisation and government officials.

## Chapter 3 Three Variables of Korea-U.S. Trade Negotiation Analysis

### 3.1 Introduction

This chapter aims to examine the variables of the new synthesised approach that was devised in the previous chapter for the case analysis of this thesis. The reason for examining them here is to facilitate an understanding of their roles when we trace the negotiation process of the case in the following chapters. In other words, before examining the dynamics among them within a specific case, we attempt to look at their respective structure and role, as when we learn the structure of a car before we drive it. This general analysis of the three factors could make our forthcoming discussions simple and clear. But, in a general sense, government officials are formally supposed to carry out their organisational missions and virtually have done, therefore, we will not separate government officials from their government agencies. As noted previously, social forces in a democratic society will not let government officials act outside their control for a long time. Here, we look at the three variables: *negotiation power, interest groups, and government trade agencies.*

Our research approach assumes that these variables determine the progress and outcomes of negotiations for the recent trade disputes arising from market access problems between Korea and the United States. Accordingly, we here put names to labels, and ask how they act and how they intervene in the negotiation process. In other words, how can we understand “power” in the context of trade negotiation? What about interest group politics in the two countries? What is the organisational system charged with trade administration in both countries? By answering these questions, we could have the

surgical instruments to perform an operation on the shelf-life dispute in the following chapters.

This chapter is divided into three sections. Each section deals with one of the variables. With regard to negotiation power, we will introduce a new approach for our research purpose. Based on this approach, we examine the economic interdependence of the two countries as a critical variable to determine negotiation powers of the two countries. We also look at the Section 301 of the U.S. trade law (Section 301) and the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) of the WTO. The case was negotiated under these two rules. As a negotiation procedure, the two rules affect directly the negotiation powers of the two countries at least in that procedure tends to influence substance. The second section provides a brief review of interest group theories, focusing on the collective action of Olson. The interest group politics of the two countries is outlined. Lastly, as the last variable of our case, we see the causal position of political institutions and then follow an explanation of the trade negotiation organisations of the two countries.

## **3.2 Negotiation Power**

Why can the negotiation power be a variable to affect the negotiation process and outcomes? It is worth stressing that if one party has no power over the other, we can not proceed in the framework of a negotiation relationship, but rather in a situation entirely different where, for instance, only hierarchical power counts.<sup>1</sup> An outcome of negotiation normally consists of a combination of concessions A demanded and B yielded, and

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<sup>1</sup> J. Rojot, *Negotiation: From Theory to Practice*, London, Macmillan Academic and Professional Ltd, 1991, p.47.

concessions B demanded and A yielded.<sup>2</sup> Elements of negotiating, therefore, are lacking in a situation when one party has total control over the other. So power is essential in a negotiation relationship. But, how can we understand “power” or “negotiation power”? Many scholars have pointed out the difficulties. Even if we acknowledge power and live with its effects, it still remains a complex and baffling concept.<sup>3</sup> Thinking about power is a difficult exercise: its language is not always clear, its scope is rather diverse and above all, it is difficult to measure.<sup>4</sup> Here, I cautiously suggest a new understanding of power, narrowly negotiation power, which could be suitable for our case analysis.

### 3.2.1 A New Approach for Negotiation Power

Power is the core concept of realists, but there is unfortunately no consensus on the concept of power. Some realists understand power to be the sum of military, economic, technological, diplomatic, and other capabilities of a country. For others, power is not an absolute value determined for each country as if in a vacuum but capabilities relative to the capabilities of other countries.<sup>5</sup> Both of these definitions offer a rather static view of power; they regard power as an attribute of a country that is the sum of its capabilities. On the other hand, the dynamic definition of power focuses on the interaction among countries. Rojot asserts that power is not an attribute, that is, it does not exist by itself,

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<sup>2</sup> J.S. Odell, ‘The Outcome of International Trade Conflicts: the US and South Korea, 1960-1981’ *International Studies Quarterly*, 1985, Vol.29, p.265.

<sup>3</sup> Keith Webb, *Prediction in International Relations: The Role of Power, Interest and Trust*, Kent Papers in International Relations, Series 1: Number 11, Canterbury Kent, University of Kent at Canterbury, 1992, p.18.

<sup>4</sup> A.J.G. Aguirre, *Power Asymmetry and Negotiation: A Theoretical Analysis*, Kent Papers in International Relations, Series 1: Number 11, Canterbury Kent, University of Kent at Canterbury, 1992, p.1.

<sup>5</sup> P.R. Viotti and M.V. Kauppi, *International Relations Theory*, 2nd edition, London, Allyn and Bacon, 1993, p.44.

rather it can only appear within a relationship.<sup>6</sup> According to Keohane and Nye, since reciprocal costly effects of international transactions among countries result in interdependence, less dependent countries can often use the interdependent relationship as a source of power in negotiating over an issue.<sup>7</sup> Viotti and Kauppi assert that a country's actual power linked with an issue is not merely determined by its capabilities but also by its willingness (and perceptions by other countries of its willingness) to use those capabilities and by its control or influence over other countries.<sup>8</sup> Thus, power can be inferred by observing the behaviour of countries as they interact: their relative power is most clearly revealed by the outcomes of their interactions.<sup>9</sup>

Some scholars have looked at the source of different kinds of power. French and Raven identify legitimate, referent, expert, coercive and reward power.<sup>10</sup> For Simon, the source of power is not in the means at the disposal of the superior, but in the willingness of the subordinate to follow instructions or orders within his "zone of acceptance."<sup>11</sup> Keohane and Nye find its source in interdependence.<sup>12</sup> Baldwin also stands on the same position in that if Japan were dependent on Saudi Arabia with respect to oil, it might modify its position on the Arab-Israeli dispute under Saudi Arabia's threat to cut off Japan's oil supply unless it withheld support for Israel.<sup>13</sup> Susan Strange, on the other hand,

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<sup>6</sup> J. Rojot, *op.cit.*, p.47.

<sup>7</sup> R.O. Keohane and J.S. Nye, *Power and Interdependence: World Politics in Transition*, Boston, Little, Brown and Company, 1977, p.9. p.11.

<sup>8</sup> P.R. Viotti and M.V. Kauppi, *op.cit.*, p.44.

<sup>9</sup> *Ibid.*, p.44.

<sup>10</sup> J.R.P. French and B. Raven, 'The Bases of Social Power', in D. Cartright, *Studies in Social Power*, Ann Arbor, Institute for Social Research, University of Michigan, 1959, pp.150-167.

<sup>11</sup> H. Simon, *Administrative Behaviour*, 2<sup>nd</sup> edition, New York, The Free Press, 1965, pp.11-12.

<sup>12</sup> R.O. Keohane and J.S. Nye, *op.cit.*, pp.11-9.

<sup>13</sup> Furthermore, Baldwin argues that the dependent actor's behaviour in dependency relations is modified despite the absence of any explicit demand by the dominant actor. David A. Baldwin, 'Interdependence and power: a conceptual analysis,' *International Organisation*, Vol.34, No.4, Autumn 1980, pp.495-6, p.499, p.502.

argues that there are two kinds of power: structural power and relational power. Structural power confers the power to decide how things shall be done, the power to shape a framework within which members relate to each other, whereas relational power is the power of an actor to get other actor to do something they otherwise would not do.<sup>14</sup> As the four sources of structural power, she identifies “control over security; control over production; control of credit; and control of knowledge, beliefs and ideas.”<sup>15</sup> And, the important point is that the possessor of the sources can “change the range of choices open to others, without apparently putting pressure directly on them to take one decision or to make one choice rather than others.”<sup>16</sup>

In short, there are many opinions, but no consensus on power. In my view, power has two different dimensions, one is an attribute (putative power), and the other refers to its dynamic aspects (relational power). These two dimensions are important in that a clear understanding of power enables us to explain many of the phenomena in the trade negotiation process. The synthesised approach of power used here is illustrated in Figure 3-1.

The absolute capacity of a country can be viewed as an attribute. However, when it enters into a relationship with another country, it becomes relative. Furthermore, when it is considered within a specific issue such as an economic or security problem with other

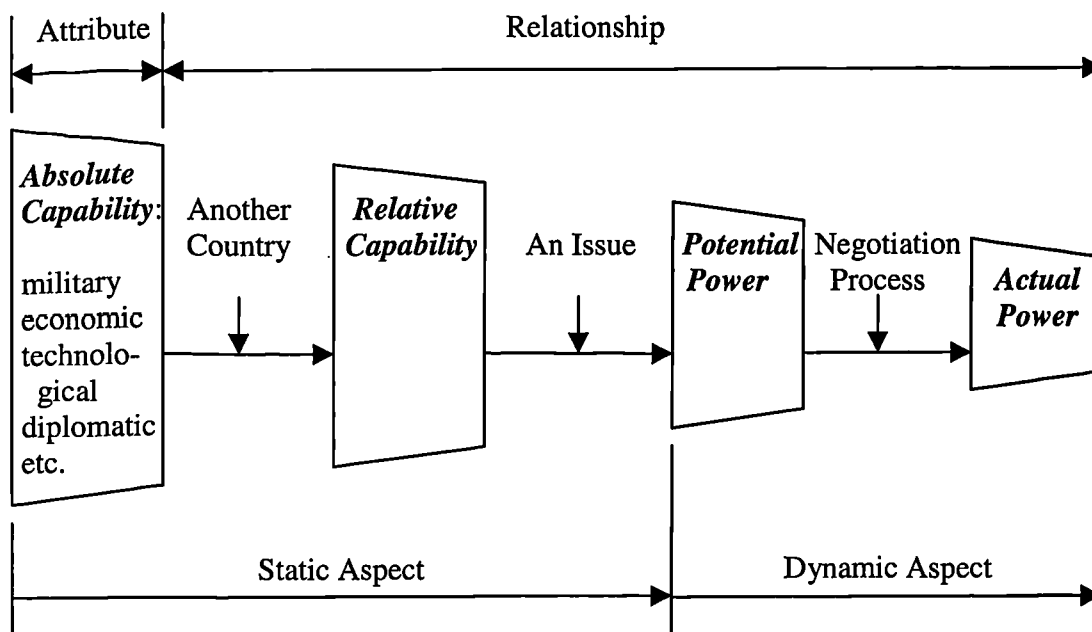
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<sup>14</sup> Susan Strange, *States and Markets*, London, Pinter Publishers, 1988, p.24.

<sup>15</sup> *Ibid.*, p.26.

<sup>16</sup> Based on the concept of this structural power, she rejects the assumption that the United States has lost hegemonic power in the international economy. Rather, she insists that “the U.S. government and the corporations dependent upon it have *not* in fact lost structural power in and over the [international economic] system. They may have changed their mind about how to use it, but they have not lost it. Nor, taking the four structures of power together, are they likely to do so in the foreseeable future.” After exploring each of the four sources of structural power, she concludes that “certain subjects of discussion in international political economy, such as trade, aid, energy or international transport systems, are actually secondary structures. They are not as they are by accident but are shaped by the four basic structures of security, production, finance and knowledge.” In my

**Figure 3-1 Two Different Dimensions of Power**



country, the scope and domain of power becomes more specific. But, the power linked with the issue is potential in that it is subject to be used in the negotiation process. Whether it will be used or not is another question. The potential power consists of diverse *negotiation resources* associated with it in the issue at stake. On the other hand, the potential power in the interstate trade dispute is continuously converted into actual power throughout the negotiation process. Political negotiation is the usual means of converting potential into effects.<sup>17</sup> Negotiators are supposed to exploit all the possible negotiation resources to establish a better position. The actual power depends on how efficiently negotiators use their negotiation resources. Insofar as we accept the realists' view of power, it is true to say that the relative size of actual power of negotiating countries determines the outcomes of negotiations. Thus, when we examine a trade negotiation from the perspective of power, the focus of analysis should be the actualised power, more specifically the converting process. Accordingly, it is important to pay attention to the

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view, the four sources of structural power could be integrated into the new approach presented here as the kinds of negotiation resources. See, *ibid*, pp28-31.



dynamic process in which negotiators exploit or manipulate their negotiation resources. This will be discussed further by clarifying the static and dynamic aspects of negotiation power.

### *The Static Aspects*

When power is considered in connection with a trade issue, it has been already transferred into a relationship. It is no longer an absolute attribute. Furthermore, even if it exists in a relationship, it has static and dynamic aspects at the same time.

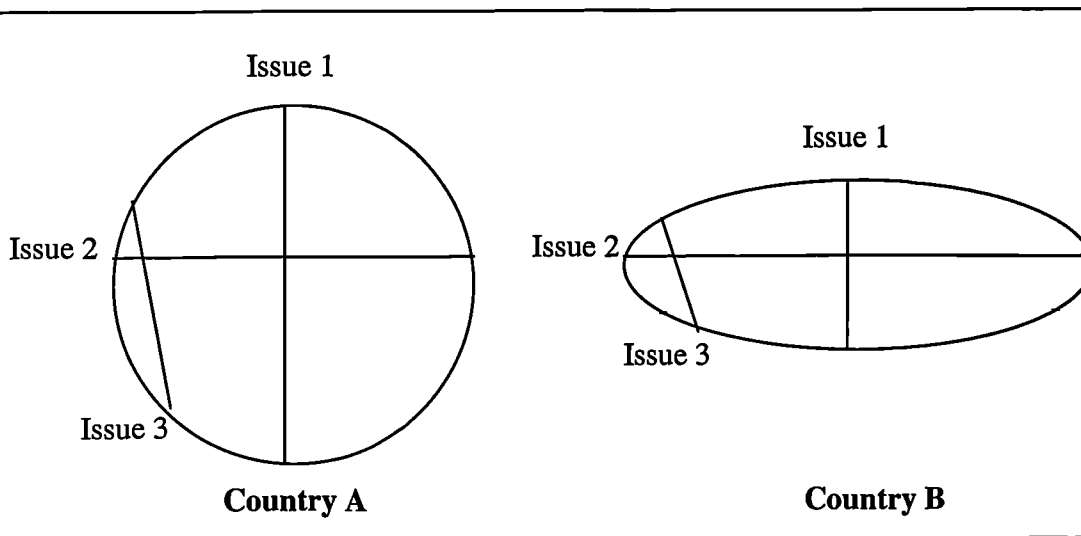
In the framework of international trade negotiation relationships, “*power*” becomes “*negotiation power*.” In its static aspect, negotiation power accounts for the overall national capabilities determined by the negotiation resources *that facilitate the accomplishment of the negotiators’ goals*. When negotiation power is considered regardless of trade issues, it could be broadly viewed as the so-called national power of a country at a specific moment. The general negotiation resources of a country consist of economic, military and natural resources, human power, the political system, the bureaucracy and so on. Thus, it can be considered that negotiation resources are fixed in the short-term perspective. However, when they are connected with a specific issue, they should be evaluated in the light of advantage or disadvantage to the issue. The stronger is not always better.<sup>18</sup>

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<sup>17</sup> R.O. Keohane and J.S. Nye, *op.cit.*, p.11.

<sup>18</sup> “ ‘Bargaining power,’ ‘bargaining strength,’ and ‘bargaining skill’ suggest that the advantage goes to the powerful, the strong, the skilful. It does, of course, if those qualities are defined to mean only that negotiations are won by those who win. But, if the terms imply that it is an advantage to be more skilled in debate, or to have more financial resources, more physical strength, more military potency, or more ability to withstand losses, then the term does a disservice. Those qualities are by no means universal advantages in bargaining situations; they often have a contrary value.” See, T. Schelling, *The Strategy of Conflict*, Cambridge, Mass., Harvard University Press, 1960, p.22, cited in Peter M. Haas (ed.), *Knowledge, Power, and International Policy Coordination*, Columbia, University of South Carolina Press, 1997, pp.340-341.

**Figure 3-2 Static Aspects of Negotiation Power**



Applied to a specific issue, negotiation resources vary in scope, weight, and domain. As Figure 3-2 shows, the overall negotiation powers of the two countries can be relatively compared by the size of the circles. The shape of the circles shows structure of negotiation resources of each country. In the context of issue 1, the negotiation powers of country A and B can be compared to each other by each length of lines dividing the circle. Country A can be simultaneously stronger or weaker than country B; strong in issue 1 and issue 3, but weak in issue 2.

Theoretically, one might measure a country's negotiation power by its negotiation resources, nevertheless, other problems still remain: how can one measure factors such as political, technological or diplomatic capability with sufficient precision?<sup>19</sup> How can one weigh different component resources such as bureaucratic or economic capabilities? These questions are beyond the scope of this study. In view of our research purpose, it is more important to understand the dynamic aspects of negotiation power.

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<sup>19</sup> P.R. Viotti and M.V. Kauppi, *op.cit.*, p.44.

### *The Dynamic Aspects*

An important point in the static analysis of negotiation power is that the power is potential. According to Baldwin, the primary difference between actual and potential power concerns the motivation of the actual or potential power wielder. This distinction allows for the common phenomenon of unused power resources; country A may have the ability to get country B to do X but lacks the desire to do so.<sup>20</sup> Thus, Hirschman argues that dependent countries may be able to offset their disadvantage in terms of potential power because they are more strongly motivated than the dominant country.<sup>21</sup> In a similar vein, disparities in economic capabilities or vulnerability do not lead necessarily to inequitable bargaining outcomes.<sup>22</sup> Thus, it is important to investigate how potential power is converted to actual power in the negotiation process. Therefore, we need to see the dynamic aspects of negotiation power. By introducing a time-factor into the static negotiation power, we can look at the dynamics of negotiation power during the negotiation process. Figure 3-3 enables us to explain the dynamics clearly because it shows the mechanism by which potential power turns into actual power. The actual negotiation power is determined by the three factors: *the issue at stake*, *negotiation resources*, and *negotiators' ability*.<sup>23</sup>

In Figure 3-3, the normal *a* and *c* of the two functions, representing the extent of the negotiators' ability to mobilise negotiation resources fully and effectively, dictates the slope of line.<sup>24</sup> Within a short-term perspective, negotiators' ability can be regarded as fixed because it takes a long time to improve it. Competent negotiators normally use the

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<sup>20</sup> David A. Baldwin, *op.cit.*, p.498.

<sup>21</sup> A.O. Hirschman, 'Beyond Asymmetry: Critical Notes on Myself as a Young Man and on Some Other Old Friends,' *International Organisation* 32, 1978, pp.47-8.

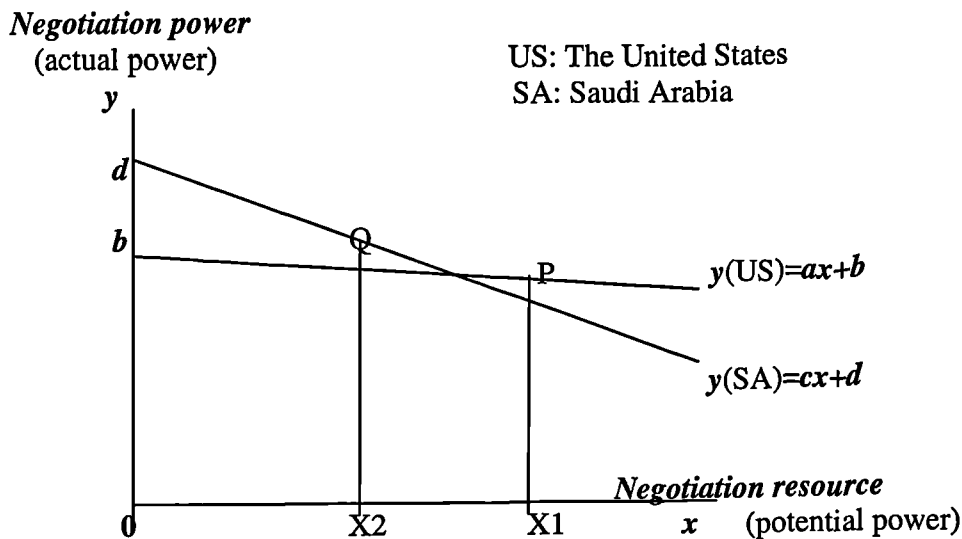
<sup>22</sup> David A. Baldwin, *op.cit.*, p.498.

<sup>23</sup> This Figure shows a simple interrelationship of factors in the dynamic process.

<sup>24</sup> These negotiators' abilities are mainly revealed in their negotiation strategies and tactics.

negotiation resources effectively whatever they are given. Thus, the country with more competent negotiators has a flatter line, that is,  $a$  is larger than  $c$ .

**Figure 3-3 Dynamic Aspects of Negotiation Power**



The normal  $b$  and  $d$ , representing a country's situation on the issue at stake, decides the starting point of line. When we consider the issue, two countries are in different positions. One might be in better position than the other because it is more independent or is less anxious about the issue. For example, the United States is trying to negotiate an investment project in Saudi Arabia's oil industry and has a strong interest in the project because the United States wants to have a safe oil supply resource. On the other hand, Saudi Arabia is in a more flexible situation in that it can afford to negotiate with any other country that can satisfy its expectations. The country with a strong national power does not always have a strong negotiation power.

In Figure 3, the variable  $x$  represents the negotiation resources that a country owns. It is equivalent to the concept of Baldwin's potential power. Good negotiation resources make the negotiation much easier because the negotiators can use them to pressure the

other country during the negotiation process. Negotiation resources vary in terms of effectiveness. Their effectiveness usually depends on the extent to which the other country is dependent on them. And resources closely related with the issue tend to be more effective. In the above example, if Saudi Arabia's oil industry relies on the U.S. invested capital and further the United States is a major consumer of its oil, the American economic negotiation leverage such as the threat of capital withdrawal will have more influence on Saudi Arabia. In Figure 3, the lines of the functions are downward because the effectiveness of negotiation resources will decrease as  $x$  moves to the right along axis X.<sup>25</sup>

Throughout the negotiation process,  $x$  continuously moves to the right as negotiators mobilise the various negotiation resources in an attempt to make the other side yield. Thus, we can not estimate the exact amount of actual power until negotiators agree to an explicit settlement of their claims. The final point of  $x$  depends on two factors; *To what extent a country has negotiation resources linked with the issue and to what extent negotiation resources are converted to the actual power in the negotiation process by the negotiators.*

Generally speaking, the country in the better position will make an effort to maintain or enhance its initial strong position, whereas the opponent will try to make the gap narrower. If the final points are X1 for the United States and X2 for Saudi Arabia (this implies that the further strategies of each country are no longer effective because of the counter-actions of the other party, or because each country no longer has the desire to use its negotiation resources, or because each country may not recognise the feasible negotiation resources under its control), the total negotiation powers of the two countries, representing all the actual powers converted from negotiation resources by the negotiators

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<sup>25</sup> In general, as negotiation resources have been used, the remaining resources become less effective. In trade dispute negotiations, the overall economic capacities and mutual

during the negotiation process, will be rectangle *ObPX1* for the United States and rectangle *OdQX2* for Saudi Arabia. By comparing the areas of their final rectangles, we can interpret the negotiation results in terms of negotiation power. In this case, the United States has improved its position and accomplished a more advantageous outcome through negotiation compared with Saudi Arabia.

However, the final points of the two countries will usually be settled in a situation in which the initial strong or weak positions remain because reversing the position from weak to strong is very difficult in practice. For example, if the United States forces Saudi Arabia to make concessions by using all kinds of strategies and tactics all at once, Saudi Arabia might withdraw its negotiators from the negotiation table on the grounds that it had better negotiate with other countries, that is, it will use its BATNA (Best Alternative To a Negotiated Agreement).<sup>26</sup> Thus, it is very difficult to reach the best outcome with the sacrifice of the opponent country.

In summary, negotiation power, precisely the actual power used in the course of the negotiation, is determined by negotiators' ability (a and c), the issue at stake (b and d), and negotiation resources (x). The critical point is to what extent the negotiation resources would be converted into actual power, and this depends on negotiators. In this sense, the negotiators' abilities play an important role throughout the process of negotiation.<sup>27</sup> While tracing the negotiation process of the shelf-life case in the last four chapters, we will examine how the negotiators of the two countries led the negotiation process.

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export dependency of the two countries, as argued by Odell, are the most important negotiation resources.

<sup>26</sup> The more attractive your alternatives to the proposed agreement, the more power you have. The fewer your alternatives, and the less attractive they are compared with the results of negotiation, the less power you have. See, Gavin Kennedy, *Negotiator*, London, Penguin Books Ltd, 1994, p.28.

<sup>27</sup> This conclusion is consistent with institutionalists' view of government agencies' role.

Now, we look at the negotiation resources of the two countries in terms of their potential power within bilateral trade disputes. Although there are numerous negotiation resources, the economic interdependence should be given a priority. Negotiation procedures should be examined as well. In relation to the case, the United States investigated the case under Section 301 that is regarded as the economic nuclear weapon.<sup>28</sup> On the other hand, with the establishment of the WTO, a new trade dispute settlement procedure was made in 1995. The case also was carried out under this multilateral procedure as the first case between the two countries. Thus, we need also to examine these two procedures in terms of advantage or disadvantage to the two countries. First, we look at the economic interdependence of Korea and the United States.

### 3.2.2 Interdependence of Korea-U.S. Economy

It is clear that interdependence is a source of power.<sup>29</sup> In reality, the dependence of a country's economy on another country is a critical factor restricting its behaviour in trade dispute negotiations. In the study on bilateral trade disputes between Korea and the United States, as noted above, Odell demonstrated the value of power theories of international political economy based on Korea's dependence on the U.S. economy, which he regarded as clear evidence of a highly unequal power relationship between the two countries.<sup>30</sup>

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<sup>28</sup> Japanese officials referred to Section 301 as the nuclear weapon of international trade policy. See, Michael Mastanduno, 'Setting Market Access Priorities: The Use of Super 301 in US Trade with Japan,' *The World Economy*, Vol.15, No.6, November 1992, p.730.

<sup>29</sup> R.O. Keohane and J.S. Nye, *op.cit.*, pp.11-9, and David A. Baldwin, *op.cit.*, pp.495-6, p.499, p.502.

<sup>30</sup> "In 1980 South Korea's GDP still totalled only about one forty-fifth that of the United States. In the same year Korean exports to the United States amounted to about 7 percent of Korea's GDP, while the United States relied on Korea to buy exports equivalent to only 0.18 percent of its GDP." See J.S. Odell, *op.cit.*, p.274.

**Table 3-1 Korea's Trade with the United States**

( million dollars )

Year	Exports	Imports	Balance	Exports to U.S./ Total Exports (%)
1965	61	182	-121	34.9
1967	137	305	-168	42.9
1970	395	585	-190	47.3
1972	759	647	112	46.7
1975	1,536	1,881	-345	30.2
1980	4,607	4,890	-284	26.3
1981	5,661	6,050	-389	26.6
1982	6,243	5,956	287	28.3
1983	8,245	6,274	1,971	33.6
1984	10,479	6,876	3,603	35.8
1985	1,0754	6,489	4,265	35.5
1986	13,880	6,545	7,335	40.0
1987	18,311	8,758	9,553	38.7
1988	21,404	12,757	8,647	35.3
1989	20,639	15,911	4,728	33.0
1990	19,360	16,942	2,418	29.8
1991	18,559	18,894	-335	25.8
1992	18,090	18,287	-197	23.6
1993	18,138	17,928	210	22.1
1994	20,553	21,579	-1,026	21.4
1995	24,131	30,404	-6,272	19.3
1996	21,670	33,305	-11,635	16.7

Source: Korea Traders Association, *The Statistics of Exports and Imports*, various issues, and Ministry of Trade and Industry of the Korean Government, *The Present Situation of Korea-U.S. Economic Relations*, 1997 p.333. [In Korean]

As Table 3-1 shows, in 1967, Korean exports to the United States had reached \$137 million, which accounted for 42.9 percent of total Korean exports. The United States has become the predominant export market for Korea. Korean exports to the U.S. market





continuously increased until the early 1970s. During that period, the share of exports going to the United States was about 50 percent. Although the rapidly growing trade can be attributed mainly to the Vietnam War, it shows that the Korea-U.S. trade relationship started to move towards interdependent dimensions.<sup>31</sup>

Since the late 1970s, Korea's export dependence on the U.S. market has dropped from 50 percent to about 30 percent. But the United States has remained the largest export market for Korea. Korea's bilateral trade deficit with the United States was maintained until 1981 except for 1972 and 1977. It was from 1982 that the trade relationship between the two countries entered a new phase. Korea, for the first time, went into the black in bilateral trade with the United States. After reaching a \$287 million surplus in bilateral trade with the United States in 1982, the surplus increased to a maximum \$ 9.5 billion in 1987. The surplus has rapidly decreased since 1989 because of the U.S. trade pressures as well as the import liberalisation policy, the economic instability, and the weak competitiveness of the labour-intensive industry of Korea.<sup>32</sup> After 1991, Korea's bilateral trade with the United States showed a deficit again.

Another change of the bilateral trade is the continuous decrease of Korea's export-dependence on the U.S. market. As explained, shipments to the United States accounted for about 50 percent of total Korean exports between the 1960s and early 1970s. By contrast, in the early 1980s, the share of exports going to the United States decreased to 26.3 percent in 1980 and 26.6 percent in 1981. Except for the mid-1980s, the trend has been continuing at 22.1 percent in 1993 and 16.7 percent in 1996. It shows that Korea's export market has been diversified.

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<sup>31</sup> Chung In Moon, 'US Trade Policy and US-Korea Trade Relations', in Ki Soo Kim (ed.), *Understanding of US Trade Policy*, Seoul, The Sejong Research Institute, 1996, p.208. [In Korean]

**Table 3-2 Order of US Trade with Major Countries**

( million dollars )

1995		1996	
Country	Trade Volume	Country	Trade volume
Total Exports of the U.S.		1,416,131 (100%)	
1,328,187 (100%)			
1	Canada 272,081 (20.5%)	Canada	290,168 (20.5%)
2	Japan 187,875 (14.1%)	Japan	182,754 (12.9%)
3	Mexico 108,017 (8.1%)	Mexico	128,824 (9.1%)
4	Germany 58,223 (4.4%)	U.K.	63,473 (4.5%)
5	China 57,303 (4.3%)	Germany	62,417 (4.4%)
6	U.K. 55,718 (4.2%)	China	59,808 (4.2%)
7	Korea 49,597 (3.7%)	Taiwan	49,250 (3.5%)
8	Taiwan 48,270 (3.6%)	Korea	48,324 (3.4%)
9	Singapore 33,882 (2.6%)	France	37,026 (2.6%)
10	France 31,418 (2.4%)	Singapore	33,058 (2.3%)

Source: Ministry of Trade and Industry of the Korean Government, *op.cit.*, p.345.

The other important change in their economic relationship is that the two countries have been important trade partners for each other in the context of the quality and quantity of trade. In regard to trade volume, even if the percentage of exports to the United States decreased, the United States remained the largest trade partner for Korea. On the other hand, Korea was the seventh largest trade partner for the United States in 1995 and the eighth in 1996 as illustrated in Table 3-2.

In trade goods, the recent leading Korean exports to the United States consist of high value-added products such as electronics, steel and metal products, automobiles, machinery and synthetic resins.<sup>33</sup> The United States formerly was dominant in these

<sup>32</sup> *Ibid*, p.209.

<sup>33</sup> The Ministry of Trade and Industry of the Korean Government, *The Present Situation of Korea-US Economic Relations*, 1997, pp.335-336. [In Korean]

**Table 3-3 Major Korean Exports to the United States, 1995**

(million dollars)

Item	Total(A)	U.S.(B)	B/A(%)
Total Exports	125,058	24,131	19.3
Electronic products	44,389	13,536	30.3
Textiles	18,383	2,715	14.8
Steel products	10,351	1,468	13.9
Automobiles	8,430	1,483	17.6
General machinery	5,570	895	16.5
Plastic products	2,198	378	17.2

Source : Ministry of Trade and Industry of the Korean Government,1 *op.cit.*, p.109.**Table 3-4 Major Korean Imports from the United States, 1995**

(million dollars)

Item	Total(A)	U.S.(B)	B/A(%)
Total Imports	135,119	30,404	22.5
Electronic products	25,135	7,658	30.3
Chemical products	25,297	5,313	21.0
Agricultural and fishery products	13,427	4,937	36.3
General machinery	18,179	4,821	26.4
Aircraft	1,723	1,536	89.1
Precise machinery	4,248	1,123	26.3

Source : Ministry of Trade and Industry of the Korean Government, *op.cit.*, p.110.

products, and now it has adopted a more aggressive policy in order to maintain its market share at home and to increase its exports abroad. Therefore, most of them have faced growing protectionist pressures.<sup>34</sup> The major U.S. exports to Korea are electronics, chemicals, foodstuffs, machinery and aircraft.<sup>35</sup> (Table 3-3 and Table 3-4)

On the other hand, in investment as shown in the above Table 3-5, the U.S. investment in Korea was \$5 billion between 1962 and 1996, which was the second behind Japan. The Korean investment in the United States was \$4 billion during that period, following a sharp expansion since 1990.

**Table 3-5 Investment of the U.S. and Korea**

( million dollars )

	US Investment in Korea		Korean Investment in the U.S.	
	Number of Projects	Amount	Number of Projects	Amount
1967~				
1990	772	2,178	236	304
1991	86	296	79	391
1992	70	379	63	347
1993	68	341	54	380
1994	115	311	127	531
1995	161	645	126	534
1996	167	876	186	1,561
<b>Total</b>	<b>1,439</b>	<b>5,026</b>	<b>871</b>	<b>4,048</b>

Source: Ministry of Trade and Industry of the Korean Government, *op.cit.*, p.11.

<sup>34</sup> Jeffrey J. Schott, 'US Trade Policy: Implications for US-Korean Relations' in Thomas O. Bayard and Soo-gil Young (eds.), *Economic Relations Between the United States and Korea: Conflict or Cooperation?*, Washington, Institute for International Economics, 1991, pp.97-98.

From these statistics, it is true to say that the economies of the two countries rely on each other to some extent. But, relatively, Korea's exports are more dependent on the U.S. market although it has reduced the dependency during the last decade. Furthermore, when we consider the GDP of the two countries, there still exists a big gap between them. In 1995, Korea's GDP was \$489 billion, while the U.S. GDP was \$7,256 billion.<sup>36</sup> Korea's GDP still totalled only about one fifteenth that of the United States. In the same year Korean exports to the United States was \$24,131 million which amounted to about 5.3 percent of Korea's GDP. On the other hand, the U.S. exports to Korea was \$30,404 million equivalent to only about 0.4 percent of its GDP. Thus, it can be concluded that the Korean economy is to a large extent dependent on the United States. The United States could attempt to use this leverage during the negotiation process as a negotiation resource.

In the next section, as another negotiation resource, we will examine the negotiation procedures applied to the case under examination. Indeed, the Section 301 and the WTO dispute settlement procedure influenced the negotiation power of the two countries. We explore how the procedures can affect the disputing countries.

### **3.2.3 Section 301 and DSU**

If the United States initiates a Section 301 investigation on a trade issue, Korea must follow the rules of Section 301 regardless of its willingness. As far as a trade issue is covered by any agreement under the WTO, the members should follow the WTO dispute settlement procedure. During the period of trade negotiation, negotiators cannot change the negotiation procedures, instead they must accept them as a given. In fact, the shelf-life

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<sup>35</sup>MTI, *op.cit.* pp.337-338.

case under examination was negotiated through bilateral diplomacy, Section 301 of the U.S. trade law, and the WTO dispute settlement procedure. As the procedures for this dispute or the negotiation resources to be mobilised by negotiators, Section 301 and DSU produced different effects on the two countries. It is therefore necessary to examine what they are and what are the two countries' positions on them.

### ***Section 301***

The U.S. government uses various policy instruments to accomplish its trade policy goals.<sup>37</sup> Trade policies are divided into import policy and export policy. Section 301 is a powerful tool of U.S. export policy, which aims to open foreign markets to the U.S. producers by eliminating unfair trade practices.<sup>38</sup> What is the background and contents of Section 301 legislation? Why have the concerns with opening foreign markets arisen in the early 1980s in the United States?

According to Section 301 of the Trade and Tariff Act of 1974, the President could take a wide range of retaliatory actions against any country that imposes “unjustifiable” or “unreasonable” import restrictions or any export subsidies diminishing U.S. sales overseas.<sup>39</sup> That statute left much discretion to the President. In the event that the Section was implemented, issues such as the way foreign countries were dealt with, or when and

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<sup>36</sup> For the U.S. data, See, *Economic Report of the President, 1998*, [http://www.gpo.ucop.edu/catalog/erp98\\_appen\\_b.html](http://www.gpo.ucop.edu/catalog/erp98_appen_b.html). For the Korean data, See, *Advance Report of Major Statistics*, <http://www.nso.go.kr/stat/other/e-speed.htm>

<sup>37</sup> Every country pursues many of the same goals: more rapid expansion of productivity, higher-wage employment, increased living standards, and strengthened economic growth. See, WTO, *Trade Policy Review of the United States : Report by the Government in 1996*, in Internet, <http://www.wto.org/wto/reviews/>

<sup>38</sup> Stephen D. Cohen, Joel R. Paul and Robert A. Blecker, *Fundamentals of U.S. Foreign Trade Policy*, Colorado, Westview Press, 1996, pp.5-6.

<sup>39</sup> Helen Milner, ‘The Political Economy of U.S. Trade Policy: A Study of the Super 301 Provision’ in Jagdish Bhagwati and Hugh T. Patrick (eds.), *Aggressive Unilateralism*, London, Harvester Wheatsheaf, 1990, p.165.

how retaliation was exercised were all left to the President to decide. Although potentially powerful, Section 301 was hardly ever used.<sup>40</sup>

“Reaganomics,” as a combination of tight monetary policy and stimulative fiscal policy introduced by the Reagan administration in 1981, deeply affected US trade policy through the revolutionary changes in domestic economic policy. High U.S. interest rates pushed the value of the dollar up sharply. The dollar remained continuously overvalued until mid-1985. Simultaneously, sharp cuts in taxes and a rising budget deficit led to excessive national spending when compared with production, and an inadequate supply of saving, a situation that was offset by a soaring trade deficit and huge capital inflows, respectively.<sup>41</sup> The United States saw its exports decline by a third, whereas its imports rose even faster resulting in factory closures and high unemployment.<sup>42</sup> Despite the fact that the trade deficits were the largest ever recorded (peaking at \$152 billion in 1987), the Reagan administration obstinately praised the advantages of the free market.<sup>43</sup> Many in Congress thought that immediate and effective action should be arranged in order to reduce the deficits. Moreover, there was a strong belief that those countries which persistently run large surpluses with the United States were acting unfairly and should be forced to reduce them. Japan, in particular, was targeted because its trade surplus accounted for approximately one third of the entire U.S. deficit.<sup>44</sup> This situation in the United States in the early 1980s created a lot of pressure for protectionism.

In order to fight the President’s inaction in the face of growing trade imbalances, Congress began action on a new trade bill. In response to Congressional pressure, the

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<sup>40</sup> *Ibid.*, pp.165-6.

<sup>41</sup> Michael C. Webb, ‘Understanding Patterns of Macroeconomic Policy Co-ordination in the Post-War Period’, in Richard Stubbs and Geoffrey R.D. Underhill (eds.), *Political Economy and the Changing Global Order*, London, the Macmillan Press Ltd., 1994, pp.182-5, and Stephen D. Cohen, Joel R. Paul and Robert A. Blecker, *op.cit.*, p.41.

<sup>42</sup> Helen Milner, *op.cit.*, p.166.

<sup>43</sup> Stephen D. Cohen, Joel R. Paul and Robert A. Blecker, *op.cit.*, p.41.

Reagan administration changed course in late 1985.<sup>45</sup> The Plaza Agreement induced a significant drop in the dollar's overvalued exchange rate. At the same time, President Reagan announced that he would "not stand by and watch U.S. business fail because of unfair trade practices abroad. I will not stand by and watch U.S. workers lose their jobs because other nations do not play by the rules."<sup>46</sup> In fact, President Reagan self-initiated four Section 301 investigations in 1985 of one Brazilian (informatics), one Japanese (tobacco), and two Korean practices (insurance services and intellectual property rights).<sup>47</sup> The Congress however was still not satisfied. Therefore, a three-year initiative of Congress began aiming at passing comprehensive trade legislation. The end product was the Omnibus Trade and Competitiveness Act of 1988 (1988 Act), especially Section 301.<sup>48</sup>

By the enactment of the 1988 Act, the Congress transferred authority to retaliate from the President to the USTR and strengthened Section 301 not only by tightening the law's procedures requiring formal investigation of private complaints but also by adding two provisions known as "Super 301" and "Special 301" which call upon USTR to develop its own complaints procedure by (1) making a comprehensive inventory of restrictions in all countries, (2) selecting priority targets from within that inventory, and (3) retaliating if the targeted restrictions are not promptly removed.<sup>49</sup>

Section 301 may be invoked in two forms. First, if USTR determines that a foreign act, policy, or practice violates or is inconsistent with a trade agreement or is unjustifiable and burdens or restricts U.S. commerce, then USTR *must* take action. Second, if USTR

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<sup>44</sup> Helen Milner, *op.cit.*, p.166.

<sup>45</sup> *Ibid.*, pp.166-7.

<sup>46</sup> Stephen D. Cohen, Joel R. Paul and Robert A. Blecker, *op.cit.*, p.42.

<sup>47</sup> Judith H. Bello and Alan F. Holmer, 'The Heart of the 1988 Trade Act; A Legislative History of the Amendments to Section 301' in J. Bhagwati and H.T. Patrick (eds.), *op.cit.*, p.84.

<sup>48</sup> Stephen D. Cohen, Joel R. Paul and Robert A. Blecker, *op.cit.*, p.42.

<sup>49</sup> Helen Milner, *op.cit.*, p.113, and Stephen D. Cohen, Joel R. Paul and Robert A. Blecker, *op.cit.*, p.154.



determines that the act, policy, and practice is unreasonable or discriminatory and burdens or restricts U.S. commerce, then USTR *may* take action.<sup>50</sup> Whether retaliation is mandatory or discretionary, action can include: (1) suspending or withdrawing from any trade agreement with the foreign country involved; (2) imposing tariffs, quotas or other import restrictions on the goods of the foreign country; or (3) entering into a new agreement that commits the foreign country to eliminate the offending act, policy, or practice. USTR has broad discretion to decide on the appropriate target goods and forms of retaliation.<sup>51</sup> On the other hand, in order to provide the opportunity for quieter, less coercive diplomacy, section 302 of the statute allows USTR to conduct informal negotiations with a foreign country even though a petition was already filed.<sup>52</sup> In short, under Section 301, USTR is authorised to retaliate unilaterally against a foreign government to remove unfair foreign trade practices claimed by an American firm or industry.<sup>53</sup> So, a foreign country cannot avoid vulnerabilities in the negotiation process if its exports are very dependent on U.S. market.

#### □ The U.S. Position

When the Congress reinforced Section 301 in 1988, foreign governments quickly objected. They convened a special meeting to criticise the evils of unilateralism, and they

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<sup>50</sup> S.D. Cohen, J.R. Paul, and R.A. Blecker, *op.cit.*, p.153.

<sup>51</sup> *Ibid*, p.154.

<sup>52</sup> M.P. Ryan, 'USTR's Implementation of 301 Policy in the Pacific,' *International Studies Quarterly*, Vol.39, 1995, p.336, and USTR reviews the allegations and must determine within forty-five days after receipt of the petition whether to initiate an investigation.

<sup>53</sup> In a broad sense, Bhagwati pointed out that the United States enacted the current Section 301 to establish new trade obligations: (1) opening markets in sectors where GATT already operates, e.g., getting foreign countries to make additional concessions in manufactures; (2) opening markets and/or establishing new rules or disciplines in new sectors, e.g., in services and agriculture; and (3) establishing new rules that may apply to old as well as new sectors, e.g., prohibition of export targeting, prescribing workers' rights, and enforcing intellectual property rights. See, J. Bhagwati, 'Aggressive Unilateralism: An Overview' in J. Bhagwati and H.T. Patrick (eds.), *op.cit.*, p.4.

warned that the new Section 301 procedures might destroy the Uruguay Round trade negotiations in GATT, and possibly even GATT itself.<sup>54</sup> Nevertheless, the Congress defended the new Section 301, while the Bush Administration was more inclined to offer off-the-record assurances that in practice Section 301 would not be as bad as it sounded.<sup>55</sup> But, within the Administration, officials at the USTR and the Commerce Department were normally receptive because the provision could provide effective leverage in ongoing bilateral negotiations.<sup>56</sup>

Within the United States, the new Section 301 had its supporters –labour and business leaders, legislators and academics – who believed that, under the imbalance in market access opportunities between the United States and other countries, the United States should be much more forceful in enforcing its commercial rights, in defending its commercial interests, and in establishing more balanced rules of the game.<sup>57</sup> Considering that the GATT dispute settlement process was frustrated by a country subject to a GATT complaint, they argued that the United States should reserve its rights to retaliate, even if in violation of existing rules.<sup>58</sup>

On the other hand, the new Section 301 had its opponents. Within the Bush Administration, the State Department and the Council of Economic Advisors opposed the provision, fearing that “it would have a detrimental impact on bilateral political relations and might even spark a costly trade war.”<sup>59</sup> The statement, drafted by Professor Bhagwati and forty of the most prominent economists in the United States, condemned both the illegality under GATT rules of 301 retaliation and, more generally, the new law’s

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<sup>54</sup> Robert E. Hudec, ‘Thinking about the New Section 301: Beyond Good and Evil’ in J. Bhagwati and H.T. Patrick (eds.), *op.cit.*, pp.113-4.

<sup>55</sup> *Ibid*, p.115.

<sup>56</sup> Michael Mastanduno, *op.cit.*, p.730.

<sup>57</sup> Geza Feketekuty, ‘U.S. Policy on 301 and Super 301’ in J. Bhagwati and H.T. Patrick (eds.), *op.cit.*, p.98.

<sup>58</sup> *Ibid*, p.98, p.101.

departure from GATT multilateralism in favour of unilateral initiatives on the basis of patronising smaller trading partners.<sup>60</sup>

#### □ The Korean position

Korea, along with other countries, criticised Section 301. Their main criticism was that a viable and credible system of international rules could not exist if the United States, as the largest country in the system, violates the rules, or even bypasses them seeking to achieve its objectives by applying unilateral pressure on its trading partners. Moreover, they argued that in the context of international obligations, the United States did not always live up to its own international obligations. Particularly, the U.S. Congress often proved most reluctant to bring its laws into compliance with GATT panel rulings.<sup>61</sup> The critical points were focused on the self-righteous tone of the law. The United States plays both prosecutor and judge in section 301 procedures.<sup>62</sup>

Chulsu Kim<sup>63</sup> argued that even if it is admitted that initiatives such as the 1988 trade law are required to achieve global trade liberalisation, the means chosen must be consistent with the goals. If all countries began to use the same policy tool such as Section 301, the GATT system would be destroyed, and the law of the jungle would prevail, he said.<sup>64</sup> In this context, he asserted that “GATT must be strengthened along with the dispute

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<sup>59</sup> Michael Mastanduno, *op.cit.*, p.730.

<sup>60</sup> Robert E. Hudec, *op.cit.*, p.114.

<sup>61</sup> Geza Feketekuty, *op.cit.*, p.98, and *Financial Times* of 18 May 1998 states that “perhaps the biggest threat to the WTO’s authority was removed last month when the EU dropped its complaint against US anti-Cuba legislation. The WTO has thereby avoided a damaging head-on clash with a touchy US Congress that could have undermined all its achievements up to now.” See, *Financial Times*, ‘The World Trade System at 50,’ Monday May 18, 1998, Survey VI.

<sup>62</sup> Robert E. Hudec, *op.cit.*, p.114.

<sup>63</sup> He served as the first assistant Director-General of the WTO and the minister for the Ministry of Trade and Industry of Korea.

<sup>64</sup> Chulsu Kim, ‘Super 301 and the World Trading System: A Korean View, in J. Bhagwati and H.T. Patrick (eds.), *op.cit.*, p.253.

settlement mechanism. It is the only current means available to constructively resolve bilateral disputes through a multilateral procedure.”<sup>65</sup> According to Young, the United States was unfair on at least three counts: (1) it responded forcefully to other countries’ protectionist policies, while at the same time practising protectionism towards politically weak countries (2) it treated Korea like an advanced industrial country, such as Japan, despite the fact Korea was still a mid-level developing country (3) although Korea had been liberalising imports since 1978, the United States did not seem to appreciate this unilateral effort. Moreover, as soon as Korea made one concession, the U.S. government would come up with a new series of demands and similar protectionist threats.<sup>66</sup>

In response to the application of Super 301 to Japan in 1989, the Japanese government refuted the U.S. action as well, stating that “the provision could do nothing but harm to the multilateral free-trade system that underpins the world economy, and that it had no intention of negotiating with the United States under the auspices of the clause.”<sup>67</sup> Makoto Kuroda<sup>68</sup> pointed out the danger of the new approach that other countries resist the United States by employing 301-like provisions against their trading partners, and illustrated several points:

What if the EC was to assert that the U.S. patent system is discriminatory and should be replaced since it takes “first inventing, first served” as its premise for Americans and “first applying, first served” as its basis for dealing with foreigners?

What if Central and South American countries were to insist that U.S. restrictions

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<sup>65</sup> *Ibid*, p.255.

<sup>66</sup> Soo-Gil Young, ‘Korean trade Policy: Implications for Korea-U.S. Cooperation’, in Thomas O. Bayard and Soo-Gil Young (eds.), *Economic Relations between the United States and Korea: Conflict or Cooperation?*, Washington, Institute for International Economics, 1991, p.121.

<sup>67</sup> Makoto Kuroda, ‘Super 301 and Japan, in J. Bhagwati and H.T. Patrick (eds.), *op.cit.*, p.220.

<sup>68</sup> He served as vice-minister for international affairs with the Japanese Ministry of Trade and Industry.

on sugar imports are clear impediments to trade and demand their removal? What if Japan and Taiwan were to claim that the U.S. requirement for voluntary restraints on machine tool exports are harmful to domestic industry and demand compensation? Would the United States enter into negotiations with these trading partners? If the United States decided not to make the required concession and these countries responded with counter-measures or sanctions against U.S. imports without recourse to GATT procedures, what would become of the world free-trading system?<sup>69</sup>

Whether Section 301 has legitimacy is not our concern. What we emphasise is that on whom and to what extent Section 301 have an effect in bilateral negotiations. From the above discussions, it is clear that Section 301 provides effective leverage to the United States. In fact, the trading partners with the United States knew that “any practice cited under Super 301 would receive intense congressional scrutiny, rendering executive threats credible and making it difficult for US negotiators to accept vague statements of good intentions as a substitute for meaningful concessions.”<sup>70</sup> They cannot avoid vulnerabilities in the negotiations, therefore, if they are involved in an issue to be able to be cited under Section 301. The United States has an exclusive and powerful negotiation resource – the so-called Section 301. If so, as another dispute settlement procedure, how about the WTO procedure? Section 301 is a U.S. domestic law, whereas the WTO procedure is a multilateral apparatus to deal with trade disputes. Thus, it may be neutral to the disputing countries. Now, we will examine the WTO procedure, focusing on its advantage or disadvantage to the disputing countries.

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<sup>69</sup> Makoto Kuroda, *op.cit.*, pp.220-1.

<sup>70</sup> Michael Mastanduno, *op.cit.*, p.730.

### *WTO Dispute Settlement Procedure*

Before the establishment of the WTO, the GATT also had a dispute settlement procedure that encouraged parties to consult each other in order to arrive at a resolution agreeable to them. In the event that no such resolution was forthcoming, the dispute settlement procedure provided for a panel to be set up, on an ad hoc basis, composed of experts to consider and hear the arguments and positions of the parties. Initially, panel rulings were presented to the interested parties so as to give them another opportunity for an amicable resolution. The panel rulings became legally binding to the parties only if the GATT Council, composed of all the members, adopted them by consensus.<sup>71</sup>

However, it was not sufficient.<sup>72</sup> Many countries were dissatisfied with the GATT dispute settlement procedure.<sup>73</sup> Schott identified three fundamental weaknesses of the procedures: “the overly long delays from the establishment to the conclusion of panel proceedings; the ability of disputants to block the consensus needed to approve panel

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<sup>71</sup> Judith H. Bello and Alan F. Holmer, ‘U.S. Trade Law and Policy Series No. 24; Dispute Resolution in the New World Trade Organisation: Concerns and Net Benefits’, *International Lawyer*, Vol.28 No.4, 1994, p.1096.

<sup>72</sup> According to Bello and Holmer, “The consultative phase could be unproductively long; the party whose measures were challenged could simply drag out the bilateral discussions. Even after parties agreed to the establishment of a panel, they encountered difficulties in agreeing on the terms of reference, panellists, and procedures for making submissions to the panel. The panel phase of the process was easily extended by fractious disputants or scheduling problems with the panellists. The credibility of the panellists as independent and objective was questioned, since nearly all were representatives of a contracting party to the GATT. If the panel issued an unsound, unsupported report, the GATT had no mechanism for appealing it. Even if a panel finally issued a report, a single contracting party - including the disputant to whom it was adverse - could block its adoption by the GATT Council. Even if the GATT Council adopted a report, nothing could guarantee that the party whose measure was deemed to be inconsistent with the GATT would withdraw it or pay compensation to the adversely affected party or parties. Neither was there any guarantee that the GATT Council, as a last resort, would authorise the adversely affected party or parties to withdraw concessions of equivalent value, that is, retaliate. Finally, no procedure existed to ensure that the GATT Council would monitor the action or inaction of a party whose measures were found to be GATT – inconsistent, unless prompted by the initiative of the party that successfully challenged those measures.” *Ibid*, p.1097.

<sup>73</sup> Palitha T. B. Kohona, ‘Dispute Resolution under the World Trade Organisation: An Overview’. *Journal of World Trade*, Vol.28, No.2, 1994, p.24.

rulings and authorise retaliations; and the difficulty in securing compliance with panel rulings.”<sup>74</sup> As a result, the establishment of a strong dispute settlement procedures was an important issue of the Uruguay Round negotiations. In fact, in a certain sense, the willingness of countries to undertake new rights and obligations under international trade agreements depended on whether those rights can be enforced.<sup>75</sup>

Through the Uruguay Round, a new procedure was made. The procedure is described in the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU or the Understanding). The Understanding provides a comprehensive framework for the resolution of disputes in the field of international trade under the WTO. It addressed the deficiencies of the GATT procedures. It is also intended to preserve the rights and obligations of the members as stated in the WTO code, and to clarify provisions of the code in accordance with the rules of interpretation under customary international law.<sup>76</sup> The GATT procedure was fundamentally changed by providing for:

- “automatic establishment of a panel and automatic adoption of a panel report (unless the Council, by consensus, decides to the contrary);
- an exceptional opportunity for appellate review of panel reports;
- rigorous surveillance of the implementation of adopted panel reports;
- compensation, or WTO authorisation, for the suspension of concessions if a report is not implemented in a reasonable period of time;
- expeditious arbitration in the event of disputes about a reasonable period of time for implementation or the appropriate of time for implementation or the appropriate level of compensation or suspension; and

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<sup>74</sup> Jeffrey J. Schott, *The Uruguay Round: an Assessment*, Washington, Institute for International Economics, 1994, p.125.

<sup>75</sup> *Ibid*, p.125.

- recourse to these procedures for practices considered as violating the WTO, or nullifying or impairing WTO benefits.”<sup>77</sup>

As a result of these reforms, the new procedure contributed to the development of a uniform international trade dispute settlement mechanism applicable to all disputes arising under the WTO. Until May 1998 since its creation in 1995, more than 120 cases have been brought to the WTO, three times as many as were brought to the GATT in its 47 years of existence.<sup>78</sup> If so, what have Korea and the United States thought of the WTO procedures?

#### □ **The U.S. Position**

The United States was especially dissatisfied with the GATT dispute settlement system because it had so many defects. In the perspective of America’s historical and cultural background, the system functioned as more political than legalistic. It was considered as “a forum for negotiating resolutions to disputes, rather than an adjudicatory body applying GATT law to particular facts”<sup>79</sup> So, the United States tried to make the system become a far more legalistic than political process.<sup>80</sup> Establishing a more judicial system was one of the main U.S. objectives at the start of the Uruguay Round. In fact, “more effective and expeditious dispute settlement mechanisms and procedures...and enable better enforcement of United States’ rights” was the first listed trade negotiating objective for the United States, which is codified in section 1101 of the U.S. Omnibus Trade and Competitiveness Act of 1988.<sup>81</sup>

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<sup>76</sup> Asif H. Qureshi, *The World Trade Organisation*, Manchester and New York, Manchester University Press, 1996, p.97 and Article 3 of the Understanding, <http://www.wto.org/dispute/dsu.htm>

<sup>77</sup> Judith H. Bello and Alan F. Holmer, *op.cit.*, p.1099.

<sup>78</sup> *Financial Times*, ‘The World Trade System at 50,’ May 18, 1998, Survey VI.

<sup>79</sup> Judith H. Bello and Alan F. Holmer, *op.cit.*, p.1096.

<sup>80</sup> Jeffrey J. Schott, *op.cit.*, p.129.

<sup>81</sup> *Ibid.*



Even if a number of countries, if not most, had doubts about the U.S. proposal of such a transformation, the United States converted them to the benefits of a legalistic, rule-based dispute settlement procedure through the aggressive unilateralism of the late 1980's.<sup>82</sup> Feketekuty pointed out this point, saying that "it was intended as a signal to other countries that if they did not address the issues identified by the United States as high-priority negotiating issues in the Uruguay Round, they would have to address them in a bilateral negotiating context under 301."<sup>83</sup> The United States finally succeeded in so improving the GATT dispute settlement procedures, nonetheless *some* in the United States worried about the fact that the rules, which is considered as an effective tool for *plaintiffs* rather than *defendants*, would prove disadvantageous to U.S. interests.<sup>84</sup> Namely, the trading partners, which are affected by the United States trade measures that would violate the GATT obligations or nullify and impair GATT benefits, could swiftly and strongly challenge the measures. The new system would undermine the credibility of the U.S. threat of unilateral action because it empowers any country, regardless of its size, to stand up to the United States and challenge its measures.<sup>85</sup>

In practice, the United States was the most frequent initiator of the GATT dispute settlement procedure and continues in the WTO, bringing more than 40 complaints until early 1998.<sup>86</sup> U.S. government officials have several times expressed satisfaction with the new procedures and noted their importance in the diplomacy of the United States.<sup>87</sup>

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<sup>82</sup> Judith H. Bello and Alan F. Holmere, *op.cit.*, p.1099.

<sup>83</sup> Geza Feketekuty, *op.cit.*, p.92.

<sup>84</sup> Judith H. Bello and Alan F. Holmere, *op.cit.*, p.1102.

<sup>85</sup> *Ibid.*, p.1102. However, I think that the United States can withstand sanctions from a smaller country much better than the small country can withstand U.S. sanctions. The remedy of DSU is still self-help.

<sup>86</sup> John H. Jackson, *The World Trade Organization*, London and Herndon, The Royal Institute of International Affairs, 1998, p.77.

## □ The Korean Position

The credible threat of the U.S. sanctions was the important leverage for opening foreign markets in the latter 1980s and 1990s. Indeed, the United States improved market access or intellectual property protection in many cases.<sup>88</sup> Section 301's successful application by the United States induced many countries to see GATT dispute settlement procedures in a new light. It was expected that a strengthened dispute settlement system could prove useful in restraining U.S. unilateralism.<sup>89</sup>

While the United States and the EC were particularly active in strengthening the GATT dispute settlement procedures, other countries including Korea were not so active.<sup>90</sup> Other countries perceived "clarity, certainty, and the rule of law as not necessarily of more value than diplomacy, negotiation, and flexibility in view of changing conditions and circumstances."<sup>91</sup> Considering that it was faced with rapid changes in domestic economic structures resulting from its high economic growth and the unstable security against North Korea, Korea might have preferred the political approach by which its specific circumstances could be better considered. But, Korea did not positively object to the new dispute settlement procedure. Considering a credible threat of Section 301 backed a wide range of retaliatory actions, the new procedure could be the second best option to avoid U.S. unilateral aggressiveness. According to *Financial Times*, the major traders remain the biggest users of the new WTO procedures, and as well developing countries have brought

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<sup>87</sup> "Testimony Before the House Ways and Means Trade Subcommittee" by Ambassador Michael Kantor, 13 March 1996, <http://www.ustr.gov>, cited in J.H. Jackson, *op.cit.*, p.60.

<sup>88</sup> "Ranging from Japan (citrus, leather and leather footwear, tobacco products, semiconductors), Korea (intellectual property, insurance, cigarettes), and India (almonds) to Argentina (soybeans), the European Community (citrus, pasta, canned fruit, meat, agricultural products adversely affected by the EC's enlargement to include Spain and Portugal), Canada (fish), and Taiwan (customs valuation, beer, wine, tobacco products)", See Judith H. Bello and Alan F. Holmery, *op.cit.*, p.1100.

<sup>89</sup> *Ibid.*, p.1101.

<sup>90</sup> Palitha T.B. Kohona, 'Dispute Resolution under the WTO: An Overview,' *Journal of World Trade*, April 1994, p.24.

and won cases, against each other and against the trade superpowers. But, most cases brought to the WTO have been resolved during the statutory lengthy consultation period before a panel investigation can be demanded.<sup>92</sup>

As a conclusion of the WTO procedure, the procedure is neutral to all the members of the WTO in that it is basically a legal process. So, the procedure makes no difference between Korea and the United States. Whether a country has advantage or disadvantage in the procedure depends on the issue at stake. If a country has a strong case in terms of legal aspects, it may prefer to resort to the procedure, namely attempt to mobilise the procedure as its own negotiation resources. In this context, Elliott pointed out that the WTO procedure limits what the United States can do now under Section 301, saying that:

It [Section 301] is very different now with the new WTO and the U.S. in fact is much more constrained in using section 301 because of the strengthened dispute settlement system in the WTO, so I think that they have used it since 1995 mostly in conjunction with the dispute settlement procedure of the WTO so it hasn't been very unilateral with a couple of exceptions.<sup>93</sup>

### 3.3 Interest Groups

Up to now, we have examined “negotiation power,” one of the three variables assumed by the research framework employed in this study. Based on the new understanding of power, we explored the negotiation resources closely related to the case under examination – the economic interdependence of the two countries, and the two negotiation procedures. Now, we examine another variable selected by our research

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<sup>91</sup> Judith H. Bello and Alan F. Holmre, *op.cit.*, p.1098.

<sup>92</sup> *Financial Times*, ‘The World Trade System at 50,’ May 18, 1998, Survey VI.

<sup>93</sup> Personal Interview [Kimberly A. Elliott on 16 April, 1999 in Washington D.C.]

approach as a determinant of trade negotiation, namely, the interest group politics of the two countries. It does so by seeking answers to the following questions: Why can interest groups be a variable to shape the process and outcomes of trade negotiations? How do they act in each country? and What are the differences between the two countries?

### 3.3.1 Interest Group Theory and Collective Action

Truman defined interest groups as follows: “An interest group is any group that is based on one or more shared attitudes and makes certain claims upon other groups or organisations in the society.”<sup>94</sup> Two aspects of this definition are crucial to understand the role of interest groups.<sup>95</sup> First, the group is composed of individuals (or other groups) who share some common characteristic or interest. Secondly, we become interested in the group when it is active in our political process seeking to have an impact on public policy. Interest groups can be divided into two subcategories: self-oriented and public interest groups.<sup>96</sup> The former seeks to achieve some policy goal that will directly benefit their own membership. Most economic groups relating with trade negotiations are primarily lobbying for their own interests, although sometimes these interests can be defined broadly. Public interest groups seek benefits that do not benefit their membership directly but are enjoyed by the general public.

Bentley is credited with the first modern articulation of American politics through the use of the concept of groups. While rejecting any explanation based on individuals, law, or all-inclusive interests, he insisted that the group concept was the key in

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<sup>94</sup> D. Truman, *The Government Process*, New York, Knopf, 1971, p.33.

<sup>95</sup> R.J. Hrebenar and R.K. Scott, *Interest Group Politics in America*, London, Prentice-Hall, 1982, p.3.

<sup>96</sup> *Ibid*, p.5.

understanding how the political process works.<sup>97</sup> He believed that public policy was the result of the coalition and compromise of group interests as expressed in activity, whereas government only played a passive role as a scorekeeper.<sup>98</sup> Truman, inspired by Bentley, comprehensively explained American government and politics using groups as an essential and supportive element in the democratic process.

Everson summarises the Bentley-Truman position as follows: public policy is a temporary equilibrium of conflicting groups in society, the balance of the group pressures is the existing state of society, and government is the process of the adjustment of a set of interest groups.<sup>99</sup> When it comes to trade policy, the interest group theory portrays U.S. trade policymaking as being ultimately controlled by organised domestic political forces demanding measures for American products, and views trade policy as being less shaped by resolute, activist politicians than by a struggle among specific interest groups.<sup>100</sup> In this sense, government agencies are considered to be acting as conduits between private sector trade demands and foreign governments.<sup>101</sup>

Interest groups are informal partners in the trade policymaking process in all democratic countries. Since the practical business experience of government officials is quite limited, and since trade policy is exercised more on behalf of the private sector than on behalf of national security considerations, interest groups are naturally involved in the trade policymaking process.<sup>102</sup> American trade officials publicly acknowledge their reliance on the private sector to inform them of individual overseas trade barriers that are worth removing. It would be no exaggeration to say that the U.S.-Japanese negotiating

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<sup>97</sup> A F. Bentley, *The Process of Government*, Cambridge, Mass., Harvard University Press, 1967, pp.176-7.

<sup>98</sup> *Ibid.*, p.41.

<sup>99</sup> D.H. Everson, *Public Opinion and Interest Groups in American Politics*, New York, Franklin Watts, 1982, p.30.

<sup>100</sup> S.D. Cohen, J.R. Paul, and R.A. Blecker, *op.cit.*, p.124.

<sup>101</sup> *Ibid.*

agenda was largely set by U.S. corporate complaints about that country's trade practices.<sup>103</sup>

On the other hand, Olsen offered a new view to the theory in *the Logic of Collective Action*.<sup>104</sup> Olsen argues that the basic explanation provided by interest group theorists for the formulation and maintenance of large, economically oriented interest groups, is flawed.<sup>105</sup> He attempted to explain collective action from an individual perspective. He assumed that individuals are rational and self-interested. His fundamental question was: Do individuals form interest groups when they share some common interest in influencing public policy? After applying economic analysis to the question, he concludes that large groups frequently will remain disorganised, whereas small groups will usually organise.<sup>106</sup> In Olsen's words:

The view that groups act to serve their interests presumably is based upon the assumption that the individuals in groups act out of self-interest...But it is not in fact true that the idea that groups will act in their self-interests follows logically from the premise of rational and self-interested behaviour...Indeed, unless the number of individuals in a group is quite small, or unless there is coercion or some other special device to make individuals act in their common interest, rational, self-interested individuals will not act to achieve their common or group interests.<sup>107</sup>

We cannot therefore leap from shared interests to the formation and maintenance of an interest group. Why will large groups not form? The answer comes from both

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<sup>102</sup> *Ibid*, p.117.

<sup>103</sup> *Ibid*, p.118.

<sup>104</sup> M. Olsen, Jr., *The Logic of Collective Action*, Cambridge, Harvard University Press, 1965.

<sup>105</sup> D.H. Everson, *op.cit.*, p.33.

<sup>106</sup> A.S. McFarland, *Public Interest Lobbies*, Washington, D.C., American Enterprise Institute for Public Policy Research, 1976, pp.27-8.

collective good and individuals' rationality. Olsen defines a collective good as "any good such that, if any person  $X_i$  in a group  $X_1, \dots, X_i, \dots, X_n$  consumes it, it cannot feasibly be withheld from the others in that group."<sup>108</sup> In other words, when a collective good is produced regardless of a result of action taken by a government or the efforts of a lobby, those who do not pay for any of that good cannot be excluded or kept from sharing the enjoyment of that good. As a result, the free-rider problem emerges.<sup>109</sup> With respect to the assumption of individuals' rationality, if a large interest group has already been organised and is pursuing some beneficial public policy or acquiring some collective goods, individuals calculate whether or not they join or support it and then continue as a free-rider because it is not rational for them to pay for the goods when they can obtain them free anyway.<sup>110</sup> Consequently, large groups usually will not form. The economic result is the production of a sub-optimal quantity of the good; the political result is that an interest group or lobby will have political resources that do not correspond to its popularity.<sup>111</sup>

On the other hand, in relatively smaller groups<sup>112</sup> individuals may voluntarily organise to achieve their common interests because they may receive a larger share of the total group benefits than that of large groups. Consequently, Olsen argues that:

The outcome of the political struggle among various groups in society will not be symmetrical...The small oligopolistic industry seeking a tariff or a tax loophole will sometimes attain its objective even if the vast majority of the population loses

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<sup>107</sup> M. Olsen Jr., *op.cit.*, pp. 1-2.

<sup>108</sup> *Ibid.*, pp. 14-5.

<sup>109</sup> A.S. McFarland, *op.cit.*, p.30.

<sup>110</sup> *Ibid.*, pp.28-9.

<sup>111</sup> *Ibid.*, p.29.

<sup>112</sup> Olsen makes a tripartite distinction in the size of groups and propensity to organise; privileged groups, intermediate groups, and the latent groups. M. Olsen Jr., *op.cit.*, pp. 49-50.

as a result.<sup>113</sup> The smaller groups – the privileged and intermediate groups – can often defeat the large groups – the latent groups which are normally supposed to prevail in a democracy.<sup>114</sup>

He also points out that the power of the lobbying organisations representing American business is indeed powerful because the business community is divided into a series of industries, each of which contains only a fairly small number of firms and therefore easily organisable for the purpose of influencing public policy.<sup>115</sup> In the context of the case under study, Olsen's arguments will be useful when we look at the interest group politics in Korea and the United States.

The logic of collective action can be explained by using the Prisoner's Dilemma.<sup>116</sup> Individuals in a group have only two options, namely cooperation and defection, where cooperation corresponds here to "contribution for collective good" and defection corresponds to "non-contribution for collective good." Table 3-6 shows the payoff matrix of this case.

If individual A contributes, individual B ends up 3 or 4 depending on whether he contributes or not; clearly it is better for him not to contribute. If individual A does not contribute, individual B ends up 1 or 2 depending whether he contributes or not; of course it is better not to contribute. Since the situation is precisely the same, individual A will end

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<sup>113</sup> In the case of U.S. import quotas on sugar. The winners in this case are a small number -about 15,000- of U.S. sugarcane and sugarbeet growers concentrated in four states. The quotas are imposed at great cost to domestic consumers: an estimated \$1.4 billion annually in higher prices, according to the evaluation of U.S. General Accounting Office, See U.S. General Accounting Office, '*Sugar Program-Changing Domestic and International Conditions Require Program Changes*,' April 1993, p.3, cited in S.D. Cohen, J.R. Paul, and R.A. Blecker, *op.cit.*, pp.126-7.

<sup>114</sup> M. Olsen Jr., *op.cit.*, pp. 127-8.

<sup>115</sup> *Ibid.*, pp. 142-3.

<sup>116</sup> The following explanation draws from S. Rossbach, lecturer at the Department of Politics and International Relations of University of Kent at Canterbury in U.K.



up with the same conclusion as individual B did. So long as we assume that individuals are rational and self-interested, non-contribution will always be better than contribution regardless of the other's option. Thus, both will defect, and both will end up worse than if they had cooperated. This result is the same if it applies to many individuals who do not know one another. This sub-optimal situation results from the non-excludability of collective good. On the other hand, in relatively smaller groups, the individuals can reach the optimal situation through contact.

**Table 3-6 Pay-Off Structure of a Collective Good**

		Individual B	
		Cooperation	Defection
Individual A	Cooperation	(3, 3)	(1, 4)
	Defection	(4, 1)	(2, 2)

\* The first number in parenthesis stands for A's pay, the second number for B's pay. It is assumed that the higher number, the better pay.

Although some scholars have repeatedly criticised the group theory, Hayes has argued that:

Organised interest groups play a much greater role in the legislative process than is commonly understood...they possess considerable advantages over unorganised publics in obtaining tangible benefits from government...interest groups will often provide the only source of constituency cues available to the...representative, and their dominance of the distributive and self-regulatory arenas will typically be

accepted as legitimate by Congressmen while provoking little challenge from deprived groups.<sup>117</sup>

In practice, interest groups impact to some degree every trade policy decision. Policy outcomes of any particular issue are a function of the varying ability of groups to organise and give their interests prominence in the policy process.<sup>118</sup>

From the above discussions, it cannot be denied that interest groups can exercise influence on government's decisions over trade issues, even though the extent of influence differs.<sup>119</sup> Thus, interest group politics can be a variable to explain the negotiation process and outcomes. To what extent interest groups are involved in the government policymaking process depends on country, field and issue. In the following sections, we will examine the interest group politics of the United States and Korea. This will facilitate the understanding of interest groups' role when we analyse the case under examination.

### **3.3.2 Interest Group Politics in the United States**

To what extent can American interest groups make negotiation outcomes favourable to themselves? It may be impossible to get a single answer due to the complexity of U.S. trade policymaking. The answer should be considered on a case-by-case basis.

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<sup>117</sup> M.T. Hayes, 'Interest Groups and Congress,' in L.N. Rieselbach, (ed.), *The Congressional System*, North Scituate, Mass., Duxbury Press, 1979, p.270, cited in D.H. Everson, *op.cit.*, p.35.

<sup>118</sup> G.J. Ikenberry, D.A. Lake, and M. Mastanduno, (eds.), 'The State and American Foreign Economic Policy,' *International Organisation*, Vol.42, Winter 1988, p.7.

<sup>119</sup> Hayes also admits the validity of group theory. Namely, the theory continues to be a fruitful path to follow in the search to understand governmental policymaking and why people become involved in politics. See, M.T. Hayes, "The Semi-Sovereign Pressure

With a view to promoting public opinion and government policies favourable to their interests, American business forms some of the more than 7,000 trade and professional associations.<sup>120</sup> Every manufacturing sector, virtually every major corporation, the service sector, the farm bloc, unions, consumers, importers, exporters, and major foreign exporters to the United States have a permanent Washington presence.<sup>121</sup> When a trade policy action is pending in Washington, one or more special interest groups will be directly affected. At this point, they will intensify their activities in order to assure that the policy will be favourable to them. In a formal way, they try to influence the policy through the permanent three-tiered network of private advisory committees statutorily created by Congress.<sup>122</sup> The advisory committees are charged with counselling the government's trade negotiator on the details of the private sector's attitudes on general trade policy and on specific negotiating objectives as well as on negotiating positions in international trade negotiations. On the other hand, they informally put forward impassioned arguments, assemble data favourable to their argument, and make allusions to their ability to deliver votes in the next election.<sup>123</sup> For these efforts, they usually mobilise trade associations, coalitions, Washington representative offices, and embassies, as well as such "hired guns" as attorneys and public relations specialists.<sup>124</sup>

If so, to what extent have their activities had a favourable result so far? The dominant economic ideology of U.S. foreign trade policy since the late 1930s has been

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Groups: A Critique of Current Theory and an Alternative Typology," *Journal of Politics*, Vol.40, 1978, pp.134-135.

<sup>120</sup> S.D. Cohen, J.R. Paul, and R.A. Blecker, *op.cit.*, pp.116-7.

<sup>121</sup> *Ibid*, p.117.

<sup>122</sup> The thirty-eight advisory committees with more than 1,000 participants from all parts of the private sector are headed by the senior-level Advisory Committee for Trade Policy and Negotiations. The second level has grown to include seven policy advisory committees on agriculture, industry, investment, labour, services, defence, and intergovernmental relations. Thirty sectoral advisory committees dealing with industry, agriculture, and labour fill out the third tier of the groups. See, *ibid*, p.118.

<sup>123</sup> *Ibid*, p.117.

liberal trade, a market-oriented trade policy. Until the 1970s, although a modest number of industries sought protection, administrative and congressional leaders encouraged them to be self-reliant, in order to avert logrolling of the Smoot-Hawley variety.<sup>125</sup> However, the 1970s and 1980s have brought significant changes in this pattern: the number and range of industries seeking governmental trade action have increased. Substantial protection had been achieved not just by the textile-apparel coalition, but by other mature industries such as steel, automobiles, and semiconductors.<sup>126</sup> However, the direct impact of business groups was not always available because of the emergence of “special interest” groups that benefited from exports or imports and were driven to do direct battle against seekers of protection. As a result, conflicting lobbying efforts effectively neutralised each other on a specific issue.<sup>127</sup> For example, the U.S. retail industry campaigned on several occasions against barriers on imported apparel, on the grounds that barriers against foreign-made apparel reduce retailers’ ability to provide customers with relatively low-priced and therefore better-selling clothing.<sup>128</sup> Politicians were likely to feel pressure from more than one direction.<sup>129</sup> In addition, currently, the industry-versus-industry conflicts tend to be more complex than in the past because of the globalisation of the world economy and the interdependence of economic actors both at home and overseas. Destler highlighted this point, “if, in certain industries, it was the foreign-owned firms that were producing high-

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<sup>124</sup> *Ibid*, pp.117-8.

<sup>125</sup> I.M. Destler, *American Trade Politics*, 3<sup>rd</sup> ed., Washington, D.C., Institute for International Economics, 1995, p.192.

<sup>126</sup> *Ibid*, pp.192-8.

<sup>127</sup> One example came in mid-1983. The Reagan administration, unable to win Chinese adherence to stringent textile restraints, imposed quotas unilaterally. The government in Beijing, urged on by Washington-based liberal trade advocates, retaliated by withholding purchases of American grain. This brought farm organisations into the fray in a campaign to soften the administration’s stance. See, *ibid*, p.195.

<sup>128</sup> S.D. Cohen, J.R. Paul, and R.A. Blecker, *op.cit.*, p.126.

<sup>129</sup> I.M. Destler, *op.,cit.*, p.196.

vale-added products on American soil, should not U.S. policy be supporting them rather than the Asia-based production of American-owned electronics firms?"<sup>130</sup>

But, when turning to export policy, we face a different scene. In export fields such as non-tariff barriers, intellectual property rights, and the service sector, American business groups exercised significant influences on the formation of the U.S. new trade policy agenda by educating unaware policymakers about unfair foreign trade barriers.<sup>131</sup>

They demonstrated the reality and heavy cost of the restrictive trade barriers against their products, which was not recognised in Washington previously. For example, they argued that U.S. industry was annually losing tens of billions of dollars in sales to foreign violators of U.S. copyrights, patents, trademarks, and industrial designs.<sup>132</sup> Now, the U.S. interest group politics have been moved from "import policies" seeking protection from foreign competition to "export policies" seeking removal of foreign trade barriers to U.S. products.<sup>133</sup>

In sum, the U.S. trade policymaking process may be very responsive to interest group pressure, or the opposite may be the case, while sometimes there is a halfway response.<sup>134</sup> It of course depends on the case in question. However, it is clear that interest groups exercise considerable influence on the export policies, especially in the removal of unfair foreign trade barriers.

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<sup>130</sup> *Ibid*, p.197.

<sup>131</sup> S.D. Cohen, J.R. Paul, and R.A. Blecker, *op.cit.*, p.125.

<sup>132</sup> *Ibid*, p.125.

<sup>133</sup> I.M. Destler, *op.,cit.*, pp.192-8.

<sup>134</sup> S.D. Cohen, J.R. Paul, and R.A. Blecker, *op.cit.*, p.128.

### 3.3.3 Interest Group Politics in Korea

What is the state of interest group politics in Korea? Have Korean interest groups affected the formulation and implementation of government trade policies?

The Korean formula of economic development was a strong, comprehensive developmental government and a tight alliance between the government and private business. During the development period, most private business organisations such as the Federation of Korean Industries (FKI) were established by the government's intervention through special laws or support.<sup>135</sup> Thus, they to some extent were under the government's influence. The government mobilised them in achieving its policy objectives. They were normally ready to endorse the government's trade expanding initiatives. There was not self-initiated interest group activism. As a result, they were often accused by their members of acting for the government rather than representing their members' interests. Until the 1980s, their participation in the policymaking process was constrained by authoritarian governments. It is evident that the interest groups politics could not develop.

Korean society was not so much differentiated in terms of interest and class, so it is not long since Korean interest group politics attracted concern. From the mid-1980s when the so-called democratisation and liberalisation movement in Korea took place, the number of interest groups increased explosively because the government allowed the formation of private organisation by lifting legal restrictions. A 1996 survey showed that 56 percent of interest groups had been formed during the last decade.<sup>136</sup> Labour unions particularly showed a sharp increase. Well-organised public interest groups as well as self-

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<sup>135</sup> Young Rae Kim, 'The Development Process of Korean Interest Groups,' in Young Rae Kim (ed.), *Interest Group Politics and Interest Conflicts*, Seoul, Hanwool Academy, 1997, pp.74-5. [In Korean]

<sup>136</sup> *Ibid.*, pp.65-8.

oriented ones emerged.<sup>137</sup> The government also allowed anti-government oriented groups to attend the policymaking process for the purpose of establishing a solid legitimacy on policies.<sup>138</sup> It was from the late-1980s that Korean interest groups turned their stance from groups pressured by the government to pressure groups on the government. But, until the mid-1990s, they as a whole were not completely independent of the government except for some groups. As of 1993, 11 percent of Koreans joined interest groups, as against 80 percent of Americans.<sup>139</sup>

In the Korean government, there are many committees consisting of both government officials and the private sector. There were a total of 417 committees in the government as of April 1995. Many interest groups joined the committees. But, the committees did not work well. For example, in 1994, there were 26 committees in the Ministry of Agriculture, Forestry and Fishery, but 11 committees did not have a meeting until September.<sup>140</sup> Government officials generally ascribed the inefficiency of committees' activities to the fact that the private members did not have concrete and expert knowledge on issues or they adhered excessively to their own sectoral interests. But, now the situation is changing. Public interest groups such as the Citizens' Coalition of Economic Justice (CCEJ) are giving their concerns prominence in the policymaking process and sometimes are arbitrating the group-versus-group conflicts.<sup>141</sup> Korean interest groups use diverse methods in articulating their interests. The main methods are: policy proposals to the government, announcement of statements on the issue at stake, informal

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<sup>137</sup> In a 1994 survey, the Citizens' Coalition of Economic Justice, created in 1989 as a public interest group, was selected as the most influential group in Korea. See *ibid.*, pp.440-1.

<sup>138</sup> *Ibid.*, p.70.

<sup>139</sup> *Ibid.*, p.72.

<sup>140</sup> *Ibid.*, p.443.

<sup>141</sup> *Ibid.*, pp.440-3.

meetings with senior government officials, and public activities for the general Koreans.<sup>142</sup> On the other hand, although parliament is a main stage for interest group politics, Korea does not yet have the lobbyist registration system, so interest groups from time to time lobby lawmakers through under-the-table deals. In fact, some politicians have thought that they could get some black money from interest groups in exchange for putting their interests into the political process.<sup>143</sup>

In a broad sense, when the shelf-life dispute between Korea and the United States took place, the concerned Korean interest groups did not have sufficient leverage to bring their interests to the trade policymaking process. They did not have well-established dialogue channels with the government, neither were they independent of the government in the liberal pluralist sense.

### 3.4 Trade Organisations

In this section, we examine the last variable – government agencies responsible for trade disputes, which our research framework assumed affect the progress and outcomes of trade negotiations over market access. Why are government trade agencies important? Are political institutions acting in their own right in the policymaking process? What are the ideas of the new institutionalism that has recently appeared in political science?<sup>144</sup> These questions are dealt with in this section. In reality, social, political, and economic institutions have become larger, considerably more complex and resourceful, and more important to our lives. Most of the major actors in the modern economic and political

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<sup>142</sup> Jong Sung Hwang, 'The Employer Groups' in Young Rae Kim (ed.), *Interest Group Politics and Interest Conflicts*, Seoul, Hanwool Academy, 1997, pp.90-5. [In Korean]

<sup>143</sup> Young Rae Kim, *op.cit.*, p.72, p.447.



system are formal organisations, and the institutions of law and bureaucracy occupy a dominant role in shaping our lives.<sup>145</sup> This section provides a brief explanation of the causal position of political institutions based on the new institutionalism, and then examines the trade organisations responsible for trade disputes and negotiation in the United States and Korea.

### 3.4.1 The Causal Position of Political Institutions

Conventional political theories do not offer a relevant explanation of institutions' role. This has brought scholars back to a consideration of institutionalism, an earlier form of theory in political science.<sup>146</sup> To some extent, the resurgence of interest in institutions is a reaction against the behavioural revolution, which interpreted public policies as the aggregate consequences of individual choices.<sup>147</sup>

Historically, political theory has treated political institutions as determining, ordering, or modifying individual motives, and as acting autonomously in terms of institutional needs.<sup>148</sup> However, modern political theories emerging from about 1950, especially behaviouralism have tended to make political outcomes a function of three primary factors: "the distribution of *preferences* (interests) among political actors, the

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<sup>144</sup> Institutionalism has a little different colour according to subjects such as politics, economics, and sociology, although it has the same root. In my view, the ideas of institutionalism in the political science are most relevant with this study purpose.

<sup>145</sup> J.G. March and J.P. Olsen, 'The New Institutionalism: Organisational Factors in Political Life,' *American Political Science Review*, Vol. 78, 1984, p.734.

<sup>146</sup> The new institutionalism is not identical with the old one. The current effort to conjoin the research focus of the old institutionalism is not merely a return to scholarly roots, but an attempt to provide fresh answers, with contemporary developments in theory and method, to old questions about how social decisions are shaped, and mediated by institutions. W.W. Powell and P.J. DiMaggio (eds.), *The New Institutionalism in Organisational Analysis*, Chicago, The University of Chicago Press, 1991, p.2.

<sup>147</sup> *Ibid*, p.2.

<sup>148</sup> J.G. March and J.P. Olsen, *op.cit.*, p.735.

distribution of *resources* (powers), and the constraints imposed by *the rules of the game* (constitutions).<sup>149</sup> In this perspective, each of the factors is treated as independent to the political system. Namely, interests are developed within a society and transmitted through socialisation, powers are distributed among political actors by social process, and constitutions are either stable or changed by a revolutionary intervention exogenous to ordinary political activities.<sup>150</sup> Consequently, they view political institutions as either just reflections of external environmental forces or neutral arenas for the performances of individuals driven by external factors.<sup>151</sup>

But, the new institutionalism challenges this perspective by blending these three factors into an older concern with institutions. According to March and Olsen,<sup>152</sup> the new institutionalism is reluctant to accept the idea that individual preferences are produced and changed by a process that is independent of the political process. Most research on political preferences has proved that these preferences are moulded through political experience or by political institutions. They are neither fixed nor determined only by external factors regardless of the political process. So, the new institutionalism asserts that if preferences are not independent of the political process, it is not reasonable to portray the political system as dependent on the society linked to it. Second, the new institutionalism argues that the distribution of political power is also partly determined internally. Political institutions affect the distribution of power, which in turn affects the power of political actors, and thereby affects political institutions. Wealth, social status, and knowledge of alternatives are not easily described as independent to the political process and political institutions. The policy alternatives of leaders are not defined completely by external forces, but are formulated by existing administrative agencies.

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<sup>149</sup> *Ibid.*, p.739.

<sup>150</sup> *Ibid.*

<sup>151</sup> *Ibid.*

Finally, the rules of the game are not really exogenous either. Constitutions, laws, contracts, and customary rules of politics develop within the context of political institutions. Government agencies create rules and have them endorsed by politicians and revolutionary changes are initiated and pursued by military bureaucrats.<sup>153</sup>

Therefore, the ideas of the new institutionalism focus on interdependence between relatively autonomous social and political institutions rather than the dependence of the polity on society. The state is not only affected by society but also affects it. Political democracy depends not only on economic and social conditions but also on the design of political institutions. The state branches such as the ministry, the legislative committee, and the appellate court are arenas for competing social forces, but they are also collections of standard operating procedures and structures that define and defend interests.<sup>154</sup> They act as independent players in the political process. These arguments also are found in Noland's study of the Section 301 trade negotiations of the U.S. government. In his study, he pointed out the independence of the USTR, saying that: "For every case in which the U.S. government takes formal action, tens if not hundreds of cases never reach this stage, either because the U.S. government is able to reach some resolution with foreign governments that avoids the necessity of formal designation and action, or because policymakers dismiss industry petitions or they dissuade industry from filing petitions."<sup>155</sup> Thus, the new institutionalism emphasises the causal position of political institutions.

From a different angle, these ideas of institutionalism can be interpreted as a claim of institutional coherence and autonomy.<sup>156</sup> In fact, political institutions cannot be treated as decision-makers if they have no coherence. Although the coherence of institutions

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<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*, p.740.

<sup>154</sup> *Ibid.*, p.738.

<sup>155</sup> M. Noland, 'Chasing Phantoms: The Political Economy of USTR,' *International Organisation*, Vol.51, No.3, Summer 1997, pp.367-8.

varies, political institutions can be viewed as acting coherently in that they are supposed to struggle to achieve their goals or missions. The autonomy of political institutions is necessary to prove that they are more than simple reflections of social forces.<sup>157</sup>

In short, government agencies have their own policy areas that they are supposed to control.<sup>158</sup> Within the areas, they develop and shape the understanding of policy issues and alternatives. They activate and organise otherwise inactive organisations and social interests in the course of the establishment of public policies.<sup>159</sup> In addition, they struggle to maintain their autonomy and capability to carry out their missions. They recruit competent officials and socialise them by shaping their views and behaviour. So, it is probably true to say that government agencies are in a causal position to the outcomes of policies. Based on the arguments of the institutionalism, we look at the government agencies responsible for trade policy in the United States and Korea, focusing on their status, missions, and structure.

### **3.4.2 The Office of the United States Trade Representative**

In the United States, which government agency is in charge of trade policy, especially trade negotiation? Article I of the U.S. Constitution empowers Congress “to regulate commerce with foreign nations.”<sup>160</sup> Thus, the President has little legal scope to act on his own in carrying out trade policy. He depends on Congress for legal authority to commit the United States to most trade agreements. If the President disregards strong congressional trade views, he risks a reprimand in the form of passage of statutory

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<sup>156</sup> J.G. March and J.P. Olsen, *op.cit.*, p.738.

<sup>157</sup> *Ibid*, p.739.

<sup>158</sup> Michael P. Ryan, *op.cit.*, p.339

<sup>159</sup> J.G. March and J.P. Olsen, *op.cit.*, p.739.

<sup>160</sup> S.D. Cohen, J.R. Paul, and R.A. Blecker, *op.cit.* P.114.

legislation that he opposes.<sup>161</sup> The ultimate authority of trade policymaking exists in Congress. However, shortly after succumbing to pressures for intensely protectionist trade legislation in 1930, Congress started to give considerable trade policy authority to the Administration.<sup>162</sup> Up to now, Congress successfully develops the institutional image of an ardent protectionist while at the same time granting a long succession of administration requests for new authority to reduce U.S. import barriers on a reciprocal basis.<sup>163</sup>

The Office of the United States Trade Representative (USTR) is the centre of U.S. trade policies. It was created by Congress in the Trade Expansion Act of 1962 and implemented by President Kennedy in a January 1963 executive order.<sup>164</sup> Initially named the Office of the Special Trade Representative (STR) this agency was authorised to negotiate all trade agreement programmes. President Carter's 1980 executive order authorised USTR to make and administer overall trade policy: all matters within the GATT; trade, commodity, and direct investment matters dealt with by international institutions such as OECD; export expansion policy; industrial and services trade policy; international commodity agreements and policy; bilateral and multilateral trade and investment issues; trade-related intellectual property protection issues; and import policy.<sup>165</sup> The agency is proactive in carrying out these missions and goals because it aims to preserve the President's prerogatives regarding the implementation of U.S. trade policy.<sup>166</sup>

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<sup>161</sup> *Ibid*, p.136.

<sup>162</sup> *Ibid*, p.114.

<sup>163</sup> *Ibid*, p.114.

<sup>164</sup> The contents of this section draw from USTR web site, *History and Mission*.

<http://www.ustr.gov/>

<sup>165</sup> The one major trade policy that is beyond the control of the USTR is the implementation of antidumping and countervailing duty laws, which is dealt with by the International Trade Commission (ITC) and the International Trade Administration of the Department of Commerce. See, M. Noland, *op.cit.*, p.367.

<sup>166</sup> Michael P. Ryan, *op.cit.*, p.335.

USTR is headed by the United States Trade Representative, a Cabinet-level official with rank of Ambassador, who is directly responsible to the President and Congress. It has offices in Washington, D.C. and in Geneva, Switzerland. It is composed of four categories of offices: support, multilateral, bilateral, and sectoral. The support staffs include the General Counsel, Congressional Affairs, Public/Media Affairs, Intergovernmental Affairs and Public Liaison, Economic Affairs, Policy Development and Coordination, and Administrative Services. The staffs with responsibility for multilateral issues include the offices of APEC Affairs, World Trade Organisation and Multilateral Affairs, and GSP and the UN Conference on Trade and Development. The staff with responsibility for bilateral issues include the offices for (1) Western Hemisphere (Canada, Mexico and Latin America), (2) Europe and the Mediterranean, (3) Japan and China, (4) Asia and the Pacific, and (5) Africa. The sectoral offices include (a) Financial and Investment Policy, (b) Industrial Affairs, (c) Agricultural Affairs, (d) Textiles, (e) Environment and Natural Resources, and (f) Services, Investment and Intellectual Property. Each office is composed of three to ten professional staff.<sup>167</sup> USTR has never had more than about 250 staff members, so it is a small organisation with ambitious missions and many important tasks to carry out. Thus, USTR must always prioritise its agenda.<sup>168</sup> Currently, the focus of its trade policy is to promote exports through the removal of unfair trade barriers in foreign markets.

USTR externally has close relations with government agencies, and the private sector. The Trade Expansion Act of 1962 established a formal interagency process for the formulation of discretionary U.S. trade policy. Over time this has evolved into three organisational tiers: the Trade Policy Staff Committee (TPSC), the Trade Policy Review Group (TPRG), and the National Economic Council (NEC). At the bottom of this

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<sup>167</sup> USTR, *Mission*. <http://www.ustr.gov/>

hierarchy is TPSC and its associated subcommittees, made up of senior public officials. Next is TPRG at the deputy USTR/under secretary level. USTR chairs both of these groups, and although the bodies make decisions by consensus, USTR virtually dominates the bureaucratic process because of informational asymmetries arising from its primary responsibility for policy implementation.<sup>169</sup> The few issues that cannot be resolved at TPSC or TPRG level are raised to NEC, chaired by the President. NEC is the final, cabinet-level decision-making group. At this high level, USTR also plays the most influential role due to its bureaucratic stake in trade policy formulation and implementation.<sup>170</sup> These interagency groups cover overall U.S. trade policies; multilateral, regional, and bilateral negotiations, and implementation of U.S. trade laws such as Section 301. Through this interagency structure, USTR coordinates trade policy, resolves agency disagreements, and frames issues for Presidential decision.

Regarding the private sector, there is an advisory system. The system is composed of a series of Committees with differing responsibilities. Primary objectives of the system are: to consult with the U.S. government on negotiation of trade agreements, to assist in monitoring compliance with the agreements and to provide input and advice on the development of U.S. trade policy. In particular, the advisory committees provide specific and technical information on problems within the private sector in a range of areas affected by trade policy, such as automobiles, steel, wheat, aircraft or poultry.

On the other hand, USTR has kept a close consultation with Congress since its inception. Five Members from each House are formally appointed as official Congressional advisors on trade policy, and additional Members may be appointed as

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<sup>168</sup> Michael P. Ryan, *op.cit.*, p.336.

<sup>169</sup> M. Noland, *op.cit.*, p.367.

<sup>170</sup> *Ibid.*

advisors on particular issues or negotiations. Liaison activities between the agency and Congress are extensive.<sup>171</sup>

In particular, in relation to our case analysis, USTR is authorised to take an action within the power of the President against a foreign government in order to help a U.S. firm or industry that has been victimised by unfair foreign trade practices.<sup>172</sup> Section 301 investigations often involve many interests of the U.S. government and, hence, many agencies within the Administration participate in the process. A standing inter-agency Section 301 Committee exists to coordinate government policy regarding Section 301 petitions and investigations.<sup>173</sup> The Committee, chaired always by the United States Trade Representative and typically by a Deputy General Counsel, includes members from the Department of State, Commerce, Treasury, Justice, Agriculture, and Labour, the Office of Management and Budget, and the Council of Economic Advisors. The Section 301 Committee also consults with relevant committees of Congress and members of Congress whose districts are affected by particular 301 investigations. The Section 301 Committee has no formal authority, but allows the Deputy General Counsel to promote inter-agency and inter-branch communication on Section 301 cases.<sup>174</sup> In short, USTR is the heart of U.S. trade policy body by providing trade policy leadership and negotiating expertise in its major areas of responsibility.

### **3.4.3 The Trade Negotiation System of the Korean Government**

Which government agency in Korea makes and administers trade policy, especially relating to trade disputes? In advance, it should be noted that the current negotiation

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<sup>171</sup>USTR, *Mission*. <http://www.ustr.gov/>

<sup>172</sup> Michael P. Ryan, *op.cit.*, p.336.

<sup>173</sup> *Ibid*, p.337.



structure of the Korean government is different from the past structure when the shelf-life dispute occurred. The Kim Dae Jung government restructured government agencies in an attempt to remove problems resulting from the diversification of trade administrative agencies in 1998.<sup>175</sup> Here, we look at the past system under which the shelf-life dispute was settled.

Unlike the United States, Korea did not have a single government agency. Many Ministries were responsible for trade administration. Major Ministries were the Ministry of Trade and Industry (MTI), the Board of Finance and Economy (BFE), and the Ministry of Foreign Affairs (MFA). According to the previous Korean government organisation laws, MTI was comprehensively in charge of commerce and trade; to formulate general trade policy, to promote export and investment to foreign countries, to exploit foreign markets, to control import policy and trade with North Korea, to cooperate with WTO, OECD, and regional economic organisations like APEC, and to negotiate trade issues with foreign countries. On the other hand, BFE, specifically its Foreign Economy Bureau, was responsible for the formulation and coordination of foreign economic policies, the coordination of the government's basic positions on current multilateral economic issues, and the supervision of foreign investment, technology and public loan. The International Economy Bureau of MFA took charge of diplomatic policies on international economic development organisations, developing countries, environmental issues, science and

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<sup>174</sup> *Ibid*, p.337

<sup>175</sup> According to the article 29 of the current Government Organisation Act, the Ministry of Foreign Affairs and Trade (MFAT) exercises general supervision over diplomacy, trade negotiations with foreign countries, and general management and coordination of trade negotiations, treaties and other international agreements, protection of and support for Korean nationals abroad, and research on international situations and immigration. But, because each Ministry takes overall charge of the affairs under his jurisdiction, trade issues involved in other Ministries should be coordinated even under the current system, although MFAT strengthened its authority to control trade negotiations. See the Korean Ministry of Government Administration and Home Affairs, <http://www.mogaha.go.kr/ehm/index.html>

technology, atomic power, fishery, and resources. The Trade Bureau of MFA was responsible for diplomatic policies on trade issues with foreign countries and international organisations. Some Ministries such as the Ministry of Agriculture, Forestry and Fishery (MAFF), the Ministry of Health and Welfare (MOHW), and the Ministry of Information and Communication (MIC) had jurisdiction over international trade issues in their areas of responsibility.

As an inter-agency committee, the Foreign Economy Coordination Committee (FECC) existed to coordinate foreign economic policies and current bilateral and multilateral economic issues. When several ministries were involved in a trade dispute, if necessary, FECC coordinated their positions. FECC in fact was the final decision agency like NEC of the United States. FECC was headed by the Minister of BFE with the rank of deputy Prime Minister. The members of FECC were the Ministers responsible for economic issues such as MFA, MAFF, and MTL. The Minister involved in the dispute at stake was a member as well. FECC could form its subcommittee with only Ministers involved directly in the dispute. FECC had the Staff Committee consisting of government officials with rank of director-general level.<sup>176</sup> In practice, the Staff Committee substantially coordinated trade policies in that FECC normally accepts proposals of the Staff Committee.

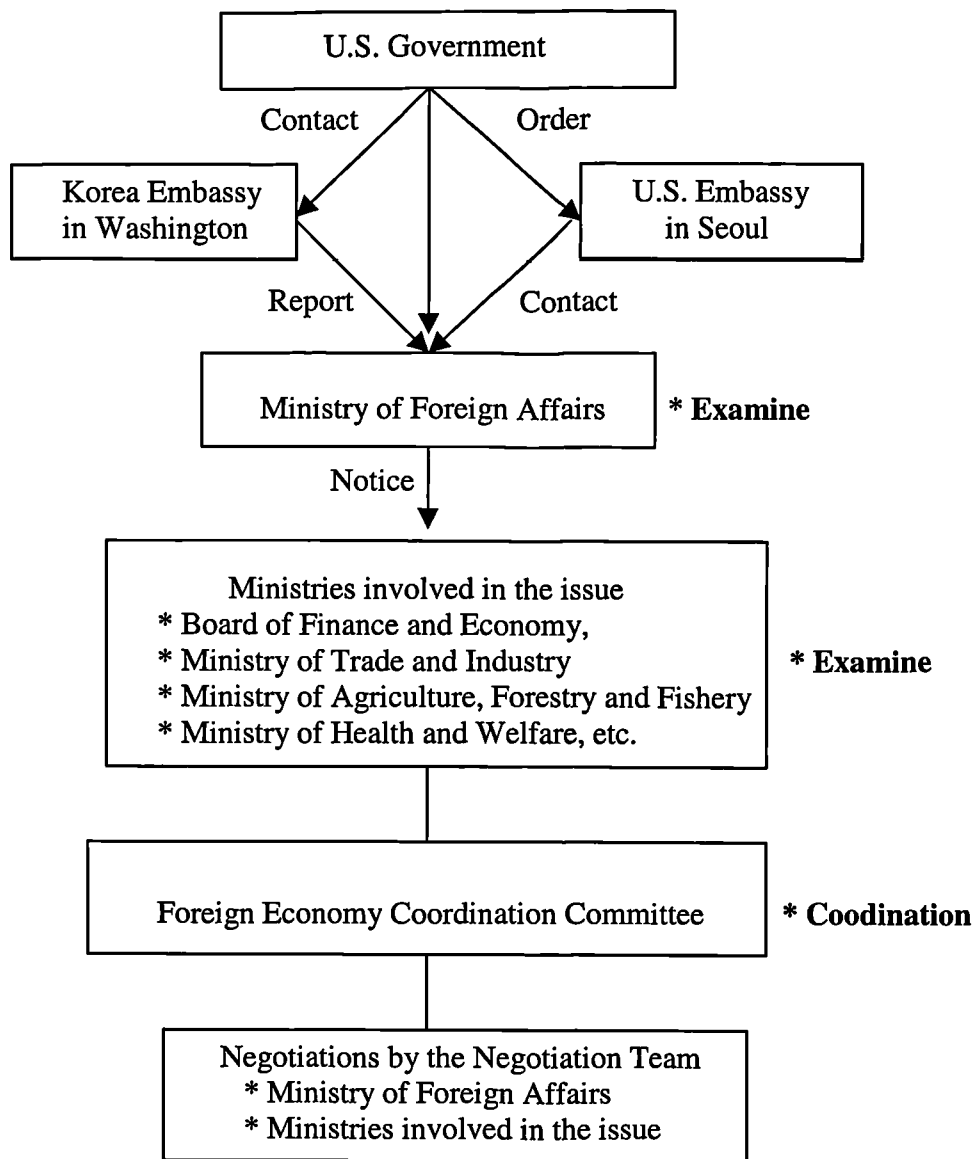
Figure 3-4 shows how the previous Korean government negotiated trade disputes with other governments.<sup>177</sup> A foreign government (USTR) facing a trade dispute with Korea could contact MFA or directly the Ministries involved in the dispute. USTR could also contact them indirectly via the Embassies of the two countries. The Embassies arrange tasks that their governments request and provide some relevant information.

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<sup>176</sup> Board of Finance and Economy, '*Foreign Economy Coordination Committee Statute*,' Presidential Decree, No.14268, 24 May 1994.

<sup>177</sup> This Figure is made based on personal interviews.(Interview E and F)

**Figure 3-4 Structure of Korea's Trade Negotiation**



The Embassies could of course negotiate directly the issues of the dispute with the other government. Ministries were supposed to examine the issues and make possible solutions to resolve them. When several Ministries were involved in the dispute, FECC coordinated their positions and disagreements. Ministries could directly negotiate the issues with USTR, but MFA usually took comprehensive responsibilities for negotiating with USTR. The Minister of Foreign Affairs therefore appointed the lead negotiator. In general, a

representative from MFA was the lead negotiator in the case that several Ministries were involved in the dispute. On the other hand, when only one Ministry was involved in the issue, the negotiation team consisted of mainly the involved ministry's members. In general, the negotiation team was under MFA's control during the negotiation process.<sup>178</sup>

As discussed above, the structure of Korean trade administrative organisations was so complex that it was not easy to find out which Ministry should address the trade issue in question. The complexity might have been a buffer dispersing the trade pressures of foreign countries. But, it rather damaged the consistency of trade negotiations. In practice, Ministries tended to adhere to their own positions, so it was difficult to coordinate Ministries' disagreements. Furthermore, under this system, experienced trade specialists could not be brought up. For these reasons, the Kim Dae Jung government integrated foreign trade functions into MFA (as in Canada and Australia) while restructuring its whole government organisations in 1998.

### 3.5 Conclusion

Up to now, we have examined the three variables which our research framework assumes affect the negotiations for settling trade dispute over the access for U.S. products to Korean markets. Previous research showed that each of them was a determinant in the bilateral trade negotiations.

We began this chapter by examining the nature of "negotiation power" as a variable in the settlement of a trade dispute between the two countries. We devised a new approach regarding how we understand "negotiation power." The approach suggests that negotiation power is determined by three factors: the issue at stake, negotiators' ability,

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<sup>178</sup> Personal Interview F.

and negotiation resources. The most important thing in formulating the negotiation power is to what extent government negotiators convert negotiation resources into the actual power during the negotiation process. As important negotiation resources in trade dispute between the two countries, we looked at their economic interdependence and the negotiation procedures of Section 301 and DSU of the WTO. When the shelf-life dispute took place, the Korean economy was dependent on the United States, and further USTR could credibly threaten Korea under Section 301 if the dispute was not resolved. For these reasons, it is likely that Korea could not avoid vulnerabilities in the negotiations. Moreover, although Korea may resort to the WTO dispute settlement procedures, the procedures cannot guarantee anything to Korea unless the issues of the dispute are favourable to Korea in terms of legal aspects. Consequently, it may be true to say that Korea was a weak position in negotiation power in terms of possible negotiation resources that could be mobilised in the negotiation process.

With respect to the interest group politics, interest group theorists say that political phenomena are best understood as the aggregate consequences of behaviour comprehensible at the group level. So, they insist that trade policy is a result of the interactions among interest groups associated with it. In this context, American interest groups have exercised considerable influence on export policy, especially the removal of unfair foreign trade barriers. Moreover, the U.S. government generally has been responsive to interest group pressure. On the other hand, Korean interest groups do not have many mechanisms through which to bring their interests to the policymaking process. They do not have well-established dialogue channels with the government. These differences lead to the conclusion that the internal negotiation process of each country would be very different. In return, this would affect the negotiation process of the two governments.

As the last variable, we reviewed the trade organisations of the two countries. Institutionalism emphasises the autonomous role for political institutions rather than the importance of both the social context of politics and the motives of individual actors.<sup>179</sup> The United States has an efficient and unified trade negotiation agency. USTR is responsible for developing U.S. international trade, commodity, and direct investment policy, and leading or directing negotiations with other countries on such matters. It has diverse formal committees to communicate with other agencies and the private sector. It also has a solid political base from the President in that the U.S. Trade Representative, as a Cabinet member, acts as the principal trade advisor, negotiator, and spokesperson for the President on trade. On the other hand, when the dispute occurred, the Korean government did not have a unified trade agency. Many Ministries were involved in trade administration. The complexity of the Korean trade organisations may prevent the government from taking initiatives in dealing with the trade dispute. In practice, it is difficult to coordinate Ministries' disagreements because each Ministry has its own bureaucratic interests and its own interest groups.

Based on this static analysis, we will trace the dynamics of the shelf-life dispute in terms of these three variables, namely: power/ interdependence; interest groups/domestic interest; and institutions /government agencies. In doing so, we examine whether the three factors affected the negotiation process of this shelf-life dispute arising from market access issues, and if they did, to what extent they influenced the process or how the difference between the factors of the two countries characterise the process.

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<sup>179</sup> J.G. March and J.P. Olsen, 'The New Institutionalism; Organisational Factors in Political Life,' *American Political Science Review*, Vol. 78, 1984, p. 738.

## *Part II*

### **Chapter 4 Positions of Korea and the U.S. to the Case**

#### **4.1 What is the case?**

This chapter aims to look at the *basic* positions of the four main actors on the case; the two governments and the two interest groups of Korea and the United States. Which specific interest groups in each country are involved in the case? What are their interests? What positions do the two governments hold towards their own interest groups and the opposing government? These questions will be addressed in this chapter. By so doing, we can bring key issues of the case to light. For the purpose of facilitating a better understanding of each actor's position, first, we will draw a rough picture of the whole case.<sup>1</sup>

The case resulted from a relatively insignificant event. According to the regulations on the shelf-life of sausages in Korea's Food Safety Code, "heat-treated" sausages are allowed a maximum shelf-life of 30 days when preserved at 0 to 10 degrees Celsius and they may not be circulated in frozen form. While conducting regular food inspections at major marketplaces in Seoul in February 1994, Korean officials found that heat-treated sausages were circulating in a frozen condition despite their English-written labels reading: "cooked" and "keep refrigerated." A subsequent review of past import documentation revealed that when those sausages were imported into Korea for the first time in late 1990, they were incorrectly categorised as "non-cooked" ones with a 90-day shelf-life because of the importer's intentional omission of crucial information in their

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<sup>1</sup> The Embassy of Korea in Washington, D.C., *Comments to the Section 301 Petition Submitted by the National Pork Producers Council, the American Meat Institute, and the National Cattlemen's Association* (The Comments), December 14, 1994, p.13, and USTR (Reading Room) maintains open files on all cases.

application for quarantine inspection. When it was revealed that heat-treated U.S. sausages had been wrongly imported in a frozen condition since 1990, the Korean government on March 30, 1994 disqualified all sausages imported under false classification and penalised the officials directly involved. This action led the U.S. meat industry to the mistaken belief that Korea had begun “reclassification” of a previously unforced Food Safety Code which had resulted in a halt of the trade of frozen, cooked U.S. sausages. Moreover, this action provided the industry with an opportunity to rant its complaints about the range of Korean trade practices concerning meat import. As a result, this incident developed into a major bilateral trade friction. Although there were many informal consultations through diverse diplomatic channels between the two governments, they could not find a mutually satisfactory solution.

Finally, on November 18, 1994, the American Meat Institute, the National Pork Producers Council, and the National Cattlemen's Association (collectively, *Petitioners*) filed a petition to USTR under Section 301 of the 1974 Trade Act as amended (*Petition*), alleging that certain practices of the Korean government regarding the importation of American meat products violate three Korea-U.S. bilateral trade agreements (collectively, *Agreements*)<sup>2</sup> and are unreasonable, and burden or restrict American commerce.<sup>3</sup> The alleged Korean trade barriers include: outdated, scientifically unsupported and discriminatory shelf-life standards; excessively long inspection procedures; contract tender procedures that prevent U.S. producers from meaningfully participating in the bidding process; local processing and repackaging requirements; discriminatory fixed-weight

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<sup>2</sup> The agreements include the 1989 exchange of letters on agricultural products, the 1990 record of understanding on beef, and the 1993 record of understanding on market access for beef. See *Petition on Korean Restrictions Affecting U.S. Meat Imports (The Petition)*, filed by the Petitioners. p.3. USTR, Reading Room.

<sup>3</sup> USTR, *Report to Congress on Section 301 Developments (Jan. 95-Jun. 96)*, <http://www.ustr.gov/reports/index.html>



requirements; dual standards for residue testing; and short pork temperature reduction requirements.<sup>4</sup>

On November 22, 1994, USTR initiated a Section 301 investigation of the practices referred to in the Petition. Initial consultations were held in January 1995. But, after bilateral negotiations broke down at the end of April 1995, USTR took the case to the WTO under Article XXII of GATT 1994 on May 3, 1995. After extensive negotiations, the two governments reached an agreement on July 20, 1995. The agreement was notified to the Chairman of the Dispute Settlement Body and to WTO members.<sup>5</sup> The Petition indeed seems to cover most Korean practices related with meat import. Before looking at the dynamics of transforming these diverse, controversial issues into an agreement, now we examine the initial position of the four actors of this case.

## **4.2 U.S. Industry Interests**

### **4.2.1 Who were the petitioners?**

This petition was filed by a coalition of three interest groups in the U.S. agricultural field: the American Meat Institute, the National Pork Producers Council, and the National Cattlemen's Association. Before looking at their aggregate interests to the case, we will explore the general information of these organisations in terms of their status and missions in the U.S. meat industry.

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<sup>4</sup> National Archives and Records Administration, *Federal Register*, USTR, Vol. 59, No.228, Tuesday, November 29, 1994, Notices, p.61006.

<sup>5</sup> USTR, *op.cit.*, <http://www.ustr.gov/reports/index.html>

### *The American Meat Institute (AMI)*

AMI represents all spectrums of the U.S. meat and poultry industry from large, multinational companies to small, family-owned businesses. Its members include packers and processors of 70 % of the beef, pork, lamb, veal, and turkey products and their suppliers throughout the United States. Many of its members have been with AMI since its founding in 1906. AMI has been representing members of the meat and poultry industry for 90 years. It therefore seems to be an essential part of the U.S. meat and poultry industry.<sup>6</sup>

AMI takes on various roles for the industry and its members. It informs, encourages and supports its members through special services and programmes. It provides legislative, regulatory and public relation services. It also conducts scientific and economic research, offers marketing and technical assistance, and sponsors education programmes. It is the only organisation offering such broad and effective representation to the North American animal protein industry.

With respect to international trade and export, AMI emphasises to its members that one of the keys to success in business in the next century is the ability to market products beyond U.S. borders. Thus, AMI works hard on behalf of its members to keep them apprised of potential customers and to intervene when barriers are in place. In 1997, AMI greatly augmented its staff expertise by hiring a senior official from USTR to lead and enhance its international initiatives. AMI's new International Trade Committee offers a way for members to stay on top of trade and export issues and to set the agenda for the Institute's activities in the world trade arena.<sup>7</sup>

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<sup>6</sup> American Meat Institute, *About AMI*, <http://www.meatami.org/aboutami.htm>

<sup>7</sup> The following figure shows U.S. exports of meat, poultry and cattle hides in major Markets (in Million \$).

• Product Exported	1991	1992	1993	1994	1995
• Red Meat Products	\$2,854	\$3,339	\$3,325	\$3,704	\$4,522

AMI offers a number of services in the area of meat and poultry exports and trade. One of the important services is to coordinate with the Meat Industry Trade Policy Council. The Council is a coalition of meat and agricultural groups that includes AMI, the National Cattlemen's Beef Association, the National Pork Producers Council, American Farm Bureau Federation, American Sheep Industry Association and the U.S. Meat Export Federation. Through the Council, AMI advocates export market growth policies on behalf of its members before the U.S. Department of Agriculture (USDA), USTR, and the Department of Commerce. AMI's goal is to create export opportunities for the U.S. meat and poultry industry and to counter practices abroad that disrupt the flow of trade. Through the weekly Trade Alert, AMI offers its members timely sales tips and the opportunity to follow up on sales opportunities, both domestic and international, for meat and poultry products, equipment, suppliers and services.<sup>8</sup>

***National Pork Producers Council (NPPC)<sup>9</sup>***

NPPC is one of the U.S. largest livestock commodity organisations. It has 85,000 producer members in 44 affiliated state associations. The members of NPPC are the members of the 44 affiliated state associations. NPPC is involved in national advertising and promotion for pork and is the single unified voice for America's pork producers on a wide range of industry and public policy issues.

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• Poultry Products	\$ 680	\$ 928	\$1,101	\$1,570	\$2,026
• Cattle Hides	\$1,074	\$1,090	\$ 977	\$1,200	\$1,388

See, AMI, *International Trade and Export Programs and Services*, <http://www.meatami.org/1svctrade.html>

<sup>8</sup> Other special services are the AMI International Meat Industry Convention and Exposition, involvement in Foreign Trade Shows, and the U.S. Meat Export Pavilion. See *ibid.*

<sup>9</sup> This is summarised from the National Pork Producers Council, <http://www.nppc.org/NEWS/nppc.html>

The mission of NPPC is to enhance opportunities for the success of U.S. pork producers and other industry stakeholders by establishing the U.S. pork industry as a consistent and responsible supplier of high quality pork to the domestic and world market, making U.S. pork the consumer's meat of choice. To make the pork industry more profitable, NPPC is carrying out a series of over 300 major programmes addressing problems affecting pork ranging from production to consumer demand. NPPC also coordinates national and international product promotion, marketing efforts, production research and producer education projects. The U.S. Meat Export Federation assists NPPC in maintaining and developing foreign markets for U.S. pork.

Every producer, regardless of production size, has a voice in policymaking through a state-elected delegate system. The Delegate Body is NPPC's ultimate policy-making entity and meets each March at the National Pork Industry Forum. The Board of Directors of NPPC elected by the Delegate Body manages the affairs of NPPC. The Board monitors all of the programmes for their contribution toward the organisation's mission and objectives.

### ***National Cattlemen's Beef Association (NCBA)***<sup>10</sup>

Initiated in 1898, NCBA is the marketing organisation and trade association for America's one million cattle farmers and ranchers. The vision of NCBA is that a dynamic and profitable beef industry consistently meets consumer needs and increases demand. NCBA is guided by policy that is developed by cattle producers through a committee process. This policy is then approved by grassroots NCBA members at the Annual Stakeholder Congress. NCBA is a consumer-focused, producer-directed organisation representing the largest segment of the nation's food and fibre industry.

NCBA has two important divisions. The Checkoff<sup>11</sup> Division oversees beef and beef product promotion, research, information and related activities financed by the beef checkoff and similar market development investments. It also functions as the Federation of 45 Qualified State Beef Councils and carries out the duties and responsibilities assigned to the Federation by the Beef Promotion and Research Act and Order. In this way, NCBA coordinates state-national efforts to build demand for beef.

The Dues Division oversees policy-making, governmental affairs and related activities financed by sources other than the beef checkoff. In this role, NCBA is a trade association with about 40,000 individual members, 46 state cattle associations and 27 national breed organisations. Together these organisations represent more than 230,000 cattle breeders, producers and feeders. NCBA works to advance the economic, political and social interests of the U.S. cattle business and to be an advocate for the cattle industry's policy positions and economic interests.

With offices in Denver, Chicago and Washington, D.C., NCBA is the only organisation protecting cattle producers' interests in Washington, D.C. NCBA provides lobbying efforts in Washington, D.C. on behalf of cattle producers on issues like trade, taxes, and property rights.

#### **4.2.2 What were the interests of the U.S. meat industry on the case?**

Korea is certainly an important and valued trading partner for U.S. agriculture. When the petition took place in 1994-5, Korea was already the fifth largest buyer of U.S.

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<sup>10</sup> This is summarised from the National Cattlemen's Beef Association, <http://www.beef.org/organzns/ncba.htm>

<sup>11</sup> The membership dues are depend on the following three factors: (1) Cow/Calf Operators add 20 cents per head (2) Feeder/Stocker Operators add 10 cents per head (3)

exports and third largest buyer of American agricultural products with total annual purchases exceeding 30 billion dollars.<sup>12</sup> A senior official in the U.S. meat industry acknowledged the importance of the Korean market saying that “Korea has been the third or fourth largest market for meat, so it’s pretty important. We see considerable potential for growth in the Korean market. We have spent a lot of time working on the Korean market.”<sup>13</sup>

The U.S. meat industry’s interests in the shelf-life case are well stated in *the Petition*.<sup>14</sup> The Petitioners assert that some Korean trade practices violate one or more of the binding Korea-U.S. bilateral trade agreements negotiated in recent years. Moreover, these Korean practices are “unreasonable” and “burden or restrict United States commerce,” and are thus actionable under Section 301.<sup>15</sup> Thus, the restrictive Korean practices should be eliminated in light of fair trade and Korean commitments to the United States.

The Petitioners focus on five principal import restrictions that generally affect one or more meat products. The principal issues (collectively, *Korean practices*) involve:

- (A) Outdated, scientifically unsupported and discriminatory shelf-life standards (30 days) governing frozen, cooked sausages and frozen beef patties;
- (B) Outdated, scientifically unsupported and discriminatory shelf life standards (10 days) governing fresh and chilled beef and pork in vacuum packaged cuts;
- (C) Meat inspection procedures lasting from 14 to 28 days that effectively prohibit the

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NCBA Base Membership Dues: \$60. See, National Cattlemen’s Beef Association, [http://www.beef.org/members/mbr\\_serv.htm](http://www.beef.org/members/mbr_serv.htm)

<sup>12</sup> Kihwan Kim, ‘Korea’s “Globalisation” Policy and its Implications for Korea-U.S. Relations’, in C.Fred Bergsten and Il Sakong (eds.), *The Korea-United States Economic Relationship*, Washing D.C., Institute for International Economics, 1997, p.37.

<sup>13</sup> Personal interview A.

<sup>14</sup> The American Meat Institute, the National Pork Producers Council, and the National Cattlemen’s Association, *Petition on Korean Restrictions Affecting U.S. Meat Imports (the Petition)*, November 18, 1994, USTR, Reading Room.

importation of fresh and chilled meat products; (D) Contract tender procedures that prevent U.S. meat producers from meaningfully participating in the bidding process; and (E) Multiple Korean import restrictions or trade barriers in violation of the 1993 Simultaneous-Buy-Sell Agreement (“SBS”) covering trade in beef products, including; (a) a requirement that imported U.S. red meat intended for resale by the members of the Korean Meat Industries Association (“KMIA”) be processed or repackaged in Korea; (b) fixed-weight requirements for the retail packaging of all imported beef and pork products that are different from the weight requirements for retail packages of Korean-produced meats; (c) a proposal that the base quota levels negotiated in the SBS, which are mandatory minimum purchase requirements for Korean “supergroups,<sup>16</sup>” could in fact be lowered if the domestic market is adversely affected by imports.<sup>17</sup>

Moreover, the Petitioners complained about other Korean practices such as dual standards for residue testing, noncompliance with standards codes, and 24-hour pork temperature reduction requirement. In fact, most Korean trade practices with respect to meat imports were enumerated by the Petitioners. The issues will be elaborated in the next chapter. Here, Table 4-1 summarises the trade-restrictive practices stated in the Petition, according to the specific meat products they affect, and the bilateral trade agreement or

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<sup>15</sup> *The Petition*, p.27.

<sup>16</sup> Supergroup means “an organisation or association of end-users that has the right to import beef under the SBS system and, as appropriate, allocate SBS sub-shares among its affiliated end-users, and shall include the following entities, subject to the conditions and terms specified in the SBS Agreement: the National Livestock Cooperatives Federation and its subsidiary companies (NLCF); Korea Cold Storage Company, Ltd. (KCSC); Korea Tourist Hotel Supply Center (KTHSC); Korea Meat Industries Association (KMIA); Korea Super Chain Association (KOSCA); and a non-tourist restaurant organisation (NTRO) to be formed for the purpose of importing and allocating imported beef.” See *the 1993 SBS Agreement*, Chapter II. Definitions, <http://www.mac.doc.gov/tcc/treaty.htm> (1999).

**Table 4-1 Korean trade-restrictive practices alleged by the Petitioners**

Practice	Violates	
	Section 301	Bilateral Trade Agreement
1. Sausages (Beef) 30-day shelf-life standard	X	X (1989 Letters)
2. Sausages (Pork) 30-day shelf-life standard	X	X (1989 Letters)
3. Sausages (Beef) Ban on Frozen	X	X (1989 Letters)
4. Sausages (pork) Ban on Frozen	X	X (1989 Letters)
5. Frozen Beef Patties 30-day shelf-life standard	X	X (SBS)
6. Fresh/Chilled Beef Vacuum-Packed Cuts 10-day shelf-life standard	X	X (SBS)
7. Fresh/Chilled Pork Vacuum-Packed Cuts 10-day shelf-life standard	X	X (1989 Letters)
8. Lengthy Inspection Procedures (Beef)	X	X (SBS)
9. Lengthy Inspection Procedures (Pork)	X	
10. Prohibitive Tendering Procedures	X	
11. Requirement That KMIA SBS Purchases Be Repackaged	X	X (SBS)
12. Fixed-Weight Requirements for Retail Market Packages	X	X (SBS)
13. Interpretation of SBS Minimum Purchase Requirements As Fluctuating Quotas	X	X (SBS)
14. Deal Standards for Residue Testing	X	
15. Noncompliance with Codex	X	
16. 24-Hour Temperature Reduction on Pork	X	X (1989 Letters)

Source: *The Petition*, p.4-5, USTR, Reading Room.

<sup>17</sup> *The Petition*, p.2.



underlying law that forms the basis for the alleged violation.<sup>18</sup> The Petitioners also pointed out concrete losses resulted from the Korean practices:

The current, actual monetary loss for fresh, chilled products due to the Korean restrictions is staggering.....The restrictive trade practices have halted what was a \$6 million a year trade in sausages, with the potential to grow to \$20-30 million a year given unrestricted access to the Korean market. The actual and potential damages with respect to the higher-value fresh and chilled products (such as carcasses, hams shoulders and processed cuts) are enormous in comparison. Petitioners estimate a 1994 actual lost export revenue on fresh/chilled beef and pork products at over \$215 million (in addition to actual lost revenues for sausages of \$6 million). This conservative estimate balloons in the coming years because of increasing demand, consumption and per-capita incomes in Korea, based on petitioners historical experience in Japan. For instance, in 1999, given unimpaired access to the Korean market, U.S. red-meat export revenues to Korea should exceed \$U.S. one billion (\$1,000,000,000) if these restrictive trade practices are eliminated.<sup>19</sup>

In short, the U.S. meat industry saw the Korean market as quite an important one because it is not only large but also has huge potential for growth. Thus, to enhance opportunities for the success of the U.S. meat industry in the Korean market, it became essential to remove the restrictive Korean trade barriers.

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<sup>18</sup> *The Petition*, pp.4-5.

<sup>19</sup> *The Petition*, p.13.

## 4.3 U.S. Government Position

### 4.3.1 Trade Policy of Clinton Administration

Before we examine the position of U.S. government, in particular the USTR, to the case, it is necessary to review President Clinton's early trade policy when the dispute took place, because Clinton's administration took a path different than former U.S. Administrations.

In his 1992 presidential campaign, Clinton had given priority to the economy due to the weak recovery from the Bush recession, and to the longer-term problem of stagnation in middle-class incomes.<sup>20</sup> With respect to trade policy, Clinton had assured that he intended to recast the entire intellectual basis of U.S. trade policy. He had promised to remove the ideological blinders that caused government and industry to view one another as antagonists. By classifying trade as an issue of similar importance to political and security problems, he had asserted that it should require a central place in U.S. foreign policy.<sup>21</sup>

President Clinton attempted to make a bold departure from existing policies on the assumption that America's economic flight had been arching in the wrong direction for over a decade.<sup>22</sup> He focused on the most basic problems affecting America's international position. He riveted the country's attention on the government's fiscal deficit. He gave priority to improving worker productivity. He proposed a technology policy not only to promote university research but also improve the way America transforms basic inventions into commercial products. Moreover, in news conferences and meetings with foreign leaders, he emphasised that the United States will no longer make trade

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<sup>20</sup> I.M. Destler, *American Trade Politics*, 3<sup>rd</sup> ed., Washington, D.C., Institute for International Economics, 1995, p.220.

<sup>21</sup> J.E. Garten, 'Clinton's Emerging Trade Policy,' *Foreign Affairs*, Summer 1993, p.183.

concessions for the security relationship.<sup>23</sup> Both for Clinton and his trade policymakers, exports were seen as the most important factor in the expansion of America's GNP, while almost all the growth of high-wage manufacturing jobs was treated as the result of American sales abroad.<sup>24</sup>

As a result, greater access for American firms to foreign markets became a key concern of the new administration. Namely, the focus of trade policy moved from import protection to export promotion through the removal of trade barriers in other countries' markets.<sup>25</sup> The administration chose a much more aggressive, results-oriented export strategy.<sup>26</sup> In this new approach to trade, USTR substantially played a leading role in formulating and implementing U.S. trade policies.

For example, the administration pressed for major Japanese market-opening measures, as well as macroeconomic policy change to stimulate demand. A major new set of demands was pressed that focused on establishing specific numerical targets for increased levels of imported manufactured goods and for a reduction in Japan's current account surplus.<sup>27</sup> Japan resisted these numerical targets,<sup>28</sup> asserting that compliance with the Clinton administration's demands would be equal to engaging in managed trade.<sup>29</sup> The determination of the Clinton administration in mid-1995 to impose retaliatory trade sanctions if Japan did not further open its market for U.S.-made automobiles and auto parts led the two countries to the edge of the so-called trade war.<sup>30</sup> Against China, on February 4, 1995, the administration announced probably the largest commercial trade

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<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> After successive GATT Rounds removed to a large extent the border barriers such as tariffs or quotas throughout the world, actual protection has shifted toward non-tariff barriers. See, M. Noland, 'Chasing Phantoms: the Political Economy of USTR,' *International Organisation*, Vol.51, No.3, Summer 1997, p.365.

<sup>26</sup> S.D. Cohen, J.R. Paul, and R.A. Blecker, *Fundamentals of U.S. Foreign Trade Policy*, Boulder, Colorado, Westview Press, Inc., 1996, p.191.

retaliation in U.S. history by imposing 100 percent tariffs on \$1 billion worth of imports from China.<sup>31</sup> This was the basic position of the Clinton administration's trade policymakers around the period when the dispute took place, even though this aggressive unilateralism faced some criticism at home and from abroad.<sup>32</sup>

#### 4.3.2 What was the position of the U.S. government on the case?

On the premise of the basic understanding of the Clinton administration's trade policy, we will see the positions of the two key government agencies involved in the shelf-life dispute: USTR and U.S. Department of Agriculture (USDA). As noted above, the Clinton administration was positive to respond to foreign unfair trade barriers that block U.S. exports. When the sausage issue took place, the two U.S. government agencies had contacts with the Korean government in an effort to resolve the issue. The initial attempts failed. During the informal contacts, USTR might have already felt that the Korean practices were unfair. On November 22, 1994, the fourth day after the petition was filed, USTR quickly decided to initiate a Section 301 investigation for the petition. On the same

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<sup>27</sup> *Ibid*, p.190, and I.M. Destler, *op.cit.*, p.229, p236.

<sup>28</sup> Although the United States asserted that Japan virtually managed trade, other countries joined Japan in denouncing the U.S. position. But, American officials called this a misrepresentation of their goal; they just wanted agreements with meaningful "qualitative and quantitative indicators" of progress in specific sectors, as the Japanese government had agreed to seek in the "framework talks" launched in July 1993. See, I.M. Destler, *op.cit.*, p.239.

<sup>29</sup> S.D. Cohen, J.R. Paul, and R.A. Blecker, *op.cit.*, p.191.

<sup>30</sup> *Ibid*, p.191.

<sup>31</sup> *Ibid*, p.234.

<sup>32</sup> *The Wall Street Journal* accused the administration of caring "less about principle than about making a political deal." *The Economist* called Washington's approach "at best incompetent and at worst a step down a slippery path towards protectionism." European Community ministers talked of America's "unilateral bullying" and of "having to grope in the dark" to figure out what the new Clinton team was trying to do, cited in J.E. Garten, *op.cit.*, p.182.

day, it also formally requested consultations with the Korean government.<sup>33</sup> According to Noland, formal actions of USTR more closely correlate with the existence of formal barriers to trade.<sup>34</sup>

Considering not just that Korea was the third biggest market for the U.S. meat industry, but that the administration gave a priority to the faithful implementation of U.S. trade laws,<sup>35</sup> USTR basically shared the same goals with the Petitioners in removing the Korean trade barriers, and tried to project the U.S. meat industry's interests by implementing its missions for Section 301. Normally, it is better for USTR to get the foreign country's concession, such as the imminent elimination of the offending practices, before a formal investigation is initiated. In this case, however, USTR failed to do so before the petition was filed. Although the Korean government announced a series of measures to improve its food-related system during the consultations, these measures fell short of USTR's expectations. USTR probably could not persuade the U.S. meat industry to accept the Korean measures.

Many U.S. government agencies generally participate in Section 301 investigations. In most agricultural cases, a close working relationship exists between USTR, USDA, Food and Drug Administration (FDA), Commerce, and State Department. Among them, USDA is the next important agency behind USTR in that it is often the first government point of contact for an industry that has encountered an agricultural trade problem. Considering not just that USDA attempts to develop policies in the best interest of American agriculture as a whole, but that it represents the interests of the U.S. agriculture in the international arena,<sup>36</sup> its position to the case seems closer to the

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<sup>33</sup> National Archives and Records Administration, *Federal Register*, USTR, Vol. 59, No.228, Tuesday, November 29, 1994, Notices, p.61006.

<sup>34</sup> M. Noland, *op.cit.*, p.384.

<sup>35</sup> S.D. Cohen, J.R. Paul, and R.A. Blecker, *op.cit.*, p.234.

<sup>36</sup> Personal interview B.

Petitioners than USTR as a negotiator which has to coordinate the positions of its domestic interest groups and the Korean government. A U.S. government official explains USDA's stance with respect to trade disputes, saying that "USDA agencies obviously attempt to resolve the dispute first, calling in whatever other government entities may be needed for support and expertise."<sup>37</sup>

In short, the whole position of the U.S. government can be summarised as such that the restrictive Korean trade barriers are unfair and harmful to the U.S. meat exports, so they should be removed. Moreover, given that the potential significance of the Korean meat market, it is inevitable to force Korea to open its market for U.S. meat products, while minimising damages to the overall trade relationship of the two countries as much as possible.

## **4.4 Korean Government Position**

### **4.4.1 A New Direction to Open Economic System**

It is also necessary to examine the Korean trade policy at the time that the shelf-life dispute occurred. As discussed in chapter 1, since the early 1980s, the Korean government perceived the adverse effects of its extensive interventions on the economy, so it took steps to dismantle barriers to imports and to reduce export promotion measures to improve the efficiency and competitiveness of the domestic economy. These steps were undertaken on a unilateral basis, though sometimes under pressure from major trading partners.<sup>38</sup> Trade liberalisation, in particular, accelerated following the current-account surpluses of 1986 to 1988. Financial incentives for exports were considerably reduced. There were no significant direct export subsidies, and import licensing requirements were made

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<sup>37</sup> *Ibid.*

automatic for the overwhelming majority of manufactures by 1988.<sup>39</sup> This import liberalisation resulted in less overt protection of manufactures to levels comparable to those of OECD countries. However, it was not expanded to the agricultural sector in a balanced manner, and agriculture on the whole remained protected.<sup>40</sup>

Trade liberalisation had been pursued continuously by the Kim Young Sam government since in 1993. As the trend towards globalisation gained momentum, the government became more and more confident that trade liberalisation was indispensable to increase Korea's economic growth and to enhance the production efficiency of domestic industries. In highly competitive world markets, it is difficult for any country to expand exports without opening its own markets to the trade partners.<sup>41</sup> Considering Korea's trade volume as the 11<sup>th</sup> or 12<sup>th</sup> country in the world, reciprocity is essential to have undisturbed relationships with its trade partners. Minister Park of the Ministry of Trade and Industry confirmed this point, emphasising that trade policies should be formulated on the basis of harmony of competition and co-operation with trade partners and that institutional changes in foreign investment, finance, and services should be continued in order to establish a substantially open economic system, in which foreign firms could be treated as domestic firms.<sup>42</sup>

After the establishment of the WTO in 1995, Korea's internal and external policies were changed to be consistent with the WTO, and directed towards implementing and enforcing the new multilateral free trade order. Korea abolished the direct subsidy system

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<sup>38</sup> OECD, *OECD Economic Surveys: Korea*, 1994, p.63.

<sup>39</sup> *Ibid*, pp.64-5.

<sup>40</sup> *Ibid*, p.63.

<sup>41</sup> Young-Suk Ohm, 'Defining National Trade Policy Objective and Trade Diplomacy,' in edited by the Sejong Institute, *Korea's Economic Diplomacy*, Seoul, the Sejong Institute, 1995, pp.498-9.

<sup>42</sup> Jae Yoon Park, 'The Vision of Commerce & Trade Policy for the New Economy,' *International Trade Law*, Vol. February 1996, Seoul, Ministry of Justice, pp.3-4. [In Korean]

for export promotion as well as some traditionally managed trade systems.<sup>43</sup> Korea also joined OECD in December of 1996, which signalled its further commitment to liberalising its goods and capital markets following the WTO.<sup>44</sup> The government did much to accelerate the globalisation of its economy and encourage both import and market liberalisation.

From the above discussions, it cannot be denied that trade liberalisation has been the constant direction of the Korean government's trade policies since the 1980s. However, trade liberalisation did not move fast enough and was left incomplete. While the number of goods under restriction and the average tariff rate dropped sharply, non-tariff barriers reduced the real effectiveness of these measures. For instance, the continued use of "special laws" aimed to enforce health and safety standards, environmental protection, and cultural preservation, maintained import restrictions on many items, although they had been liberalised in terms of "trade law."<sup>45</sup> Consequently, trade frictions between Korea and its trade partners, particularly with the United States, continued. Trade partners accused Korea of unfairly closing its market by operating *de-facto* trade barriers through its complicated and sometimes non-transparent legal and regulatory structure in the special laws.<sup>46</sup> To this allegation, the Korean government insisted that these laws were legitimate under the international trade agreements including GATT because they were designed to protect the welfare of consumers rather than to restrict trade.<sup>47</sup> On the other hand, the government continuously reformed the legal and regulatory systems that were inconsistent with international standards not only to prevent unnecessary trade friction with foreign

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<sup>43</sup> Chan-Hyun Shon, Junsok Yang, and Hyo-Sung Yim, *Korea's Trade and Industrial Policies: 1948-1998*, KIEP working Paper 98-05, Seoul, Korea Institute for International Economic Policy, 1998, p.50.

<sup>44</sup> *Ibid.*, p.53.

<sup>45</sup> *Ibid.*, p.43.

<sup>46</sup> *Ibid.*, p.43, p.46.

<sup>47</sup> *Ibid.*, p.43.



trade partners but also to enhance the competitiveness of domestic industries. The shelf-life dispute under examination took place in the context of such controversies.

#### **4.4.2 What was the position of the Korean government on the case?**

It is evident that no Korean government agency stands outside of the government's trade liberalisation policy. What government agencies were involved in the case? As mentioned in chapter 3, the Korean government did not have a single government agency such as USTR responsible for trade disputes. In this case, many Korean Ministries were involved: the Board of Finance and Economy (BFE), the Ministry of Foreign Affairs (MFA), the Ministry of Agriculture, Forestry, and Fishery (MAFF), and the Ministry of Health and Welfare (MOHW).<sup>48</sup> The extent of each Ministry's involvement in the case will be revealed through tracing the negotiation process in the following chapters. Here, we look at the position of the Korean government as a whole, although there were internally some differences in dealing with the case among the Ministries. The *Comments*, which the Korean government formally submitted to USTR in response to the Section 301 investigation, represent the Korean government's position on the case.

Regarding the sausage issue, the position of the government, specifically MOHW, was as follows: Heat-treated American sausages had been wrongly imported in frozen condition since 1990. After discovering this irregularity, the government took the corrective measure. Accordingly, the measures were appropriate. However, if necessary, the government had an intention to review the existing regulations on food distribution in

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<sup>48</sup> When the Kim Young Sam government reorganised the government agencies in December 1994, the Ministry of Health and Social Affairs (MOHSA) was renamed as the Ministry of Health and Welfare (MOHW). In this study, I will use only the current MOHW to avoid confusion in that there was no change in the authority of dealing with the shelf-life regulations for food products. This applies to other Ministries as well.

terms of their conformity with international practices.<sup>49</sup> With respect to the initiation of the Section 301 investigation, the government pointed out that the Petition failed to deliver a correct and balanced picture of the Korean government's policies and practices relating to the import of meat products. And it also insisted that the Petition contained a number of important factual errors, failed to mention the recent developments in Korea's food sanitation system, and that the U.S. meat industry was not well informed of the Korean government's position on this matter.<sup>50</sup> The government rebutted the complaints raised by the Petitioners as follows:

First, many of the allegations in the Petition are based upon a number of important factual errors. Several of the alleged Korean practices cited in the Petition as unfair practices actionable under relevant U.S. laws do not exist in reality<sup>51</sup>..... Secondly, the Petition fails to mention recent developments in Korea's food sanitation system. The Korean government has been making strenuous efforts to improve its current food sanitation system. Examples include the September 23 announcement of a proposed transition to voluntary shelf life determination and other interim measures. Thirdly, the Petition incorrectly interprets the terms of the various Korea-U.S. bilateral agreements because of a lack of understanding of the background of those agreements. Further, the U.S. Meat Industry does not seem to be well informed of the position of the Korean government on this matter. Finally, many of the so-called "international standards" cited in the Petition are only U.S.

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<sup>49</sup> In the letter of MOHW Minister Suh to USDA Secretary Espy on May 21, 1994. This letter is the exhibit 4 of the Comments.

<sup>50</sup> *Press Release*, 15 December, 1994, issued by MFA, No. 94-438, p.1, [In Korean]

<sup>51</sup> Notable examples presented the Korean government include; (1) the imposition of a fixed weight requirement for the retail packaging of beef imported under the SBS system (which was lifted as of June, 1994); (2) inspection procedures for chilled meat lasting 14 to 28 days (which, statutorily, must be completed within 7 days at the latest); and (3) dual standards for residue testing (which never exist in Korea). See, *the Comments*, pp.1-2.

practices that are not generally accepted internationally or, in some cases, are not even fully established within the United States.<sup>52</sup>

In short, the government rejected the U.S. meat industry's allegations that the relevant Korean practices were unjustifiable and unreasonable, and that they burdened and restricted U.S. commerce. Rather, it argued that the shelf-life regulations, which were designed to protect the Korean consumers' health, were legitimate under GATT and other international agreements. On the other hand, to avoid a situation in which the bilateral trade relationship between the two countries would be damaged by a trade issue, the Korean government expressed its willingness to accommodate any reasonable and logical advice suggested by foreign governments or private entities, including the U.S. meat industry.<sup>53</sup> While explaining the Comments to reporters, a Korean official said, "If USTR requests a consultation, we will positively try to resolve the issues through the consultation. But, considering that the issues are closely related with people's health, we plan to be firm against the unreasonable demands which are inconsistent with international standards and lacks a scientific basis."<sup>54</sup>

## **4.5 Korean Interest Groups' Interests**

### **4.5.1 Who were the Korean interest groups?**

What kind of interest groups are involved in a trade dispute arising from market access issues? Of course, it depends on cases. Generally, exporting firms are the main

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<sup>52</sup> The Comments contain a detailed description of the position of the Korean government on each issue raised by the Petitioners. It will be explained in the following chapters. See, *the Comments*, pp.1-4.

<sup>53</sup> *The Comments* p.27.

<sup>54</sup> *Press Release*, MFA, 15 December 1994, p.2.

interest groups in an export country, whereas an import country has diverse interest groups: consumers, importing firms, and domestic producers. In this case, the U.S. meat industry was the only direct interest group on the U.S. side. On the other hand, in Korea, Korean consumer associations represented Korean consumers' interests, while Korean agricultural industry groups represented domestic producers' interests. But, the Korean importing firms did not act positively to bring their interests in the negotiation process, since they violated the current domestic sanitary laws and had no formal organisation to articulate their interests. Now, we review the interest groups of the Korean side involved in the case.

***Coalition of Consumers and Farmers for Imported Food Safety (the Coalition)***

The Coalition was virtually the only interest group on the Korean side that intervened actively in the negotiation process. It was temporarily established in May 1995 in relation to the shelf-life dispute. The Coalition urged the Korean government to take measures to guarantee food products' safety and refuted the U.S. "unfair" trade pressures on agricultural products.<sup>55</sup> The Coalition consisted of 36 civil groups. It nearly covered all of the organisations in the Korean private sector related to agriculture and consumer issues. Major groups among the Coalition were the Citizens' Coalition of Economic Justice (CCEJ), the National Livestock Cooperative Federation (NLCF), the National Agricultural Cooperative Federation (NACF), the Campaign Centre for Korean Agriculture's Survival, the Korean Catholic Farmers Association, and the National Farmers Group Council.

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<sup>55</sup> *Joongang Ilbo*, 15 June 1995, p.44. [a Korean newspaper]

CCEJ, established on 7 July 1989, is one of the most influential public interest groups in Korea that aims to accomplish “social and economic justice.”<sup>56</sup> NLCF was established in 1981 based on a special law to develop the livestock industry and to promote meat producers’ social and economic welfare, as provided for in the Livestock Cooperative Law. NLCF is the largest producers’ group in the Korean livestock industry with 278,587 members and 193 local cooperatives. NLCF deals with a broad range of produce, processing, distribution, trade, and finance.<sup>57</sup> NLCF also supports sales, distribution and processing of meat products, along with training, research and public relations for meat producers. On the other hand, NACF was established in 1961 as the top organisation of agricultural cooperatives, whose mandate is to increase agricultural productivity and enhance the economic and social status of member farmers pursuant to the Agricultural Cooperative Law. NACF conducts diverse functions including marketing, processing, supply of farm inputs and consumer goods, credit and banking, and relevant support activities such as research and publication. With about 1,200 member cooperatives and over 10,000 various business centres, NACF serves five million Korean farmers and rural communities.<sup>58</sup>

### ***The Korea Meat Industry Association (KMIA)***

Established in 1986, KMIA has about 70 firm members which process meat. KMIA is not the only interest group representing the Korean meat processing firms, but most large firms are members. The mission of KMIA is to provide its members with raw meat for processing and to support them by increasing consumer demand through national advertising and promotion activities. To ensure safe and high quality meat products, it

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<sup>56</sup> CCEJ, <http://www.ccej.or.kr>

<sup>57</sup> NLCF, <http://www.nlcf.co.kr>

<sup>58</sup> NCAF, <http://www.nonghyup.co.kr/E-HOME/E-HOME.HTM>

carries out scientific research and provides technical assistance. KMIA also conducts a consulting programme in order to improve its members' management. Regarding international trade and export, KMIA directly imports raw meats on behalf of its members and markets products in world markets.<sup>59</sup> At the time of the shelf-life dispute, KMIA expected that it would import \$89 million of the raw meat and supplementary materials from the United States: \$40 million in turkey and chicken, \$20 million in pork, \$20 million in beef, and \$9 million in supplementary materials such as spices and casing.<sup>60</sup> Furthermore, KMIA said that these imports would rapidly increase after 1997. KMIA was one of the largest industry groups in Korea importing U.S. meat products.

#### **4.5.2 What were the interests of the Korean interest groups on the case?**

Korean private groups have a general perception that the government is weak in coping with trade pressure from advanced countries, especially the United States.<sup>61</sup> Thus, they have usually criticised the government's handling of trade disputes. In this case, there was no interest group that continuously kept articulating its interests to the government throughout the negotiations. Instead, from time to time, diverse interest groups criticised the U.S. pressures as unfair domestic intervention, while supporting the government's initial measures of disqualifying the sausages. In fact, they basically needed not to oppose the government's initial measures. In their view, U.S. meat products that violated the Korean Food Code should be blocked from the Korean market to protect Koreans' health. They did not change this position even after the two governments reached an agreement.

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<sup>59</sup> Personal Interview, Min Kyung Sung (late December, 1999, by phone), Deputy Manager of the General Affairs Section, KMIA.

<sup>60</sup> Letter of KMIA to MOHW Minister Suh on May 31, 1994.

<sup>61</sup> *Hankook Ilbo*, 11 May 1997, Editorial. [a Korean newspaper]

Here, we see opinions expressed by the two major interest groups during the negotiation process.

KMIA was active at the beginning of the dispute. KMIA asserted that the current Korean food shelf-life regulations were reasonable in view of the poor quality of Korea's food production and distribution facilities. Thus, the U.S. coercive demand of extending shelf-life periods was just an intervention in the domestic affairs of Korea. KMIA argued that any government has a right to regulate its food safety requirements according to its distribution system, technical level, facilities, and consumers' pattern. In particular, regarding the U.S. demand of allowing KMIA to sell U.S. wholesale beef without processing, KMIA rejected it on the ground that most its members did not want it. Furthermore, if the United States continued to intervene in the Korean meat distribution system, KMIA threatened, it could initiate anti-American campaigns such as "Not-buying U.S. products" with all the people engaged in the livestock industry.<sup>62</sup> KMIA also demanded the Korean government to maintain the current system to protect the public health, asserting that the Code should be applied equally to import sausages and domestic products, namely the government can not allow U.S. cooked, frozen sausages to be circulated with 90 days shelf-life, while prohibiting it for the same, domestically produced products.<sup>63</sup>

The Coalition also asserted that the government's measures were proper because such illegal imports in violation of Korean food sanitation law should be rooted out. The Coalition argued that actual conditions in the Korean food industry rendered Korean manufacturers technically incapable of establishing shelf-life rules that provide the level of protection sought by Korean consumers. It pointed out that there were two important

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<sup>62</sup> KMIA, *Resolution on U.S. pressure on the Korean Meat Market*, November 25, 1994. [In Korean]

<sup>63</sup> Letter of KMIA to MOHW Minister Suh on May 31, 1994.

distinctions between the Korean market and the U.S. market: (1) the lack of modern storage, refrigeration and hygienic facilities in the Korean countryside, and (2) the reliance of consumers on the regulatory process rather than the judicial system to protect them from risk. So, the Coalition maintained that the lenient U.S. shelf-life standards were unacceptable under the quite different conditions prevailing in the Korean market. They believed that the adoption of the manufacturer system and the extension of the shelf-life periods amounts to an abandon of public health and life, thus the government should reserve its decision to open the Korean market until a domestic cold chain system could be established.<sup>64</sup>

Several agricultural producer groups such as the National Farmer Groups Council also argued that the abolition of shelf-life requirements for chilled meat was just the same as the abandoning of the domestic beef and pork industry. So, actual conditions of production, distribution and sale in the domestic market should be taken into account in introducing a new system.<sup>65</sup>

## 4.6 Implications

The U.S. meat industry groups insisted that they were losing their business profits because of the unfair Korean trade barriers. Considering the present loss and the potential growth of the Korean market, they claimed, it became an urgent concern to remove the distortions and impediments in the Korean market. On the contrary, the Korean interest groups argued that given the relatively poor condition of the domestic food production and distribution industries, the government, rather than the less-trustworthy food industry,

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<sup>64</sup> The Statement on 21 July, 1995 issued by the Coalition and *Chonsun Ilbo*, July 22, 1995, <http://www.chosun.com/w21data/html/news/199507>

<sup>65</sup> The Statement on 21 July 1995 issued by the National Farmer Groups Council.



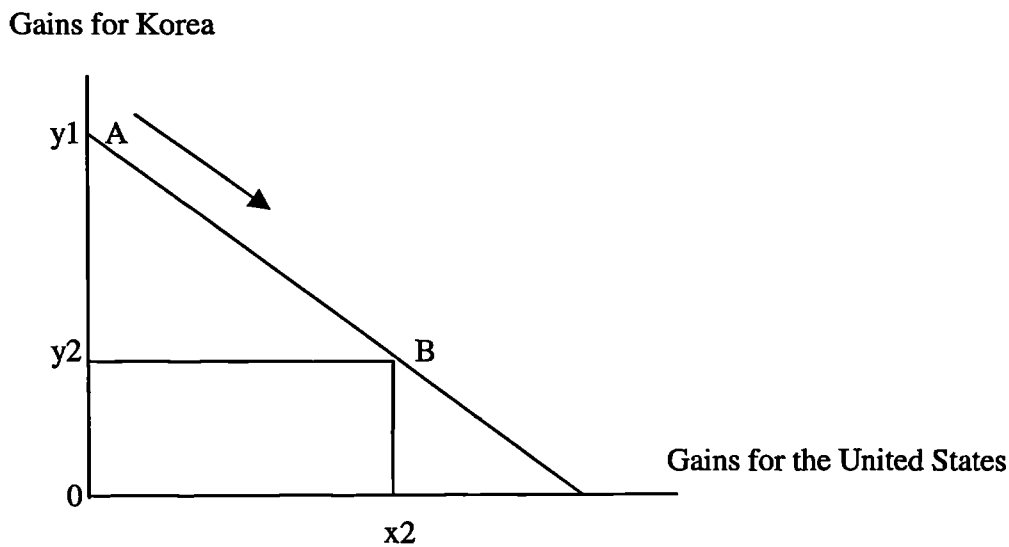
should protect public health by keeping the current system. In particular, Korean producer groups argued that unconditional allowance of meat import could cause the deterioration of the domestic meat industry and farms. The two governments in principle therefore stood behind their own interest groups' positions. The U.S. government considered the dispute as a market access problem, but the Korean government insisted that it was a health issue. But, as a negotiator or coordinator, the two governments were in the same situation in that they had to find a solution to satisfy both their domestic interest groups and the other government. That is, they were supposed to negotiate with the domestic groups to accept the negotiated package reached with the other government.

In practice, most interstate relationships contain both elements of common interest and areas in which one side gains at the expense of the other. Trade transactions themselves benefit both countries. From the long perspective, the expansion of trade could be a positive sum to each country through the better use of national resources and the enhancements to investment and growth. But, the coercive expansion of trade resulting from trade conflict does not always benefit both countries. Rather, it is highly likely that a country could destroy the relevant domestic industry; and a world of truly open markets could guarantee only the victory of competitive industries. Whether the dispute is an open market issue or a health problem, the interests of the two countries are extremely opposed. There seems to be no common interest in this dispute. Thus, this case begins as a zero-sum game in terms of the positions of the two sides. The two countries are competing with each other in the context of fixed sum payoffs. The more opening of the Korean market, the more benefits of the U.S. meat industry, the worse protection of the Korean food safety. Although there is a possibility for Korea to get some economic benefits in the future by opening its market, the present best payoff of Korea is to keep its current system or to

open its market according to its own schedule reflecting the present food industry's situation.

Walton and McKersie divide negotiation into two categories. The first is distributive negotiation wherein each party attempts to maximise its own share in the context of fixed sum payoffs. It is a zero-sum game. Integrative negotiation, on the other hand, occurs as the parties attempt to increase the size of the joint gains without respect for the division of the pay-off.<sup>66</sup>

**Figure 4-1 Zero-Sum Game**



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Source: J. Rojot, *Negotiation: From Theory to Practice*, London, Macmillan Academic and Professional Ltd, 1991, p.88.

Figure 4-1 shows a zero-sum game. In this dispute, Korea and the United States start negotiating from point A in the graph because Korea can maximise its interests when it keeps its initial position. The United States will attempt to move point A along the axis

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<sup>66</sup> The criteria are two dimensions of the underlying structure of payoffs: the total value available to both parties and the shares of the total available to each party. See, R.E. Walton and R.B. McKersie, *A Behavioural Theory of Labor Negotiations*, New -York, McGraw Hill, 1965, p.13.

X. If the negotiations finally reached an agreement at point **B**, Korea suffers a net loss from point **y1** down to point **y2**, whereas the United States gains from point **0** to point **x1**. Where will the final point be settled? In the following chapters, we will trace the movement of point A.

## Chapter 5 Negotiation under Diplomatic Process

### 5.1 Introduction

This sausage dispute was negotiated under diverse negotiation procedures; the normal diplomatic process, the Section 301 of the U.S. trade law, and the dispute settlement procedure of the WTO. There are roughly two viewpoints on the role of dispute settlement procedure: one is “a ‘negotiation’ or ‘diplomacy’-oriented approach whereby dispute settlement procedure should not be juridical or ‘legalistic’, but should simply assist negotiators to resolve differences through negotiation and compromise.”<sup>1</sup> This can be considered as a political approach. Another approach views it as “a relatively disciplined juridical process by which an impartial panel could make objective rulings about whether or not certain activities were consistent with WTO obligations.”<sup>2</sup> This can be considered as a legal approach or a rule-oriented approach. From this context, the normal diplomatic process is typically a political approach. Section 301 and WTO procedures are a mixture of the two approaches. But the Section 301 procedure is closer to the political approach, whereas the WTO procedure is much closer to the legal approach.

With a view to resolving the dispute, Korea and the United States continued negotiations at working level or higher level under the normal diplomatic process, but the dispute remained unsolved. Finally, the U.S. meat industry took a formal process by filing this issue with USTR under Section 301. The two governments did not find an amicable resolution even under Section 301 either. As a last resort, USTR filed for consultations in the WTO on this issue. Here, we will trace the negotiation process under the normal

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<sup>1</sup> John H. Jackson, *The World Trade Organisation*, London and Herndon, The Royal Institute of International Affairs, 1988, p.60.

<sup>2</sup> *Ibid.*

diplomatic process. The two latter negotiation processes will be examined in the next chapters.

In general, when a trade friction occurs between two countries, the two government agencies involved make contact and discuss it. After reaching mutual understanding on the issue, they come to an agreement to settle it. In so doing, there is no fixed process. This normal diplomatic process proceeds informally. The two government agencies could make contact directly or mobilise their other agencies such as Embassies. They could communicate through the existing committees between the two countries. Within a country, the relevant agencies adjust their views through their respective internal system. Interactions among actors in a negotiation system are a typical political process, whatever they occur between the disputing countries or within a country.

How do we trace and evaluate the informal negotiation process of the case? First, we describe the negotiation process in detail as much as we can without evaluating it, while dismantling black boxes being left by the individual research approaches. In so doing, we focus on interactions of actors. After that, we assess the negotiation process in terms of the three factors: namely, negotiation power, interest groups, and government agencies. That is, we seek to find out whether the three factors influenced the negotiation process, further to what extent they affected the negotiation outcomes. It does so by exploring an explanation to the deadlock of the diplomatic negotiations: Why did the two countries fail to reach a satisfactory resolution despite the continued negotiations through the diplomatic process?

This chapter is divided into three parts. The first section describes the beginning interactions among actors and then clarifies the positions of the two sides presented at the various negotiation tables. The evolution of the dispute is dealt with in the second section. Finally, we assess the negotiations under the informal negotiation process.

## 5.2 The Beginning of the Dispute

As discussed above, the dispute resulted from a relatively insignificant event. On importation of the first U.S. sausages in November 1990, Namju Distribution, a Korean importer, initially reported the import sausages as *heat-treated* for inspection and customs clearance. But, these sausages were found by laboratory tests to be contaminated with coliform bacillus and failed to get import permission. The importer then reapplied for clearance by declaring the same products as *non-heat treated*. The importer intentionally changed the contents of the documents by omitting information regarding the heat-treating manufacturing process.<sup>3</sup> The products were finally cleared in February 1991 as *non-heat treated* and thus automatically were given a 90 days shelf-life according to the Korean Food Code.<sup>4</sup> As a result of this initial misclassification, all sausages imported thereafter from the United States were regarded as the *non-heated* variety.

During regular food inspections at marketplaces in Seoul in February 1994, Korean quarantine officials discovered that heat-treated sausages were circulating in a frozen condition with their labels written as “cooked and keep refrigerated.”<sup>5</sup> They reviewed the import documentation of those sausages, and found that when the sausages were imported into Korea for the first time in late 1990, they were incorrectly classified *non-heated* ones with a shelf-life of 90 days. Accordingly, the Korean government took measures not only to prohibit heat-treated sausages from being circulated in a frozen condition or beyond a shelf-life of 30 days, but also to disqualify sausages imported under false classification.

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<sup>3</sup> Embassy of Korea, Washington, D.C. *Comments to the Section 301 Petition Submitted by the National Pork Producers Council, the American Meat Institute, and the National Cattlemen’s Association* (“Comments”), December 14, 1994. p.13.

<sup>4</sup> According to the Korea’s Food Code, “heat-treated” sausages are allowed a maximum shelf-life of 30 days when preserved at 0 to 10 C and they cannot be circulated in frozen form.

The Korean government penalised the officials involved.<sup>6</sup> As a result of the Korean government's measures, the sausages of 37 containers were stranded in the port of Pusan, valued at \$1.3 million.

### 5.2.1 Actions of the United States

Regarding the Korean government's measures, Agriculture Counsellor J. Child of the U.S. Embassy in Seoul and Deputy Assistant USTR for Asian Affairs P. Collins visited the Ministry of Health and Welfare (MOHW) to discuss the sausage issue in early March 1994. The main points argued by them were as follows:<sup>7</sup> Changing the Food Code and applying it without prior notification was an unfair measure considering economic losses of importers and exporters. Traders were victims with good intention as there was no precedent of problems on import declaration for many years. The action, not based on the scientific background on the respect of food safety, was merely based on the quality aspect because of the lack of regulation in the Food Code.

U.S. Ambassador James T. Laney sent a letter to MOHW minister Suh on March 10, 1994. He pointed out the following points in his letter: The action to detain the sausages was based on a new interpretation of the Food Code. The USDA-approved guidelines allow for a 3-6 month shelf-life for heat-treated, frozen sausages. There would be no problem if allowed past the 90 days shelf-life for these sausages. In the United States, those sausages are consumed by school children as part of the government sponsored school lunch programme and are sold at American military installations

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<sup>5</sup> *The Comments*, p13, and Letter of MOHW minister Suh to USDA Secretary Espy on May 21, 1994.

<sup>6</sup> *The Comments*, p.13.

<sup>7</sup> Personal Interview D.

overseas. The sausages are exported to foreign countries, including Japan, Taiwan, Hong Kong and Russia. There have been no problems.

The U.S. Embassy contacted the Ministry of Foreign Affairs (MFA) as well. On March 11, Economy Counsellor John F. Hoog of the Embassy sent a letter to MFA. In his letter, he said that MOHW rejected clearance of the U.S. sausages valued at \$1.3 million and prohibited selling those sausages in the Korean market. He argued that the sausages were both heat-treated and frozen to extend the shelf-life, as well as the food safety. He said that MOHW decided the sausages were not secure, even though those sausages had been sold in Korea without problems during the last three years. He also pointed out that the absence of the shelf-life for heat-treated, frozen sausages in the Food Code resulted in the decision because, according to the Code, the shelf-life for non-heat treated sausages is 90 days, while heat-treated sausages is 30 days. Ambassador Laney also conveyed to MFA his hope for quick settlement of this issue. He particularly asked to release the containers detained in Pusan through interim measures of the new application of shelf-life regulations.<sup>8</sup>

During April 4-5, the Korea-U.S. Trade Subgroup Meeting held in Washington dealt with current trade issues including the sausage issue. The issue was given priority by the U.S. government. The U.S. government insisted that the MOHW's action was a reintroduction, without appropriate notice in advance, of a new application of government technical regulations and thus was inconsistent with joint recommendations of the Presidents' Economic Initiative (PEI).<sup>9</sup> The U.S. government insisted that the shipments now detained in Pusan should be released.<sup>10</sup>

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<sup>8</sup> Personal Interview E.

<sup>9</sup> When President G. Bush visited Seoul in January 1992, the two Presidents agreed to establish a Joint Working Group, which would be responsible for the improvement of their bilateral business environments. As a result, the Joint Working Group produced the so-called PEI Joint Recommendation to be implemented by the two governments. The



In spite of repeated exchanges of views at both the working and senior-levels of the two governments, this issue was not settled. Encountered with this deadlock, and with the sausages currently in the port of Pusan approaching the point at which they would fail even the old 90 days shelf-life requirement, the Meat Industry Trade Policy Council (MITPC)<sup>11</sup> called, in its letter on April 8, on U.S. Trade Representative Mickey Kantor to list Korea for trade retaliation under Super 301.<sup>12</sup> In its letter, MITPC insisted that “in recent meetings with U.S. Ambassador to Korea, MOHW would not commit to establishing a scientific dialogue on the issue. Consequently, over \$1 million in sausages already shipped are being destroyed or diverted at a significant loss into third country markets.” MITPC also insisted that the Korean government began enforcing its Food Code regulation after local meat processors began complaining about the growing level of imports in March 1994. MITPC criticised the MOHW’s action as a sign of its protectionist trade stance towards all meats, pointing out that “the shelf-life issue extends beyond *sausages* to influence a potentially larger-value trade in *chilled pork and beef*. Chilled pork imports were liberalised on January 1, 1994, but no trade has commenced due to archaic MOHW’s regulations establishing a 10-day shelf life limit.”

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relevant PEI provision which the U.S. government cited is as follows: “In particular, the United States and Korea will: ( C ) Except as otherwise provided under the Agreement on Technical Barriers to Trade, i.e., in emergencies or exceptional circumstances, prior to adopting, modifying or reintroducing the application of a government standard, technical regulation or conformity assessment procedure related to foreign trade and economic cooperation, publish a notice of the proposed measure. Such notice shall inform the public that interested parties may submit comments on the proposed technical regulation or conformity assessment procedure within a reasonable period of time.” Internal document of MOHW.

<sup>10</sup> MFA, *Press Release*, The 16<sup>th</sup> Korea-U.S. Trade Subgroup Meeting, April 5, 1994.

<sup>11</sup> According to the letter, MITPC is an organisation which represents the interests of the following groups; American Farm Bureau Federation, American Meat Institute, American Sheep Industry Association, National Cattlemen’s Association, National Pork Producers Council, and U.S. Meat Export Federation.

<sup>12</sup> In September 1994, USTR was expected to come out with a new list of countries targeted under Super 301. Super 301 allows the United States to give trading partners

MITPC raised other trade restrictive issues in its letter as well. It argued that the Korean government violated the existing *beef* access agreement, most recently by limiting the packaging options of Korean meat processors. And it charged that the Korean government was illegitimately claiming that “recently negotiated quota levels are non-binding callings rather than minimum purchasing commitments.” It also revealed its distrust of Korea’s meat import policies, saying that “Korea will continue to erect new trade barriers and restrictions as long as they encounter no substantial international opposition or threat of retaliation.” Finally, MITPC strongly requested that for the purpose of reversing Korea’s lack of commitment to free and fair trade, Korea’s meat import policies should be cited as trade restrictive measures subject to action under the Super 301 provision of U.S. trade law.

Some Congressmen expressed their interests on this issue to the Korean government, which perhaps resulted from the pressures of the U.S. meat industry. Mrs. Marjorie Margolies-Mezvinsky, House of Representative, urged the Korean government to come to a mutually agreeable resolution as soon as possible. She said in her letter to Korean Ambassador Han on April 18, 1994 that her main interest, as the Congressional Representative for several of these companies, was the immediate release of approximately 37 containers held in the port of Pusan and the clearance of any product which would arrive in port.

Mr. Donald W. Riegle, Jr., a U.S. senator, wrote a letter to Korean Ambassador Han. The letter of April 28, 1994 stated that “It has recently come to my attention that the Korean government has quarantined a shipment of 38 cargo containers of cooked sausages (hot dogs) from a Michigan firm, Thorn Apple Valley, valued at over a million dollars.” He also argued that the Korean government action violated Korea’s trade obligations,

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notice that they could be targeted for retaliation unless they make progress towards

under both the GATT and bilateral U.S.-Korean agreements, considering that it took approximately 30 days to ship heat-treated sausages from the United States by sea, the new 30 days shelf-life regulation had virtually banned the importation of U.S. sausages. While strongly repudiating the imposition of such a trade barrier as unacceptable, he said, “your government will understand the seriousness of imposing such trade barriers and will take immediate steps to release the seized product and to resolve the overall issue of shelf-life regulations.”

Mr. Sander Levin, House of Representative, also sent a letter to Ambassador Han on April 29, 1994. In his letter, he expressed his deep concern about “the arbitrary seizure in Korea of U.S.-made sausage products.” Like other Congressmen, he criticised the Korean government’s action as irrational by pointing out that “the new 30-day requirement has no rational relation to food safety; in fact, most countries apply a 90-day or longer requirement. Moreover, the 30-day requirement effectively amounts to a ban on U.S. imports, which typically take 30 days to be shipped from the U.S. to outlets in Korea.” And he asked for immediate steps to release the \$1.3 million of U.S. sausages seized at the Korean port and to revise the underlying regulations.

U.S. Department of Agriculture also conveyed its position over the sausage issue to MOHW. Secretary Mike Espy of USDA planned to meet MOHW minister Suh in Washington in late April to discuss the sausage problem. But, because of the special opening of the National Assembly in Korea, Suh could not come to Washington.<sup>13</sup> On learning of the cancellation of Suh’s visit to Washington, Espy sent a letter to Suh on May 3, 1994. The letter stated that: “the sudden, arbitrary, and unannounced change in the enforcement of regulations pertaining to shelf-life (from 90 days to 30 days) by the health

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opening their markets to U.S. goods.

<sup>13</sup> Letter of Secretary Espy to Minister Suh on May 13, 1994 and Letter of Minister Suh to Secretary Espy on May 21, 1994.

authorities in Pusan has caused hardship for both Korean importers and U.S. exporters, and has disrupted a fast-growing area of U.S. food exports to Korea.” Espy reconfirmed the allegations already argued by the U.S. side,<sup>14</sup>

The United States has had many years of good experiences with frozen, heat-treated sausages. They have been stored and transported for periods of well over three months, utilised in U.S. school lunch program, and shipped to U.S. military facilities overseas, including those in Korea. The quality and food safety of these products have been maintained..... Moreover, this product has been exported to Korea for more than 4 years. There have been no problems involving the quality or healthfulness of the product.

He expressed his high hopes that the Food Safety Group Meeting, which would be held in Seoul in May between the two countries’ experts, could achieve a satisfactory resolution. Finally, he warned, “in light of the lack of advance notification and the effect on trade of the regulations, the U.S. government is examining its options under bilateral and multilateral trade agreements.”

The Food Safety Subgroup Meeting between the two countries was held in Seoul May 5, 1994. The U.S. government expected this Meeting to be an opportunity to be able to resolve the issue because MOHW had continuously suggested that an expert meeting would be efficient to deal with this sausage problem. But, the two sides did not produce a resolution. One Korean official said that the U.S. side stopped the talks one-sidedly on the grounds that Korea would not accept as a precondition the clearance of the sausages

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<sup>14</sup> *Inside U.S. Trade*, ‘U.S. Threatens Action Against Korea Over Sausage Imports,’ Vol.12 No. 20, May 20, 1994.

stranded in the port of Pusan. U.S. industry sources said that the talks broke down after Korea refused to release the containers or begin negotiations on new regulations.<sup>15</sup>

In Korea, the U.S. Embassy released a press paper with a title of “Background [of the shelf-life dispute]” through its Press Office, which aimed at manifesting U.S. positions and publicising them to Korean people who had negative attitudes to the U.S. assertions. The background can be summarised as follows;<sup>16</sup>

- U.S. heat-treated frozen sausages meet both the U.S. government and international standards for safety, quality, and wholesomeness. The U.S. government has presented several scientific documents to MOHW that indicate a shelf-life for these sausages ranging from 12-16 months.
- Thus, in the United States, sausages like the ones in question are sold at retail and are consumed by school children as part of the U.S. government sponsored school lunch program. Furthermore, this product is sold at U.S. military installations overseas including Korea with a 12-month shelf life.
- This product is exported to several countries as well, including Japan, Taiwan, Hong Kong, Singapore, Malaysia, Thailand, Mexico and Russia. These countries assign the sausage shelf-life of 9-12 months.
- Since 1990, Korea has imported a total of \$21.4 million worth of heat-treated frozen sausages from the United States, including \$7.4 million worth in 1993. There have been no problems. But, a total of 37 containers, valued at approximately \$1.3 million, were held last March in the port of Pusan without notification or appeal.
- MOHW’s decision to detain the sausages was based on a new interpretation of the Food Code, not on proven or tested food safety concerns. MOHW’s Food Code has a

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<sup>15</sup> *Ibid.*

<sup>16</sup> U.S. Embassy in Seoul, *Backgrounder*, Press Office, United States Information Service, 23 May 1994. [In Korean]

longer shelf-life for uncooked frozen sausages (90 days) than for cooked frozen sausages (30 days).

- When imported food products are detained in the United States, the importer can appeal the detention. A decision is made based on safety, quality, and wholesomeness.

### **5.2.2 Responses of Korea**

The claims of the U.S. side so far could be summarised into two major points. The Korean government should take immediate measure to release the 37 containers of U.S. sausages—including those being held in bond by importers afraid of submitting import clearance applications—that had not been permitted to clear customs in the Korean port. And then the government should have consultations with USTR to resolve the overall issues over shelf-life regulations. As discussed in chapter 4, Korea did not have a unitary government agency responsible for trade disputes. In principle, each ministry of the Korean government independently handled issues under its jurisdiction. As long as MOHW dealt with nation's health pursuant to the Government Organisation Law, the sausage issue was under the MOHW's control.

When Agriculture Counsellor J. Child of the U.S. Embassy in Seoul and Deputy Assistant P. Collins of USTR visited MOHW, MOHW explained to them that: Under its current Food Code, the heat-treated sausages should be circulated in a refrigerator with a maximum shelf-life of 30 days, thus, its measures were inevitable considering that heat-treated sausages with their labels written in English “keep refrigerated” by the manufacturers were circulated in the Korean markets beyond the shelf-life of 30 days. Furthermore, the measures were just to correct the wrong practice of fraudulent import of heat-treated sausages, which needed no prior notification. However, with respect to the

establishment of a new category for *heat-treated, frozen* sausages, MOHW said that the new category might be possible if the current Korean distribution system allowed it.<sup>17</sup>

In his letter to Ambassador Laney of March 10, Minister Suh said that “Under existing domestic regulations, a maximum shelf-life of thirty days is allowed for cooked sausages. The recent measure taken by my Ministry was based on the fact that cooked sausages labelled ‘keep refrigerated’ were found being circulated beyond the period of thirty days in Korea.” And he suggested a food safety expert meeting to deal with this issue, saying that “I believe it would be more efficient to deal with related matters through an expert meeting of the two countries. The experts will be able to exchange opinions on technical matters, based on international practices and sound scientific grounds, and produce more reasonable and mutually satisfactory results.”

After receiving protests for the MOHW’s measures from the U.S. side, MFA asked MOHW to review the requests of the United States. But, MOHW explained its position with the same tone: The current Food Code does not allow heat-treated sausages to be circulated in a frozen condition. The sausages imported from the United States have their labels written in English as “cooked” and “keep refrigerated.” Accordingly, the imported sausages should be under 30 days shelf-life when preserved in a refrigerator. This measure is not the reintroduction or reinterpretation of the relevant regulations which were not applied in the past but a corrective action to prevent such irregularities. The absence of a shelf-life for heat-treated, frozen sausages in the Food Code is because heat-treated sausages can be best maintained when they are preserved in a chilled, not frozen, condition. In most other countries, heat-treated sausages are distributed in a refrigerated condition rather than in a frozen condition. Furthermore, considering the poor cold chain system in Korea in which the conditions of the sausages fluctuates between a frozen and

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<sup>17</sup> Personal interview D.

thawed state, it is difficult to allow heat-treated sausages to be circulated in a frozen condition.<sup>18</sup>

Minister Suh in his letter of May 21 to USDA Secretary Espy explained the current Food Code regulations: “According to the existing regulations, heat-treated sausages are allowed a maximum shelf-life of thirty days when preserved at 0C~10C, and they may not be circulated in a frozen condition. This regulation has been in effect since 1989. Any manufacturer who wishes to change the regulation must submit relevant scientific references to support the change sought and obtain government approval.” And he defended his ministry’s action, saying that:

In spite of this regulation, heat-treated American sausages have been wrongly imported in frozen condition since 1990.....Our government discovered these irregularities in February this year, and accordingly took the corrective measure that is quite appropriate.....This is not a matter of a change of import policy or regulation, and advanced notification is not necessary. When we decided to take such a measure, we reviewed it carefully in many aspects, because the prohibition of this sausage might cause difficulties for Korean importers as well as U.S. exporters.<sup>19</sup>

He also explained his position that as the person responsible for the nation’s health and food safety, he could not leave the irregularities that were inconsistent with the existing regulations.<sup>20</sup>

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<sup>18</sup> *Ibid.*

<sup>19</sup> Letter of MOHW minister Suh to USDA Secretary Espy on May 21, 1994.

<sup>20</sup> In reality, the Korean government was strict in controlling food safety or quality. In late March 1994, the Seoul Metropolitan Government discovered 9 food importing companies which were distributing 20 imported food products such as herb-candy with an illegal longer shelf-life or no indication of shelf-life. The Government prosecuted them along with the prohibition of their business for 15 days. The products were confiscated and



While there were several working-level talks between government officials and experts of both countries, MOHW did not change its initial position on the sausage issue, continuously insisting that under the current Food Code, heat-treated sausages should be distributed in the refrigerated condition with a 30 days shelf-life. The distribution of cooked sausages in frozen condition could not be allowed under the current Food Code. Given the underdeveloped state of Korea's distribution system, cooked sausages, if allowed to be distributed in frozen condition, became more susceptible to early decay or deterioration in quality while they alternated between "frozen" and "refrigerated" conditions. Regarding the request of the U.S. side that the shipments now detained in Pusan and those already contracted at the time of this dispute should be released as soon as possible, MOHW also maintained its argument that there was no basis for reversing the administrative action legitimately taken on the basis of the effective regulation.

### 5.2.3 The GATT Council Meeting

The U.S. government forwarded this issue to the multilateral apparatus, at the General Agreement on Tariffs and Trade Council in Geneva which dealt with it on May 10, 1994 as Agenda item 8: *Korea, Standards for Frozen Sausage*. The points argued by the U.S. side at the Council were that:<sup>21</sup>

- Since mid-February Korea has not allowed the entry of sausages exported from the United States. This was quite an unpleasant surprise for the owners of 37 containers of cooked sausages of considerable value which are being held at port in Pusan. It should

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disqualified. See *Joongang Ilbo*, March 23, 1994, p.21,  
[http://search.joins.com/asp/snews\\_search.asp](http://search.joins.com/asp/snews_search.asp)

<sup>21</sup> *Communication from the United States*, L/7450, Agenda Item 8: Korea, Standards for Frozen Sausages, GATT, The GATT Council Meeting, May 10, 1994, and *Inside U.S. Trade*, Vol.12 No. 20, May, 20, 1994.

be reminded that the product in question has been successfully entering Korea for the past four years.

- This is only the most recent example of trade disruptions due to unscientific and/or inadequately notified food safety or phytosanitary restrictions.
- There have been numerous exchanges between the U.S. and Korean governments that were unable to resolve the issue. According to MOHW, the containers were detained because Korea does not have a food code category for “heat-treated, frozen sausage.” The same product has been entering the country for the past four years as “raw, frozen” product, which allows for a 90-day shelf life. Being classified as “heat-treated, chilled,” the product now has a 30 days shelf-life. The Korean government informed that this new classification was necessary because its customs administration had wrongly classified the product in the past.
- We believe that the original interpretation of the regulations is consistent with science because “heat-treated, chilled” exceeds “raw, frozen” as a preservation method. The US administration has already sent the Korean authorities all the necessary scientific and regulatory information which supports a 90 days or longer shelf-life for heat-treated frozen sausage.
- The Korean government’s right to adopt and implement technical regulations cannot be questioned as long as they will help fulfil a legitimate objective, such as the protection of human health or safety. However, both the U.S. and Korean governments have committed themselves to not allowing such measures to create unnecessary obstacles to trade.
- In the light of the substantial commercial losses as a result of the Korean government’s sudden action, as well as the growing losses following the effective closure of Korea’s market to these products, we ask the Korean government to take immediate action for

the release of the containers in Pusan, to approve the sale immediately and establish standards which are consistent with science so that trade will continue to flow.

- Depending on the Korean government's actions to this problem, the United States is determined to review all options available and appropriate to ensure fair treatment for U.S. exports to Korea.

To this allegation of the U.S. government, the Korean side responded:<sup>22</sup>

- On March 30, the Korean government disqualified certain types of imported sausages because they did not meet Korean food safety standards. The Government made this decision after having revealed most serious irregularities committed by some importers.
- Under Korea's Food Code, cooked sausages must be sold in a chilled condition at a temperature between zero and 10 C degrees with a maximum allowable shelf life of 30 days. Raw sausages can either be sold frozen, at a temperature between minus 12 C and 18 C degrees with a 90-day shelf life, or alternatively they can be sold chilled at a temperature between 0 and 5 C degrees within 25 days.
- Instead a number of importers, in order to get the benefit of the longer shelf-life permitted for frozen raw sausages, have for some time imported cooked sausages as if they were frozen raw sausages. They thus froze the cooked sausages and applied for the license to import them under the category of frozen raw sausages. The Government uncovered these irregularities in February and, accordingly, took the corrective measure that is quite appropriate. No Government could allow such irregularities to continue. Any Government would take similar measure under such circumstances.

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<sup>22</sup> *Communication from the Republic of Korea*, Agenda Item 8: Korea, Standards for Frozen Sausages, GATT, The GATT Council Meeting, May 10, 1994, and *Inside U.S. Trade*, Vol.12 No. 20, May, 20, 1994.

- The government cannot understand the underlying motives of the United States in bringing this matter to the Council. Nor can the government accept its arguments. The Korean government believes that the measures are the right ones. No breach is involved with respect to GATT, or to domestic regulations. The United States claims that the Korean Government suddenly and without advance notification reclassified this product. But, the truth is that as soon as the government became aware of the irregularities, it took the legal actions and the government did not reclassify the product concerned. This was a purely corrective measure, and notification is not required unless change in the standards is involved.
- The United States seems to suggest that the measure undermines business predictability and adversely affects the commercial interest of the importers. The Korean government does not share this view. Rather, these importers violated the existing law and put their business interests before human health concerns by unscrupulously circumventing publicly announced food safety standards.
- The United States also seems to suggest that Korea's current standard on cooked sausages is not scientifically justified. But, cooked sausages are generally not sold frozen, but chilled. Moreover, it is all the more necessary in a country like Korea where a cold chain system is not fully developed. In the absence of such a system, it is most likely that these sausages go through different preservation conditions before they end up in the hands of consumers. Sometimes they may be kept chilled, sometimes frozen, and sometimes, even exposed to normal temperature, resulting in a serious deterioration in the safety and quality of the product. However, if the United States questions the scientific justification, the Korean government is quite willing to discuss it.

- What we cannot accept, however, is the U.S. demand that the Korean Government condone such irregularities simply on the grounds that this practice has been rightly or wrongly permitted in the past.

#### 5.2.4 Unbending Assertions of the Two Sides

According to *Inside U.S. Trade*, the U. S. government fired “a high-level salvo” in the sausage dispute with Korea since the beginning of the dispute.<sup>23</sup> In letters to Korean cabinet officials, in bilateral economic meetings, and in a GATT Council meeting, the U.S. government had asked Korea to immediately allow the release of about 37 containers of frozen sausages that had been blocked in a Korean port for three months and to revise regulations governing permitted shelf-life of meat and poultry products. In spite of those efforts, the dispute remained unsolved. In May, under this situation, Agriculture Secretary Espy warned Minister Suh that the U.S. was “examining its options” under both bilateral and multilateral agreements.<sup>24</sup>

On the Korean side, although MFA asked MOHW to review the U.S. requests proactively after consulting with the U.S. government officials, MOHW kept on its initial positions, repeating that its measure was inevitable to correct the wrong practice of fraudulent import of heat-treated sausages under the current Food Code, and the measure was merely to protect public health. Until then, the dispute had revolved around U.S. claims, that is, the Korean government changed the shelf-life for cooked frozen sausages from 30 days to 90 days without warning. The 90-day shelf-life was indispensable to ensure that the sausages could be shipped to Korea and make it onto local shelves.<sup>25</sup>

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<sup>23</sup> *Inside U.S. Trade*, Vol.12 No. 20, May 20, 1994.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

On the other hand, U.S. meat industry officials charged that although a new shelf-life classification category for heat-treated, frozen sausages was needed, the Korean government had so far indicated no willingness to talk about establishing new regulations.<sup>26</sup> To this allegation, Korean officials at the GATT Council said that they were prepared to continue to discuss the issue if the United States continued to question their scientific justification.<sup>27</sup> But, U.S. meat industry officials insisted that an “agreement to talk” about a new shelf-life category would be not sufficient. They were seeking a concrete agreement from the Korean government on a new shelf-life category for heat-treated, frozen sausages as a long-term solution.<sup>28</sup> An industry official also said they were not willing to drop the issue of the 37 containers in exchange for an agreement on shelf-life.<sup>29</sup> According to *Inside US Trade*, a Korean official said he feared that the U.S. meat export firms were considering filing a petition with USTR seeking to include the issue in a Super 301 listing in September.<sup>30</sup> But U.S. industry sources could not confirm the effort, though they said they would not oppose a Super 301 listing. Other sources said USTR would, for now, continue bilateral talks on the issue.<sup>31</sup>

Until that time, there were no actions in Korean industry. The importers comprising small companies could not have a voice because they violated the existing food regulations. Because of their irregularities, they had no choice except for returning the imported sausages to the United States or diverting them into third country. But, they might pressure the U.S. export firms to resolve the shelf-life issue quickly. On the other

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<sup>26</sup> *Ibid.*

<sup>27</sup> *Communication from the Republic of Korea*. Agenda Item 8: Korea, Standards for Frozen Sausages, GATT, The GATT Council Meeting, 10 May 1994.

<sup>28</sup> *Inside U.S. Trade*, Vol.12 No. 20, May 20, 1994.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

hand, the Korean press generally criticised the United States. *Chosun Ilbo* said in its editorial that:

From our judgement, the sausage issue has no special cause to be disputed between Korea and the United States.....The government prohibited the distribution of illegal sausages after having revealed some importers' irregularities. Thus, we cannot understand that why this simple and clear measure could be a trade dispute between the two countries, further we also cannot understand that why the U.S. government took this issue to the GATT and criticised the Korean government's measure.....The U.S. claim is the equivalent of insisting that Koreans should continuously consume unsafe food products in the interest of U.S. exporters. It is absurd.....No government in the world can force other countries to buy unsafe and adulterated food products. No government would allow those products to be circulated, and the irregularities to be continued.....This issue is a commercial matter between the trading companies concerned. There are no grounds on which the Korean government can be criticised, and the U.S. government should not intervene.<sup>32</sup>

### **5.3 Enlargement of the Dispute**

#### **5.3.1 Tougher Stance of the United States**

Despite many talks between government officials and experts of the two countries, there had been no progress. Confronted with this situation, U.S. government agencies involved had a meeting to discuss future actions for the sausage issue in May 1994. In this

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<sup>32</sup> *Chosun Ilbo*, 'The Sausage Dispute is Unreasonable,' May 13, 1994, Editorial, <http://www.chosun.com/w21data/html/news>

meeting, the agencies confirmed that:<sup>33</sup> “the current Korean shelf-life standards were not based on science, and that the past exported U.S. sausages had no problem in terms of safety. The Korean government’s action was just to prevent the access of U.S. sausages to the Korean market. The action violated a 1989 agreement on agricultural issues between the two countries.” During the meeting, there were some opinions on initiating the Section 301 investigation. But, this was reserved as a second option. Rather, they agreed to tackle overall Korean food safety standards as well as the ongoing sausage issue. In this context, they agreed to collect information about trade barriers on the access of the Korean market from the U.S. agricultural industry. And they decided to deal with the trade barriers through bilateral consultations of the two governments rather than Section 301.<sup>34</sup> The U.S. government started to toughen its stance towards Korea in hopes of smashing what it saw as unreasonable trade barriers to U.S. meat products.<sup>35</sup> It seems that the U.S. government intended to put all Korean trade barriers imposed on exports of the U.S. agricultural products into the current dispute.

On the other hand, MITPC called on USTR again to cite under Super 301 Korean barriers on U.S. meat and sausage exports. In a May 23 letter to U.S. Trade Representative Mickey Kantor, which contained nearly the same contents of the previous letter on April 8, MITPC warned that they were “very concerned with the Republic of Korea’s ongoing pattern of trade disrupting practices which are preventing meaningful access to Korea’s meat import markets.”<sup>36</sup> It also claimed that Korea’s scientifically outdated requirement assigned a longer shelf-life to raw meat products than to cooked products, so it was just a poorly veiled non-tariff trade barrier. This requirement was not reclassified until Korean

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<sup>33</sup> Personal Interview C.

<sup>34</sup> *Inside U.S. Trade*, Vol.12 No. 20, May 20, 1994.

<sup>35</sup> *Journal of Commerce*, June 9, 1994, p.6A.

<sup>36</sup> *Inside U.S. Trade*, ‘Meat Industry Calls For Super 301 Action on Korean Sausage Imports,’ Vol. 12 No. 21, May 27, 1994.



meat processors began complaining about the growing level of imports caused by the liberalisation of frozen sausage imports in 1991, it charged. "Korea has given no indication during recent negotiations that it is willing to repeal its outdated shelf-life requirements and, in fact, has repeated its commitments to uphold them." Furthermore, the Korean government indicated that it intended to erect more barriers to free trade, even though it agreed to significant market access concessions in the Uruguay Round, MITPC argued. It also pointed out that this market, valued at more than \$171 million in 1993, had the potential for being one of the most important long term markets for U.S. red meat.

In the letter, MIPTC raised other issues as it did in April: the enforcement of more scientifically unsound shelf-life requirements for chilled pork and beef,<sup>37</sup> the requirements that imported meat intended for resale should be processed or repackaged, the fixed weight requirements for the retail packaging of all imported meats, and the refusal to acknowledge the recently negotiated quota levels as minimum purchasing requirements of U.S. beef. Finally, MIPTC strongly requested that "Korea's meat import policies be cited as trade restrictive measures subjecting Korea to action under the Super 301 provision of U.S. trade law."<sup>38</sup>

To this request of the meat industry, U.S. Trade Representative Mickey Kantor, in a May 25 letter to the National Pork Producers Council, said that his agency had taken "a strong interest in this matter from the outset" and was "protesting the lack of scientific justification in MOHW action and working intensely to resolve this troublesome issue."<sup>39</sup> He explained his office's efforts to resolve the issue, saying that:

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<sup>37</sup> U.S. industry officials said, "Korea have set a 10-day shelf-life standard for these products based on trade in "hot" carcasses and cuts and not on the international vacuum packed cuts which define today's international standard. They routinely export fresh beef and pork with 100-day and 40-day shelf-lives respectively." See, *ibid.*

<sup>38</sup> Letter of MITPC to U.S. Trade Representative Kantor on May 23, 1994.

<sup>39</sup> *Journal of Commerce*, 'White House Adopts Tougher Stance on Meat Trade with South Korea,' June 9, 1994, p.6A

I have spoken directly with Foreign Minister Han about this matter, and Ambassador Laney has both written and spoken with MOHW Minister Suh protesting his Ministry's action.....Most recently, we formally raised the matter during the May 10 meeting of the GATT Council<sup>40</sup> and received supportive responses from representatives of other countries.

The European Union said at the GATT Council that it would join U.S. efforts in protesting the new Korean meat regulations.<sup>41</sup> And Kantor assured in his letter that his office would continue work to make the Korean government follow proper notification procedures and allow products to flow, and also that his staff would continue to work closely with the industry and keep the industry informed as new developments occurred.

On June 9, through the *Federal Register* notice,<sup>42</sup> USTR officially requested public comments on problems exporters of U.S. agricultural products may have been having with respect to access to the Korean market. USTR requested all interested persons to provide any information concerning possible barriers that may have been imposed by the Korean government. In particular, USTR sought comments with respect to 77 products covered by a 1989 agreement<sup>43</sup> between the two countries. According to the notice, the two governments agreed in the 1989 agreement that "Korea would liberalise import restrictions

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<sup>40</sup> According to *Wall Street Journal*, the discussion in the Council was the first step in a process that could end with the U.S. taking retaliatory measures under the Super 301 trade law. *Wall Street Journal*, 'From Sausages to Autos, U.S. Products Still Face Trade Hurdles in South Korea,' May 31, 1994, p.A13.

<sup>41</sup> *Journal of Commerce*, June 9, 1994, p.6A.

<sup>42</sup> National Archives and Records Administration, *Federal Register*, Vol. 59, No.110, Thursday, June 9, 1994, Notices, p.29863.

<sup>43</sup> With regard to the agreement, *Journal of Commerce* states, "Ironically, South Korea narrowly avoided being targeted under Super 301 in 1989, when Japan, Brazil and India were named. To escape sanctions, South Korea agreed to open its markets to a range of U.S. products, including agricultural ones. South Korea's failure to meet the terms of that agreement in the eyes of the USTR has renewed talk of a Super 301 ruling against the country." See, *Journal of Commerce*, June 9, 1994, p.6A.

on 62 agricultural products, implement tariff reductions for seven products, and subject eight products to automatic import approval,” and further “these commitments would remain unimpaired by restrictions or requirements directly or indirectly affecting importation of the agricultural products.”

“We want a solid record of evidence to go back to Korea with to make the point that they should remove the market access barriers” one official at USTR said.<sup>44</sup> USTR planned to classify the comments it received by the type of market access barriers while it tried to reach solutions with Korea, she said. USTR of course had the first priority in pursuing with Korea its shelf-life requirements for sausages.<sup>45</sup> U.S. officials hoped that the written comments, which would be presented to the Korean side in talks in Washington June 21-22, provided the Korean side with a clue to the depth of U.S. dissatisfaction over the current trade relations.<sup>46</sup>

In my view, USTR intended to achieve two objectives against Korea through the Federal Register notice. First, the industries’ comments would be used by a leverage to resolve the sausage issue because the Korean government clearly would not want this sausage issue to widen. Secondly, if the sausage issue was not resolved easily, USTR might take an action under Super 301 over the whole Korean agricultural market access barriers including the sausage issue, based on the comments. USTR was supposed to designate the priority foreign country practices by September 1994 under the new Super 301 procedure announced by President Clinton in an executive order in March.

U.S. meat industry officials considered the USTR’s notice as a warning to the Korean government. But, they characterised as “inadequate” USTR’s efforts to step up the

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<sup>44</sup> *Inside U.S. Trade*, ‘U.S. Plan on Korea Meat Limits ‘Inadequate,’ Industry Officials Charge,’ Vol. 12 No. 24, June 17, 1994.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Journal of Commerce*, June 9, 1994, p.6A.

pressure on Korea by seeking additional information through the notice.<sup>47</sup> Probably, the best option they wanted was a prompt citation on the sausage issues under Super 301. The notice in fact was partly intended to appease the meat industry that had continuously called on USTR to cite the Korean meat import practices under Super 301.<sup>48</sup> “The Administration does not want us to file a 301 case on sausages or any other issue,” one industry official said. “They want us to respond in the comment period and they’ll take action in their due course of speed.”<sup>49</sup>

According to *Inside U.S. Trade*, USDA, with the backing of the meat industry, had been pushing for listing the Korean practices under Super 301 in September. However, that proposal was rejected in the inter-agency process by the Department of State and the National Security Council due to political reasons.<sup>50</sup> The two agencies did not want to leave Korea alone at that time because of an escalating unrelated dispute with North Korea over atomic weapons production, it stated.

U.S. lawmakers in the House of Representatives also supported the U.S. meat industry’s claim that Korea’s meat import practices be cited as trade restrictive. They conveyed their opinions to Ambassador Han. In their letter, they said, “We are concerned about recent actions by the government of the Republic of Korea which have severely disrupted U.S. red meat exports to your country.”<sup>51</sup> The reason why so many Congressmen

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<sup>47</sup> *Inside U.S. Trade*, Vol. 12 No. 24, June 17, 1994.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> Doug Bereuter (Republican-Nebraska), Robert Smith (R-Oregon), Calvin Dooley (Democrat-California), Scott Klug (R-Wisconsin), Richard Durbin (D-Illinois), Jim Lightfoot (R-Iowa), Ike Skelton (D-Missouri), Joe Skeen (R-New Mexico), Bill Barrett (R-Nebraska), Bill Emerson (R-Missouri), Tim Johnson (D-South Dakota), Tom Lewis (R-Florida), Jim Nussle (R-Iowa) Earl Pomeroy (D-North Dakota), James Inhofe (R-Oklahoma), Ted Strickland (D-Ohio), Richard Pombo (R-California), Fred Grandy (R-Iowa), Timothy Penny (D-Minnesota), John Boehner (R-Ohio), and David Minge (D-Minnesota), See, Letter of lawmakers to Ambassador Han on June 24, 1994.

joined this work to pressure the Korean government can be guessed from the comments of a senior U.S. industry official,

If you want 10 and the government says you can only have 5, I think the private sector then has some options. They take 5, or one option is that you go to Congress and tell Congress that you want 10 and the government says you can only have 5. Congress may give you 7 or 8. Sometimes it works, sometimes it doesn't work. But that's a consideration.<sup>52</sup>

As the dispute has been stuck since March, the U.S. meat industry resorted to Congress to push the two governments to meet its requests as soon as possible. The lawmakers through the letter argued that: the Korean actions were particularly disturbing because they were not based on sound scientific reasoning. Because of those unsound scientific regulations, the trade of cooked, frozen U.S. sausages had been halted and no trade of fresh chilled pork and beef had commenced. In addition, they charged that the Korean Ministry of Agriculture had maintained its trade distorting requirements that imported meat intended for resale be processed or repackaged in Korea, which was in direct violation of the Simultaneous-Buy-Sell (SBS) agreement. They also warned that Korea decreased rather than increased its market access even if Korea had agreed to provide additional market access during the Uruguay Round negotiations. Finally, they insisted, the Korean trade disruptive practices should merit consideration by the U.S. government for action under Super 301.<sup>53</sup>

MIPTC submitted its comments to USTR on July 8 in response to the June 9 Federal Register notice. MIPTC claimed in its comments that the Korea import barriers to U.S. meat products were among the most severe of any industrialised nation, so Korea

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<sup>52</sup> Personal Interview A.

should be placed on the 301 trade sanctions list. "Without intervention by the government, Korea's pattern of trade disrupting practices will only continue, even though they are facially agreeing to further liberalise their markets," the comments stated.<sup>54</sup>

### 5.3.2 Inflexibility of Korea

The concerned Ministries of the Korean government had a meeting in late May to explore alternatives to be able to settle this troublesome dispute. In this meeting, they decided to make a working group comprised of government officials and experts, which was supposed to examine comprehensively the current food safety standards including sausage shelf-life. And if necessary, they allowed the working group to formulate a new comprehensive policy for improvement.<sup>55</sup> The U.S. government was informed of the Korean government's willingness to do this during the Korea-U.S. Economic Meeting in Washington on June 22.<sup>56</sup> Although MOHW agreed to establish the working group, MOHW seemed not to change its position in that it went on to refute the U.S. assertions thereafter.

The Korea Meat Industries Association (KMIA), in a letter of May 31 to minister Suh, asked MOHW to keep its initial position to protect public health against the illicit requests of the United States. It also argued that the Food Code should be equally applied to import sausages and domestic products, namely the government could not allow U.S. cooked, frozen sausages to be circulated with 90 days shelf-life, while it prohibited even producing cooked, frozen sausages at home. KMIA submitted a paper along with the letter

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<sup>53</sup> Letter of lawmakers to Ambassador Han on June 24, 1994.

<sup>54</sup> *Inside U.S. Trade*, 'U.S. Rules Out Super 301 in Dispute over Korean Agricultural Access,' Vol. 12 No. 30, July 29, 1994.

<sup>55</sup> Personal Interview E.

<sup>56</sup> *Ibid.*

to MOHW. The paper containing KMIA's opinions over the sausage issue was originally supposed to be delivered to the U.S. side.

KMIA's opinions in the paper can be summarised as follows. First, as a voice towards the United States, KMIA insisted that MOHW's measures were proper because such illegal imports in violation of Korean food sanitation law should be rooted out. With regard to the U.S. assertion that the Korean import policies were changed without advance notification, the paper states, "We must let you know that such action was not taken for new policy, but that it has been stipulated in the Food Sanitation Law from the time before import liberalisation." And considering general customs, consumer's preference in Korea, and general distribution practices of cooked sausages in the United States, the Korean food shelf-life regulations were not unreasonable, the paper stated. Secondly, as a voice to the Korean government, KMIA claimed that the government punish the officials responsible for the initial wrongdoings to prevent any future irregularity. The current Food Code should be abided by the government as well as producers and traders as long as it is not revised.

While the issue was taking on political significance in the United States, the Korean government was continuously defending its initial position. In this context, the Korean Embassy in Washington responded to the U.S. meat industry. Economic Counselor Kim of the Embassy repudiated the MIPTC's assertions of its letters of April 8 and May 23, 1994, to 11 relevant U.S. organisations, saying that the letters had several erroneous descriptions.<sup>57</sup>

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<sup>57</sup> MIPTC, American Farm Bureau Federation, American Meat Institute, American Sheep Industry Association, National Cattlemen's Association, National Pork Producers Council, U.S. Meat Export Federation, USTR, USDA, Inside U.S. Trade, and Knight-Ridder Financial News. Letter of Economic Counselor Kim of the Korean Embassy to MITPC on June 9, 1994.

First, in regard to the allegation that Korea recently began reclassification of a previously unenforced Food Code regulation, he said that according to the Code, which has been in effect from 1989 to the present, heat-treated sausages should be circulated with a maximum shelf-life of 30 days when preserved at 0 to 10 C and they may not be circulated in frozen form. In derogation of these regulations, U.S. heat-treated sausages had been wrongly imported in a frozen condition since 1990. This occurred when sausage importers deliberately submitted documents falsely stating that the U.S. sausages were non-cooked and had been approved by quarantine officials. After discovering these irregularities in February 1994, the Korean government took corrective measures by disqualifying sausages imported under false classification and penalising the officials involved. In this sense, the measures were not a change in import policies but an enforcement of the existing regulations, namely, the measures were not a reclassification of the product concerned but a correction of past irregularities.

Secondly, with regard to the scientifically unsound shelf-life requirements for chilled pork and beef, he pointed out that shelf-life regulations for those products had been effective even before the import liberalisation of January 1, 1994. Accordingly, they were not new requirements intended to block the import of chilled pork and beef. He also reminded that the Korean government has been continuously proposing to review, through consultations between experts of the two countries, any existing shelf-life regulations on sausages, fresh chilled pork and beef in vacuum-packaged cuts, and frozen beef patties in view of scientific grounds and international practices.

Thirdly, with regard to the requirement that imported meat intended for resale should be processed or repackaged in Korea, he argued that the requirement applied only to KMIA while the other SBS participants could resell imported beef without going through processing or repackaging. As far as KMIA was concerned, just distributing or



reselling imported cut meat was not included in the business scope of KMIA's members. According to him, KMIA membership is open to those engaged in manufacturing or processing edible meats pursuant to Korean law and the KMIA's own statute. Those who merely resell meat, either raw or processed, are not eligible for membership.<sup>58</sup> Lastly, he hoped that these issues would be resolved through mutual dialogue and consultations, not legal actions.

Korean Ambassador Han replied to the U.S. lawmakers on July 1, 1994. His explanations matched the Economic Counselor Kim's letter to MIPTC. But he added some points. With regard to the scientific reasoning of Korean shelf-life regulations, he said that "the Korean government is open to suggestions from U.S. government and industry. My government is fully prepared to engage in bilateral consultations on the scientific appropriateness and conformity with international practice of Korea's food safety standards, including shelf-life regulations." With regard to the lawmakers' concern over deteriorating access to the Korean market, he emphasised that the Korean government remained committed to free and fair trade, and to the spirit of the Uruguay Round agreements. He also argued that access to Korean market was increasing, not decreasing, indicating that:

According to recent U.S. Meat Export Federation statistics, in the first four months of this year Korea's imports of U.S. beef, pork, and various beef and pork meat products reached \$85 million, marking a drastic increase of 187% in comparison to the same period in 1993. In particular, beef imports, which account for more than 95% of total imports of U.S. meat and meat products, increased by 192%; pork imports increased by 240 %.

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<sup>58</sup> Provision 22 of Food Sanitation Law, Provision 7 of Presidential Decree of the Law,

Finally, he said that it was disappointing that the lawmakers had decided, based on inaccurate information, to support the U.S. meat industry's request.

In July 22, MOHW partly revised the Food Code. But, it left the shelf-lives for sausages as they were, while changing some parts of the Code including shelf-lives of certain food products. Before revising the Food Code, processed peanuts and nuts had two different shelf-lives: 18 months for peanut butter and products made of more than 80 percent of nuts, and 12 months for others. But, in the new Food Code, the two shelf-lives were unified into 12 months. The revised Code allowed the use of flavour to coffee, which was requested by the United States. The previous Code prohibited the use of flavour in coffee on the grounds that using chemically synthesised compounds instead of plant origin raw materials in tea products is detrimental to the quality of products.

### **5.3.3 Concession and Disappointment**

In early August 1994, the Korean Embassy in Washington asked MFA to review positively its proposal that the extension of shelf-lives for sausages was necessary to cool off the trade frictions.<sup>59</sup> That is, the sausage issue caused the comprehensive investigation by the U.S. government into possible barriers to the access for U.S. agricultural products to the Korean market through the Federal Register Notice on June 9. And the American Congress has been very interested in the sausage issue. Thus, if the sausage issue could be resolved, the government could alleviate burdens on overall agricultural products and food safety issues. Furthermore, it would be helpful to improve the general trade relationship between the two countries in anticipation of the announcement of the Super 301 list

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and Provision 5 of KMIA's Jeong Kwan (Its own statute).

<sup>59</sup> Personal Interview C.

September 30.<sup>60</sup> The Embassy also pointed out that the United States had been expecting that the Korean government could extend the shelf-life for sausages based on the various information provided by the U.S. government.<sup>61</sup>

On August 18, 1994, while delivering a letter to MOHW Minister Suh from USDA Secretary Espy, Ambassador Laney said in his own letter that the unresolved issue was getting worse, pointing out that the Embassy was receiving an increasing number of complaints from traders of the two countries about shelf-life requirements.

Espy's letter<sup>62</sup> started with his disappointment at MOHW's refusal to take action to allow the U.S. sausages stranded in Pusan to be delivered into Korea even after extensive consultations at the working level and higher levels. He said, "as a result of MOHW's actions, heavy commercial losses have been incurred by U.S. exporters, and importers have been forced to divert more than \$1 million dollars of this product to other markets at reduced prices." He argued that MOHW's measures, virtually banning U.S. sausages from the Korean market, was inconsistent with the 1989 exchange of letters. According to the 1989 letters, he said, Korea agreed that its commitments to liberalise import restrictions on 77 agricultural products would remain unimpaired by restrictions or requirements affecting importation of the agricultural products.

Furthermore, he warned that many U.S. agricultural exporters had complained to his office that the Korean government had imposed unjustifiable regulatory barriers on their export products. He also pointed out that the exporters have also written letters to

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<sup>60</sup> The U.S. government's Super 301 list, under the terms of the March executive order, would consist of three lists. It would list priority foreign practices, triggering an investigation and possible sanctions. And it would include two "watch lists," one describing foreign practices that may warrant future priority designation, and the other identifying practices that are being dealt with in other ways through existing trade agreements or trade negotiations. *Inside U.S. Trade*, 'U.S., Meat Industry Reject Korean Plan to Change Sausage Standards,' Vol. 12, No.39, September 30, 1994.

<sup>61</sup> In my view, insofar as MFA agreed with the Embassy's opinion, it seemed to convey the opinions to the concerned ministry, MOHW.

USTR in response to the Federal Register notice, indicating that Korean regulatory barriers had a discriminatory effect on U.S. agricultural products. Finally, as a first step to avoid unpleasant trade confrontations, he asked Minister Suh to “allow U.S. sausages to enter the country immediately under the same shelf-life requirement that was used during the past 4 years until such time that a new shelf-life standard can be worked out between the technical experts.”

Despite subsequent talks in September at various levels to find a resolution of the ongoing dispute, such as a technical level working meeting and the 17<sup>th</sup> Trade Sub-Group Meeting in Seoul, the two governments did not reach an agreement. Before the September talks, in fact, Deputy Assistant USTR for Asia Affairs Peter Collins and Korean officials agreed in a meeting in July to schedule a technical level working meeting.<sup>63</sup> The meeting was expected to focus on what the U.S. charged were a host of regulatory and other technical problems in Korea.<sup>64</sup> Until then, the two countries had been discussing diverse food safety issues besides the shelf-lives for food products. Korea was interested in the residue tolerance levels for pears, and FDA Nutrition Labelling and Education Act, whereas the United States was interested in the self-specification system, labelling, food additives, and the imported food inspection system.<sup>65</sup> According to *Inside US Trade* of July 29, the U.S. government’s decision to hold the technical talks came as various industry and commodity groups submitted comments to USTR in response to the June 9 Federal Register notice.<sup>66</sup> Indeed, many industry groups submitted their comments to

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<sup>62</sup> Letter of USDA Secretary Epsy to Minister Suh in August 1994.

<sup>63</sup> *Inside U.S. Trade*, Vol. 12 No. 30, July 29, 1994.

<sup>64</sup> *Ibid.*

<sup>65</sup> Internal Document of MOHW

<sup>66</sup> Through the June 9 notice of Federal Register, USTR requested U.S. exporters of agricultural products to provide information concerning Korean regulatory barriers, especially “inappropriate food safety regulations,” “inappropriate human, animal and plant health safety regulations” and “customs misclassification” problems, about which U.S.

USTR. For instance, the National Food Processors Association (NFPA) charged in its comments that Korea currently banned the import of 100 percent apple juice, apple juice concentrate and pear juice concentrate, even though it should adhere to its Uruguay Round commitments to lift its ban on imports of American apples if the United States satisfied certain standards.<sup>67</sup> “USTR should confirm that the U.S. has met the phytosanitary concerns and hold the Korean government to their commitment to lift the ban in 1995,” the comments said.<sup>68</sup> NFPA also noted that frequent Korean label change requirements constituted a non-tariff barrier, saying that “label changes be coordinated so that the effective date for the change provides sufficient lead time for all parties to deplete existing label inventory and prepare new labels incorporating the change in the regulations.”<sup>69</sup> The *Inside US Trade* reported that the U.S. government nearly completed a paper to be presented to Korea before the technical meeting that would characterised the comments and further would form the basis for the technical talks.<sup>70</sup> It seemed that at that time USTR, instead of targeting Korea under Super 301 for its agricultural market access barriers, planned to find ways to remove the Korean barriers through a high-level technical talks with Korea.<sup>71</sup>

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exporters had complained. See, National Archives and Records Administration, *op.cit.* p.29863.

<sup>67</sup> *Inside U.S. Trade*, Vol. 12 No. 30, July 29, 1994.

<sup>68</sup> *Ibid.*

<sup>69</sup> It seems that U.S. exporters' demands were specific in that NFPA insisted in its comments that “USTR should pursue establishment of effective dates not less than two years following publication of final regulations.” See, *ibid.*

<sup>70</sup> *Inside U.S. Trade*, Vol. 12 No. 30, July 29, 1994.

<sup>71</sup> *Ibid.* Here, it is necessary to see the U.S. intents on whether the United States would designate Korea as a target country under Super 301 over its agricultural access practices. *Inside US Trade* of September 23 reported that: “The U.S. list of possible target countries for designation Sept. 30 under Super 301 has been narrowed to two, Japan and Korea.....But the Administration is facing some internal dissent, particularly from officials responsible for trade relations with Asia, who are opposed to identifying only Asian countries under the controversial trade law.....Korea was proposed as a target country over its agricultural market access practices in an initial draft list that was prepared last week by the Office of the U.S. Trade Representative.....A final decision on the target list of

Korea also had been insisting continuously that technical problems should be resolved at a technical level among experts. "A solution can be worked out at this level. They don't need to use 301," a Korean official said, but added that the two governments still had significant differences of what was meant by compliance with a 1989 agreement between the two countries.<sup>72</sup> He also said that the agreement was targeted only to remove quotas and import prohibitions, and that technical barriers such as sanitary and phytosanitary standards were maintained by most countries, including the United States. "Obviously, the U.S. side expects that when we agreed to liberalise they wanted to have freer access to the Korean market and when they say freer access, they include the elimination of any sanitary and phytosanitary regulations," he said.<sup>73</sup> Because of this different perception between the two governments, they could not reach an agreement in the early September technical talks either. With respect to scientific grounds on the shelf-life of sausage, Korea believed that heat-treated sausages were susceptible to a risk of being infected by micro-organisms or of having its integrity and taste unfavourably affected, when the condition of the sausages fluctuated between frozen and unfrozen states, which was often the case with much of the frozen food in Korea. With respect to

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countries will be made by U.S. Trade Representative Mickey Kantor and the so-called deputies group of the National Economic Council, but the decision is likely to be delayed until the conclusion of ongoing trade talks between the U.S. and Japan.....Despite the focus on Asia in the early draft recommendations, there was no premeditated effort by the Administration to target Asian countries, and that the list reflects ongoing market access problems in the region. But the appearance of such a regional bias could be problematical given the upcoming November summit meeting of leaders from the Asia-Pacific Economic Cooperation forum.....Citing Japan, however, may increase pressure on the Administration also to target Korea, in order to avoid being seen as singling out one country. The only practices being seriously considered are Korea's barriers to agricultural market access, particularly imports of sausages.....While the U.S. and Korea continue to face tough negotiations over autos, sources said that Korean auto barriers are unlikely to be targeted. Korea offered a package of concessions on autos to the U.S. this summer, and the talks in that area do not appear to face the same kind of impasse as the negotiations over agricultural trade barriers." See, *Inside US Trade*, 'U.S. Considering Japan, Korea as Only Targets Under Super 301,' Vol.12 No.38, September 23, 1994.

<sup>72</sup> *Inside U.S. Trade*, Vol. 12 No. 30, July 29, 1994.

international practices, it took a position that there was no international standard on the shelf-life of cooked, frozen sausages adopted by international standardising bodies such as the WHO Codex Alimentarius Commission, thus the shelf-life of sausage should be set by each individual governments in accordance with the country's current level and practice of storage, packaging and distribution of the products.<sup>74</sup>

Around September, the U.S. meat industry's position was that it would file a Section 301 petition if the shelf-life dispute could not be resolved. On September 8 just before the 17<sup>th</sup> Trade Sub-Group Meeting, the U.S. meat industry presented a draft petition to Collins in order to provide him with leverage in the talks of the meeting.<sup>75</sup> Korean officials were informed of the industry's position, namely, "the meat industry wants a negotiated solution, but is willing to file a Section 301 petition if there is no progress in the talks."<sup>76</sup> After the meeting in Seoul, Collins, who led the U.S. delegation to the meeting, said through a spokeswoman that there had been no progress on "*the meat issue*,"<sup>77</sup> that the talks would be continuing, and that the two sides would get back together in a couple of months.<sup>78</sup> At the meeting, Korean officials had suggested the establishment of a process that could lead to changing the shelf-lives for some food products by next April, along with other provisions in their Food Code. But the U.S. side rebutted that the

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<sup>73</sup> *Ibid.*

<sup>74</sup> Personal Interview D. And this Korean assertion seemed to be consistent with the U.S. interpretation of the SPS Agreement: "First, and most importantly, while the SPS Agreement contains a general obligation to use international standards, it protects the United States' ability to use more stringent standards if the relevant Codex standard does not provide an adequate level of food safety. As is currently the case, U.S. regulatory agencies will only adopt Codex standards when they meet U.S. safety requirements and statutory mandates." See, USTR, *Report on U.S. Food Safety and The Uruguay Round: protecting Consumers and Promoting U.S. Exports*, June 1994, p.13.

<sup>75</sup> *Inside U.S. Trade*, 'Meat Industry ready to File Section 301 Petition Against Korea,' Vol. 12 No. 38, September 23, 1994.

<sup>76</sup> *Ibid.*

<sup>77</sup> It should be noted that the sausage issue had already developed into a wider meat issue including other products such as fresh-chilled meat.

<sup>78</sup> *Inside U.S. Trade*, Vol. 12 No. 38, September 23, 1994.

proposal was not formally tabled, but was just suggested by Korean officials as a possible way of settling the dispute, "It was nothing close to a formal position," it said.<sup>79</sup>

On September 23, 1994 just after the Trade Subgroup Meeting, MOHW announced its plan to *review* the current shelf-life system with a view to eventually moving towards a manufacturer-determined shelf-life system. MOHW explained the backgrounds of the plan through its press release.<sup>80</sup> First, the current shelf-life system was partly irrational. The current Food Code regulated the uniformed self-life for food products considered to be the same type, and had no way of reflecting the characteristics of individual food items, such as different manufacturing processes; level of processing technology; packing technology; and distribution structure. In case of ham, Korea regulated only 30-day shelf-life for all kinds of ham, whereas Japan regulated 30-45 days for sliced ham, 45-50 days for wrapped ham. In the United States, the shelf-life varied from 35 to 55 days according to the discretion of the producers. In the case of cooking oil, even though the speed at which products stored at room temperature deteriorate varied depending on the type of materials used for the bottle, only one-year shelf-life was applied uniformly in Korea. In Japan, however, cooking oil stored in a clear plastic bottle was one year, and in coloured bottle, two years. In the United States, its shelf-life in a clear bottle was one year, and in a coloured bottle, one and a half years. As a result, many food products that were still considered good quality had to be disposed of as wastes because their shelf-life had expired. This resulted in the waste of resources, which was equivalent to \$470 million in 1991. Moreover, the uniformed shelf-life system discouraged the development of manufacturing technology and the diversification of products, and denied consumers the opportunity to select from a variety of and high-quality food products.

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<sup>79</sup> *Ibid.*

<sup>80</sup> MOHW, *Press Release*, 'Improvement on Shelf-life System for Food Products,' September 23, 1994.



Secondly, most foreign countries allowed manufacturers to decide the shelf-lives of their products, but in Korea the decision was under government control. Thus, it was very difficult to harmonise the current practice with the international trend. Because of that, foreign countries cited the practice as a trade barrier with raising doubts about the scientific basis of shelf-life periods.

The major contents of the plan were as follows.<sup>81</sup> In principle, the establishment of shelf-life period should move towards giving manufacturers basic responsibility for setting shelf-lives autonomously. However, considering that the Korean food industry was small and its distribution structure was weak, more time and further consideration was needed to review methods of guaranteeing sanitation and safety.

Based on this principle, first, an overall review of the existing shelf-life would be conducted. With regard to those items whose shelf-lives were shortened without sufficient scientific basis in the revised Food Code of July 1994, there would be a move to return to the previous shelf-life, to be implemented by the end of this year. In addition, shelf-lives that had been considered irrational would be revised during the first half of 1995. Secondly, manufacturers, whose products were found to have no food sanitation problems and whose high-standard production and examination facilities could guarantee the safety of food products, would be allowed to set shelf-lives autonomously. However, the manufacturer must be responsible for its own products. The government would implement simultaneously a heightened package of punishments including recall and heavy penalties to be imposed on products of substandard food.<sup>82</sup> It is true to say that the most meaningful thing in the announcement was the decision that the shelf-life of imported frozen sausage be extended from the present 30 days to 90 days before the end of that year, which was the

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<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

spark that ignited this dispute and the most troublesome issue between the two countries until then.<sup>83</sup>

Why did MOHW turn its position drastically? This plan might have been aimed at easing the ongoing shelf-life dispute between the two countries,<sup>84</sup> considering that the sausage issues were developing into unpleasant trade friction, and the pressure from the U.S. side was getting stronger, and the shelf-life issues was getting wider to include all food products. Furthermore, MOHW also intended to avoid the designation of Super 301 over agricultural market access by announcing the new plan. In reality, Korean officials expressed their worries about the possibility of a Super 301 listing for agricultural practices that would include sausages, as well as a possible listing for barriers to auto imports.<sup>85</sup> The list of Super 301 was supposed to be announced on September 30.

Koreans were generally critical of the government's plan.<sup>86</sup> *Maeil Kyungje* chose as its headline "The Korean government's decision to enable manufacturers to regulate food shelf-life has been harshly rebuked by consumer groups as giving up the responsibility of protecting the nation's health."<sup>87</sup> According to the newspaper, the Consumers Union of Korea strongly opposed the plan, insisting that the government should take the responsibilities for guiding and supervising the whole process of food production from manufacture and distribution to consumption, and that such government action was equivalent to renunciation of its administrative responsibility. The Union pointed out that the government action, though pretending to respect the position of manufacturers and consumers, was just a submission to countries exporting food products,

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<sup>83</sup> *Ibid.*

<sup>84</sup> *Korea Herald*, September 24, 1994, p.3.

<sup>85</sup> *Inside U.S. Trade*, 'U.S., Meat Industry Reject Korean Plan to Change Sausage Standards,' Vol. 12, No.39, September 30, 1994

<sup>86</sup> *Donga Ilbo*, September 24, 1994, p.29. *Maeil Kyungje*, September 25, 1994, p.19, and *Kookmin Ilbo*, September 24, 1994, p.17. [Korean newspapers]

<sup>87</sup> *Maeil Kyungje*, September 25, 1994, p.19.

such as the United States. Particularly, the decision to prolong the shelf-life of U.S. frozen sausages from 30 days to 90 days was regarded as the most representative example of the government's submission to foreign pressure and the inconsistency of government policy.<sup>88</sup> "The decision neglects Korea's current distribution system," said a staff member of the Citizens' Coalition for Economic Justice (CCEJ). He insisted, "the frozen sausage, once defrosted, will go bad, even if it is sold in a chilled condition. Some kind of measures, such as banning the sales of the sausages at stores unequipped with a refrigerator, must be taken in advance before the shelf-life is prolonged."<sup>89</sup> A housewife compared the shelf-life determined by individual manufacturers to entrusting a fish to a cat. "Shelf-life must be managed and supervised by the government for the sake of food safety and the nation's health," she said.<sup>90</sup> On the other hand, a part of the food industry welcomed the plan in that the government decision would contribute to the further development of the food industry by upgrading the out-dated, underdeveloped shelf-life system.<sup>91</sup> Producers of canned tuna, sesame oil, bean curd, tea, milk, and noodles supported the plan, whereas producers of sausages, frozen bread, and confectionery were concerned about a situation in which imports of those products would rise sharply.<sup>92</sup>

Although Korea had expected that the plan could settle down the troublesome trade friction with the United States,<sup>93</sup> the U.S. government and U.S. meat industry officials rejected the Korean plan as insufficient. In particular, U.S. meat industry officials were reluctant to accept the plan not only because it was only prospective and would only go into effect next April at the earliest after a 70-day comment period, but also because the Korean government did not indicate any willingness to make other technical changes to

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<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> *Kookmin Ilbo*, September 24, 1994, p.17.

<sup>92</sup> *Joongang Ilbo*, September 26, 1994, p.31.

the Food Code standards that restrict U.S. access to the Korean market.<sup>94</sup> While conceding the plan as a step in the right direction, the industry officials regarded it as an attempt to avoid either Section 301 action by the industry or a Super 301 listing by USTR. One U.S. meat industry official said that Korea had arbitrarily changed the shelf-life requirements last March, but was now allowing a six-month revision period for just returning to the old rules. "This is a delay tactic and is the Korean style," one source said.<sup>95</sup>

A Korean official refuted the U.S. rejections, saying that Korea had agreed to change shelf-life regulations because this had been raised as a problem earlier this year by the U.S. government, but the United States demanded even more changes,<sup>96</sup> even if the demands were only made earlier that month. "No democratic country can change any part of its (food code) system within one month. It's too radical a request," he said.<sup>97</sup> According to *Inside U.S. Trade* of September 30, USTR was still considering whether to cite Korea on the Super 301 list, while U.S. meat industry officials said it was "highly likely" that the industry would file a Section 301 petition if Korea would be not listed, despite the Korean plan of September 23.

#### **5.4 Conclusion: Intermediate Assessment**

Up to now, we have traced the informal diplomatic negotiation process between the two governments. The dispute occurred from a small event, but developed into a significant trade dispute, while adding other related issues. The dispute began with the shelf-life requirements for sausages, and further proceeded to fresh-chilled beef, fresh-

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<sup>93</sup> *Korea Times*, September 24, 1994, p.3.

<sup>94</sup> *Inside U.S. Trade*, Vol.12 No.39, September 30, 1994.

<sup>95</sup> *Ibid.*

<sup>96</sup> During the September talks, it seems that the U.S. side raised new demands based on the draft of the U.S. meat industry's Section 301 petition.

chilled pork, and frozen beef patties. Now, the Section 301 draft petition of the U.S. meat industry included many new issues such as meat inspection procedures. Here, we have to answer the following question: Why did the two sides fail to produce a satisfactory resolution despite lots of interactions during the diplomatic negotiation process? We will seek the answers in terms of the three factors selected as the variables of this dispute from our research approach: negotiation power, interest groups, and government agencies.<sup>98</sup>

### *Negotiation Power*

First, according to the framework for negotiation power used here, trade negotiation outcomes depend on relative negotiation powers of the parties. An absolute strong negotiation power enables a party to settle a dispute quickly in its own way. In a zero-sum game like this dispute, insofar as balance of powers between countries continues, disputes cannot be settled. Then, in this dispute, how can we assess the negotiation powers of the two governments during the diplomatic negotiation process?

According to our framework, negotiation power starts from the issue in question. Negotiation power at the beginning stage is determined largely by the issue itself. In this case, the United States is exporting its cooked, frozen sausages to Korea. Korea is an increasingly lucrative market to the U.S. meat industry.<sup>99</sup> According to a U.S. pork-industry source, Korea reasonably could be developed into a market of 250,000 to 350,000 metric tons a year in the next five years or so.<sup>100</sup> As for beef, the United States agreed with Korea to ship 106,000 tons in 1994, a figure the industry hopes would swell in coming

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<sup>97</sup> *Inside U.S. Trade*, Vol.12 No.39, September 30, 1994.

<sup>98</sup> Each factor was proved as a determinant of the past trade disputes between the two countries respectively by empirical researches of Odell, Aggarwal, Keohane, Yoffie, and Ryan as explained in chapter 2.

<sup>99</sup> Korea imported about \$7.5 million worth of sausages, mostly from the United States since it opened its market in 1990. *Wall Street Journal*, May 31, 1994, p.A13.

<sup>100</sup> *Journal of Commerce*, June 9, 1994, p.6A.

years.<sup>101</sup> Moreover, the Korean market is the third largest market for U.S. agricultural products. On the other hand, Korean agricultural exports to the United States can be ignored because of its small volume. Thus, Korea as a consumer is in a strong position considering only the issue itself. Ultimately, the fact that Korea could import meat products such as sausages from other countries than the United States strengthens Korea's position.<sup>102</sup>

The United States wanted to increase the trade of meat products by removing the Korean trade barriers in question. But, whether or not the barriers would be removed depended on the Korean government's decision. In this sense, Korea has more power than the United States: it can simply resist change, while the U.S. offensive requires that the United States mobilise resources to affect change, and to thrust the burden of adjustment on Korea. This position probably was the main source that led the Korean government to maintain its initial position despite the U.S. aggressive attacks on Korea during the negotiation process. Based on the above discussions, it is probably true to say that Korea resorted to the power<sup>103</sup> of the issue itself during the negotiation process although it was afraid of a possibility of trade retaliation under Section 301.<sup>104</sup>

On the other hand, the United States might be reluctant to promptly cite the sausage issues under Section 301. The sausage issue is just a small portion of the overall

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<sup>101</sup> *Ibid.*

<sup>102</sup> According to KMIA, the imported sausages in 1993 were \$6,000,000 including \$3,000,000 from the United States. And after MOHW's measures of February, it was virtually impossible to import the sausages from the United States under 30 day shelf-life "by sea", thus some importers resorted to bringing in the products "by air", *Korea Times*, September 25, 1994. p.3.

<sup>103</sup> Here, the superiority of the issue does not mean that whether MOHW's measures are right or whether they are based on sound scientific grounds. Instead, it means its position of a big importer confers upon it power in an interdependent relationship.

<sup>104</sup> A Korean official said he feared that the U.S. meat industry was considering filing a petition with the USTR seeking to include the sausage issue in a Super 301 listing in September, *Inside US Trade*, 'U.S. Threatens Action Against Korea over Sausage Imports,' Vol. 12 No. 20, May 20, 1994.

trade between the two countries. The sausages stranded at Korean ports are just 37 containers worth approximately \$1.3 million. Furthermore, considering not only that Koreans have been criticising the Section 301 of U.S. trade law, but also that Korean consumer associations are especially keen to public health issues, if the United States suddenly takes a Section 301 action, the action may cause the Korean consumer associations to initiate a boycott against U.S. products.<sup>105</sup> Moreover, it takes about one year or more to complete the procedures of Section 301 action. In that case, the U.S. meat industry would have to suffer damages from stopping the meat trade until it concludes. In the long-term perspective, the Section 301 action is not the U.S. best option to address this small dispute. Furthermore, in anticipation of the inception of WTO, the Section 301 action would not have been welcomed by other foreign countries, most of which argued that the unilateral 301 action is not consistent with the GATT/WTO system. The U.S. government, which played a key role in establishing a new multilateral trade system, might leave Section 301 action as the last resort for the sausage dispute. For these reasons, the U.S. government might seek to resolve this dispute through bilateral dialogue and consultations for the time being.

Under these considerations, it may be true that the negotiation power of Korea at the beginning of the dispute was superior to the United States. Accordingly, the United States could not get any concessions from Korea. With a view to breaking this deadlock, the United States started to mobilise negotiation resources. It tried to collect clear evidence for the sausage issue and new other related issues through the *Federal Register* notice, and succeeded to widen the sausage issue throughout the negotiation process. It also threatened that Korea might be a possible target country for designation in September under Super

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<sup>105</sup> A U.S. trade official admitted the possibility, saying that another problem was a quirky anti-import perception among the Korean public, which sometimes manifests itself in an attitude that foreigners are unfair towards them. *Journal of Commerce*, June 9, 1994, p.6A.

301 over its agriculture practices. As the two governments went on negotiating, the balance of the negotiation powers seemed to move towards the U.S side. Changing in negotiation powers might cause MOHW to announce the September 23 plan, but the change was not enough to force Korea to accept all of the U.S. requests. In terms of power, it is difficult to reach quickly an agreement in a zero-sum game when the negotiation powers of the two sides are equal. Given that the sausage dispute is a kind of zero-sum game, the two sides cannot compromise until the balance of negotiation powers is destroyed. From the above discussions, it can be said that negotiation power can partly explain the deadlock of the negotiations.

### *Interest Groups*

Liberals insist that the negotiation process is dominated by interest groups that influence government policy choices, and a result of negotiation is just the reflection of interactions among those groups.

Across the world, interest groups in the agriculture sector have a relatively long history and are aggressive in voicing their interests. The society at large is also favourable towards them. Thus, roughly, the government's discretion on agriculture issues is relatively narrow compared with other issues. As noted earlier, interest groups in the United States are generally well organised and active to articulate their interests. They can easily gain access to government agencies through formal or informal channels. In this dispute, the U.S. meat groups pushed USTR and USDA to take actions to dismantle the Korean trade barriers banning the importation of the U.S. sausages. Within the United States, there were no counter-groups to oppose their interests. Their demands were exactly delivered to the Administration. The Congress also supported their claims. Nevertheless, the sausage issues were not settled during the diplomatic negotiation process. Why?



As explained in the theoretical concerns of this paper, there is no doubt that the structure of a trade negotiation can be regarded as a system. When we see the negotiation for this case through the angle of the so-called "system model," the basic elements of the negotiation system are the two governments and various interest groups of each countries. In this context, the U.S. meat groups have strong counter-groups within its negotiation system. The Korean interest groups have exactly the opposite interests to them. In the domestic politics, the government is the final decision-maker to formulate an internal policy. But, in a bilateral trade negotiation, the two governments share the decision power. Each government is backed by its own interest groups. Like in a domestic political process, the interests of the two groups collide in the negotiation process through their own governments. Thus, it is likely that the U.S. meat groups' demands were offset after crashing with the incompatible interests of the Korean interest groups.

The U.S. meat groups were active to put their interests into the negotiation process, but the Korean consumer associations and KMIA relatively were not so active.<sup>106</sup> The two Korean interest groups believed MOHW's measures were appropriate to protect the public health, so they supported the measures *ex post facto*. They wanted their government to maintain its initial position during the negotiation process. They virtually needed not to act aggressively insofar as their government did not change the position. However, if the government changed the position, it is reasonable to conclude that they would take actions

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<sup>106</sup> The American MITPC asserted that the Korean government took the measures to block the cooked, frozen sausages after receiving complaints about the growing level of imports from Korean meat processors. From my personal experiences in the Korean government, however, it is impossible for a government agency to take measures to block certain foreign products just based on the complaints of local producers regardless of the relevant laws. Because of the measures, many sausages in the markets were disqualified. And the importers had to endure the damages from the already contracted sausages. The official themselves were punished. The issue has been developed into a serious trade friction. I tried to find out whether the Korean producers lobbied to block the importation of the sausages, but, unfortunately, that information was not forthcoming.

immediately.<sup>107</sup> So, although the pressures from the Korean interest groups were latent, the Korean government well recognised possible reactions of the interest groups. For this reason, MOHW probably could not retreat from the initial positions. It is clear that the two governments cannot sort out this dispute without satisfying to some extent their own interest groups respectively. In any case, they could not entirely ignore the pressures from the interest groups. The government decisions disregarding the interests promptly would face prompt objections from them.

In short, the interest groups of the two countries played an important role during the informal negotiation process. While the U.S. interest groups acted aggressively, the Korean interest groups were defensive. But, their effects to their own governments seem to be similar. If the sausage dispute were a positive game, the two interest groups might allow their government to reach an agreement by properly allocating benefits and losses. But, in this zero-sum game, the two governments have not much room to concede. In the existence of incompatible interest groups, as liberals asserted, any interest group cannot achieve its objectives fully. The theory of interest group politics partly explains the deadlock of the negotiation process as well.

### *Government Organisations*

Institutionalists emphasise that government agencies are political actors in their own right, so they act independently in the policymaking process. In the United States, USTR has a comprehensive authority in handling trade policies, especially trade negotiations. The U.S. trade laws allow USTR to have its own discretion in dealing with trade issues. At the same time, USTR is interacting with its environment as system

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<sup>107</sup> The Koreans are keen on criticising food products. They generally give a priority to the food safety and quality.

analysts suggest.<sup>108</sup> USTR cannot exist without supports from the environment. Proper response to the demand of the environment gives USTR legitimacy to exist. But, to what extent USTR absorb the demands is difficult to predict. In this dispute, USTR had the same interests with the U.S. meat groups, so it did not hesitate to pressure the Korean government to remove the restrictive trade barriers. But, USTR took its initiatives in negotiating or pressuring Korea, instead of following the meat groups' unilateral demands. Despite pressure from the Congress and the meat groups, USTR initially rejected to target Korea under Super 301 for its agricultural market access barriers.<sup>109</sup> In order to handle this dispute in a balanced way for the U.S. national interests, USTR also respected other government agencies' opinions and then adjusted its position.<sup>110</sup> Although USTR failed to reach an agreement during the diplomatic negotiation process, it is clear that USTR was attempting to lead the negotiation to a favourable direction to the U.S. side by mobilising diverse negotiation resources.

On the other hand, Korea is complex in terms of the autonomy of trade government agencies. There is not a unitary agency responsible for trade issues like USTR. In a general sense, when an agency has all the authority over a certain field, it can deal with the field's problems with discretion. The agency can make a best solution for them without destroying the whole balance of its objectives. But, if many agencies are involved in the field, problems cannot be handled efficiently. Each agency tends to adhere to its own position. In this sense, the autonomy of the Korean government regarding this dispute is limited. MOHW was responsible for shelf-life standards for food products, thus, the final decision over shelf-life standards should come from MOHW. On the other hand, MAFF

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<sup>108</sup> In this study, the environment means all things that have a direct relationship with the USTR, such as interest groups, other government agencies, and the Congress.

<sup>109</sup> *Inside U.S. Trade*, Vol. 12 No. 30, July 29, 1994.

had some voice because this dispute was concerned with agricultural products. In fact, as the issue was widening MAFF was more involved in the issue. As negotiators or coordinators, both BFE and MFA were involved in this dispute with their own angles. Under this circumstance, it was probably difficult for the Korean government to make a unified alternative to resolve the dispute. In my view, MOHW seemed to deal with the dispute in terms of its own angle without considering the overall trade relationship with the United States. Moreover, cooperations between the Ministries did not seem to work well. As a result, the Korean government could not handle the dispute with its own discretion. Rather, whether consciously or unconsciously, the government virtually made its position worse by losing proper time to settle the dispute. As the dispute was getting serious, the Korean government's favourable positions were disappearing. If Korea had a trade agency with absolute authority like USTR, there would have been a high possibility of settling this dispute during the negotiation process because the agency might attempt to take advantage of its initial favourable positions.

On the other hand, when we focus on MOHW's position, MOHW was in a delicate situation because this issue was directly related with public health. While Korean newspapers were describing the dispute as a "sausage war,"<sup>111</sup> Koreans and especially farmers gave serious concern to the dispute. Furthermore, Minister Suh came from the political circle and President Kim's policy preferences seemed to be oriented to the current public opinion, so it was very difficult to make a decision against the public mood.<sup>112</sup> Considering these situations, it is fully understandable why MOHW maintained strongly

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<sup>110</sup> As discussed above, the State Department and the National Security Council asked USTR to treat Korea gingerly, since Seoul was having to deal with the threat of a North Korean nuclear attack. *Inside US Trade*, Vol.12 No.24, June 17, 1994.

<sup>111</sup> *Korea Herald*, September 25, 1994, p.3.

<sup>112</sup> In a democratic society, the government should follow public opinion, but, in some cases, the government, in view of the long term national interest, could make a decision

its initial position. But, as this issue was developing into a serious trade friction, MOHW could not help changing its position despite public objections.<sup>113</sup> But, when we contemplate the September plan, MOHW did not so much retreat from its initial positions, instead it tried to settle this dispute by resolving the initial issue of extending the shelf-life period for sausages. MOHW might take a middle point between Koreans' opinion and the U.S. requests.

In short, faced with strong pressures from the U.S. meat industry, USTR pressured Korea to remove the trade barriers. On the other hand, the Korean government kept its initial positions to avoid clashes with its own interest groups. So long as the two governments adhered to the assertions of their own interest groups, it was inevitable to face the deadlock of the negotiation. Nevertheless, a fundamental change in the negotiation system was developing. USTR continued to strengthen its positions, but the Korean government lost a time to settle the dispute as a strong party and faced a Section 301 investigation.<sup>114</sup> Accordingly, it can be said that the two government agencies substantially affected the negotiation process. The absence of a unitary trade organisation might prevent the Korean government from taking initiatives to resolve the dispute.

### *Intermediate Assessment*

Although we traced only the major events that occurred in the informal negotiation process, there is no doubt that the three factors selected by our research approach were dominating the negotiation process. The issue itself decided a start point of each

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against public opinion. Public opinions tend to fluctuate. The government is not only affected by society but also could affect it.

<sup>113</sup> *Maeil Kyungje*, September 25, 1994. p.19.

<sup>114</sup> The U.S. move of taking this dispute to the Section 301 procedure seemed to give a significant implication. As noted earlier, instead of a quick settlement of the sausage issue, USTR might take a different road, namely, it intended to remove all of the Korean

government to negotiate the dispute. Korea's position as a large importer enabled it to withstand the U.S. requests. But, the United States soon kept up with Korea by strengthening its negotiation power. That is, it sought to collect other Korean trade barriers on agricultural products to back the current issue and warned of a possible designation of Super 301 or a Section 301 investigation. By mobilising powerful negotiation resources, the United States could surpass Korea at the end of the diplomatic negotiation process. If the positions of the two countries were reverse in this dispute, does the Korean government, which has no powerful negotiation leverage, dare to urge the U.S. government to change its food safety code? And could the United States announce its plan to change its food safety code despite strong objections from the Americans and its meat industry? Most likely not.

The interest group politics of the two countries also affected the negotiation process. The U.S. meat groups were so aggressive to put their interests into the negotiation process. They pushed USTR and USDA to force the Korean government to change the shelf-life regulations. To achieve their goals, they caused the Congress to chase the two governments. These actions in fact influenced the two governments' behaviour. On the other hand, the potential influences of the Korean interest groups prevented the Korean government from surrendering the U.S. pressures. Interest groups were an important factor characterising our negotiation process as well.

As for the two governments, they to some extent diverted the flow of the negotiations. For instance, USTR did not immediately resort to the Super 301 weapon against the shelf-life dispute, even though the U.S. meat groups asked it promptly to cite

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trade barriers on agricultural exports by accepting the 301 petition of the U.S. meat industry.

the dispute under Super 301.<sup>115</sup> MOHW announced the September 23 plan to change its Food Code although it had expected vigorous objections from the private sector.

In sum, the informal negotiation process for this dispute can be well explained by the three factors. Each factor cannot provide a full explanation of the dispute negotiation. They have a partial power to explain the negotiation process. We can draw a whole picture of the dispute by a combination of the three factors.<sup>116</sup>

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<sup>115</sup> *Inside US Trade*, Vol.12 No.24, June 17, 1994.

<sup>116</sup> In fact, security problems in Korean peninsula might affect the negotiation process. But this is outside the scope of this study. There are many factors such as the negotiator's individual capability, the negotiation strategy, and the domestic political situation that can influence the negotiation process, regardless whether their influences are significant or not. But, we are here analysing the three factors selected from our research approach. The other factors can be examined in different research approaches. It is a future project.

## Chapter 6 Negotiation Under Section 301

### 6.1 Introduction

Section 301 of the U.S. trade law is a coercive, unilateral measure. However, it is not without its faults. Kimberly A. Elliott pointed out the general problem of Section 301 that it is difficult to achieve meaningful change if the target country does not view that change to be in its interest.<sup>1</sup> Furthermore, after the WTO was created in 1995, the United States was virtually much more constrained in using Section 301 because of the strengthened dispute settlement system of the WTO. For example, Japan stood up to the United States in the auto case in 1994-95, saying that there was no WTO violation and that if the United States imposed 301 sanctions then they would take the United States to the WTO and the United States backed down. In fact, USTR has used Section 301 since 1995 mostly in conjunction with the WTO procedure.<sup>2</sup> Before we examine the negotiations under Section 301, it is necessary to review the Section 301 legal procedure.<sup>3</sup> Figure 6-1 shows it. Any interested person may file a petition under Section 302 with USTR

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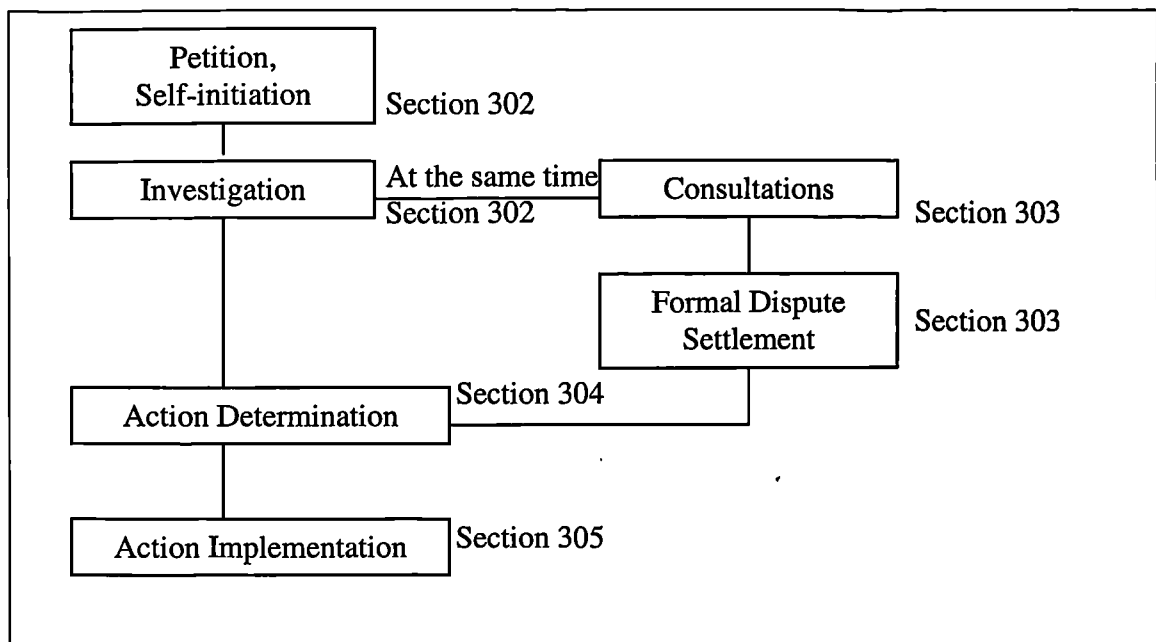
<sup>1</sup> "I just read an article the other day in the Financial Times about canned fruit and we have 301 cases on European canned fruit going back to the early 1980s or late 1970s. I think the general problem with a tool like section 301 is that anytime you're using external pressure to force a country to change a policy, when they don't view themselves that change is in their interest, it's very difficult to get meaningful change. So USTR has probably not been very satisfied with the outcome of negotiations in Korea, but I don't think they've been very satisfied with negotiations with many other countries either under Section 301. In general, USTR is more satisfied with multilateral WTO agreements, because if it's a co-operative agreement, then all the countries are committed to the agreement. Whereas if it is a section 301, where you have to twist the other country's arms, then they're going to agree grudgingly, they're not going to co-operate, they're only going to comply. It's a very different attitude, and therefore it is almost inevitable that when it's a threatening negotiation rather than a co-operative negotiation, you're likely to be less satisfied with the results." Personal Interview, Kimberly A. Elliott (16 April 1999, Washington D.C.), Institute for International Economy.

<sup>2</sup> *Ibid.*



requesting the President to take action under Section 301 and setting forth the allegations in support of the request. USTR reviews the allegations and must determine within 45 days after receipt of the petition whether to initiate an investigation. USTR may also self-initiate an investigation after consulting with appropriate private sector advisory committees. USTR has the discretion to determine whether action under Section 301 would be effective in addressing that issue in question. Section 303 requires the use of international procedures for resolving the issue to proceed in parallel with the domestic investigation.

**Figure 6-1 Section 301 Legal Procedure**



Source: N. D. Kim, *The U.S. Trade Barriers*, Seoul, Institute for Foreign Economic Policy, Policy Research Vol. 92-23, 1992, P.87. [In Korean]

USTR, on the same day as the determination to initiate an investigation is made, must request consultations with the foreign country concerned regarding the issue. If the

<sup>3</sup> The explanation of the Section 301 procedure draws from *Overview and Compilation of U.S. Trade Statutes*, 1989 ed. (Washington, D.C.: U.S. Congress, Committee on Ways and Means, 1989).

issue is covered by a trade agreement and is not resolved during the consultation period, if any, specified in the agreement, then USTR must promptly request formal dispute settlement under the agreement before the close of consultation period specified in the agreement, if any, or 150 days after the consultation began.

Section 304 sets forth specific time limits within which USTR must make determinations of whether the issue meets the unfairness criteria of Section 301 and, if affirmative, what action, if any, should be taken.<sup>4</sup> Section 305 requires USTR to implement any Section 301 actions within 30 days after the date of the determination to take action.

This chapter will be divided into three parts. First, we clarify the allegations of the two sides, focusing on major issues raised by the petitioners. And then we trace the negotiation process under the Section 301 procedure. Despite the continuous bilateral consultations, the dispute was not settled. We therefore attempt to answer the following question: Why did the Section 301 negotiations fail to reach an agreement? or What factors caused USTR to take this dispute to the WTO procedure?

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<sup>4</sup> USTR must make these determinations; (1) within 18 months after the date the investigation is initiated or thirty days after the date the dispute settlement procedure is concluded, whichever is earlier, in cases involving a trade agreement, other than the agreement on subsidies and countervailing measures (2) within 12 months after the date the investigation is initiated in cases not involving trade agreements or involving the agreement on subsidies and countervailing measures (3) within 6 months after the date the investigation is initiated in cases involving intellectual property rights priority countries.

## 6.2 Petition and Comments

### 6.2.1 Launching of Section 301 Investigation

#### *Petition, Withdrawal and Re-petition*

A Korean news agency reported on September 29, 1994 that the U.S. meat industry sought to file a Section 301 petition because the industry believed that USTR would not cite Korean agricultural practices under Super 301.<sup>5</sup> The industry continuously warned USTR that it would file a Section 301 petition if a negotiated resolution could not be reached.<sup>6</sup> Until that time, USTR tried to resolve this dispute through the bilateral talks with Korea as much as possible.<sup>7</sup>

Before the 17<sup>th</sup> Trade Subgroup Meeting in Seoul during September 13 to 16, 1994, the industry had already informally presented to USTR a draft for petition requesting a Section 301 investigation of Korean agricultural practices. As a last resort to the negotiated resolution, the industry expected that USTR would achieve a satisfactory resolution by threatening Korea with the draft. But, the industry was disappointed with the September 23 plan of the Korean government which might be considered as a result of the Meeting. Finally, the industry filed on September 30 its formal petition with USTR seeking a Section 301 investigation just before USTR announced the Super 301 listing.<sup>8</sup>

The U.S. meat industry wanted Korea to be listed under Super 301 for the shelf-life regulations, whereas the Korean government was concerned about the possibility of a Super 301 listing.<sup>9</sup> However, USTR on October 3 decided not to identify any priority

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<sup>5</sup> *Yonhap Tongsin*, H1-042 S02-015, Economy (934), September 29, 1994.

<sup>6</sup> *Inside US Trade*, 'U.S. Meat Industry Reject Korean Plan to Change Sausage Standards,' Vol.12 No.39, September 30, 1994.

<sup>7</sup> *Ibid.*

<sup>8</sup> In this sense, it seems that the U.S. meat industry had been already informed that Korea would not be listed under Super 301 for the shelf-life issues.

<sup>9</sup> *Inside US Trade*, Vol.12 No.39, September 30, 1994.

foreign country practices under Super 301.<sup>10</sup> With respect to Korea, only a practice of market access for automobiles remained a significant trade negotiating objective for the United States.<sup>11</sup> Concerning the reason of Korean agricultural practices including the shelf-life issues not to be listed, *Joongang Ilbo* attributed it mainly to the September plan assuring the extension of shelf-life for cooked, frozen sausages.<sup>12</sup> And, *Chonsun Ilbo* stated that White House and Department of State asked USTR to consider Korean issues along with the security problem of North Korea's nuclear threat.<sup>13</sup> But, an USTR official said that it would have been redundant to do anything on Super 301 when USTR already had the Section 301 petition.<sup>14</sup>

According to the September 30 petition filed by the U.S. meat industry groups, AMI, NPPC, and NCBA, they charged that Korea hindered the entry of U.S. meat products into its market through non-tariff import restrictions such as restricted shelf-life requirements, long meat inspection procedures and unfair contracting practices.<sup>15</sup> They also charged that those non-tariff barriers violated not only the terms of three bilateral market access agreements signed since 1989 between the two countries but also Korea's obligations to the GATT.<sup>16</sup> But, they did not ask USTR "at this point" to pursue GATT remedies.<sup>17</sup> They said that the U.S. approach to Korea's violations should be to pursue the

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<sup>10</sup> USTR, *Press Release*, 'Identification of Trade Expansion Priorities Pursuant to Executive Order 12901,' 94-50, Monday, October 3, 1994, p.4.

<sup>11</sup> *Ibid.*, p.5.

<sup>12</sup> *Joongang Ilbo*, October 3, 1994, p.27.

<sup>13</sup> *Chonsun Ilbo*, October 3, 1994, p.25.

<sup>14</sup> *Inside US Trade*, 'Three U.S. Meat Groups File Section 301 Case Against Korea,' Vol. 12 No.40, October 7, 1994.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

case as a violation of the bilateral agreements rather than their GATT obligations because the bilateral agreements are clearer, more obvious and take less time to resolve.<sup>18</sup>

The Clinton Administration agreed to launch a Section 301 investigation against Korea.<sup>19</sup> The decision to proceed with the investigation was made late October in an inter-agency panel.<sup>20</sup> The panel agreed that the economic harm that would result from not pursuing the investigation was sufficient to bring the case.<sup>21</sup> According to *Inside US Trade*,

Earlier in the inter-agency review, State Department and Defence Department officials had questioned the investigation as a 'possible irritant' in the broader U.S. relationship with Korea in the midst of ongoing U.S. security negotiations with North Korea. But, with the U.S. and North Korea signing an agreement last month regarding North Korea's nuclear program, the Section 301 investigation against Korea was no longer seen as possibly interfering with security interests.<sup>22</sup>

But, the U.S. meat industry on November 11 withdrew its petition at the request of USTR in order to create a better political climate for talks with Korean officials at the Asia Pacific Economic Cooperation (APEC) summit in Jakarta.<sup>23</sup> The petition was filed on September 30, and USTR had up to 45 days from the date of filing to either reject or accept a section 301 petition. The deadline for announcing a decision on whether it would

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<sup>18</sup> *Ibid.*, and *Inside US Trade*, 'U.S. Formally Launches New Section 301 Case on Korean Sausages,' Vol. 12 No. 48, December 2, 1994.

<sup>19</sup> *Inside US Trade*, 'U.S. Set to Launch Section 301 Investigation on Korean Meat Barriers,' Vol.12 No. 44, November 4, 1994. And *Yonhap Tongsin*, H1-547 S02-077 Economy (966), November 15, 1994.

<sup>20</sup> The panel includes representatives of USTR, and from the departments of Agriculture, Commerce, Defence, State and other U.S. agencies. *Inside US Trade*, Vol.12 No. 44, November 4, 1994.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

accept the petition was November 14, which fell in the middle of scheduled talks in Jakarta between U.S. and Korean officials.<sup>24</sup> According to *Inside US Trade*, the push to withdraw the petition had come from the National Security Council.<sup>25</sup>

In persuading the industry to drop the petition, USTR assured the petitioners that it would try to negotiate this issue in Jakarta, and that if the negotiation did not produce a satisfactory result, then it would allow the industry to re-file the petition. Once re-filed, USTR promised that it would accept the petition without the interagency review requirements currently required under Section 301.<sup>26</sup> “The administration requested we withdraw the petition at this time and resubmit at a future date and that upon resubmitting the petition they would accept it,” said A. Tank, vice president of public policy and foreign trade for the National Pork Producers Council.<sup>27</sup> He also said, “This does not in any way alter our intent to get rid of these unfair trade barriers.....It is the expectation of the red meat industry that this issue will be equitably resolved by the administration on an expedited basis.”<sup>28</sup>

After the summit meeting, however, the U.S. side said that the talks in Jakarta broke down after Korean officials refused to make additional concessions in removing the non-tariff barriers.<sup>29</sup> Interestingly, the Korean newspapers did not report about the shelf-life issue during the meeting in Jakarta, even though the issue at that time was a serious trade friction between the two countries. According to *Reuter*, U.S. and Korean officials were expected to hold bilateral meetings chiefly on the North Korea nuclear arms issue, so

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<sup>23</sup> *Inside US Trade*, ‘Meat industry vows to file new Section 301 case after talks fail,’ Vol. 12 No. 46, November 18, 1994.

<sup>24</sup> *Ibid.*, and the APEC summit meeting was scheduled to conclude on November 16.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*, and *Yonhap Tongsin*, H1-342 S02-054, Economy (1190), November 16, 1994.

<sup>27</sup> *Reuter*, Washington, November 14, 1994.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Inside US Trade*, ‘Meat Industry Vows to File New Section 301 Case After Talks Fail,’ Vol. 12 No. 46, November 18, 1994.

it was very unlikely that Seoul would propose anything to cause Washington to back away from the petition during the APEC summit meeting.<sup>30</sup>

On November 18 just after the APEC summit meeting, the industry re-filed the Section 301 petition that had been withdrawn. As promised to the industry, USTR formally decided on November 22 to initiate a Section 301 investigation into alleged Korean non-tariff barriers on U.S. meat exports.<sup>31</sup> Through the *Federal Register* notice on November 29, USTR invited written comments from interested persons on the issue being investigated, which was due on or before noon, January 6, 1995. USTR also requested consultations with the Korean government as required by section 303(a) of the Trade Act of 1974. USTR had 12 months to conduct negotiations with Korea under the threat of trade retaliation.<sup>32</sup>

On the other hand, *Yonhap Tongsin* pointed out another aspect of the U.S. meat industry's petition.<sup>33</sup> After interviewing a U.S. senior industry official, it reported that there were other groups in the industry which insisted that the industry should obtain substantial concessions from Korea not through a Section 301 action but through bilateral negotiations. Their logic was that it took about one year or more to complete the section 301 process and to take a retaliation action. In addition, the United States could not force it after the Uruguay Round agreements would be in effect. The Section 301 action could

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<sup>30</sup> *Reuter*, Washington, November 14, 1994. In relation to this controversy, I think, the reasons for requesting the meat industry to withdraw the petition was that USTR intended not only to avoid any political discomfort while President Clinton was meeting with Korean President Kim, but also to avoid a violation of its own trade law, an announcement of Section 301 investigation beyond the 45 days in the law. The violation of the law could be issued as a defect of legal process by the Korean side.

<sup>31</sup> *Inside US Trade*, Vol.12 No. 48, December 2, 1994.

<sup>32</sup> Pursuant to section 304 of the Trade Act of 1974, USTR must determine on or before November 22, 1995, on the basis of the investigation and the consultations, whether any act, policy or practice described in section 301 of the Trade Act of 1974 exists and, if that determination is affirmative, decide what action, if any, to take under the Trade Act of 1974, See National Archives and Records Administration, *Federal Register*, Vol. 59 No. 228, November 29, 1994, Notices, pp.61006-7.

cause serious damage to the industry as a whole by stimulating Koreans' anti-America emotion. Thus, they asserted that it was much more desirable to force Korea to extend the shelf-lives in question when it revised its Food Code in the next spring, while using a section 301 action as only a threat weapon in negotiations with Korea. They further pointed out that the Korean inspection process for import products had been much improved after the September petition, and that the Korean government had planned to revise its Food Code including shelf-life standards.<sup>34</sup> Nevertheless, according to *Yonhap Tongsin*, the reason that the meat industry relentlessly pursued the Section 301 petition was partly due to public opinion in the United States. That is, Americans thought that there were too many meat interest groups, which should be integrated. Against this public pressure, the meat groups at that time needed to demonstrate their roles. Accordingly, the petition could be a result of power struggle to take initiatives for a possible restructuring among them, it stated.<sup>35</sup>

### *Responses of the Korean Side*

The Korean Embassy in Washington said it was regrettable that the U.S. government sought to resolve this food safety dispute through a unilateral coercion such as Section 301 in anticipation of the start of a new multilateral trade system under WTO.<sup>36</sup> The Seoul government also criticised the U.S. government's decision through its press release. MFA drew the U.S. government's attention to the fact that use of such a unilateral action would have negative effects on the international trade system.<sup>37</sup> It stated that it would try to resolve the dispute amicably through consultations with the United States,

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<sup>33</sup> *Yonhap Tongsin*, H1-342 S02-054, Economy (1190), November 16, 1994.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> The Korean Embassy, *Press Release*, Washington, November 22, 1994.



and it would begin the consultations by indicating wrong claims of the U.S. meat industry. MFA also made clear that the government was willing to revise continuously practices that were exposed as irrational or inconsistent with international standards, regardless of the petition.<sup>38</sup> However, in the case the United States would take retaliatory action, a MFA senior official implied that there would be a possibility of WTO filing on the action by the Korean government.<sup>39</sup>

On December 15, the Korean government submitted its comments, of about 50 pages, to USTR according to the USTR Federal Register notice.<sup>40</sup> In the comments, the Korean government refuted charges raised by the U.S. meat industry that Korean meat regulations unfairly discriminated against U.S. meat products. According to the comments, the U.S. meat industry petition contained a number of important factual errors and ignored recent steps taken by the Korean government to address U.S. demands. After offering a point-by-point rebuttal of the petition, the comments said that “the Korean government strongly doubts that the Petition is actionable under Section 301.”<sup>41</sup> The comments also offered to update the food regulations based on reasonable or logical advice from foreign governments or exporters.

The main arguments of the comments are as follows: The petition charged that Korea instituted new requirements as a non-tariff trade barrier to stem increasing U.S. sausage imports. But, the comments rejected this argument, claiming that the requirements were imposed after health officials had exposed fraudulent imports. The comments also refuted the petition’s assertion that the accepted international standard for distribution of

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<sup>37</sup> MFA, *Press Release*, ‘Comments on the Initiation of a Section 301 Investigation on Food Safety and Meat,’ November 23, 1994.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Joongang Ilbo*. November 27, 1994, p.2.

<sup>40</sup> No other comments were filed. See *Inside U.S. Trade*, ‘Korea Refutes Charges of American Meat Industry 301 Petition,’ Vol.13 No.2, January 13, 1995.

<sup>41</sup> *The Comments*, p.27.

frozen sausages is 90 to 180 days, saying that virtually no international standard exists. Although Korea instituted a new three-month shelf-life for frozen sausages in September 1994, the petition did not mention that. The petition's claim that its exports had been subject to 14 to 28 days of inspection procedures in Korea was also incorrect. Korean regulations required meat inspections to be completed in three days, unless a laboratory examination is required, in which case the process should be completed in seven days. While delays in imports clearing customs might be caused due to the current shortage of infrastructure and facilities in Korean ports, such *de facto* delays were unavoidable and beyond the control of the Korean government, the comments stated.<sup>42</sup>

It should be noted that through the Section 301 petition, the U.S. meat industry put 62 specific agricultural products in question, although it focused on sausages, frozen beef patties, and fresh and chilled vacuum-packed pork and beef.<sup>43</sup> Thus, the dispute was considerably widened, including most of the items with which the United States had concerns.

KMIA also strongly criticised the pressure of the United States on the Korean meat market. KMIA issued a written resolution concerning the Section 301 petition including the last SBS beef negotiation between the two countries in the 6<sup>th</sup> board of directors held on November 25.<sup>44</sup> With regard to the U.S. demand to extend the shelf-life for sausages to 180 days, KMIA insisted, considering the facts that cooked, frozen sausages were distributed in a chilled condition in most countries, and that the Korean food safety regulations should consider its weak distribution system, the U.S. demand was regarded as

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<sup>42</sup> The next section will contrast the two sides assertions according to each issue alleged by the petitioners.

<sup>43</sup> The 1989 Letters exchanged between Korea and the United States provided the framework for the liberalisation of Korean import restrictions on the 62 specific products in which the United States had expressed interests. See *The Petition*, pp.20-2, and Appendix I.

an intervention in the domestic affairs of Korea only in an attempt to increase export of the U.S. meat products. With regard to the U.S. demand to allow KMIA to sell U.S. wholesale beef without processing it, KMIA opposed the U.S. demand on behalf of its members' interest, although some Korean firms might ask it of the U.S. Meat Export Federation.<sup>45</sup>

The resolution was as follows: "We adopt a resolution with our opinions against the U.S. pressure of extending the shelf-life for chilled meat, sausage and sterilised milk etc., while denouncing the U.S. intervention in Korean internal affairs.

- We demand that the United States right now withdraw the plan of a Section 301 investigation resulted from the request of the U.S. meat industry groups intending to sell chilled meats which are inappropriate in the Korean market.
- We oppose the reckless extension of the shelf-life for sausage and sterilised milk etc. We use raw meats imported under the current SBS system only for making processed products such as ham and sausage and making cut meat. In selling our products, we ask for no package method except for the current one that needs a manufacturer's label and a certificate of origin.
- In the sale of packaged meats, KMIA will form and repackage raw meats according to the Korean appetite. Thus, the U.S. producers, processors and suppliers should stop the wrongdoings to get benefits by publicising distortedly KMIA's position.
- We will struggle to the last for all meat products to be manufactured and distributed in accordance with our skill, appetites and interests. We ask for a quick withdrawal of the demand, an intervention of the Korean domestic affairs, of extending the shelf life of cooked, frozen sausages to 180 days.

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<sup>44</sup> Korean Meat Industries Association (KMIA), *Resolution on U.S. pressure on the Korean Meat Market*, Agenda 5 of the Board of Directors, November 25, 1994. [In Korean]

<sup>45</sup> *Ibid.*

- We will launch an Anti-America campaign such as a boycott against U.S. products with all the people engaged in the livestock industry if the United States intensifies its intervention in the Korean meat distribution system instead of stopping it.”<sup>46</sup>

## 6.2.2 Petition and Comments<sup>47</sup>

Here we clarify the allegations of the petitioners and the comments of the Korean government in terms of major issues. By doing so, we can easily understand the process through which the incompatible positions converge to an agreement. This work provides the starting point to trace the two formal negotiation processes of Section 301 and the WTO. Since we have already explained in chapter 4 the position and interests of both sides, at this time we contrast U.S. assertions and Korean refutations in the context of each issue. The details of this section are attached as *Appendix I*. In order to make clear the controversies, we will take the arguments from the texts of the Petition and the Comments.

### 6.2.2.1 Major Issues in the Petition

#### *Shelf-life for Sausage*

##### □ The U.S. Side

Korean customs officials previously classified U.S. “heat-treated and frozen” sausages as “frozen” sausages with a 90-day shelf-life. Upon discovering in February, 1994 that

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<sup>46</sup> *Ibid.*

<sup>47</sup> This section draws from the “*Petition on Korean Restrictions Affecting U.S. Meat Imports*” (*The Petition*) submitted by the U.S. meat industry groups to USTR and the “*Comments to the Section 301 Petition Presented by the Korean government*” (*The Comments*) to USTR.

U.S. sausages were also heat-treated, they reclassified the “heat-treated and frozen” sausages as “heated” sausages with a 30-day shelf-life because of the absence of dual category for “heat-treated and frozen” sausages in the Korea Food Code. This reclassification effectively halted U.S. sausage imports.

□ The Korean Side

The absence of a shelf-life for “heat-treated, frozen” sausages in the Food Code is because “heat-treated” sausages can be best maintained when they are preserved in a chilled, not frozen, state. Moreover, there are only a few distribution outlets in Korea equipped with facilities to sell food products in a frozen state. Nevertheless, the Korean government announced on September 23, 1994 that it would establish a 90 days shelf-life for “heat-treated, frozen” sausages. The Petition, although submitted after the announcement, failed to mention this development.

***Frozen Beef Patties***

□ The U.S. Side

There is also no scientific basis for a 30-day period for frozen beef patties, which can safely be stored for as long as one year. Such a restriction operates as an absolute ban on these imports inasmuch as transportation time to Korea, customs clearance, and internal distribution often can take longer than 30 days.

□ The Korean Side

The old Food Code established separate categories for “hamburger patties” and “mince and processed meat products.” Because of the confusion between them, the 1994 revised Food Code integrated the two shelf-life categories. As a result, beef patties enjoy a longer shelf-life, 30 days to 3 months, depending upon whether or not they are heat-treated.

## ***Fresh and Chilled Vacuum-Packed Pork and Beef Cuts***

### **□ The U.S. Side**

The Korean Food Code enforces a 10 days shelf-life for all fresh and chilled meat products, including beef and pork vacuum packed cuts. It takes about 13 days to deliver the products to Korea, longer than the applicable shelf-life period. As a result there has been little trade in fresh and chilled beef and pork since Korea “liberalised” trade in pork and beef products on January 1, 1994. Scientifically accepted standards applicable to international trade in vacuum packed beef and pork cuts are 100 and 40 days, respectively.

Furthermore, Korean customs officials have subjected U.S. products to inspection procedures lasting from 14 to 28 days, while the international inspection standard is 2 to 5 days. The combination of the restrictive shelf-life regulation and inspection procedures has halted exports of chilled pork and drastically curtailed exports of chilled beef.

### **□ The Korean Side**

The length of shelf-life for fresh and chilled beef and pork in the U.S. is similar to that of Korea. In Australia, shelf-life for fresh and chilled meat is 7 days for beef and 5 days for pork while in France, it is 4 days for both beef and pork. In particular, no separate shelf-life has yet been set on vacuum-packed cuts of fresh and chilled meat in the Korean Food Code, since they are relatively new to the Korean market.

In addition, under the relevant Korean laws, the Korean inspection procedures should be completed in three days, except under special circumstances, i.e., when lab testing is required. Even when a longer period of inspection is required, the testing should be completed within a maximum period of 7 days. On the other hand, there is a possibility of a *de facto* delay due to the backlog of cargo on the dockyard. This kind of delay, being experienced not just by U.S. meat exporters but by all shipments entering Korean ports, is

unavoidable and beyond the control of the Korean government, given the current shortage of infrastructure and facilities in Korean ports.

### ***Tendering Procedures***

#### **□ The U.S. Side**

Korean bidding procedures for meat contracts have a similarly trade-restrictive effect on U.S. meat imports. Although Korea normally allows seven days between announcing a bid offering in an English newspaper and the date of the bid opening, in the past this period has been limited to as little as three days.

#### **□ The Korean Side**

The short tendering notice has often been inevitable because of unexpected shortfalls in domestic supply. Since tenders are offered frequently, the conditions for these tenders have remained nearly the same, except for the quantities of meat. Thus, Denmark, a similarly distant country, could have been the greatest beneficiary of the tender procedures. However the Korean government feels the need to provide a longer lead-time.

### ***Requirement that KMIA Super-group Purchases Be Repackaged Prior to Resale***

#### **□ The U.S. Side**

Under the 1993 SBS Agreement,<sup>48</sup> the Korean government may not impose restrictions on meat products imported under the SBS system, including processing requirements,

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<sup>48</sup> The 1993 SBS agreement (SBS) indicates the July 1993 Record of Understanding On Market Access for Beef signed between the United States and Korea., *The Petition*, p.23. And the whole text of the 1993 ROU can be found in Internet; U.S. Department of Commerce, Market Access and Compliance(MAC), Trade Compliance Center(TCC), <http://www.mac.doc.gov/tcc/treaty.htm> (1999)

labelling, pricing, marking or packaging requirements. However, since early 1994, the Korean government has not allowed members of the Korean Meat Industries Association, (KMIA), to market U.S. wholesale beef without processing it in Korea.

□ The Korean Side

Requirements that the beef imported by KMIA should be processed by its member companies is not a newly imposed restriction. The statute of KMIA had already regulated the terms of business for its members and the scope of the activities within the SBS system. Thus, the companies cannot by its nature engage in the pure distribution of meats under the SBS system. Negotiators of both governments well recognised this fact when they concluded the 1993 SBS Agreement.

***Fixed Weight Requirements***

□ The U.S. Side

The Korean government maintains fixed-weight requirements for the retail packaging of all imported meats under the SBS system. This similarly restricts trade in U.S. meat products. These requirements are different from the weights required for retail packages of Korean beef.

□ The Korean Side

The fixed weight requirements for retail sale packaging was already lifted as of June 1994. Currently, there is no weight requirement on the sale of packaged SBS beef at retail outlets.



### *Interpretation of Minimum Purchasing Requirements As Fluctuating Quotas*

#### □ The U.S. Side

At the fourth quarterly SBS consultation held in June 29, 1994, the Korean government stated its intention to lower the SBS minimum purchasing requirements if the Korean domestic cattle market appears to be affected by liberalised trade with the United States. This action would effectively lower the mutually established base quotas in violation of Korea's bilateral obligations to the United States.

#### □ The Korean Side

The Korean government indeed suggested a concept of a quota credit. The suggestion was tabled as a means of coping with the negative reaction of the Korean public. But, the United States rejected it.

### *Standards for Residue Testing*

#### □ The U.S. Side

The Korean MAFF maintains a list of residue tolerance levels for beef and pork products and allegedly conducts tests on residue levels in domestic livestock, but the results of such tests are not publicly available. This implies that Korea's residue tolerance standards are not forced against Korean meat products. This lack of enforcement results in a dual standard since Korea maintains and enforces strict residue tolerance levels for imported pork products.<sup>49</sup>

#### □ The Korean Side

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<sup>49</sup> Regardless this Petition, USTR had already issued these practices as an unscientific or questionable. See *1994 National Trade Estimate Report on Foreign Trade Barriers*, <http://www.ustr.gov/reports/index.html>

Tests on residue levels are conducted for both domestic and imported meat products. Every year, almost forty-five thousand random tests are conducted on domestic products and test results are used for the special administrative monitoring over farms where such livestock are produced.

### ***Noncompliance with Standards Codes***

#### **□ The U.S. Side**

Korea has refused to recognise results of laboratory tests conducted outside of Korea that are consistent with Codex-approved standards. Korea's refusal to recognise and acknowledge these test results, violates obligations of equivalency in the maintenance of standards, which are required by the provisions of the newly agreed Sanitary and Phytosanitary Agreement.

#### **□ The Korean Side**

Few countries accept Codex standards exactly. The United States itself maintains sets of residue standards different from Codex. The international norm allows each country to set its own standards. The Korean government does not recognise the results of laboratory tests conducted outside of Korea, but, the same is true of the United States.

### ***24-Hour Temperature Reduction Requirement on Pork***

#### **□ The U.S. Side**

Korea requires that pork as raw material must be chilled and kept below 5 degrees Celsius within 24 hours from slaughter. However, the procedures followed in U.S. pork

slaughterhouses make it impossible to comply with the Korean standard, even though the technology used in the United States is the most efficient in the world.

□ The Korean Side

A survey of the practices of other countries shows that many countries adopt a 24-hour or even shorter temperature reduction requirement on pork, as opposed to the allegedly efficient 48-hour method. In Australia and Belgium, pork meats must be chilled immediately after slaughter while in Japan, pork meats are customarily chilled around 4 degrees Celsius within 4 hours after slaughter.

**6.2.2.2 Whether the Korean practices violate the Korea-U.S. bilateral trade agreements?**

***The 1989 Exchange of Letters***<sup>50</sup>

□ The U.S. Side

The 1989 Letters noted that 62 agricultural products will be open to importation without restriction in the years indicated on the Letters, such as sausages on January 1, 1990 and pork cuts on January 1, 1991. Paragraph 11 of the Letters embodies the spirit of the 1989 negotiations, requiring the two countries to refrain from any action affecting

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<sup>50</sup> According to the United States, on May 25, 1989, an Exchange of Letters ("1989 Letters") occurred between United States Trade Representative Carla Hills and the Korean Ambassador Tong-Jin Park. The 1989 Letters provided the framework for the liberalisation of Korean import restrictions on 62 specific products, including beef and pork sausages and vacuum-packed pork cuts. The 1989 Letters were successfully concluded, in part, as a result of a 1988 Section 301 petition filed by AMI on high-quality beef, See *The Petition*, pp.21-2. On the other hand, the Korean side stated that as part of its overall market opening measures, the Korean government announced on April 8, 1988 its plan to further liberalise agricultural imports, which was later confirmed in its May 1989 Exchange of Letters with the U.S. government. Anyway, the 1989 Letters covered sixty-two agricultural products in which the U.S. government expressed interest, See *The Comments*, p.8. The full text of the 1989 Letters can be found in Internet: U.S. Department

trade in the delineated agricultural products. Without question, the ban on the circulation of sausages in frozen state, reclassification of the applicable shelf-life period for sausages from 90 to 30 days, and the 10 days shelf-life for fresh, chilled meat, restrict trade and clearly violate the 1989 Letters.

□ The Korean Side

In principle, the Korean government fulfilled its commitments under the 1989 Letters. The U.S. meat industry contends that certain provisions of Korea's sanitary and phytosanitary regulations are inconsistent with the unrestricted trade liberalisation required by the Letters. However, the Letters were never intended to deny the right of the Korean government to protect its people's health by regulating the quality and safety of food products. The wording "without restrictions" in the Letters indicates that the Korean government would lift the *quantitative* import restrictions on individual products covered by the 1989 Letters. The U.S. also maintains restrictions on the import of foreign meat products in accordance with its own strict food regulations.

***The 1990 Record of Understanding and the 1993 SBS Agreement***

□ The U.S. Side

Subsequent to the 1989 Letters, and as a result of two GATT panel determinations, the Korean government signed the April 1990 Record of Understanding on beef ("1990 ROU").<sup>51</sup> The 1990 ROU reaffirms the Korean government's undertaking to eliminate

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of Commerce, Market Access and Compliance(MAC), Trade Compliance Center(TCC), <http://www.mac.doc.gov/tcc/treaty.htm> (1999)

<sup>51</sup> The recommendations of the GATT dispute settlement panel report on Korean import restrictions on beef (L/6503) and the report of the GATT Balance of Payments Committee concerning Korea (BOP/R/183/Add.1). *Record of Understanding Between the Government of Republic of Korea and the Government of the United States of America on Beef* (in April 1990), <http://www.mac.doc.gov/tcc/treaty.htm> (1999).

remaining import restrictions or otherwise bring them into conformity with GATT provisions. The 1990 ROU led to the signing of the second Understanding in July 1993, the so-called the 1993 Simultaneous-Buy-Sell Agreement (“SBS agreement”).<sup>52</sup> The SBS agreement prohibited the Korean government and Korean supergroups<sup>53</sup> from imposing import restrictions or other NTBs on trade in beef. Nevertheless, the Korean government bans various U.S. red meat imports in a discriminatory manner. Korea’s processing and weight-based packaging restrictions on imported beef products clearly violate the SBS agreement.

□ The Korean Side

The Petition quotes Article IV. C. 6 (a) of the SBS agreement and incorrectly interprets the article.<sup>54</sup> This article does not deny the Korean government’s right to impose justifiable and necessary requirements on *beef import, distribution and sales*. Rather, it prohibits the government from imposing arbitrary or unnecessary trade obstacles. The legitimacy of restrictions should be determined in accordance with whether they are necessary to achieve justifiable purposes, including maintaining a sound domestic

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<sup>52</sup> The second Understanding is “*Record of Understanding Between the Government of the United States of America and the Government of the Republic of Korea on Market Access for Beef*.” <http://www.mac.doc.gov/tcc/treaty.htm> (1999). And, This SBS agreement now governs Korea-U.S. trade in beef products. It provided for increasing minimum yearly base amounts of beef to be imported into Korea from the United States. It also permitted end-users in Korea to directly contact and negotiate terms of sale with U.S. exporters of beef for the first time.

<sup>53</sup> The definition of “supergroup” is stipulated in the 1993 ROU, See *The 1993 ROU*, Chapter II. Definitions, <http://www.mac.doc.gov/tcc/treaty.htm> (1999).

<sup>54</sup> “Except as otherwise specified in this Understanding, there shall be no restrictions placed by the ROKG [Republic of Korea’s Government] or any supergroup on beef (regardless of country of origin, product type, or specification, whether grass-fed or grain-fed or whether fresh, chilled or frozen) imported under the SBS system, including processing requirements, labelling, pricing, marking or packaging requirements or other barriers to legitimate importation, distribution, and sales, that create unnecessary obstacles to trade or otherwise undermine the objectives of this Understanding. Beef imported under the SBS system must be distributed and sold through legal channels in conformance with Korean regulations.” See *the SBS agreement*, Chapter IV, paragraph 6(a), <http://www.mac.doc.gov/tcc/treaty.htm> (1999).

distribution system. For instance, labelling or processing requirements may be introduced to prevent the disguising of imported beef as domestic Hanwoo beef.<sup>55</sup>

### **6.2.2.3 Whether the Korean practices violate Section 301 or GATT?**

#### **□ The U.S. Side**

The Korean government has continued to erect non-tariff barriers through its lengthy inspection and meat tendering procedures, dual standards, and testing requirements. These practices are inconsistent with, and deny benefits to, the United States under various bilateral trade agreements. These practices are unjust, unreasonable and restrict U.S. commerce. Accordingly, the Korean practices are actionable under Section 301.<sup>56</sup>

#### **□ The Korean Side**

It is doubtful that the Petition is actionable under Section 301, given that the allegations have been rebutted point by point. However, the Korean government is willing to update its food-related system in line with technological development and to accommodate any reasonable advice suggested by foreign governments.

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<sup>55</sup> The Koreans prefer domestic Hanwoo beef, so Hanwoo beef is more expensive than imported beef in Korea.

<sup>56</sup> As discussed in chapter 3, Section 301(a) authorises the President to take action: (1) to enforce the rights of the United States under any trade agreement; or (2) to respond to any act, policy or practice of a foreign country or instrumentality that (a) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade

## 6.3 Negotiations under Section 301

### 6.3.1 The First Consultation

The first formal contact over the Section 301 case between the two governments was in the form of bilateral consultation at a staff-level on January 19-20. In the consultation, the United States expressed its interests in the Korean government's plan for an introduction of a new manufacturer-determined shelf-life system and an overall revision of the Food Code in April. As an interim measure, the United States proposed that the Korean government extend the shelf-life for some products until manufacturers set a date by which products have to be sold. The specific items and their shelf-lives raised by the United States were as follows: from 90 days to over 90 days for heat-treated, frozen sausages, from 14 days to 100 days for chilled vacuum-packed beef cuts, from 10 days to 50 days for chilled vacuum-packed pork cuts, and from 30-90 days to 180 days for frozen beef patties.<sup>57</sup>

The Korean side restated its willingness to introduce the manufacturer system. "In principle, we make it clear that it is Korea's goal to introduce such a system," a Korean official said. "But, at the moment, we are not able to give an exact time for doing so."<sup>58</sup> To this, a U.S. official said that the issue was "how far and fast" Korea would go towards the system.<sup>59</sup> Korea also hinted that it would ease shelf-life requirements in the upcoming April revision of its Food Code along the lines proposed by the United States.<sup>60</sup>

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agreement; or (b) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce.

<sup>57</sup> The Ministry of Agriculture, Forestry and Fishery of the Korean Government (MAFF), *Youtong Gihan Kwanryun Chujin Kyungkwa*, (The Evolution of Shelf-Life Dispute), Internal Document of MAFF, pp.1-2. [In Korean]

<sup>58</sup> *Inside U.S. Trade*, 'U.S., Korea Remain at Odds Over Issues Raised in Meat Section 301 Case,' Vol.13 No.5, February 3, 1995.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

The United States claimed that the customs procedures were delaying meat shipments for two to three weeks as authorities conducted tests and process paperwork, and proposed that Korea set up a faster system for processing entries, backed up by random testing and product recall. But, Korean negotiators did not suggest any new flexibility on the customs issue.<sup>61</sup> They just hinted that they would study the possibility of moving towards such a system, but made no firm commitments to do so.<sup>62</sup> While the two sides were closer to altering shelf-life requirements for meat products, they remained at odds over the customs procedures.<sup>63</sup>

In early February, as bilateral problems between the two countries were on the rise,<sup>64</sup> Deputy U.S. Trade Representative Charlene Barshefsky warned that the United States was considering a challenge in the WTO of Korean trade practices on meat products, saying that “We are also looking at the possibility of a WTO case on phytosanitary and sanitary barriers,” and “While formal trade barriers to imports have fallen, Korea has raised new more subtle barriers.”<sup>65</sup> In her testimony to two House International Relations subcommittees on February 2, she highlighted standards, licensing certification, rulemaking and customs clearance.<sup>66</sup> She said that the United States was seriously concerned about inappropriate application of sanitary and phytosanitary (SPS) restrictions, particularly those not based on sound scientific evidence. As products that had been held up by disputes with Korea, she also cited medical devices, medical products,

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<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> At this time, the United States has faced with many other trade issues with Korea such as autos, medical devices, medical products, and cigarettes. See to *Munhwa Ilbo*, February 6, 1995. Moreover, AT&T complained that Korea was using certification requirements to prevent the company from bidding on \$50 million worth of government telephone switching contracts, see *Inside US Trade*, ‘Senior USTR Official Sees Possible Trade Case Against Korea in WTO,’ Vol.13 NO. 6, February 10, 1995.

<sup>65</sup> *Inside US Trade*, ‘Senior USTR official sees possible trade case against Korea in WTO,’ Vol.13 NO. 6, February 10, 1995.



chocolates, and pet food. Although she did not mention a possible WTO case in her testimony, she warned that failure to resolve these problems could lead to a broader, more serious trade dispute.<sup>67</sup>

“The U.S. is just in the beginning stages of examination regarding a possible WTO case against Korea,” a USTR official said.<sup>68</sup> USTR was considering how the Korean restrictive trade barriers applied to WTO rules, he said. If the United States decided it had a solid enough case, it would contact other countries, which had also complained about the Korean trade barriers, about their possible participation in a WTO challenge, he said.<sup>69</sup> If it decided to proceed with a case, the United States could choose to challenge one particular policy, or to bring one giant case that would use various trade barriers as examples, he said.<sup>70</sup> A giant case would be similar to one brought by the EU against U.S. gas taxes, including the Corporate Average Fuel Economy standard, gas guzzler tax and luxury tax, according to the official. But, he said there was no timeline for USTR to finish the consideration of a possible case.<sup>71</sup>

A Korean newspaper of February 6 also warned that current Korean trade relations with the United States were becoming difficult, introducing Barshefsky’s comments in her testimony to the House committees.<sup>72</sup> According to the newspaper, the United States was toughening its stance towards Korea in anticipation of a February 13 Ministerial meeting between the two countries, in which U.S. Trade Representative Kantor would address the Korean restrictions that the United States had identified as trade barriers with Korean

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<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Munhwa Ilbo*, February 6, 1995, p.9.

Minister Park.<sup>73</sup> The newspaper predicted that the trade frictions would not be settled easily, indicating that the commercial counsellors of the U.S. Embassy have recently pressured the Korean government to open even its specific fields such a marketing activity of U.S. firms in Korea.<sup>74</sup>

### 6.3.2 Ministerial Meetings

Korea's MFA Minister Kong met with Kantor to discuss current bilateral trade issues on February 6 in Washington.<sup>75</sup> The two ministers were satisfied with an overall trade trend because the two countries were enjoying a balance of trade along with increasing its volume, and agreed to exert efforts to keep this trend. While admitting the Korean government's efforts to open its market such as autos, however, Kantor pointed out that a part of the Korean government had erected a second trade barrier such as quarantine or inspection to the already import liberalised products.<sup>76</sup> But, Kong emphasised that this kind of issue would disappear through the ongoing "globalisation policy" of the Korean government because removing unreasonable regulations is one major goal of the policy. He also said that his ministry was paying special attention in discussing with other ministries the current bilateral trade issues, so progress would be expected on those issues, especially in shelf-life requirements.<sup>77</sup>

In Korea, the Korean Dairy and Livestock Association issued a resolution to refute the Minister Kong's Washington comment on the shelf-life issue. The resolution took its

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<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Chosun Ilbo*, February 8, 1995, <http://www.chosun.com/w21data/html/news>, and MFA, *Press Release*, 'Meeting Results Between Foreign Minister and U.S. Trade Representative Kantor,' February 7, 1995.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

title, "Withdraw the Minister's comment on elimination of shelf-life period for meat products."<sup>78</sup> Major arguments of the resolution were as follows.

We felt dishonour to the diplomatic stance which led the domestic meat distribution system to depend on demands of the United States. We are also disappointed with the government's behaviour to abandon public health under pressures from the United States. The United States has mobilised various methods of pressure to take over the Korean meat market. In particular, the United States has urged Koreans to consume U.S. beef by forcing an increased shelf-life period for chilled beef from 14 days to 100 days. If the government adopts a manufacturer system, the domestic dairy and meat industry would be immediately destroyed, given that exporting countries such as the United States and Australia have been eager to export beef and milk to Korea. The government had already surrendered to various U.S. pressures not only by announcing to open completely its cattle and beef market in 2001 during the Uruguay Round negotiations, but also by increasing the SBS quota annually. But, because the abolition of the current shelf-life system would imperil public health beyond farmers' interests, if the government attempts to do it, we would strongly deter it with consumers and civil groups.<sup>79</sup>

To strong blame from the Association, MFA explained that during the consultation, Minister Kong responded to the U.S. requests in a normal manner. He expressed his expectation that the Korean government could examine properly the current trade issues such as meat products, autos and communication devices. In addition, the

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<sup>78</sup> The Korean Dairy and Livestock Association, *Resolution*, February 8, 1995. (In my own translation)

<sup>79</sup> *Ibid.*

Ministry said, it was regrettable that the Association announced the resolution based on false facts even though it had already distributed a press release on the Meeting results.<sup>80</sup>

On the other hand, MTI Minister Park visited Washington on February 12 to 16 and met his major counterparts of the United States: U.S. Trade Representative Mickey Kantor, Department of Commerce Secretary Ronald Brown, Department of State Deputy Secretary for Economy, Joan Spero, Committee of Trade in House Chairman Philip Crane, and Committee of Trade in Senate Chairman Charles Grassley.<sup>81</sup> He consulted with them on the current bilateral trade issues such as market access to autos, protection of intellectual property rights, the pending Section 301 investigation on meat products, communication devices, cigarettes, and tax standards on U.S. firms. Like the visit of Minister Kong, the two sides agreed on the whole to work together for the enlargement of bilateral trade and investment based on dialogue and cooperation. But, the United States warned that if there were no progress in the meat product and communication device issues, it would consider a WTO case or retaliatory actions.<sup>82</sup>

On February 13, 1995, MOHW announced its plan to adopt a new system allowing manufacturers to set their own shelf life requirements for their products under self-responsibilities.<sup>83</sup> There is no doubt that the Korean government's announcement aimed at addressing the U.S. concerns on the meat product issues. But, according to the announcement, the new system would be introduced "step by step" after examining the domestic distribution system and characteristics of each product. As a first step, some products such as canned and bottled goods which do not have many sanitary problems would be moved to the system in the third quarter the year. Based on the results of this

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<sup>80</sup> MFA, *Press Release*, February 9, 1995.

<sup>81</sup> *Chosun Ilbo*, February 7, 1995, <http://www.chosun.com/w21data/html/news>, and Personal Interview C.

<sup>82</sup> *Ibid.*

<sup>83</sup> MOHW, *Press Release*, 'Improvement of Food Sanitation Laws,' February 13, 1995.

measure, all the products would eventually be under the manufacturer-determined shelf-life system by 1998.<sup>84</sup> In addition, MOHW said that it would wish to revise sooner its Food Code on an interim basis to extend shelf-life for products such as vacuum-packed meats.<sup>85</sup> A Korean newspaper responded to the plan, saying that no international standard of shelf-life existed. The same products could have different shelf-life periods according to the country's situation. Thus, although it was desirable to liberalise the shelf-life regulations from the long perspective, the government should lift control only on those products whose safety could be secured under the inferior distribution system. The government could not relinquish the protection of public health owing to trade pressure.<sup>86</sup>

U.S. industry officials said that the plan still fell short of the demands that triggered the Section 301 case the previous year, and the industry feared that it would simply lead to further delays in removing Korean restrictive trade barriers to meat imports.<sup>87</sup> As a Korean official pointed out, the plan would be open for public comment in Korea, and then could be altered depending on what domestic pressures the government faced. Thus, the U.S. meat industry wanted Korea to adopt such a system immediately, rather than phase it in over three years, industry officials said.<sup>88</sup>

The industry also criticised the fact that Korea had linked the revisions of its Food Code to the U.S. providing new scientific data that warranted longer shelf-life times for certain products such as vacuum-packed meats. According to a Korean official, in the case of those products, the Korean government did not have its own scientific data on shelf-life, and needed such data from the United States. But the U.S. industry was worried about that such a process could become an exit to delay any revisions to the Code, and further the

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<sup>84</sup> *Ibid.*

<sup>85</sup> *Inside US Trade*, 'Koran Plan on Meat Shelf-life Falls Short of Industry Demands,' Vol. 13 No. 8, February 24, 1995.

<sup>86</sup> *Joongang Ilbo*, February 16, 1995, Editorial.

<sup>87</sup> *Ibid.*

Korean government could decide to reject the U.S. data. In short, the industry urged Korea to move immediately to the manufacturer system, and then to initiate a research project for the scientific justifications.<sup>89</sup> Even if Korea had resolved the shelf-life issue for heat-treated, frozen sausages by extending 90 days earlier this year, the inspection system remained unsolved, which the U.S. industry charged often resulted in lengthy delays before imports were allowed into Korea. One industry official argued that a 90-day shelf-life was meaningless if it took 60 days to clear.<sup>90</sup> According to the U.S. industry, if there were no progress in the issue, USTR would likely respond by taking Korea to the WTO dispute settlement procedures. Although USTR had not set any deadlines in the negotiations, the industry said, a WTO challenge would be far more likely than the imposition of unilateral sanctions if the negotiations failed.<sup>91</sup>

### 6.3.3 Pressures from the U.S. Congress

Senate Majority Leader Bob Dole and other senators and congressmen increased pressure on USTR to resolve the Korean meat dispute.<sup>92</sup> On February 15, 1995, in addition to Agriculture Committee Chairman Pat Roberts, 28 House representatives sent a letter to Ambassador Kun Woo Park in Washington. The U.S. Senate also sent Park a letter that was identical of the House letter. The Senate letter was signed by 17 senators including Senate Majority Leader Dole, Agriculture Committee Chairman Richard Lugar, Commerce Committee Chairman Larry Pressler and Minority Leader Tom Daschle.<sup>93</sup>

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<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> The senators are as follows: Charles E. Grassley (R-IA), Robert Dole (R-KS), Mitch McConnell (R-KY), Max Baucus (D-MI), Strom Thurmond (R-SC), Tom Harkin (D-IA),

In the letter,<sup>94</sup> the lawmakers expressed their deep concern regarding the Korean non-tariff barriers to trade in U.S. red meat products. They emphasised the issues raised by the Section 301 investigation could and should be resolved by prompt negotiations, whereas they also warned that USTR would be willing to take unilateral action or resort to the WTO if necessary.<sup>95</sup>

The letter stated that the U.S. meat industry was a vital part of the U.S. economy, with operations in each of the 50 states and millions of tons of annual exports of high-quality products to countries across the world. But, Korea had severely limited its market access for the U.S. meat products through a host of non-tariff barriers. While other countries rely on the manufacturer system, it charged, only Korea and Egypt impose government-mandated shelf-life limitations on meat products.<sup>96</sup> The lawmakers in the letter strongly urged the Korean government to adopt the manufacturer system in the very near future. They also charged that through several bilateral trade agreements between the two countries over the last decade, the Korean government had promised to eliminate certain trade-restrictive barriers only for them to erect new barriers later. In addition, they pointed out, "Korea's time-consuming port clearance and inspection procedures of up to 3 weeks have greatly hindered the U.S. red meat industry's attempts to export and distribute fresh chilled products to Korean consumers within government-mandated periods." To stop this, they demanded the Korean government's assurance that there would be no undue delays in port and customs clearance, including inspection and testing procedures. They

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Rick Santorum (R-PA), David Pryor (D-AR), Craig Thomas (R-WY), Carol Moseley-Braun (D-IL), Conrad Burns (R-MT), Larry Pressler (R-SD), Mike DeWine (R-OH), John Glenn (D-OH), Larry E. Craig (R-ID), Thomas A. Daschle (D-SD), Richard Lugar (R-IN), See Letter of the U.S. Senators to Korean Ambassador Park on February 17, 1995 in *Inside US Trade*, 'TEXT: Senate Letter on Korean Meat,' Vol. 13 No. 8, February 24, 1995.

<sup>94</sup> These letters were posted to U.S. Trade Representative Michael Kantor as well. *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

also emphasised that the assurances must include a coordinated effort by all Korean agencies, including the MOHW, the Korean Customs Service and the National Animal Quarantine Service.<sup>97</sup>

Finally, they pointed out that the U.S. meat industry lost over \$240 million in revenue in 1994 due to the Korean non-tariff barriers, and the figure would further rise to over \$1 billion annually by 1999 if Korea kept the barriers which violate bilateral trade agreements with the United States and its international obligations under the WTO.<sup>98</sup>

On February 23, 1995, the Foreign Economy Coordination Staff-Committee of the Korean government was held to coordinate the government position on the current bilateral trade issues with the United States including the issues raised by the Section 301 investigation. The Meeting was attended by senior officials of BFE, MFA, MOHW, MAFF, MTI and MIC.<sup>99</sup> In this Meeting, with respect to the U.S. request that the manufacturer system should be adopted by 1995, the Committee concluded that the government would implement MOHW's February plan as it was, along with exerting efforts to persuade the United States that the plan was the best option of the Korean government when the current Korean inferior distribution system was considered. But, the Committee confirmed that the United States could comment on every step of the plan until the system was completely adopted. In addition, as an interim measure, the government would consider establishing new shelf-lives for certain products such as vacuum-packed, chilled beef or pork which were then not distributed in Korea, if the United States provided scientific data justifying shelf-life requirements for those products. The Committee also

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<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

<sup>99</sup> MAFF, *op.cit.*, p.4.



decided to announce the government's willingness that the interim measures would be carried out regardless of the manufacturer system's introduction.<sup>100</sup>

#### 6.3.4 U.S. Warning and Korean Concession

A team of U.S. officials led by Christina Lund<sup>101</sup> from USTR went to Seoul and had talks with Korean officials during February 28 to March 4.<sup>102</sup> In talks with Korean officials at MFA and MOHW, they requested Korea to implement the manufacturer-determined system earlier than its schedule. They also expressed their intention of filing for consultation in the WTO on the Section 301 meat issue if it was not resolved, saying that the WTO filing would be a better solution to the dispute on the grounds that the United States had a strong position because of non-scientific bases, non-transparency of the Korean shelf-life system, and that the WTO procedures would be ended within a year as well as covering all the products.<sup>103</sup> During the talks, the U.S. main points over the meat issues were as follows: The manufacturer-determined system should be implemented from July 1, 1996, and the Korean government, as an interim measure, immediately should announce a plan of extending shelf-lives for the following products: 90 days for non-heated, frozen beef patties, 50 days for vacuum-packed, chilled pork, and 100 days for vacuum-packed, chilled beef. The United States also demanded that those interim dates be included in the upcoming April revision of the Korean Food Code.<sup>104</sup>

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<sup>100</sup> *Ibid.*

<sup>101</sup> Christina Lund, as director of Korean Division of USTR, was substantially in charge of the shelf-life dispute. Personal Interview A.

<sup>102</sup> *Inside US Trade*, 'U.S. to Move to WTO Consultations in Meat Dispute With Korea,' Vol.13 No.10, March 10, 1995.

<sup>103</sup> *Ibid.*, and *Inside US Trade*, 'U.S. to Notify Korea of WTO Talks Over Market Access Barriers,' Vol. 13 No. 13, March 31, 1995.

<sup>104</sup> MAFF, *op.cit.*, p.5.

Korean negotiators responded by explaining their government plan announced on February 14, 1995. That is, the government would introduce the manufacturer-determined system from the third quarter of 1995, and full implementation of the new system would occur by no later than the end of 1998.<sup>105</sup> The new system would be implemented on a phase-in basis, given the current Korean food manufacturing and distribution industries. With respect to extending shelf-life of the products in which the United States had expressed its special interest, Korean negotiators asked the United States to provide scientific data. They assured that their government would endeavour to consider extending the shelf-life for the products based on the data. They also pointed out that massive efforts were underway to resolve other remaining issues of the Section 301 investigation in a realistic and reasonable manner.<sup>106</sup>

The consultations turned out to be another failure. U.S. negotiators returned to Washington with no progress in the dispute. According to *Inside US Trade* of March 10, the United States was disappointed with the consultations, and responded as follows:<sup>107</sup> First, as Deputy U.S. Trade Representative Charlene Barshefsky had announced in February, USTR was planning a trade case in the WTO against the Korean sanitary and phytosanitary practices. By filing for consultations under the WTO, the United States would continue further bilateral negotiations with Korea, while it proceeded with legal procedures to take a retaliatory action.<sup>108</sup> Secondly, with respect to the interim measure to remove current impediments to chilled pork and beef, USTR denounced that Korea did not agree to such a measure in the consultations only to make some encouraging comments.<sup>109</sup>

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<sup>105</sup> *Ibid.*, and the United States however worried about that meat products, which were of the greatest export interest to the U.S., would likely be liberalised last, i.e. late 1998. See *Inside US Trade*, Vol.13 No.10, March 10, 1995.

<sup>106</sup> Personal Interview C.

<sup>107</sup> *Inside US Trade*, Vol.13 No.10, March 10, 1995.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

Lastly, USTR was reluctant to meet a Korean request that it submit data justifying shelf-life requirements. A U.S. official pointed out that there were publicly available data in the United States that supported a 50 days shelf-life for vacuum-packed pork, and that the Australian government had already provided Korea with information that supported a 100 days shelf-life for vacuum-packed beef.<sup>110</sup> Rather, USTR argued that in the case of WTO consultations, Korea would have to justify the scientific basis of its current system.

In a related development, the Senate supported the effort by USTR to open the Korean meat market in a non-binding sense of the Senate resolution sponsored by Senator Max Baucus.<sup>111</sup> The resolution of March 16 offered “support and commendation” for the initiative and urged USTR to continue to push the Korean government to remove the restrictive trade barrier to U.S. beef and pork.

No progress in the dispute by March caused the United States to take a tough stance against Korea. USTR planned to notify formally the Korean government that it would seek formal consultations in the WTO on May 1 if the dispute was not resolved, and the formal request was likely to be delivered by April 1, which would give the Korean government one month’s notice.<sup>112</sup> According to a U.S. official, although it especially would look at meat, the U.S. challenge in the WTO would focus on the whole system of the Korean government-mandated shelf-life, which affects all food products.<sup>113</sup> The Korean government was expected to make a new proposal in an attempt to resolve the dispute before the United States resorted to WTO, and to present the proposal to the United States in advance of an April meeting of the Trade Subgroup of the Korea-U.S. subcabinet-level dialogue, a Korean official said.<sup>114</sup> However, U.S. government officials

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<sup>110</sup> *Ibid.*

<sup>111</sup> *Inside US Trade*, Vol. 13 No. 13, March 31, 1995.

<sup>112</sup> *Joongang Ilbo*, April 1, 1995, p.6.

<sup>113</sup> *Inside US Trade*, Vol. 13 No. 13, March 31, 1995.

<sup>114</sup> *Ibid.*

said that they were not informed about a possible new Korean proposal until March, but they received some encouraging comments from Korea.<sup>115</sup>

By resorting to the WTO procedures, the United States seemed to intend to break the deadlock in talks and have more bilateral consultations with Korea, instead of directly taking a retaliation action under Section 301. USTR believed it had a very strong case against Korea under the SPS agreement because it could charge that Korea's government-mandated shelf-life system and customs inspection procedures were not based on sound science.<sup>116</sup> On the basis of the collected data on the Korean shelf-life system, a U.S. official said, "We are fairly convinced that on this issue, we are on the side of the angels."<sup>117</sup> Under the current system, Korea could set a short shelf-life such as 10 or 14 days, which coupled with a very slow customs inspection procedure effectively prevented trade, the official pointed out. Moreover, the official emphasised that even Korean government officials admitted that the system was not based on sound science. According to the official, in order to determine shelf-life requirements, many variables should be considered such as storage, transportation, distribution, product ingredients, and product packaging. Therefore, "There are so many fast-changing techniques in selling products nowadays, that even if you harnessed the entire Korean bureaucracy, they would be unable to come up with the scientifically determined date," the official said.<sup>118</sup>

Regarding Korea's continuous request to provide some data justifying the shelf-life requirements, the official said, the United States had intentions to provide the Korean government with the data if the Korean government offered some assurance that it would use the data to allow trade to take place. "There comes a time when you say enough is enough, we have been negotiating access to your meat market since 1987," and "if you

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<sup>115</sup> *Ibid.*

<sup>116</sup> *Inside US Trade*, Vol.13 No.10, March 10, 1995.

<sup>117</sup> *Inside US Trade*, Vol.13 No.13, March 31, 1995.

need scientific cover, fine, we'll provide it, but give us something that trade can take place"<sup>119</sup>

From the U.S. viewpoint, conducting the consultations under the WTO could be a way for other WTO members to participate in the dispute. The United States had already discussed a possible dispute settlement case with the EU, Australia, New Zealand, and Canada in an informal session during the Seoul negotiations with the Korean government in early March. Since those countries' exports were also being affected by the Korean shelf-life system, the countries possibly would take part in the case against Korea, but they would want to see exactly what the United States was considering before deciding to do so, the official said.<sup>120</sup>

On the other hand, the Korean government held a meeting on March 17 to discuss the current U.S.-Korean trade issues. Senior officials from concerned Ministries attended the meeting.<sup>121</sup> In the meeting, they agreed that the United States would seek consultations under the WTO if an acceptable resolution could not be produced over the meat issues, especially the extension of shelf-life for vacuum-packed, chilled pork and beef, the early implementation of a manufacturer-determined system, and the quick clearance procedures for chilled meats. On the basis of these understandings, they discussed possible alternatives and decided to review the possibility of the following options: the new establishment of the shelf-lives for vacuum-packed, chilled meats, and in order to reflect them into the Food Code quickly, some revision procedures such as public comment period would be shortened as much as possible. And an early implementation of the manufacturer system would be positively considered only if it proved not to threaten public health. Lastly, the government would review whether import clearance procedures

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<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.* and *Joongang Ilbo*, April 1, 1995, p.6.

for chilled beef and pork could be completed within 2-5 days. In order to make final decisions on these options, they would have another meeting in early April.<sup>122</sup>

On March 22, MOHW Minister Suh had a meeting with Ambassador Laney in Seoul. In this meeting, the Ambassador asked for the manufacturer system to be introduced by July 1, 1996 as the United States had demanded. Minister Suh said he would do his best, but he, as the Minister responsible for public health issues, should consider public health and consumers' safety prior to trade issues. Thus, only if scientific evidence and a monitoring system were provided in advance of adopting the system, there was no reason to adjourn the system. For this reason, he asked the United States to offer all of the relevant materials on chilled meat such as recall system to a Korean team that would visit Washington to look at the U.S. system.<sup>123</sup> The Minister also warned that he wanted this dispute not to be discussed in the WTO, but if the United States would pursue it, MOHW would stop revising its Food Code and await a final decision of the WTO.<sup>124</sup>

According to a Korean newspaper of April 1, the United States decided to request formal WTO consultations over the current Korean shelf-life practices.<sup>125</sup> The newspaper stated that this dispute would be the first case in the WTO after it was established. But, Korean government officials said there were high possibilities to compromise with the United States before the WTO procedures started because the government was considering acceptance of the U.S. requests. They also said the government was reviewing some measures in the case that the dispute moved to the WTO.<sup>126</sup>

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<sup>121</sup> MAFF, *op.cit.*, p.4.

<sup>122</sup> *Ibid.*

<sup>123</sup> Korean officials from MAFF and MOHW went to the United States and Canada to look at manufacture, processing, and distribution systems for chilled meat of the two countries during March 25 to April 6. This visit might aim to collect information to set the shelf-life for vacuum-packed, chilled beef and pork.

<sup>124</sup> Personal Interview D.

<sup>125</sup> *Joongang Ilbo*, April 1, 1995, p.6.

<sup>126</sup> *Ibid.*

On April 3, U.S. Trade Representative Micky Kantor informed MFA Minister Gong of his intention to refer this dispute to the WTO dispute settlement procedures, saying that "this week I will be instructing Ambassador Gardner to officially initiate dispute settlement proceedings regarding Korea's government-mandated shelf life system the week of May 3."<sup>127</sup> In his letter, he also said, the two governments had held lengthy consultations on this shelf-life issue and other related issues, such as the unreasonable delays at the port. The United States had clearly explained its concerns and the relief it was seeking from the Korean government, especially MOHW. However, the Korean government had not given a clear indication that would address all issues of the dispute, he charged. Regarding the manufacturer-determined system, he clearly rejected the Korean government's time schedule to move to a manufacturer-determined shelf-life system. "1998 as a 'target date' is unacceptable, given the increasing cost incurred not just by the U.S. meat industry but other food exporters as well."<sup>128</sup>

Korean senior officials held another meeting on April 4 with a view to making a proposal which could resolve the dispute. With respect to the shelf-life for vacuum-packed, chilled meat, they decided that MOHW consult with the United States before it announced a revision draft of the Food Code for public comments in April. The actual shelf-life periods for chilled beef and pork would be decided after reviewing reports of the team that was supposed to examine the U.S. and Canadian system. With respect to the introduction of the manufacturer system, they decided that although it is difficult to implement the system from July 1, 1996, MOHW would examine whether only the selected products in which the United States expressed its interests could be under the system until 1997. Lastly, with respect to the customs and quarantine clearance procedures, they decided to explain the actual Korean situations to the United States

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<sup>127</sup> Letter of USTR Kantor to MFA Minister Kong on April 3, 1995.

because 80 percent of imported meat products virtually completed import clearance within 3 days, while only about 20 percent required 5-7 days for detailed inspections.<sup>129</sup>

In the subsequent meeting in April, MOHW suggested new shelf-life requirements for chilled beef and pork on the basis of the reports of the investigation team as follows; 80 days for beef and 40 days for pork.<sup>130</sup> But, MOHW failed to present scientific evidence on the new shelf-life periods. Participators said it was difficult to persuade their people as well as the United States without scientific evidence in establishing a new shelf-life. The meeting concluded that MOHW would review it again and set a new shelf-life no later than the 18<sup>th</sup> Trade Subgroup meeting of April 26.<sup>131</sup>

### 6.3.5 Other New Frictions over Agricultural and Food Products

While the two countries were negotiating the shelf-life issues, new trade issues over agricultural and food products occurred.<sup>132</sup> These new issues worsened the ongoing dispute and hindered its smooth resolution. In his letter of April 3 to MFA Minister Gong, Kantor said many of the new trade problems appeared to involve MOHW regulations, and argued that even if he did not question the sovereign right of Korea's regulatory

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<sup>128</sup> *Ibid.*

<sup>129</sup> Personal Interview C and MAFF, *op.cit.*, p.6.

<sup>130</sup> *Ibid.* pp.7-8, and according to the team, although they asked USDA to offer data to justify the U.S. requests of 100 days for beef and 50 days for pork, USDA did not offer data, saying that the data is not important because the U.S. requests of 50 or 100days for the products are only an interim measure prior to the manufacturer-determined system which is the U.S. final destination. The U.S. exporters did not provide any data either, instead they asserted that they have been exporting chilled beef and pork to Japan under the shelf life requirements they had asked for.

<sup>131</sup> *Ibid.*

<sup>132</sup> Besides these agricultural and food products, the two governments were negotiating other field issues such as auto, intellectual property rights, telecommunications equipment, and medical devices in relation to the Korean market. See *Chosun Ilbo*, March 13, 1995, <http://www.chosun.com/w21data/html/news>, and *Inside US Trade*, Vol.13, No.10, March



authorities to protect the health and safety of Koreans, such regulations should conform to Korea's obligations under the WTO.<sup>133</sup> He also illustrated trade problems which had been of great concern to the U.S. government. One issue concerned MOHW labelling rules for confectionery and chocolate products. He pointed out in his letter,

New rules were recently issued which gave manufacturers only three days to comply, and they were not notified as required under the Technical Barriers to Trade Code in the WTO. U.S. chocolate exports have suffered considerable financial losses. The problem is still unsolved, despite assurances to two U.S. Senators from your Embassy in Washington.<sup>134</sup>

In another particularly urgent case, a small family-run firm would soon go out of business because of a MOHW-mandated test for bacteria in popcorn, he said. "The exporter recently learned after waiting for 109 days that his product was declared 'unfit for human consumption.'" He was in a situation to discard shipments worth \$45,000, a serious sum to a small firm. His request for retesting was rejected, although the U.S. laboratory tests proved no contamination of the samples.<sup>135</sup>

Another serious case concerned a recent MOHW regulation which requires testing for over 100 new agricultural chemical residues. "Florida citrus exporters have reported that their fruit is rotting at the port while awaiting test results. Most countries in the world use random sampling techniques and provide for expedited clearance at the port for perishable products while awaiting test results."<sup>136</sup>

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10, 1995, and USTR, *1995 National Trade Estimate: Republic of Korea*,  
<http://www.ustr.gov/reports/nte/1995/korea.html>

<sup>133</sup> Letter of USTR Kantor to MFA Minister Kong on April 3, 1995.

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*

<sup>136</sup> *Ibid.*

After illustrating those problems including the current Korean shelf-life system, he expressed his disappointments that all the attempts to resolve many of them bilaterally had not met with success. And he pointed out that these specific problems were not isolated disputes but a pattern of regulatory barriers to trade that were neither consistent with international practice nor in conformity with rules under the WTO. Finally he warned that USTR could not help seeking redress under the WTO dispute settlement procedures, saying that the U.S. Ambassador to the WTO in Geneva would officially request WTO consultations with the Korean government the week of April 3 over the inspection regulations for perishable agricultural products including Florida grapefruit, and that he also would instruct the Ambassador to initiate the WTO procedures regarding the current Korean shelf-life system the week of May 3, 1995.<sup>137</sup>

In his reply of April 8, Gong explained the problems raised by Kantor as follows: Regarding the chocolate labelling issue, intensive inter-agency consultations were underway to seek to resolve the problem, taking the U.S. requests into favourable consideration. With respect to the question of popcorn clearance, he said, "Inspection

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<sup>137</sup> *Ibid.* The dispute over Florida grapefruit shipments is separate from a U.S.-Korea dispute over the shelf-life under examination. USTR indeed referred this inspection issue to the WTO procedures on April 4, and requested expedited consultations because the case involves perishable products. The two governments held the first consultations on May 4-5 in Geneva, but failed to conclude this dispute. The United States charged that Korea was restricting U.S. exports of grapefruit in violation of the SPS agreement. In an effort to defuse the dispute, Korea put a new inspection system in place April 3, immediate after which the United States requested consultations under the WTO. Under the new system, which applies to all perishable agricultural product inspections conducted by MOHW, the maximum time limit for lab testing would be reduced from 25 days to 5 days. Fruit can be released before tests are completed on random samples. Despite the new Korean inspection system, USTR insisted WTO consultations because it had a number of questions about the system and wanted to clarify those questions to make sure that the new system can solve importers' problems. See *Inside US Trade*, 'U.S. Seeks WTO Consultations With Korea Over Testing Requirements,' Vol.13 No.15, April 14, 1995, and 'U.S. Kicks off WTO Process Against Korea, Seeks Support From Others,' Vol. 13 No. 19, May 12, 1995. And, MFA, *Press Release*, 'The Shelf-life Problems for Meat and the U.S. Request of WTO Consultations on Inspection Clearance for Grapefruits,' April 6, 1995.

authorities are prepared to grant the U.S. exporter an opportunity for coliform retesting upon his request.” And the Florida grapefruit case could be resolved on the basis of new measures taken by the Korean government on April 3, 1995 to improve the sanitary and customs clearance system.<sup>138</sup>

Finally, he stressed that the Korean government did not want these nagging problems to drag on any longer, so it was working on the trade problems with a sense of urgency, and their satisfactory resolution was in sight. He also expressed his wish that the two governments would “continue to have close consultations to prevent the recurrence of unnecessary trade problems and, once they take place, to resolve them without delay through dialogue.”<sup>139</sup>

### **6.3.6 The 18<sup>th</sup> Trade Sub-Group Meeting**

Confronted with the continuous trade disputes, the Korean government sent a few senior officials at MOHW and BFE to Washington before the 18<sup>th</sup> trade Sub-group meeting. They were supposed to visit some relevant agencies and explain the Korean system in terms of technical points, and seek possible resolutions. In addition, they planned to observe the U.S. system in an effort to get information that would be useful in improving the current Korean system. Based on the results of the visit, the Korean government might intend to prepare for some negotiation options to be presented to the U.S. side in the coming Trade Subgroup Meeting. There was no doubt that the Meeting

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<sup>138</sup> Letter of MFA Minister Kong to USTR Kantor on April 8, 1995

<sup>139</sup> *Ibid.*

would be the last chance for Korea if to avoid the WTO procedures. But, the attempt did not succeed.<sup>140</sup>

Just before the 18<sup>th</sup> Trade Subgroup meeting in Washington, the Korean government on April 22 held a Foreign Economy Coordination Committee to decide its formal position on the current bilateral trade issues with the United States. On the premise that USTR would not refer the case to the WTO, they made a new proposal to be presented to the United States.<sup>141</sup> With respect to the shelf-life requirements, they decided to set 90 days for chilled beef and 45 days for chilled pork. With respect to the introduction of the manufacturer-determined system, they concluded that the system would be completely introduced by 1998 as the government had announced in February. But, the products in which the United States had expressed its special interests would be given a priority. Namely, canned and dried food products would be under the system from September 1, 1995. All the frozen products and vacuum-packed (CO<sub>2</sub> injected), chilled meats would be liberalised from July 1, 1996. All the chilled products including vacuum-packaged ones would be liberalised from January 1, 1998. The other products would be liberalised until 1998.<sup>142</sup>

During 26-28 of April, U.S. and Korean officials negotiated the bilateral trade issues under the auspices of the Trade Sub-group of the bilateral subcabinet-level dialogue. The leading negotiators were Korea's MFA, Trade General Director K.H. Jang and USTR, Director of Korea Division, Christina Lund.<sup>143</sup> The biggest issue on the agenda was the shelf-life dispute. The United States had already threatened to request formal consultations in the WTO by May 3 if the dispute was not settled. During the negotiations,

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<sup>140</sup> *Chosun Ilbo*, April 12, 1995, <http://www.chosun.com./w21data/html/news>, and Personal Interview D.

<sup>141</sup> MAFF, *op.cit.*, p.7.

<sup>142</sup> *Ibid.*

the two sides agreed on some points; the shelf-life dispute must be settled as a package, and the frozen food rules and other remaining issues pose a major threat to the settlement.<sup>144</sup> They discussed a new set of interim measures for a variety of foods which would apply while Korea changes its current system to allow manufacturers to set their own dates. They reached a tentative deal regarding the interim measures for chilled beef and pork because Korea offered the United States a deal “close” to what the U.S. side had asked, which was a 50 days shelf-life for chilled pork and 100 days for chilled beef, but were far from achieving a whole deal settling the broader shelf-life dispute due to disagreements over the treatment of frozen food, a U.S. official said.<sup>145</sup>

Regarding the manufacturer-determined system, they agreed on shelf-life rules for bottled and canned foods essentially to be entered into the manufacturer system. On the contrary, they could not reach an agreement on the time when the frozen food rules would go to the manufacturer system. The Korean side insisted that the system would be adopted in a “step by step” way, while the U.S. side pressed Korea to introduce the system earlier than it scheduled. In fact, Korea had no intention to include the U.S. request for frozen food in the proposed revisions of the Food Code, which would be published on April 30. Although they narrowed their differences, they could not reach an agreement because there were still many gaps as a whole between the two side’s positions. Finally, the negotiations did not meet with success.<sup>146</sup> The following Table 6-1 shows the differences of the two sides on each issue.

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<sup>143</sup> BFE, MAFF, MTI, and MOHW, *Press Release*, ‘The Results of the 18<sup>th</sup> Korea-U.S. Trade Subgroup Meeting,’ April 30, 1995.

<sup>144</sup> *Inside US Trade*, ‘U.S., Korea Wrestle With New Shelf-life Requirement System,’ Vol. 13 No. 17, April 28, 1995

<sup>145</sup> *Ibid.*

<sup>146</sup> BFE, MAFF, MTI, and MOHW, *op.cit.*

**Table 6-1. Difference on Each Issue Between Korea and the United States**

	<b>U.S. Request</b>	<b>Korean Position</b>
<b>&lt;The Implementation of Manufacturer-determined System&gt;</b>		
<ul style="list-style-type: none"> <li>□ Vacuum-packed, chilled meat</li> <li>□ Frozen Food</li> </ul>	<p>Jul. 1, 1996</p>	<p>- Jul. 1, 1996: CO2 injected - Dec. 31, 1997: the others</p>
<p>Frozen meat Other non-meat products</p>	<p>Jul. 1, 1996 Oct.1, 1995</p>	<p>Jul. 1, 1996 Jul. 1. 1996</p>
<b>&lt;The Interim Measure&gt;</b>		
<ul style="list-style-type: none"> <li>□ Vacuum-packed, chilled meat</li> <li>□ Frozen Food</li> </ul>	<p>50 days: Pork 100 days: Beef</p>	<p>45 days: Pork 90 days: Beef</p>
<p>Frozen beef Frozen pork, poultry Sausages Minced meat Other non-meat products</p>	<p>12 months 12 months 3 months 3 months 12 months</p>	<p>12 months 9 months 3 months 3 months 9 months</p>

Source: MAFF, *Youtong Gihan Gwanryun Chujin Gyungkwa*.

At last, the dispute moved to the WTO dispute settlement procedures. Looking back on the negotiation process, the dispute began with a small event, and developed a serious trade conflict by adding a host of food products. All the Korean food products were virtually involved in this dispute as shown in the above Table. This enlargement of the dispute might be one of factors to prevent it from being resolved. USTR requested WTO consultations on May 3, 1995. The U.S. action came just four days after the talks in

Washington broke down without agreement.<sup>147</sup> To the coming WTO consultations, a U.S. official hinted that the two sides would try to settle the dispute before going to a WTO panel. “No country goes to a WTO case for its own sake,” the official said. “It’s to work out a solution.”<sup>148</sup> Interestingly, another U.S. senior official said that bilateral consultations would likely begin in early June, but “we do not expect to reach agreement in the bilateral consultations. We fully expect to request a panel hearing on this.”<sup>149</sup>

On the other hand, the Korean government released a paper for press after the negotiation in Washington failed to settle the dispute. In the paper, the government said that the WTO dispute settlement procedures would provide an opportunity to discuss this bilateral dispute again in the context of multilateral forum. Under the procedures, Korea could contend its own rights endowed by the WTO agreements. Thus, it would be possible to produce a relatively balanced resolution. The paper also said, the Korean government had a chance to tackle this issue with the grapefruit issue which has been already filed in the WTO. While conducting the WTO consultations, the government would implement the February plan to improve the overall food management system including the quarantine and inspection procedures according to its initial schedule. This way would be better to protect Korean’s public health and consumers’ choice of food products, the paper said.<sup>150</sup>

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<sup>147</sup> *Journal of Commerce*, ‘US, South Korea to Settle ‘Hog Dog’ Row at WTO,’ May 4, 1995, and *Joongang Ilbo*, May 5, 1995, p.1.

<sup>148</sup> *Inside US Trade*, Vol. 13 No. 19, May 12, 1995.

<sup>149</sup> *Journal of Commerce*, May 4, 1995.

<sup>150</sup> BFE, MAFF, MTI, and MOHW, *op.cit.*

## **6.4 Conclusion: Two Options of the Two Governments**

The final result of the negotiations under Section 301 procedure was another failure. Why did the negotiations fail again? In other words, why did the United States take the WTO dispute settlement procedure, instead of settling the dispute within the Section 301 procedure? Which factors caused the two governments to move to the WTO dispute settlement procedure? Here, we analyse this WTO option in terms of the two governments' policy choice.

In advance, it is necessary to assess the Section 301 negotiations in terms of the three factors as we did in the diplomatic negotiation process. Roughly, the United States could strengthen its negotiation power by mobilising the powerful Section 301, by which in fact it could get some concessions from Korea such as the extension of sausage shelf-lives and the introduction of manufacturer-determined shelf-life system. During these changes, the interest groups of the two countries affected the government's policy choices. The U.S. meat industry groups through a direct or indirect way pushed USTR to get Korea's complete concessions. The Korean interest groups claimed the Korean government not to give in to the U.S. requests, while they warned the U.S. government to suspend unfair trade pressures on Korea.

It was also true that the two governments made efforts to resolve the dispute throughout this negotiation process. In terms of the autonomy of the two governments, however, USTR to some extent could not act freely at its own discretion because the U.S. meat industry, with a large number of allies in Congress, aggressively urged USTR to open the Korean meat market. In fact, under this situation, USTR might have no choice but to prosecute this case in order to avoid a confrontation with both the U.S. meat industry and Congress. Dong Kyu Choi, who participated in the negotiations with USTR



over the Korean auto market in 1998, indicated the same point regarding USTR's position, stating that "What the United States is concerned with are the interests of the U.S. auto industry. For USTR, therefore, the only criteria for its success is to what extent the industry and Congress are satisfied with the final negotiated option."<sup>151</sup> On the other hand, the Korean government did not show its own discretion not only because the case was basically related with public health, which attracted most Koreans' concern, but also because the concerned Korean interest groups severely rejected the U.S. requests. To the Korean government, acceptance of the U.S. requests could provoke accusations by the public of giving in to the U.S. pressure.

In fact, there was a chance to produce an agreement in the last Washington negotiation in that the Korean government made a great concession to the United States. But, the complex competing relations among actors might prevent the two governments from producing a resolution. Under this situation, as illustrated in Figure 6-2, USTR had two options. One was to continue bilateral negotiations under Section 301 and then take retaliatory actions if the dispute was not resolved to the end. The other was to initiate consultation proceedings under the auspices of the WTO. USTR decided to take the case to Geneva. On the other hand, the Korean government also had the same options, but it could not take an initiative in choosing one of them in that it was basically defensive to the dispute.

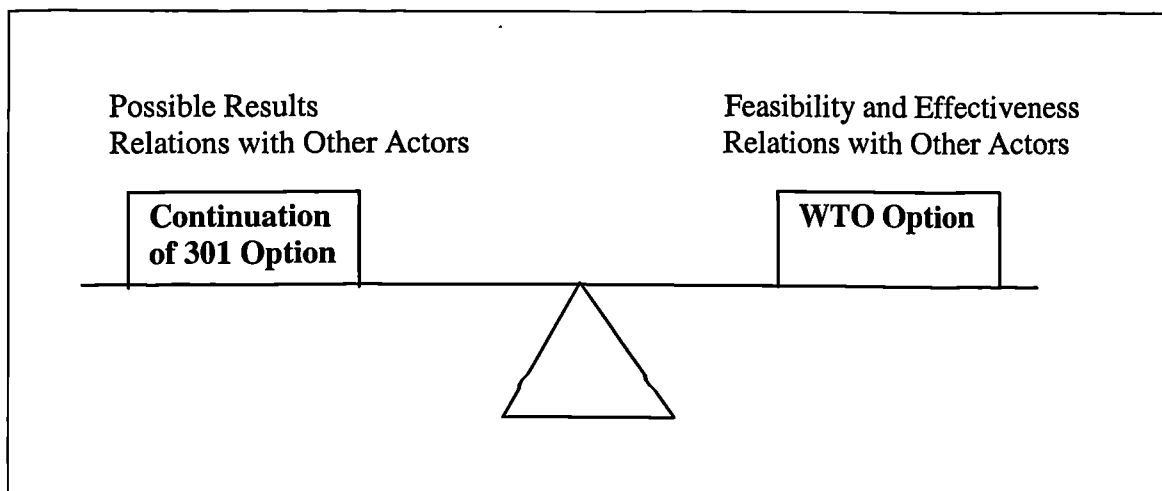
If so, we have to explain this final phenomenon of the Section 301 negotiations as a conclusion of this chapter. Why did the two governments choose the WTO option without completing the Section 301 procedure? Logically, the two governments would consider the two options and take the option that produces larger *net* benefits between

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<sup>151</sup> Dong Kyu Choi, 'Looking Back over the Korea-U.S. Negotiations on Autos,' *International Trade Law*, Vol.24, The Ministry of Justice, December 1998, p.226. [In Korean]

them. In this context, we analyse the pay-off structure of the two options in the view of the two governments, focusing on the United States. As Figure 6-2 shows, in assessing the two options, the two government would use the following evaluation criteria: the feasibility and effectiveness of the WTO option, the possible result of the Section 301 option, and the relationship of other actors to the two options.

**Figure 6-2. Two Options of the Two Governments**



***On the surface***

On the surface, USTR attributed the failure of the last Washington negotiation to the following factors: the Korean government classified vacuum-packed, chilled meat into two categories in terms of whether CO<sub>2</sub> is injected or not, and it offered to implement the manufacturer-determined system for CO<sub>2</sub> injected one from July 1, 1996, while for others from December 31, 1997. But, this proposal was far from the U.S. requests. In addition, the Korean government did not assure that it would publicly announce its plan to adopt the manufacturer system. With respect to the interim measure, USDA did not agree with

Korea's proposal; 45 and 90 days for chilled pork and beef.<sup>152</sup> On the other hand, the Korean side attributed the failure to the fact that USTR intended to avoid blame from the U.S. poultry industry because it failed to set a 12 months shelf-life for poultry products, which was not a main negotiation issue until the negotiations. As another reason, the Korean side suggested that USTR had difficulty in handling the dispute because each Korean ministry involved had a little different positions on the issues, so USTR might prefer WTO procedures which could hear one voice from the Korean government.<sup>153</sup>

There is no doubt that all the above factors presented by the two sides contributed to USTR's decision to refer the case to the WTO. But, from a different angle of USTR's policy choice, we could find other factors that might motivate USTR to resort to the WTO dispute procedures. As mentioned above, in order to break this deadlock in the negotiations, USTR had two options, either continuously to pursue bilateral relief under Section 301 or to seek a WTO dispute resolution. USTR might evaluate the two options in terms of merits and demerits of each option, and then might take the latter. I think that the following considerations could have actually led USTR to take this case to Geneva.

#### *The possibility of playing the WTO card in this case*

From the viewpoint of USTR, the first consideration is whether this dispute could be resolved through the WTO dispute settlement mechanism. Article 23 of the Understanding on Rules and Procedures Governing the Settlement of Dispute (DSU) requires WTO members to abide by WTO dispute resolution procedures in any action involving an impediment to the attainment of any objective of WTO agreements.<sup>154</sup> Of

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<sup>152</sup> MAFF, *op.cit.*, p.9.

<sup>153</sup> *Ibid.*, p.9.

<sup>154</sup> Article 23 [Strengthening of the Multilateral System] 1. "When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered

course, the Sanitary and Phytosanitary (SPS) agreement is one of the agreements. Although the Section 301 petition did not allege any Korean violation of the SPS agreement, it challenged the validity of Korea's SPS measures by contending the Korean shelf-life practices as arbitrary and discriminatory and not based on sound science.

According to Article 1 of the SPS agreement, "This agreement applies to all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade."<sup>155</sup> Because the SPS agreement aims at regulating the types of measures challenged in the Section 301 petition, a WTO panel might have concluded that the petition involved an alleged impediment to the attainment of the objectives of the SPS agreement. A panel reaching that conclusion would also conclude that Article 23 of the DSU requires the United States to take this dispute to the WTO dispute settlement procedures, rather than pursue bilateral negotiations.<sup>156</sup> Thus, the U.S. might conclude that there was no problem in taking this dispute to the WTO mechanism. That is, the United States could attempt to resolve the case under the WTO system.

### *The effectiveness of the WTO dispute procedures*

The second consideration of USTR is whether it can win easily the case under the WTO dispute procedures. As discussed above, the United States was charging so far that

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agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding." See, WTO, *Understanding on Rules and Procedures governing the Settlement of Disputes*, <http://www.wto.org/dispute/dsu.htm>

<sup>155</sup> WTO, *Agreement On the Application of Sanitary and Phytosanitary Measures*, <http://www.wto.org/goods/spsagr.htm>

<sup>156</sup> Article 23. 2. (a) states, "Members shall not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding." See WTO, *Understanding on Rules and Procedures Governing the Settlement of Disputes*, <http://www.wto.org/dispute/dsu.htm>

under the current system, Korea could set a short shelf-life period which effectively allowed no trade to take place, and that the Korean system was not based on sound science and substantially restricted trade. On that basis, USTR believed that it had a very strong case against Korea under the SPS agreement. In fact, during the last few months, USTR was collecting data on the Korean shelf-life practices to ensure that it had a good case. At that time, therefore, USTR was fairly convinced of the case, saying that it was “on the side of the angels.”<sup>157</sup> USTR might confirm that this strong position would bring an easy win to the United States.

On the other hand, the win could give the United States an opportunity to address SPS-related disputes with other countries as a side-effect. According to trade analysts, part of the tough U.S. stance with Korea reflected a desire to set a WTO liberalisation precedent on an issue it could win.<sup>158</sup> The message of course was aimed not only at Korea but also at Japan and China, they said. Furthermore, in terms of appropriateness of a challenge, in many ways, Korea’s barriers are more obvious than Japan’s. In Japan, unofficial relationships and cultural practices make impediments much harder to pinpoint.<sup>159</sup>

Furthermore, USTR expected that other WTO members would take part in the case against Korea. Under Article 4 (11) of the DSU, WTO members who have a substantial interest in consultations requested by another member may take part in the consultations if the member to which the request for consultations was addressed agrees.<sup>160</sup> USTR already

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<sup>157</sup> *Inside US Trade*, Vol. 13 No. 13, March 31, 1995.

<sup>158</sup> *Journal of Commerce*, ‘WTO Test Case Held Goal In US-S. Korea Flap,’ April 12, 1995.

<sup>159</sup> *Ibid.*

<sup>160</sup> Article 4 (11) states, “Whenever a Member other than the consulting Members considers that it has a substantial trade interest in consultations being held pursuant to paragraph 1 of Article XXII of GATT 1994, paragraph 1 of Article XXII of GATS, or the corresponding provisions in other covered agreements, such Member may notify the consulting Members and the DSB, within 10 days after the date of the circulation of the

had discussed a possible WTO case with EU, Australia, New Zealand, and Canada in an informal session in early March, and it had received favourable responses from these countries.<sup>161</sup> While requesting WTO consultations, indeed, the United States asked those countries to join its case against Korea at the consultation stage.<sup>162</sup> Multilateral support for the United States could increase the pressure on Korea to change its practices.

### *The relationship with Congress and the meat industry*

The third consideration of USTR is whether it could enhance its position vis-à-vis Congress and the U.S. meat industry by taking this dispute to the WTO procedures. First, USTR might have felt the need to demonstrate the effectiveness of the WTO disputes settlement mechanism to the Congress. During debates in Congress on the 1994 GATT agreements through which the WTO could be formally initiated, Clinton Administration officials assured members of Congress that DSU would effectively protect U.S.

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request for consultations under said Article, of its desire to be joined in the consultations. Such Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded. In that event they shall so inform the DSB. If the request to be joined in the consultations is not accepted, the applicant Member shall be free to request consultations under paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATT 1994, paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATS, or the corresponding provisions in other covered agreements.” See WTO, *Understanding on Rules and Procedures Governing the Settlement of Disputes*, <http://www.wto.org/dispute/dsu.htm>

<sup>161</sup> *Inside US Trade*, Vol. 13 No. 13, March 31, 1995.

<sup>162</sup> To the U.S. proposal, *Inside US Trade* reported other government’s responses: “One foreign government official said it is unusual that the U.S. is asking countries to join in the consultation phase instead of waiting until a panel is being formed. Another foreign official said that his government is likely to first exhaust its bilateral options with Korea before attempting to join a multilateral effort. He emphasised that failure by other countries to join the U.S. in the WTO proceedings does not necessarily mean they do not support the U.S. or do not have an interest in the case. Instead, they may not have exhausted their bilateral options, he said.” See *Inside US Trade*, Vol. 13 No. 19, May 12, 1995.

interests.<sup>163</sup> If the Administration fails to prove this assurance, the Administration politically would be seriously damaged. The Clinton Administration thus had a strong incentive in demonstrating that the WTO procedures could be used to force the removal of foreign trade barriers regarded by the United States as contrary to the WTO. In this context, USTR might have selected this dispute as a good test case to demonstrate the effectiveness of the WTO procedures. Because USTR believed that it had a very strong case against Korea, it might have expected that a quick and complete win in this case would give credibility to its position on WTO dispute resolution, and thus would enhance its political position to the Congress. In addition, the deadline in the section 301 case for resolving the dispute or imposing sanctions was November 1995.<sup>164</sup> However, if the dispute was referred to the WTO, USTR legally could not pursue further unilateral action under Section 301 until the WTO proceeding end. Thus, the WTO option would protect USTR from Congressional criticism while the dispute is in Geneva, and would also give a good excuse for its own failure to retaliate if a panel were to determine that Korea had not violated the SPS agreement. Thus, the WTO option would be very attractive to USTR in the context of the relationship with Congress.

Secondly, with respect to the U.S. meat industry, the industry strongly forced USTR to acquire Korea's quick concessions since the dispute occurred. As a way to accomplish its objective, the industry mobilised all the possible measures such as Section 301 petition and Congress. Even if the WTO option could take more time to produce a resolution, from the long perspective, it could be compatible with ultimate objectives of the industry. In other words, the WTO option at least would not be rejected by the U.S.

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<sup>163</sup> Judith H. Bello and Alan F. Holmer, 'U.S. Trade Law and Policy Series No. 24; Dispute Resolution in the New World Trade Organisation: Concerns and Net Benefits' *International Lawyer*, Vol.28 No.4, 1994, p.1102. And I. M. Destler, *American Trade Politics*, 3<sup>rd</sup> Edition, Institute for International Economics, Washington DC, 1995, pp.245-6.

industry. The imposition of unilateral sanctions under Section 301 might ultimately force the Korean government to open its market further, but it also might risk angering Korean consumers and provoking anti-U.S. actions in Korea. Because of these possible negative developments, the industry probably would accept a peaceful solution that does not risk the current image of U.S. meat products in the Korean market. Of course, if the WTO challenge would not produce results, USTR would be criticised by the industry for giving up the 301 bilateral procedures. But, USTR was confident in the case, so it could choose the WTO option in spite of the risk.

#### ***The possible results of the bilateral negotiation under Section 301***

The last consideration of USTR is what are the possible results of continuing bilateral negotiations under Section 301. USTR might recognise the vulnerability of Section 301 procedures under the WTO. Its unilateral sanctions under Section 301 might be challenged in the WTO by the Korean government. As mentioned above, Article 23 of DSU requires WTO members to keep WTO dispute settlement procedures in any action involving an impediment to the attainment of any objective of WTO agreements.<sup>165</sup> Thus, although USTR continued with the Section 301 option, it could not have authority under the WTO to impose sanctions that result in other violations of U.S. obligations to Korea under the WTO agreements.<sup>166</sup> Rather, it is very likely that the imposition of Section 301 retaliation would give the Korean government a legal basis for challenging U.S. action in the WTO. The Korean government was reluctant to use the WTO procedures. But, who

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<sup>164</sup> *Inside US Trade*, Vol. 13 No. 19, May 12, 1995.

<sup>165</sup> Under the WTO option, the focus of the dispute is whether the Korean practices in question violate the SPS agreement. On the other hand, the bilateral approach under Section 301 focuses on alleged violations of the three U.S.-Korea agreements.

<sup>166</sup> Because of this, WTO opponents in Congress argued that the DSU largely undermined the ability of the United States to act unilaterally under Section 301. But, the Clinton Administration rejected publicly this argument.



guarantees that the Korean government would not seek a WTO challenge in any case? Rather, it is likely that Section 301's retaliatory actions and the following Korean consumers' resistance might urge the Korean government to take the WTO procedures. In this case, the United States would be on the defensive under the WTO procedures. Therefore, it seems that at that time the United States could not but choose the WTO option.

Section 301 trade law also allows USTR to use WTO remedies if and when a petition alleges a violation or impairment of U.S. benefits under a WTO agreement.<sup>167</sup> In such cases, USTR would base its Section 301 determination on the outcome of the WTO procedure, and would seek authority from WTO to retaliate if a violation is determined. Furthermore, USTR would take the offensive and force Korea to justify its current shelf-life regulations under the SPS agreement. Although the U.S. meat industry did not allege any violation of the SPS agreement, USTR might contend that the Korean shelf-life regulations in question are not based on scientific principles, are maintained without sufficient scientific evidence, and are applied in an arbitrary or unjustifiable way.<sup>168</sup> In my view, USTR was convinced that it could allege a violation or impairment of U.S. benefits under the SPS agreement on any or all of the above grounds.

In sum, continuing the Korean shelf-life case under Section 301 could lead USTR to an endless deadlock, and force USTR either to back down or impose Section 301 sanctions and risk a successful WTO challenge by the Korean government. Either outcome

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<sup>167</sup> Section 303 of the Trade Act of 1974, as amended, requires the use of international procedures for resolving the issues to proceed in parallel with the domestic investigation. The USTR, on the same day as the determination to initiate an investigation, must request consultations with the foreign country concerned regarding the issues involved. The USTR may delay the request for up to ninety days in order to verify or improve the petition to ensure an adequate basis for consultation. See J. Bhagwati, 'Aggressive Unilateralism: An Overview' in J. Bhagwati and H.T. Patrick (eds.), *Aggressive Unilateralism*, London, Harvester Wheatsheaf, 1990, p.41.

would be politically damaging to USTR. Moreover, the Section 301 option could take longer than a WTO option if USTR could face a WTO challenge by the Korean government after long bilateral consultations. These considerations may lead USTR to the belief that a quick resolution would be made through a multilateral mechanism rather than through bilateral negotiations. At that time, therefore, the best option for USTR could be to take this dispute to Geneva.

*From the viewpoint of the Korean government*

Korea was essentially on the defensive in the dispute. Its key concern was how to defend its interests. A main question of the Korean government was how to find an equilibrium point at which the two countries' interests could be satisfied. Namely, to what extent does the government open its meat market to meet the demands of the interest groups in the two countries? As the U.S. requests grew stronger and broader, the Korean government's options were narrower. Since the United States had no intention to retreat during the Section 301 negotiations, the Korean government was obliged to take one of the following two options. One was to accept all the U.S. requests before a WTO challenge of USTR. The other was to continue consultations with USTR under the WTO dispute settlement procedures. Which option was better for the Korean government?

The government seemed to be reluctant to face a situation where Korea had to combat with the United States at the dawn of a new era of the WTO. The government believed that the situation served to deteriorate overall trade relations with the United States as well as other members. In this context, the government might have preferred this dispute to be resolved through dialogue and consultation that had usually guided the past relations between the two governments. But, as long as the Korean government could not

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<sup>168</sup> OECD, *Food Safety and Quality: Trade Considerations*, OECD Publications, Paris,

accept the U.S. requests, there was no choice but to go to Geneva. If so, what factors caused the Korean government to consider the U.S. WTO challenge as an acceptable option despite its unwillingness towards the WTO procedures?

In the Korean government's view, the only practical solution was to accept the U.S. requests unconditionally. If the possible worst result in the WTO is the same as Section 301 retaliation, any government would take the WTO procedures. By taking the WTO option, the Korean government might find it politically more acceptable to offer concessions in the context of a WTO procedure than in response to purely bilateral negotiations under Section 301. Most Koreans have criticised bilateral U.S. trade initiatives, particularly where Section 301 sanctions have been threatened. Considering this circumstance, the Korean government might be convinced that it would be politically easier to settle this dispute on a multilateral dispute settlement procedure. Under the Section 301 option that is more sensitive politically, there would be a high possibility for the government to be accused of surrendering to U.S. pressure.

In addition, under the WTO procedures, the United States is not entitled to immediate referral of its complaint to a WTO panel. Article 4 of DSU requires USTR to engage in a 60-day period of consultations with Korea prior to requesting the establishment of a panel.<sup>169</sup> During these consultations, USTR is supposed to explain its legal and factual basis for any alleged violations or impairment of benefits under the SPS agreement.<sup>170</sup> Thus, the Korean government would have a good opportunity to evaluate the U.S. allegations again in terms of the legal aspect, and then could decide whether to

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1999, pp.14-5.

<sup>169</sup> Article 4 (7) of the DSU prescribes, "If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the complaining party may request the establishment of a panel. The complaining party may request a panel during the 60-day period if the consulting parties jointly consider that consultations have failed to settle the dispute." See WTO, *Understanding on Rules and Procedures Governing the Settlement of Disputes*, <http://www.wto.org/dispute/dsu.htm>

offer concessions in advance of a panel arbitration or to continue a panel. For these reasons, the Korean government also might have preferred to accept the WTO option rather than give concessions now. Consequently, there was no obstacle to block proceeding of this dispute towards the WTO dispute settlement procedure. In the next section, we will trace negotiations under the WTO procedures that lead an agreement of this dispute.

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<sup>170</sup> *Inside US Trade*, Vol. 13 No. 19, May 12, 1995.

## Chapter 7 Negotiation Under the WTO and Agreement

### 7.1 Introduction

The negotiations so far were a political process. But, under the WTO procedure, the disputing countries are supposed to argue the legal aspect of the dispute. Nevertheless, another consultation process before panel arbitration is offered to settle the dispute in a political manner. This consultation is the last chance to reach a mutually satisfactory resolution through negotiation and compromise. Up to this point in time, most WTO cases virtually had been resolved during this consultation period before moving to a panel.<sup>1</sup>

When the issue moves to a panel process, it is impossible to consider a political resolution. Under the panel, panellists examine only legal aspects concerning whether the issue in question violates the relevant rules or impairs the other side's benefits of the WTO agreements. That is, the panel rules on disputes by reference to WTO rules and general international law, rather than trying to broker a mutually satisfactory solution. In addition, countries cannot veto adoption of the findings of the panel. They can appeal against panel rulings but the judgement of the appellate body is binding. Because of these legal aspects of the WTO procedures, it is true to say that the procedures need trade specialists, especially lawyers and government negotiators with lots of knowledge and experience in dealing with trade disputes.

Because of the legalistic aspects of the procedure, it is important whether the issue is involved in a WTO violation. In this sense, Kimberly Eliot pointed out that "It is providing protection for countries with no WTO violation, even though the United States has that same nominal amount of economic power, as long as it values the WTO as an

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<sup>1</sup> *Financial Times*, 'The World Trade System at 50,' May 18, 1998, Survey VI.

economic institution, it doesn't want to do anything to threaten the institution."<sup>2</sup> On the other hand, countries with a WTO violation are in more trouble, then the United States is going to be stronger in its threats because it will be authorised by the WTO to retaliate.<sup>3</sup>

Before looking at the negotiations under the WTO procedure, we briefly review the dispute settlement procedures of the WTO.<sup>4</sup> Figure 7-1 shows us the new dispute settlement procedures and deadlines. In the first instance, the disputing countries are enjoined to enter into consultation with each other, and to give sympathetic consideration to the representations made in this process. Sixty days for the consultation process have been set. All consultation processes have to be notified to the Dispute Settlement Body (DSB).

When consultations fail, a complaining country has a right to the establishment of a panel for the adjudication of its complaint. The panel is to consist of three persons, unless the parties to the dispute agree otherwise, in which case there will be five.<sup>5</sup> The panel is to produce a final report within six months of its establishment; and in cases that require urgent consideration, including cases involving perishable goods, the final report of the panel should be produced within three months. In no case should the delay in the submission of the report to the members of the WTO exceed nine months. In a non-violation complaint the onus of proof at the outset rests with the complainant to demonstrate that there has been a nullification or impairment of benefits. In the event of a violation complaint the onus of disproving nullification and impairment of benefits under the agreement rests on the member against whom the complaint has been brought.

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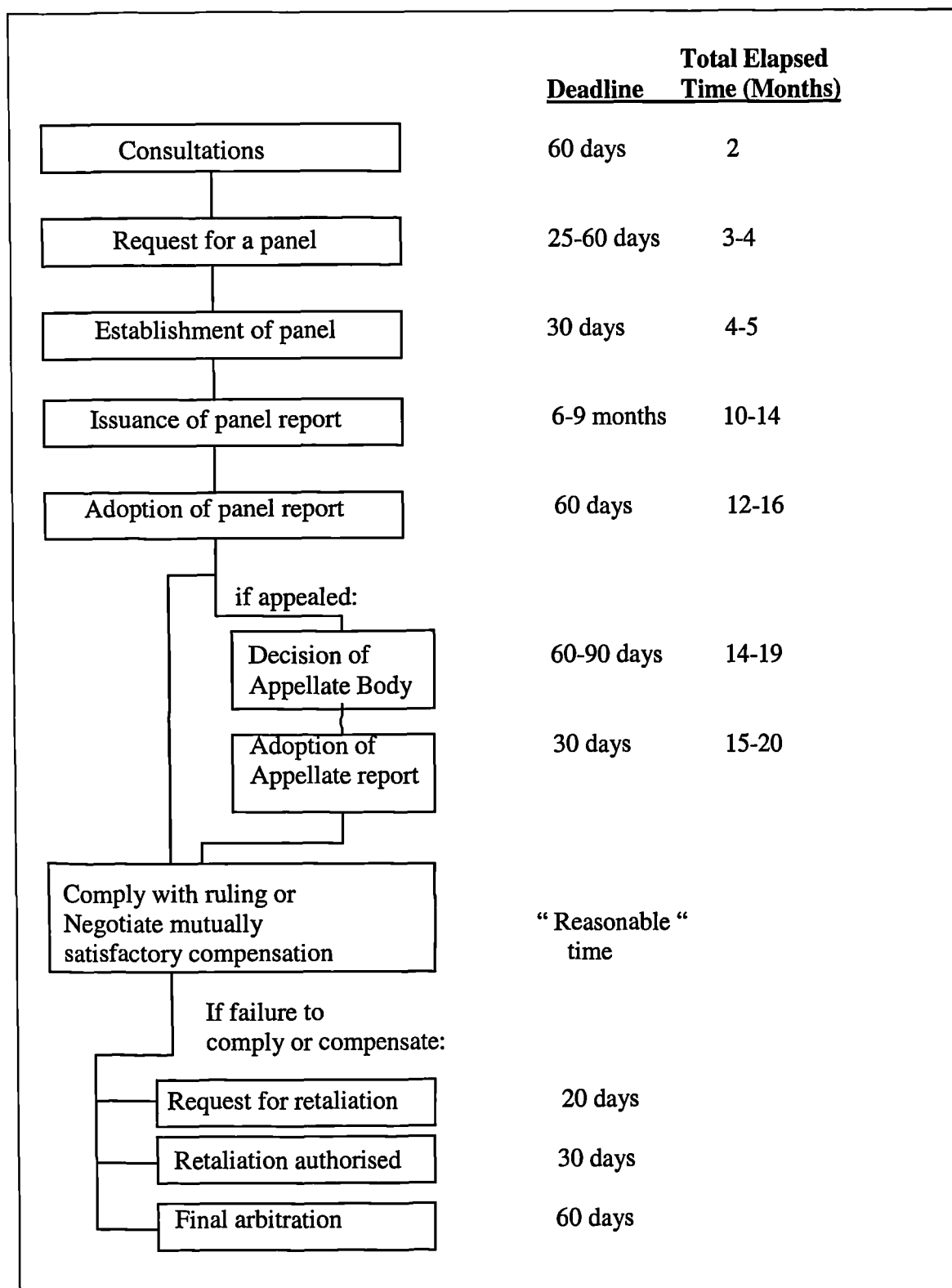
<sup>2</sup> Personal Interview, Kimberly A. Elliott (16 April 1999, Washington D.C.), IIE.

<sup>3</sup> *Ibid.*

<sup>4</sup> WTO, *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), <http://www.wto.org/dispute/dsu.htm>

<sup>5</sup> They are well-qualified governmental and/or non-governmental individuals, persons who have served in a representative capacity in the WTO system or its Secretariat, and individuals who have taught or published on international trade law. (Article 8 of DSU)

**Figure 7-1 WTO Dispute Settlement Procedures and Deadlines**



Source: Jeffrey J. Schott, *The Uruguay Round: an Assessment*, Washington, Institute for International Economics, 1994, p.127.

A country may appeal to the Appellate Body with respect to the final panel report.<sup>6</sup> A right of appeal from a panel report exists only on a point of law covered in the panel report and on legal interpretation developed by the panel. The Appellate Body shall conclude its deliberations not later than ninety days from the date of notification of the appeal. An Appellate report is to be adopted by DSB and unconditionally accepted by the countries.

The sanctions available consist of a recommendation or a ruling for the withdrawal of the offending trade policy measure and/or an authorisation to suspend concessions or other obligations on a discriminatory basis vis-à-vis the other member. Compensation is available on a limited basis when the immediate withdrawal of the offending measure is not predictable, and only on a temporary basis until the withdrawal of the offending measure.

The country concerned is to be given reasonable time to implement the recommendations, and is required to inform DSB of its intentions in relation to the implementation of the recommendations. The determination of what is 'reasonable time' is a time-period that is proposed by the country in question, although subject to the approval of DSB. DSB is to monitor the implementation of adopted panel reports; and the implementation of a report is to be kept on DSB agenda for a certain period of time.

This chapter will be divided into three sections. First, we trace the negotiations in the WTO, which finally led to an agreement. And after examining the agreement in contrast with the assertions of the two sides so far, we introduce responses of the two countries to the agreement. We also look at issues that were raised in the course of

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<sup>6</sup> The Appellate Body is to consist of seven individuals – three of whom may serve at any given time on an appeal. (Article 17[1] of DSU) The Appellate Body shall comprise individuals appointed by the DSB to serve for a four- year term. (Article 17[2] of DSU)



implementing this agreement. A whole conclusion of this study including this chapter is given in the next chapter.

## 7.2 Negotiation Under the WTO

### 7.2.1 Other Message of the U.S. WTO Card

The U.S. government requested WTO consultations on May 3, and WTO formally notified members that the United States was seeking consultations with Korea over the Korean shelf-life system.<sup>7</sup> On the same day, it also requested the Korean government to hold consultations regarding the dispute pursuant to Article 4 of DSU. The U.S. government suggested that the current Korean shelf-life regulations appeared to be inconsistent with the following agreements: (1) General Agreement on Tariffs and Trade 1994, Article III or Article XI; (2) Agreement on the Application of Sanitary and Phytosanitary Measures, Article 2 and 5; (3) Agreement on Technical Barriers to Trade, Article 2: and (4) Agreement on Agriculture, Article 4.<sup>8</sup> The two governments agreed to hold the first consultation on June 5-6. Canada on May 15 informed the Korean Embassy in Geneva of its intention to participate in the shelf-life consultation. Canada had interests the shelf-life for bottled water. As noted above, the United States had already asked several trading partners to join its case against Korea in an attempt to make a favourable circumstance on its case in the WTO.

Before we trace negotiation process under the WTO, it is necessary to stress the fact that the United States had another objective in addressing this case under the WTO mechanism. American food exporters have long charged that potential markets for their

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<sup>7</sup> *Inside US Trade*, 'U.S. to Notify Korea of WTO Talks Over Market Access Barriers,' Vol. 13 No. 13, March 31, 1995.

<sup>8</sup> MAFF, *Youtong Gihan Gwanryun Chujin Gyungkwa*, Internal Document, p.9.

products had been blocked in many countries by arbitrary, nonscientific SPS measures. The Clinton Administration decided to “shift to a markedly more aggressive policy to fight non-tariff barriers based on local health and safety regulations that restrict U.S. food sales in foreign markets.”<sup>9</sup> The policy aimed at increasing sales of all the U.S. food products—ranging from meat to grapefruit to wheat. The United States believed that new WTO trade rules, especially the SPS regulations could give Washington more power to open the potential markets for the U.S. food industry, and U.S. officials said they fully intended to use the power.<sup>10</sup>

Referred to as the SPS rules, the rules were approved in the last round of negotiations under the GATT after years of debate. It now fell to WTO to enforce the rules. Article 2 of the SPS agreement prescribes, “Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence,” and “Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.”<sup>11</sup>

Therefore, a country’s SPS regulations cannot be used as disguised trade barriers, but have to be based on scientific findings. On the basis of these tough rules, USTR decided to take big food trade disputes such as the Korean shelf-life system or the EU’s hormone meat ban straight to the WTO procedures instead of working things out on bilateral basis. “We have a new policy ... rather than trying to work it out bilaterally,

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<sup>9</sup> *Journal of Commerce*, ‘WTO Rules Hoped to Boost US Food Sales Abroad,’ USA, April 19, 1995.

<sup>10</sup> *Ibid.*

we're going to bring it directly to the WTO," a U.S. official said.<sup>12</sup> The U.S. industry had the same feeling as well. "This guarantees that we can now go after non-tariff trade barriers," said Al Tank, vice president of the National Pork Producers. "For American agriculture, how we deal with this is going to be very important for a long period of time."<sup>13</sup> As countries have been forced to lower import tariffs and other obvious trade barriers by the past GATT Rounds, they have often tried to erect new non-tariff barriers such as health or safety regulations. These non-tariff barriers have been irritating the United States, the biggest agricultural exporter in the world. In this context, head trade negotiator at the Agriculture Department, Paul Drazek said, "As countries look for ways to replace the restrictions they had to give up, these sanitary and phytosanitary issues are going to be more important."<sup>14</sup>

The shelf-life dispute could be seen as the first test in which the United States resorted to the new SPS rules under WTO. Sales of U.S. fruits and vegetables also were prevented by unfounded health concerns in a number of countries, including grapefruit in Korea, potatoes in Japan and a wide range of U.S.-grown fruits in Chile.<sup>15</sup> Thus, it is clear that there was another message of USTR to take this shelf-life dispute to the WTO procedures: for other countries to see the Korean case and remove non-tariff barriers as an example of the kind of response they also could expect from the United States.

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<sup>11</sup> *The SPS agreement*, <http://www.wto.org/goods/spsagr.htm>

<sup>12</sup> *Journal of Commerce*, April 19, 1995.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

## 7.2.2 Announcement of A New Plan by Korea

Just before the first consultation in early June, MOHW on May 31 announced a new plan for improving the current shelf-life system. It is perhaps true that the plan partly aimed at accommodating U.S. complaints, and creating a positive image of Korea in Geneva. The most meaningful thing of the plan was that MOHW specified the time-frame of adopting the manufacturer-determined shelf-life (MDSL) system on a phased-in basis. According to MOHW, the new plan was launched to reform the current system, taking into consideration that the current system could impede the sound development of the food industry and bring about the waste of resources because recommended shelf-lives in the current Food Code did not reflect the characteristics of each product due to the application of a single shelf-life to the products under the same product category.<sup>16</sup>

According to the plan, the products covered by its first step would be liberalised from the government-mandated shelf-life system, starting from October 1995. The products were: (1) foods which are less perishable when preserved and distributed under normal temperature, (2) foods which pose a low level of risk from the sanitary point of view, and (3) foods such as frozen sweets for which establishing the shelf-life is meaningless in light of their characteristics. As a result, 207 among the total 346 (75%) product groups would be subject to the first tranche of the programme.

Products eligible for the gradual implementation of the MDSL system by 1998 are: (1) foods which are easily perishable or whose shelf-life is short, (2) foods which require special distribution treatment such as frozen, chilled and warmed preservation, (3) foods which pose a high level of risk from the sanitary point of view, and (4) foods such as baby

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<sup>16</sup> *Press Release*, 'Preliminary Notification of the Revision Draft on the Food Code,' MOHW, May 31, 1995, *Joongang Ilbo*, June 1, 1995, p.25, p.27.

foods which are consumed by special groups of people. As a result, 114 of the remaining 139 product groups are liberalised.

The last 25 products excluded from the application of the MDSL system until, but as appropriate, eligible for the system after 1998 are: (1) foods which are easily perishable in an extremely short period of time, or the measures for the safety of which are difficult to be improved within a few years, (2) foods which require special preparations by manufacturers for their distribution management, and (3) foods which require an appropriate monitoring system. On the other hand, even during the implementation of the MDSL system, the shelf-life of products under the government system could be extended with the approval of submitted scientific evidence by the relevant agencies.<sup>17</sup>

### **7.2.3 The First Consultation in Geneva**

The first consultation under the WTO held in Geneva during June 5-6 went on with the key negotiators, Mr. Jang and Mrs. Lund. Canada joined, as an interested party, in the consultation.<sup>18</sup> In the talks, the arguments raised by the Korean side as a defendant can be roughly summarised as the following four points:<sup>19</sup> First, regarding the last Washington negotiation, Korea expressed its disappointments that the United States refused to accept the Korean proposal that it believed reflected most of the U.S. requests. Korea pointed out three issues. It first questioned the U.S. legal basis of taking this dispute to the WTO procedures, asking the United States for a clarification on this challenges of the Korean shelf-life system invoking both Agreements of TBT and SPS. According to Korea, Article

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<sup>17</sup> *Ibid.*

<sup>18</sup> *Inside US Trade*, 'Administration to Request WTO Panel in Korea Meat Dispute,' Vol.13 No.24, June 16, 1995.

<sup>19</sup> The Statement of Korea in the consultation.

1.4 of the SPS agreement<sup>20</sup> can be interpreted as meaning SPS measures that satisfy the requirements of the SPS agreement are immune from challenges under the TBT agreement. The TBT agreement also stipulated a similar provision. Article 1.5 of the TBT agreement says “the provisions of this Agreement do not apply to sanitary and phytosanitary measures as defined in Annex A<sup>21</sup> of the SPS agreement.”<sup>22</sup> Therefore, it was not appropriate for the U.S. government to challenge the Korean shelf-life system invoking both agreements, Korea asserted. In addition, if the United States was of the view that the shelf-life issue fell inside the area of SPS measure, then, Korea is also of the view that the Article 5.7 of the SPS agreement<sup>23</sup> would be applicable to the Korean shelf-life system. Thus, Korea did not violate the SPS agreement.

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<sup>20</sup> Article 1 [General Provisions] 1.4 “Nothing in this Agreement shall affect the rights of Members under the Agreement on Technical Barriers to Trade with respect to measures not within the scope of this Agreement.” See WTO, *Agreement On the Application of Sanitary and Phytosanitary Measures*, <http://www.wto.org/goods/spsagr.htm>

<sup>21</sup> Annex A [Definitions] “1. *Sanitary or phytosanitary measure* - Any measure applied: (a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms; (b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs; (c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or (d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety.” See WTO, *Agreement On the Application of Sanitary and Phytosanitary Measures*, <http://www.wto.org/goods/spsagr.htm>

<sup>22</sup> WTO, *Agreement on Technical Barriers to Trade*, <http://www.wto.org/goods/tbtagr.htm>

<sup>23</sup> Article 5 [Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection] 7. “In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of

The second point argued by the Korean side was regarding Article 4.4 of the DSU agreement.<sup>24</sup> The Article provides that any requests for consultations should be submitted in writing and should give the reasons for the request, including identification of the measures at issue and an identification of the legal basis for the complaint. Based on this Article, the Korean side asked the United States to make more specific clarifications regarding which parts of the Korean system were in violation of the WTO agreements, rather than touching upon the Korean system in general.

Thirdly, the Korean side refuted the U.S. claims that the current Korean shelf-life system restricted imports of food products and that the system was arbitrary and discriminatory. According to the Korean side, the fact that the shelf-life was determined by the government did not mean that Korea's shelf-life system impeded market access. Rather, the current Korean system provided a legal basis to allow manufacturers or importers to extend the government-mandated shelf-life of food products, and the government, whenever it deemed necessary, took appropriate measures based on scientific evidence submitted by the manufacturers or the importers. The Korean side insisted that the system was implemented in a way that did not cause trade problems nor constitute a disguised restriction on international trade and the system applied equally to both domestically manufactured and imported products. Thus, the current Korean system could

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available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time." See WTO, *Agreement On the Application of Sanitary and Phytosanitary Measures*, <http://www.wto.org/goods/spsagr.htm>

<sup>24</sup> Article 4 [Consultations] 4.4. "All such requests for consultations shall be notified to the DSB and the relevant Councils and Committees by the Member which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint, See WTO, *Understanding on Rules and*

not have any negative trade effects. Furthermore, the system had been in operation since 1989. The fact that imports of products of the U.S. interests had been increasing rather than decreasing between the two countries proved that the system did not constitute a disguised restriction on international trade.

Lastly, Korea argued that there was no international standard for the shelf-life of each category of food products, and as a result, the method of applying a risk assessment to setting shelf-lives was not yet established. Since the Codex Alimentarius Commission has not yet established a specific method and procedures for risk assessment, which could serve as a basis of scientific evidence, no one could make an authoritative judgement on the justifiability of a risk assessment by a certain country.

The United States responded in a similar manner that it took in the previous bilateral negotiations as follows: The Korean government-mandated shelf-life system had been operating arbitrarily without scientific bases. Furthermore, the system, far from the manufacturer system adopted by most of countries, had been virtually restricting trade. These reasons caused the U.S. government to take this dispute to the WTO. The key U.S. concern is that Korea should adopt the manufacturer system as quickly as possible. If the U.S. requests are not satisfied through consultations, it cannot help requesting a panel. In addition, it argued that the new plan recently announced by the Korean government used no tangible evidence.<sup>25</sup>

With these basic positions, the United States carried on the consultation, focusing on the scientific basis of the Korean system. The U.S. side raised some questions about whether risk assessments for food products are based on objective criteria or whether

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Procedures Governing the Settlement of Disputes.” *Understanding on Rules and Procedures Governing the Settlement of Disputes*, <http://www.wto.org/dispute/dsu.htm>

<sup>25</sup> Personal Interview E.



product quality and taste are considered in determining shelf-life dates.<sup>26</sup> A Korean official said that the consultations focused largely on the scientific basis of Korea's system of shelf-life requirements and neither side put forward a new proposal.<sup>27</sup> It appears that the United States tried to find out legal flaws on the scientific basis of the current Korean system as well as elements that are considered in violation of the SPS agreement in setting shelf-life dates. Questions prepared by USTR for consultations shows this point.<sup>28</sup> Of course, this was in anticipation of a possible panel.

The consultation also turned out to be another failure. In fact, USTR had not held out much hope for a resolution at the consultation because the two governments had been holding talks on the dispute since the U.S. initiated a Section 301 case in November last year.<sup>29</sup> The consultation was the "first and last" held as a result of a U.S. consultation request in the WTO, a U.S. official said.<sup>30</sup> As far as the United States is convinced that it had a good case, it is probably difficult to compromise with Korea without fulfilling the following core requests which it claimed so far: Korea should adopt the manufacturer system on the condition that it is implemented earlier than the time-schedule suggested by the Korean government. As an interim measure, Korea should establish a shelf-life of 100 and 50 days for chilled pork and beef, respectively, and allow meat imports to clear customs in three to five days.

Since the United States requested consultations with Korea on this dispute on May 3, it had to wait 60 days from that date before it could request the formation of a panel. After July 3, it could request a panel in anytime. After the consultation in Geneva, a U.S. official said USTR would request a panel as quickly as possible under WTO rules, which

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<sup>26</sup> *Ibid.*

<sup>27</sup> *Inside US Trade*, Vol.13 No.24, June 16, 1995.

<sup>28</sup> Questions of USTR for the consultation were formulated on the basis of the legal aspects. See Appendix II, Internal document of USTR.

<sup>29</sup> *Inside US Trade*, Vol.13 No.24, June 16, 1995.

would be July 3. At the panel, the United States would intend to argue that Korea violated the WTO rules not only by applying shelf-life requirements not based on sound science, but also by applying national treatment to imports on the ground that while Korea enforces the shelf-life dates to imported meat, it allows domestic meat usually to be sold in open-air markets without any dates stamped on the packaging, the official said.<sup>31</sup> As mentioned above, if the panel is open, it would be the first action brought by the United States in the WTO<sup>32</sup> and also the first test brought under the SPS agreement, the new rules on sanitary and phytosanitary measures.<sup>33</sup>

Canada expressed its interests in the shelf-life for bottled water and processed frozen fisheries.<sup>34</sup> During the consultations, it supported the U.S. positions, saying that Korean shelf-life requirements lacked scientific basis and blocked the normal trade flow, and that customs clearance procedures were too troublesome.<sup>35</sup>

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<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> Regarding the other dispute over Korean customs and inspection procedures, the two countries held separate consultations June 1-2. At that time, Korea gave the U.S. a paper explaining proposed changes to its procedures. The paper aimed to address the U.S. demands. According to a U.S. official, although the requirement to consult during a 60-day period had been fulfilled, the U.S. government was still evaluating the Korean paper to settle the dispute, so it had not decided whether to seek additional consultations with Korea or to request a panel. See *Inside US Trade*, Vol.13 No.24, June 16, 1995.

<sup>33</sup> *Ibid.*

<sup>34</sup> The Ministry of Environment announced on April 21, 1995 that it received negative comments on the shelf-life dates for bottled water from the United States, Canada, France, New Zealand. The comments resulted from the WHO submission of the Ministry's plan to set 6 months shelf-life for bottled water. The United States objected to the 6 months shelf-life on the ground that there are no shelf-life requirements for bottled water in America. France said the 6 months is too short in view of transport time. Canada insisted that the shelf-life be determined by manufacturers. See *Chosun Ilbo*, 'France and Canada's Negative Response to the Shelf-life for Bottled Water,' April 22, 1995, <http://www.chosun.com/w21data/html/news>

#### 7.2.4 Towards a Resolution

Korean civil groups including mass media were opposed to the Korean government's policy changes in the shelf-life requirements and customs and inspection procedures. The Korean Catholic launched a campaign for objecting the government policy of "abolition of government-mandated shelf-life system" and "pre-custom clearance, post-inspection."<sup>36</sup> According to a Korean newspaper, the Catholic in May decided to launch a signature-collecting campaign from all the diocese in Korea, along with the establishment of a new agency, the so-called "Coalition of Consumers and Farmers for Imported Food Safety."<sup>37</sup> Bishop Choi at Seoul diocese said the campaign aimed at urging the Korean government to take measures for safety on imported foods, while it aimed at giving the United States a warning that trade should be fair and moral based on social justice.<sup>38</sup> The Korean Catholic insisted that the United States should stop unfair trade pressures on Korea. The results of the signature-collecting campaign were supposed to be handed in to both the Korean President and the U.S. Embassy on August 4, the newspaper reported.<sup>39</sup>

Regardless of the deadlock of talks with the United States, MOHW kept on taking actions to improve the current food system. In the June 9 Economic Ministers Meeting presided by the President, MOHW Minister Lee said that with a view to intensifying an *ex post facto* control on foods, his Ministry would legalise a recall system in the second half

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<sup>35</sup> Personal Interview E.

<sup>36</sup> In the Korean Catholic, there was an organisation called "WooriNongchonSaligi UndongBonbu" in Korean, which was devoted to surviving the Korean agriculture through various activities. *Joongang Ilbo*, June 10, 1995, p.21.

<sup>37</sup> *Joongang Ilbo*, June 16, 1995, p.44.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

of this year and implement it by the first half of next year.<sup>40</sup> Under the recall system, the social responsibility of businessmen and consumer protection would be reinforced by making manufacturers responsible for recalling and destroying food products which had been found by inspection to contain hazardous elements, he said. The Ministry also would introduce the Hazard Analysis and Critical Control Points (HACCP) system,<sup>41</sup> and avoid trade frictions with foreign countries by harmonising food sanitary standards and specifications with international standards. Shelf-lives for products that are less perishable such as canned and dried products would be determined autonomously by manufacturers from late September 1995, he said.<sup>42</sup>

Senior officials from the concerned Ministries of the Korean government had a meeting in late June 1995 in an attempt to review alternatives to break the deadlock in the meat dispute. They decided to attempt to resume bilateral talks, while preparing for a panel in the WTO in terms of technical and legal aspects. So, they discussed a possible alternative that would be presented in the talks. Although they failed to produce a single alternative, the option suggested by BFE as the coordinator of the Ministries was as follows:<sup>43</sup>

(1) The introduction of the MDSL system

- Frozen foods: July 1, 1996
- Chilled foods: Vacuum-packed meat; July 1, 1996

General meat: July 1, 1997

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<sup>40</sup> *Chosun Ilbo*, 'An Introduction of Food Recall System and Liberalisation of the Shelf-life for Canned Products From September,' June 10, 1995, <http://www.chosun.com/w21data/html/news>

<sup>41</sup> The HACCP system is carried out like that: Product-by-product analysis is conducted on hazardous elements. This analysis is applicable throughout the whole process of selection of ingredients, production, distribution and consumption. Control standards is established for each stage of the process of focused control. Personal Interview D.

<sup>42</sup> *Chosun Ilbo*, 'An Introduction of Food Recall System and Liberalisation of the Shelf-life for Canned Products From September,' June 10, 1995, <http://www.chosun.com/w21data/html/news>

<sup>43</sup> MAFF, *op.cit.*, pp.11-2.

(2) The Interim Measure

- Vacuum-packed, chilled beef: 90 days
- Vacuum-packed, chilled pork: 45 days

This option was virtually one point retreat from the previous proposal in the April Trade Subgroup Meeting. At that meeting, the Korean government divided the vacuum-packed, chilled meat into two categories in terms of CO2 injection. Now, BFE proposed to liberalise it at the same time in an effort to meet the U.S. request. But, regarding the interim measure, MAFF insisted that the interim measure for the vacuum-packed meat should be re-examined because the experiment results of the Korea Food Development Institute had showed 62 days for beef and 38 days for pork. As a result of the Meeting, Korean officials at the Korean Embassy in Washington started to consult with USTR. But USTR warned, if the dispute was not resolved by July 3, when the mandatory consultation period expired, it would request the establishment of a panel.<sup>44</sup> In Washington, the two countries made a last-ditch effort to negotiate a settlement.<sup>45</sup>

One obstacle of the talks was the interim shelf-life periods for vacuum-packed meat. To the Korean proposal of 62 days and 38 days for chilled beef and pork respectively, Robert Cassidy of USTR said in his June 30 letter to Minister Counsellor E.Y. Chung of the Korean Embassy in Washington that the new dates were not supported “by such scientific studies nor by international practice” and furthermore, represent a significant departure from the Korean government’s previous offer of 90 days for chilled beef and 45 days for chilled pork in the last April meeting. He enclosed a bibliography of

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<sup>44</sup> *Ibid.*

<sup>45</sup> The two countries also were continuing to discuss a separate dispute over the food inspection procedures. According to *Inside US Trade*, USTR gave Korea a list of questions in response to the Korean proposal of the previous consultation. USTR had criticised the vagueness of the Korean proposal. Korea was expected to respond to the questions within a few weeks. See *Inside US Trade*, ‘U.S., Korea Try to Head off WTO Panel in Shelf-life Dispute,’ Vo.13 No.27, July 7, 1995.

some of the relevant scientific studies regarding shelf-life periods for chilled beef and pork.<sup>46</sup> He also charged that the new talks failed again because of the suggestion of the new interim periods for chilled beef and pork, even though USTR and the U.S. industry so far had been “flexible, and compromised on many points.” He warned that USTR would send a letter to the U.S. Trade Representative’s Office in Geneva, which requested a panel regarding this shelf-life dispute.

The mandatory 60-day consultation period expired without a final compromise between the two sides, but USTR did not immediately request a panel. The U.S. industry said that USTR was still holding out some hope that an agreement could be reached because Korea indicated it would like to resolve the dispute before Korean President Kim Young Sam visited Washington, DC, July 25.<sup>47</sup> With the U.S. warning of moving to a dispute settlement panel, negotiators of the two sides continued to negotiate a settlement.

The Korean Ambassador in Washington, Kun Woo Park, said July 12 that the dispute should be resolved bilaterally, rather than through the WTO.<sup>48</sup> In an address to the National Press Club, he expressed his hope that the dispute could be resolved before President Clinton met President Kim Young Sam later that month. “I am optimistic,” he

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<sup>46</sup> The bibliography is as follows: (1) “Maximising Shelf Life of Beef for Export to Japan,” January 1991, G.R. Acuff, C. Vanderzant, Z.R. Dixon, Food Science and Technology Section, H.R. Cross, J.W. Savell, Meats and Muscle Biology Section, Department of Animal Science, Texas A&M University, College Station, Texas; Summary conclusion: “In this study, it was demonstrated that exportable beef products can be produced in a commercial facility having an acceptable shelf life of approximately 100 days.” (2) “Evaluation of Microbial Contamination of Pork and Shelf Life Prediction of Vacuum-Packaged Chilled, Fresh Pork,” January 13, 1995, Dr. C.L. Knips, Meat Science Section, Department of Animal Science, Iowa State University; Summary conclusion: “Based on both microbial numbers and sensory evaluation of 3 sets of vacuum packaged pork loins obtained from one pork operation and held at zero degrees centigrade over 9 weeks, it was determined that the useable shelf life of these loins was 7 weeks.” etc.

<sup>47</sup> *Inside US Trade*, Vo.13 No.27, July 7, 1995.

<sup>48</sup> *Inside US Trade*, ‘U.S. Threatens to File WTO Case Next Week in Korea Shelf-life Fight,’ Vo.13 No.28, July 14, 1995.

told reporters.<sup>49</sup> Clinton and Kim were due to discuss the bilateral trade relationship and cooperation in the APEC forum, in addition to a number of political and security issues, according to Ambassador Park. But he added that bilateral disputes, such as the shelf-life issue, would not be discussed. "It's beneficial for both the Republic of Korea and the United States to keep the overall situation in mind, rather than to allow sector-specific or industry-specific interests to dominate the trade relationship in detrimental ways," he said.<sup>50</sup>

In the meantime, a U.S. official also hinted that he expected an agreement to be reached before President Kim's July 25-28 visit.<sup>51</sup> U.S. and Korean officials continued to negotiate a resolution in Washington. In fact, through the July 3 Ministers Meeting, the Korean government removed the main obstacle of the talks by accepting the interim shelf-life requirements of 90 days and 45 days for vacuum-packed, chilled beef and pork. The data provided by Cassidy might enable the Korean government to change the previous position on the shelf-life for chilled meat. After resolving this key problem, U.S. and Korean negotiators continued to adjust some minor problems in making an agreement to settle the dispute.

As the last spurt to step up the pressure on Korea, the U.S. industry mobilised the Congress. The co-chairs of the Senate Beef Caucus, Max Baucus and Kit Bond, circulated a letter for signature June 30, which supported the WTO challenge of the Administration.<sup>52</sup> "The Korean government has privately expressed its strong desire to resolve the U.S.-Korea meat dispute before the President's visit," the senators said. "Thus, the next few

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<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> *Inside US Trade*, Vo.13 No.28, July 14, 1995, and *Joongang Ilbo*, July 18, 1995, p.26.

weeks are a prime opportunity for the United States and Korea to reach a mutually acceptable resolution.”<sup>53</sup>

The letter was sent to President Clinton on July 17 with 44 senators’ signatures.<sup>54</sup> In the letter, the senators said the U.S. beef and pork industries are vital components of the U.S. economy, with employment of tens of thousands of Americans and operations in each of the 50 states.<sup>55</sup> They also pointed out that: even if Korea holds the potential of becoming a huge market for the U.S. meat products, the Korean market is unacceptably closed. Currently, U.S. meat exports to Korea are blocked by unscientific shelf-life requirements and cumbersome customs and inspection procedures, costing the U.S. beef and pork industries more than \$240 million last year, and this amount was expected to rise to over \$1 billion by the turn of the century if Korea failed to change its practices. In this context, they said “We applaud your decision to proceed with a World Trade Organisation panel action against Korea, and urge you to stand firm in any upcoming negotiations on this issue.” Considering that the coming weeks before President Kim’s visit would provide a prime opportunity to resolve this dispute and open the Korean market once and for all, they pressured the Administration, stating “We strongly urge you to make resolution of this issue a top priority and to emphasise to President Kim the importance of reaching a mutually satisfactory settlement before his visit, or the United States will have no choice but to let the WTO decide.”<sup>56</sup>

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<sup>53</sup> *Ibid.*

<sup>54</sup> Among the senators who signed the letter were Majority Leader Bob Dole, Finance Committee Chairman Bob Packwood, and trade subcommittee Chairman Charles Grassley, See *Inside US Trade*, ‘U.S., Korea Reach Agreement to Settle Meat Dispute, Head off WTO Case,’ Vol.13 No.29, July 21, 1995.

<sup>55</sup> Letter of Senators to President Clinton on July 17.

<sup>56</sup> *Ibid.*



In adjusting minor problems for an agreement, U.S. and Korean negotiators were confronted with three major problems.<sup>57</sup> One was about a side letter suggested by Korea, which contained “factual” statements of the current Korean shelf-life management system. When Korea accepted the 45 and 90 day shelf-life for vacuum-packaged beef and pork, it proposed this letter with a view to making up for the lack of scientific evidence on those shelf-lives. The contents of the letter were roughly as follows: According to the Korean laws and regulation, the shelf-life is a maximum period of time within which a product may be sold to consumers, and each importer is required to set autonomous shelf-life within this period of time recommended in the Food Code in such as appropriate storage temperature (zero to minus two degrees centigrade) in the cold chain system, appropriate packing etc. Therefore, importers should set the shelf-life for their own products autonomously within the shelf-life established in the Food Code taking into account the condition of the raw meat and its packing, the securing of appropriate delivery means including cold storage vehicles, and distribution condition of the cold chain system. The importers should assume full responsibility and take measures such as recalls in case of adulteration of their products within the autonomously designated shelf-life.<sup>58</sup> But, the U.S. side refused the side letter on the ground that it could be used as a basis to nullify bilateral agreements, even if Korea sent it to the United States in a unilateral way. In the end, they agreed that Korea reads the letter in the last bilateral consultation of this dispute and then the United States takes note.

Another problem regarded storage temperature for vacuum-packaged, chilled meat. U.S. negotiators insisted that “chilled” means at a temperature from -2 to +2 C and not previously frozen, so the storage temperature for chilled meat should be this scope. They emphasised that this issue is “a make or break point.” They also warned that if it were not

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<sup>57</sup> MAFF, *op.cit.*, pp.13-6, and Personal Interview C and D.

accepted, they would let a WTO panel decide. According to the U.S. side, U.S. meat firms were worrying about the situation in light of their experiences. Instead of the Korean quarantine agencies confirming the log of shippers, they may try to measure temperature after opening containers. In this case, the temperature may be over +2 C, which could cause products not to enter the Korean market. But, Korean negotiators refused the maximum +2 C because the current Food Code stipulates chilled meat preserves in storage facilities with from – 2 to 0 C, and the shelf-lives of 45 and 90 days were determined based on this storage condition, and even the data provided by the United States showed that chilled meats are preserved in 0 C or –1 C. After lots of discussion, they concluded that instead of specifying a specific temperature, Korea promised not to abuse storage temperature for the purpose of restricting trade.<sup>59</sup>

The last issue regarded an implementation problem. The United States insisted that this final Agreement should be abided to by Korea's local governments and non-government organisations as well, so the Agreement should include a similar provision of the Article 13 of the SPS agreement. Article 13 of the SPS agreement provides that "In addition, members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement."<sup>60</sup> But, Korea opposed the U.S. argument. As a member of the WTO, Korea

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<sup>58</sup> *Ibid.* p.13.

<sup>59</sup> Finally, this issue was included in the Agreement as follows: "(a) Effective July 1, 1996; the storage temperature of a product subject to a shelf-life requirement by the Korean Food Code shall be determined by the manufacturer of the product when such a shelf-life requirement is removed. (b) During the period October 1, 1995, through June 30, 1996; the Government of Korea shall ensure that it will not abuse the current requirements for storage temperature of any product in the Korean Food Code for the purpose of restricting trade." *The Agreement*, Annex 1- Shelf Life, II [In general] 1. Storage Temperature. See *Appendix III*, 'Republic of Korea and United States of America, Shelf-Life Agreement.'

<sup>60</sup> WTO, *Agreement On the Application of Sanitary and Phytosanitary Measures*, <http://www.wto.org/goods/spsagr.htm>

had to observe this obligation as a matter of course, thus, it was not necessary to prescribe the Article 13 in this Agreement. But, in the end, the U.S. argument succeeded in including this implementation provision into the Agreement.<sup>61</sup>

## 7.3 Agreement and Responses

### 7.3.1 The Agreement

Korea and the United States on July 20, 1995 reached an agreement to settle the dispute. U.S. Trade Representative Kantor and Ambassador Park signed the Agreement in Washington. The Agreement was sent to the Chairman of the Dispute Settlement Body in Geneva on July 20. As a subsequent measure of the agreement, USTR terminated the investigation of the Korean trade practices affecting U.S. meat imports under Section 301.<sup>62</sup> According to *Inside US Trade*, USTR had repeatedly threatened to ask for a dispute settlement panel in the WTO during the last negotiations, several times relenting when Korea asked for more time. Even the week before the agreement, USTR told the Korean side that a deal had to be reached by July 17, but in the end, USTR held additional talks and finally reached an agreement.<sup>63</sup>

Compared with positions of the two sides in the April Trade Sub-group Meeting under Section 301, Table 7-1 shows the final Agreement over main items of the dispute. The Agreement called for Korea to phase-out its current shelf-life requirements and

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<sup>61</sup> *The Agreement*, Annex1- Shelf Life, II [In general] 3. Implementation.

<sup>62</sup> With the Agreement, the two governments agreed to begin work immediately on drafting a joint letter to the WTO dispute settlement body laying out a solution to another case regarding Korea's residue testing and inspection of imported agriculture products, See USTR, *Press Release*, 'Statement by Ambassador Kantor,' July 20, 1995.

<sup>63</sup> *Inside US Trade*, Vol.13 No.29, July 21, 1995. Korean newspapers continuously reported that the United States would request a WTO panel due to the failure of bilateral talks. *Chosun Ilbo*, July 14, 1995, p.8, *Joongang Ilbo*, July 15, 1995, p.25, *Hanguk Ilbo*, July 14, 1995, p.2, *Hangyeore Sinmun*, July 14, 1995, p.2.

**Table 7-1 Comparison of the Agreement on the Shelf-Life Dispute**

	U.S. Request	Korean Position (April 1995)	The Agreement	The Current Korean System
<b>&lt;The Implementation of Manufacturer-determined System&gt;</b>				
<input type="checkbox"/> <b>Vacuum-packed, chilled meat</b>  <input type="checkbox"/> <b>Frozen Food</b>  * Frozen meat * Other non-meat products	Jul. 1, 1996    Jul. 1, 1996 Sep.1, 1995	- Jul. 1, 1996: CO2 injected - Dec.31,1997: the others   Jul. 1, 1996 Jul. 1. 1996	Jul. 1, 1996    Jul. 1, 1996 Jul. 1, 1996	
<b>&lt;The Interim Measure&gt;</b>				
<input type="checkbox"/> <b>Vacuum-packed, chilled meat</b>  <input type="checkbox"/> <b>Frozen Food</b>  * Frozen beef * Frozen pork, poultry * Frozen sausages * Minced meat * Other non-meat products	50 days: pork 100 days: beef   12 months 12 months 3 months 3 months 12 months	45 days: pork 90 days: beef   12 months 9 months 3 months 3 months 9 months	45 days: pork 90 days: beef   12 months 9 months 3 months 3 months 9 months	New New   12 months 1-9 months 3 months 3 months 9 months

Source: Press Release, MOFE, *Hanmi Sigpum Yutonggihan Hyupsan Tagyeul*. (Korea and the U.S. reached an agreement on the shelf-life dispute in English), July 21, 1995.

instead to allow manufacturers to set their own shelf-life dates. For vacuum-packed, chilled beef and pork and all frozen food, including beef, pork and poultry, Korea's new

system would come into effect on July 1, 1996. For all dried, packaged, canned or bottled products, the manufacturer system would go into effect on October 1, 1995. In the April Meeting, the United States insisted that frozen non-meat products should be liberalised from September 1, 1995, while Korea insisted that vacuum-packed, chilled meat with non-CO<sub>2</sub> injection should be liberalised from January 1, 1998. As a result, the two governments made mutual concessions in the manufacturer system.

The Agreement called for Korea to set shelf-life requirements as interim measures, which would allow trade to resume until the new system takes effect. For vacuum-packed, chilled beef and pork, 90 day and 45 day shelf-life respectively would be applied. In the April meeting, the United States had insisted on 100 day and 50 day shelf-life for those products, while Korea had proposed 90 days for beef and 45 days for pork.

The Agreement also covered other concerns raised by the U.S. meat industry. With respect to residue tolerances, Korea agreed to ensure, no later than July 1, 1996, that any maximum residue level it maintained for imported excretory organ meats would be consistent with the international standards established by the Codex Alimentarius Commission. With respect to pork chilling, Korea agreed to extend the chilling period for pork from the current 24 hours to 48 hours. With respect to tendering procedures, on the condition that shorter tender and arrival periods are permissible only in the case of large-scale supply disruption resulting from natural disaster, Korea agreed to provide at least 7 days advance notice prior to offering a tender for the purchase of pork and provide a period of at least 30 days for arrival of the product to carry out the contract provided.

### 7.3.2 Response of the United States

USTR Kantor announced in his July 20 public statement that U.S. efforts to open the Korean market to U.S. meat and other food products had resulted in a successful agreement between the two governments, saying that “We have enjoyed strong support from our industry and our Congress for working within the WTO to resolve this dispute and our two governments have demonstrated that, using the tools of the WTO, we can achieve a mutually acceptable result.”<sup>64</sup> And he continued, “The importance of this agreement to the tens of thousands of American workers in our beef and pork industries across all 50 states is manifest. Korea is the fourth largest market in the world for our agricultural exports, and the third largest market for our beef.”<sup>65</sup> Furthermore, the Agreement would allow as much as \$1 billion annually in additional exports to Korea by 1999, Kantor said in a July 20 press conference, “It’s fair to say we got everything we wanted.”<sup>66</sup>

Representatives of the petitioners, the U.S. meat industries, praised the Agreement, pointing out that per capita consumption of meat in Korea was much higher than in Japan, which was currently the biggest export market for U.S. meat.<sup>67</sup> Paul Rosenthal, a lawyer for the U.S. meat industry explained most of the contents of the Agreement in the press conference.<sup>68</sup> The U.S. government intensely fought over the interim shelf-life periods during the last negotiations, but in the end they were satisfactory to the U.S. industry, he said. Kantor also pointed out that Korea would also use U.S. standards for pork chilling.<sup>69</sup>

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<sup>64</sup> USTR, *Press Release*, July 20, 1995.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Inside US Trade*, Vol.13 No.29, July 21, 1995.

<sup>67</sup> According to the Statement by Ambassador Kantor, Koreans consume four times as much beef as the Japanese on a per capita basis.

<sup>68</sup> *Inside US Trade*, Vol.13 No.29, July 21, 1995.

<sup>69</sup> *Ibid.*

The Administration's willingness to use the WTO dispute settlement mechanism sent a signal to other countries, Kantor said. "We won't hesitate to use the dispute settlement process whenever U.S. products are subject to discrimination." In fact, USTR at that time was faced with the European Union's ban on beef produced with growth hormones.<sup>70</sup>

### 7.3.3 Responses of Korea

The Korean government issued a press release on July 20. In an attached paper with the press release, the government said the two trade disputes over food and agricultural products with the United States after inception of WTO reached an agreement through bilateral talks without a WTO dispute settlement panel procedure. The government said it might enhance Korea's image in the WTO and take an opportunity to improve the U.S. view to trade issues by settling these dispute smoothly. While introducing the MDSL system to harmonise the current system with WTO agreements and international standards, the government would take necessary measures to secure consumer safety, according to the paper. Manufacturer's responsibility for safety control would be strengthened by forcing them to recall and destroy deteriorated or rotten food products, and a cold chain system would be established as soon as possible, the paper said.<sup>71</sup>

The settlement of the disputes was reported with banner headlines in the Korean newspapers, generally critical of the Agreement. *Jungang Ilbo* of July 22 reported that:

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<sup>70</sup> *Ibid.*

<sup>71</sup> BFE, *Press Release*, 'Hanmi Siggpum Yutonggihan Hyupsan Tagyeul' (Korea, the U.S. Reached an Agreement to Settle the Shelf-life Dispute), July 21, 1995.

Quite unexpectedly, the Agreement came out soon. It had seemed to take a considerable time to reach a compromise. Judging from the Agreement, the two governments seemingly could reach the Agreement by conceding each other. Namely, while Korea showed a flexibility in early implementation of the manufacturer system, the United States showed a flexibility in the interim measures for some products.....Give and take is natural in negotiations between governments, but an important point is what and how. From when the manufacture-determined system would be implemented was the key issue in the April consultation, which caused the consultation to fail. So far government officials insisted that the issue was the last line not to be retreated. Nevertheless, they quietly retreated from the line before President Kim's Washington visit..... This negotiation showed again the Korean nature to lay stress on appearance rather than substance. Some of government officials involved in the dispute did not hide their dissatisfactions to the Agreement.<sup>72</sup>

Consumer associations and farmer groups in Korea issued their own statements one after another, which strongly criticised the Agreement. The Coalition of Consumers and Farmers for Imported Food Safety (the Coalition) July 21 announced a statement which urged the government to withdraw its decision to liberalise shelf-life dates.<sup>73</sup> Main points of the statement are as follows: The Coalition had strongly demanded that the government should reserve its decision to open the Korean market until a domestic cold chain system was established. But the government completely ignored this demand. The issues were so important in terms of public health that the Coalition had visited MOHW to

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<sup>72</sup> *Joongang Ilbo*, July 22, p.26. [http://search.joins.co.kr/asp/snews\\_search.asp](http://search.joins.co.kr/asp/snews_search.asp)

<sup>73</sup> *Chonsun Ilbo*, July 22, 1995, <http://www.chosun.com/w21data/html/news/199507>. And Coalition of Consumers and Farmers for Imported Food Safety, *Statement*, July 21, 1995.



convey public voices as it were, but failed to meet the Minister. So far MOHW tried to avoid consumers' voices. The government did not make public the negotiation process either and it suddenly announced its plan to liberalise shelf-life requirements, accepting all of the U.S. requests. This aroused suspicions of the government intention in settling the dispute, such that the Agreement just was a pork-barrelling to the United States just before President Kim's Washington visit. The adoption of the MDSL system and the extension of the shelf-life dates amounted to an abandonment of public health and life. If the government did not withdraw its decision, the Coalition would launch a national signature-collecting campaign to resist the Agreement.

The National Farmer Groups Council<sup>74</sup> issued a statement as well. In the statement, the Council expressed its disappointment and anger that the government policy to liberalise the shelf-life periods was tantamount to abandoning the domestic meat industry. According to the statement, meat products including beef and pork were normally distributed in a frozen condition because domestic distribution system relies on a traditional butcher shop with a small facility. For this reason, shelf-life requirements for chilled meat had been determined as 14 days for beef and 10 days for pork. Nevertheless, the government accepted the U.S. requests of 90 days for beef and 45 days for pork. By extending the shelf-life periods, the United States aimed at dominating the Korean meat market by exporting vacuum-packed, chilled meat under the Korean inferior distribution system, the statement stated.<sup>75</sup> The Council also demanded strongly in the statement that the government withdraw the liberalisation measures of shelf-life requirements.

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<sup>74</sup> The Council consists of 11 national agricultural groups such as the National Swine Raising Association.

<sup>75</sup> In fact, it is not likely that the liberalisation measures immediately affect the Korean beef and pork industries. The reasons are that beef has been limited to import by quota until 2000, so the vacuum-packed, chilled beef should be imported within the whole quota of each year. The quota of beef is as follows: 1995 (123,000 ton), 1996 (147,000 ton), 1998 (187,000 ton), 2000 (225,000 ton). On the other hand, the Korean pork industry in

## 7.4 Implementation Issues

There was a feud over Korea's implementation of the Agreement. It was a kind of interpretation problem of the Agreement. The friction centred on the scope of "other products" prescribed in the Agreement. According to the Agreement, Korea should notify WTO of the corresponding Harmonised System (HS) tariff heading or subheading for each item subject to a shelf-life requirement in the Korean Food Code, or for which such a shelf-life requirement is removed or proposed to be removed.<sup>76</sup> As the first case of the liberalisation of shelf-life requirements, Korea submitted to WTO a list of 207 food products that would be liberalised from October 1, 1995. But, the United States argued that the list did not cover all the products specified in the Agreement.<sup>77</sup> In interpreting the "other foods" paragraph of Part I. 4 of the Agreement, the two countries had different views. Paragraph 4 provides that "(For other foods) Effective October 1, 1995, the shelf-life for dried, packaged, canned or bottled products, other than those foods specified in paragraphs 1 through 3, shall be determined by the manufacturer of the product." Korea insisted that "other foods" meant 207 products that had been already handed in to the

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principle has competitiveness. It exported 11,329 ton in 1993 and 11,138 ton in 1994 and imported 5,704 ton in 1993 and 25,180 ton in 1994, See BFE, *Press Release*, July 21, 1995.

<sup>76</sup> Part II. 2 [References to Harmonised System headings and subheadings]: "Beginning October 1, 1995, the Government of Korea shall notify other members of the World Trade Organisation (WTO), through the WTO Secretariat, the corresponding Harmonised System tariff heading or subheading for each item subject to a shelf life requirement in the Korean Food Code or successor measure, or for which such a shelf-life requirement is removed or proposed to be removed. The subheading shall be at least at the 6-digit level, if one exists under the Harmonised System, otherwise it shall be at the 4-digit level." See Appendix III.

<sup>77</sup> *Inside US Trade*, 'U.S., Korea Resolve Meat Dispute, Continue Fight on Other Products,' Vol. 14 No.1, January 5, 1996.

United States during the negotiations.<sup>78</sup> But, the United States argued that it meant all the dried, packaged, canned or bottled products as the paragraph provides.<sup>79</sup>

While the first half of the Agreement, which dealt with meat products, listed numbers in the Harmonised System, the second half simply stated that Korea would liberalise shelf-life requirements for bottled, packaged, canned and dried products. A Korean official explained the backgrounds of stipulating the two paragraphs in a different way: The “other foods” virtually means the 207 products considering the negotiation process to reach the agreement. In fact, Korea originally wanted the 207 products to be listed in terms of HS numbers before the Agreement was made. But, Korea could not present the HS numbers of the products by the planned deadline of the last negotiations because the HS codes are basically different from the classification method employed in the Korean Food Code. Thus, it expected that it would take a long time to convert them and in some sense, it was impossible to convert them exactly.<sup>80</sup> Furthermore, in the case of converting them, the U.S. side demanded enough time to examine the conversion results whether the products it had interests in were included or not. For these reasons, the two sides agreed to set paragraph 4 without listing the HS numbers.<sup>81</sup>

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<sup>78</sup> In May 1995, as mentioned above, the Korean government alone took measures to improve its current system to alleviate the U.S. pressures regardless of the talks with the United States. Among the measures were included 207 products to be liberalised from October 1995. As a result, 139 among the total 346 product groups would be liberalised until 1998.

<sup>79</sup> Personal Interview E.

<sup>80</sup> According to Korea’s notification to the WTO of October 12, “The HS codification is basically different from the classification method employed in the Korean Food Code because of the differences of the basic purpose, nature, scope and coverage between the HS system and the Korean Food Code. Therefore, it is technically difficult to describe products in the Korean Food Code in full compliance with the HS headings and subheadings, since the headings and subheadings in the Korean Food Code do not perfectly match the HS codes.” See *Inside US Trade*, ‘Administration Questions Implementation of Korea Meat Agreement,’ Vol.13 No.44, November 3, 1995.

<sup>81</sup> Personal Interview E.

The Korean government argued that bottled, packaged, canned and dried products had high safety and preservation, but since there are various ways to pack, bottle, or dry, concrete specifications of products should be determined by the Korean Food Code.<sup>82</sup> A Korean official pointed out that there were no HS numbers that specifically cover canned, bottled, packaged and dried foods. “These are not criteria in the HS system,” the official said. The official dismissed the idea that the Agreement should cover all such products, and he noted that cheese, for example, comes in many forms.<sup>83</sup>

From this context, Korea indicated, in its notification to the WTO, that the description of products listed by the HS codes in the notification does not necessarily mean that those products are covered by the shelf-life change required under the Agreement. Discrepancies between the two classification systems would be resolved in favour of the Korean Food Code.<sup>84</sup> These comments provoked the U.S. side to rebuke. The United States said that it “spent days negotiating HS numbers” to ensure that the Agreement covered all the products it wanted to export. Korea’s decision to implement it based on a different classification system nullifies the Agreement, it charged.<sup>85</sup>

The Korean side insisted that Korea was willing to implement the Agreement faithfully. But it was difficult to implement the Agreement based on the Harmonised System, which did not completely correspond to the Korean Food Code.<sup>86</sup> Thus, the Korean government thought that a more pragmatic approach would be needed to resolve this friction that occurred in implementing the Agreement, and wanted to receive from the

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<sup>82</sup> The Korean Embassy in Washington, *Press Release*, ‘The Outcome of the Technical-level Meeting on Shelf-life Issue,’ January 22, 1996.

<sup>83</sup> *Inside US Trade*, Vol. 14 No.1, January 5, 1996.

<sup>84</sup> *Inside US Trade*, ‘Administration Questions Implementation of Korea Meat Agreement,’ Vol.13 No.44, November 3, 1995.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

United States a specific list of products which it believed should be covered by the Agreement.<sup>87</sup>

Mickey Kantor told his Korean counterpart at the APEC forum summit in November that if this implementation problem was not resolved by December 15, USTR would consider bringing a WTO case.<sup>88</sup> Kantor also identified the Korean shelf-life Agreement as one of five initial targets of USTR's new monitoring and enforcement unit.<sup>89</sup> But, Korea stressed that the issue was one of interpretation, not an alleged violation of the Agreement.<sup>90</sup> The two sides continued to spar over what other products were covered by the Agreement. At a subsequent meeting of continuous consultations of December 1995, the two governments held a technical-level meeting in Washington during January 16-7, 1996. In the meeting, the United States presented its interest products and Korea agreed to remove the shelf-life requirements for butter, cheese, processed cheese, baby food and baby formula by March 31.<sup>91</sup> But the two sides failed to resolve a disagreement over sterilised milk, and the United States reserved its rights to pursue this issue under the WTO dispute settlement rules.<sup>92</sup> By resolving the implementation problems, the longstanding shelf-life dispute arising from a small sausage incident virtually ended.

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<sup>87</sup> *Inside US Trade*, Vol. 14 No.1, January 5, 1996.

<sup>88</sup> *Ibid.*

<sup>89</sup> Kantor said that the unit, starting its operation from January 1996, would first look at the possibility of bringing a challenge against Korea in the WTO to resolve Korea's implementation problem on the shelf-life agreement. See *Inside US Trade*, 'Kantor Names Five Initial Targets of New USTR Monitoring Group,' Vol.14 No.2, January 12, 1996.

<sup>90</sup> The Korean Embassy in Washington, *Press Release*, January 22, 1996.

<sup>91</sup> USTR, *Press Release*, 'USTR Monitors Korean Shelf-life Agreement,' No. 96-08, January 22, 1996.

<sup>92</sup> *Journal of Commerce*, 'S. Korea to Ease More Shelf-Life Restrictions,' January 23, 1996.

## Chapter 8 Conclusion

We have explored a trade dispute concerning non-tariff barriers between Korea and the United States. Non-tariff barriers have been the main issues in recent trade disputes throughout the world. By analysing the shelf-life dispute in terms of the three-fold lens: negotiation power, interest groups, and government trade agencies, we expected to get a systematic knowledge of cause and result of this kind of market access disputes, especially between the two countries. The shelf-life dispute finally reached an agreement through a long negotiation process. Judging from the responses of the two sides, it is evident that the United States got most of the pie. With these results, here, we attempt to answer the main question raised in the first part of this study; What are the salient factors in the settlement of a new form trade dispute occurred by the market access problem? Negotiation power? Interest groups? Government trade agencies? Or all of them, then to what extent? Before answering these questions, I here summarise the main arguments over the shelf-life requirements raised by the two countries, even though there were many other issues during the negotiation process.

The arguments of the U.S. side are as follows: (1) The Korean shelf-life requirements for food products are arbitrarily short and are not set based on scientific evidence. (2) The barriers to imports arising from Korea's shelf-life requirements are exacerbated by delays in the sanitary and phytosanitary inspection procedures. On the other hand, the refutations of Korea are as follows: (1) Korea's regulation of shelf-life has not departed from any international standard, as defined in the SPS agreement. Given the relatively poor condition of the Korean food production and distribution industries, the government's direct involvement in the shelf-life issue is necessary in order to ensure the high level of food safety desired by the Koreans. (2) The Korean government has recently

reviewed the regulations and is in the course of preparing a major reform package of its shelf-life regulations.<sup>1</sup> (3) Delays caused by the backlog of cargo on the dockyard are unavoidable and beyond the control of the Korean government, given that the current shortage of infrastructure and facilities in Korean ports.

## **8.1 Negotiation Power**

As discussed in chapter 3, negotiation power is always changing with time. During the diplomatic negotiation process, Korea could keep its superiority on the negotiation power on the ground that it was the third largest importer for U.S. meat products. So it could refuse the U.S. requests regarding the sausage issue. But, new trade issues such as shelf-life requirements for vacuum-packed meats entered into the dispute, which had weakened Korea's position. That is, as the dispute was broadening, Korea had to defend many issues from the U.S. claims. Nevertheless, Korea kept on its superiority on the negotiation power until the United States initiated the Section 301 investigation. By mobilising a Section 301 action, the United States significantly reinforced its negotiation power by threatening Korean exports to the U.S. market. Moreover, the Section 301 action enabled the United States to convert the small sausage issue into a broad bilateral economic problem by issuing all the U.S. meat industry's requests.

In fact, the negotiation power of the two countries was reversed under the Section 301 action. Section 301 aims at pressuring a trade partner on the premise that the United States could close its own market if the trade partner does not open the market. Thus, the power of Section 301 depends on to what extent the partner is dependent on the U.S. market. The United States was the largest market for Korean products, so the Section 301

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<sup>1</sup> As discussed above, the Korean government announced its reform plan, which adopted

action provided the United States with decisive leverages to pressure the Korean government. Closing of the U.S. market would seriously damage the Korean economy. If Korea rejected the U.S. requests, it would endure a considerable export loss. Of course, the United States also would suffer losing the lucrative Korean meat market for a certain period because the retaliatory action would cause Koreans to refrain from buying U.S. meat products. At this point, Korea had to compare the benefits and damages of the possible options; to accept the U.S. requests, to find a middle point, or to endure retaliatory actions by keeping its initial positions. The Korean government took a risk in competing against the United States under the WTO dispute settlement procedures.

In principle, the WTO dispute settlement procedure is a legal process. When a small country has a legal legitimacy in the issue in question, the procedure could protect the country from the unfair trade pressure of a strong country. But, as far as the small country is weak on the issue, the procedure would be a more serious threat to the country in that the strong country could authorise retaliation actions by the international procedure. The WTO procedures are neutral. The party with a good case can strengthen its negotiation power considerably. Although there were controversies on Korea's violation of WTO agreements between the two countries, it seems to me that the United States was in a better position because Korea virtually had not presented scientific data on its shelf-life requirements for food products. In this sense, the U.S. WTO filing, although it was a precedent measure of Section 301 retaliatory actions, caused the balance of negotiation power decisively to tilt to the United States. In addition, given that the status and influences of the United States in the WTO and particularly the skill of its centralised trade bureaucracy, it is clear that a country with no legal basis could not beat the United States.

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the MDSL system on May 31, 1995.



As a whole, the United States gradually reinforced its negotiation power throughout the negotiation process. It brought new issues into the sausage dispute. And by initiating the section 301 investigation, it threatened the dependency of Korean economy on the U.S. market, the weakest point of Korea. Convinced that the WTO case was unfavourable to Korea, it took the dispute to the WTO. Through this process, the balance of negotiation power between the two countries was destroyed, finally the United States with a strong negotiation power could achieve its objectives. On the other hand, Korea at first was superior to the dispute based on the dependency of the U.S. meat industry on the Korean market. But, by losing a proper time to resolve the dispute, Korea entered into a miserable situation where it had no voice to the supplier despite being a big consumer. Finally, it was obliged to choose one of the two options; to open the Korean meat market or to lose the U.S. market. Considering that its exports heavily relied on the U.S. market, Korea could not help accepting the U.S. requests.

In addition, during the disputes, there were various trade issues such as IPR, medical device, communication, and services to be resolved between the two countries. Korea also was a defendant in these trade issues, so the United States virtually had many sources of leverage with which to pressure Korea. Furthermore, Korea often expressed its hopes of avoiding the WTO procedures. This Korean negative attitude to the WTO procedures might have contributed to USTR's decision to take this dispute to the WTO procedures. Judging from its arguments during the negotiation process, Korea to some extent had its own legal basis on the issues. Thus, it is strange that Korea should not have accepted a panel proceeding. Even though Korea could have lost the case in the panel, it could resort again to Article 10 of the SPS agreement that provides a two-year grace period for implementation. As noted earlier, negotiation resources that are mobilised by negotiators could be converted to negotiation power. Instead of carrying out the WTO

procedures to the end, Korea suddenly accepted the U.S. requests just before President Kim's Washington visit. This looks like an abandonment of negotiation, or a complete loss of negotiation power, or possibly the de-prioritising of trade issues within the overall issue-hierarchy of the bilateral political relationship.

## **8.2 Interest Group**

The interest group theory portrays the trade negotiation process as being ultimately controlled by interest groups, and views negotiation outcomes as being less shaped by government agencies than by a struggle among specific interest groups.<sup>2</sup> The theory of course focused mainly on U.S. domestic politics. Nevertheless, insights of the theory could be applied to an international trade dispute system as discussed in chapter 3. The petitioners, the three meat groups, were the main interest groups on the issues in the United States. On the other hand, public groups such as the Coalition of Consumers and Farmers for Imported Food Safety or the Citizens' Coalition of Economic Justice (CCEJ) were the key interest groups in Korea. In contrast with the United States, there was no organised activity from the Korean food industry producing the same kind of products as import food products such as sausages.

In the United States, the petitioners as exporters continuously raised their voice. Their claims were clear and simple: The Korean trade practices limited their exports and were not based on international standards, thus the U.S. government should remove the barriers pursuant to the relevant U.S. laws. The Section 301 filing was at the height of their vigorous activities. They strongly urged USTR to initiate a Section 301 investigation in a direct and indirect way. After that, they consistently claimed that USTR take Section

301 retaliatory actions if Korea would not open its market. With a view to ensuring their interests, they mobilised the Congress whenever the dispute faced the crucial point. Lawmakers backed the industry's claims by conveying their support to President Clinton, U.S. Trade Representative Kantor, and Korean Ambassadors.

The most important activity of the petitioners was that they had a lot of interactions with the government negotiators before, during, and after the negotiation.<sup>3</sup> Through these interactions, they checked the progress of the negotiations and put their opinions in the negotiation process. One industry official said, "What normally happens is that prior to the government's negotiations and after the government negotiations, usually the government meets with the private sector and says 'we're going to meet with the Koreans next week, and this is what we're going to tell them and this is what we're going to ask them, do you agree with this?' And then after the meeting they'll say 'okay, we've had the meeting, this is what they said, what do you think we should do now?'"<sup>4</sup> As a result, the interests of the U.S. meat industry were well absorbed into the negotiation process.

In addition, new issues brought new U.S. interest groups into the dispute. The U.S. poultry industry joined the dispute to achieve its interests that were not important at the beginning of the dispute. When this dispute moved to the WTO procedures, most of the U.S. food-exporting firms had something to do with this dispute. The increase of numbers of these self-oriented interest groups reinforced the voice of the U.S. private sector. Without satisfying these interest groups' demands to some extent, the U.S. government could not get an agreement with Korea. In this sense, it is perhaps true to say that the U.S. meat interest groups fairly shaped the agreement of this dispute.

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<sup>2</sup> S.D. Cohen, J.R. Paul, and R.A. Blecker, *Fundamentals of U.S Foreign Trade Policy*, Oxford, Westview Press, 1996, p.124.

<sup>3</sup> Personal Interview A.

<sup>4</sup> *Ibid.*

On the other hand, in Korea there were no well-organised interest groups that had direct interests in this dispute. Even KMIA had nothing to do with the main shelf-life issues. KMIA was just concerned with the requirements that its imported beef should be processed by its member firms before resale. Consumer associations and various agricultural producer groups were loosely connected with this dispute through the Coalition of Consumers and Farmers. In contrast with the U.S. side, whether it is formal or informal, the Korean interest groups did not have any dialogue channel with the government. Thus, they could not keep in close discussions with the government during the negotiations. The lack of communication might have prevented the Korean interest groups from putting their interests into the negotiation process. After the agreement being announced, the interest groups strongly criticised the government's decision. This shows that they did not have any chance to discuss the issues with the government in a face to face manner in order to adjust their positions.

In the beginning of the dispute, their interests could be protected by the government's position. They thought that short shelf-life periods needed to protect public health under the inferior Korean food industry, and that the government took appropriate measures pursuant to the relevant laws. Therefore, there was no need to articulate their interest positively. When the government started to change the position, the Coalition expressed its objections against the changes. Throughout the negotiations, instead of proactively putting their demands into the negotiation process, the interest groups usually responded *ex post facto* to the government's decisions after perceiving them through news media. Their activities such as the campaign for collecting signatures could affect the government's policy choice. But, the activities did not help to formulate a possible solution to satisfy both themselves and the U.S. meat industry. Only a mobilisation of the public without constructive dialogues with the government could not make an amicable

resolution. During the formal negotiations, it is likely that the Korean government was wandering around the middle point on a line whose ends were occupied respectively by the interest groups of the two countries. The two interest groups had no willingness to concede their demands, so if the Korean government selected one of them, the other would lose everything.

During the negotiations, the U.S. side seemed to think that the dispute could be resolved by only the Korean government's decision. But, in reality, the Korean government's discretion was narrowed. The government could not act freely because it recognised well that any change in its position evidently would cause the interest groups' vigorous criticism. In this sense, it can be said that the Korean interest groups virtually affected the government's policy decision. But, as a whole, the absence of constructive communications between the Korean government and its interest groups caused the government to make a decision far from the interest groups' claims. The Korean government accepted most of the U.S. requests. Finally, the interests of the Korean interest groups were dismissed by the Korean government, while the interests of the U.S. meat industry groups were fulfilled.

These results for the two countries could be well explained by the logic of collective actions of Olson. The U.S. interest groups are self-oriented groups, while the Korean Coalition is a kind of public interest group. The self-oriented groups are usually small and seek interests that only their members enjoy.<sup>5</sup> Public interest groups are large and seek interests that do not benefit their membership directly but are enjoyed by the general public. According to M. Olson, "Unless the number of individuals in a group is quite small, or unless there is coercion or some other special device to make individuals act in their common interest, rational, self-interested individuals will not act to achieve

their common or group interests”<sup>6</sup> When this assertion is applied to this dispute, we cannot expect the positive activities of the 36 diverse interest groups which were the members of the Coalition of Consumers and Farmers for Imported Food Safety. The Coalition was a temporary organisation for this dispute, comprised of large associations such as CCEJ and NACF. Any member therefore would not pay for the price of achieving their interests. Rather they might choose to be a free-rider, partly because there were many other groups to pursue their interests and partly because the benefits from the dispute would not be enjoyed by them exclusively. Strict regulations regarding food products such as short shelf-life period could guarantee food safety or quality much better, but the benefits would be enjoyed equally by Koreans regardless of their contribution to the Coalition. The Coalition’s claims were very popular with Koreans, but the actions to achieve these were lacking. In this sense, it is no exaggeration to say that Koreans as the beneficiaries preferred free-riding. Consequently, the political result is that the Korean government could dismiss their claims.

On the other hand, the U.S. interest groups were relatively small and represented a specific business area. They also would consider that if they succeed in this dispute, they could exclusively enjoy the achievements that must be larger than their efforts.<sup>7</sup> As a result of this consideration, they made lots of efforts to remove the Korean trade barriers that restrict their exports. And they succeeded.<sup>8</sup> Consequently, the small groups defeated the

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<sup>5</sup> R.J. Hrebenar and R.K. Scott, *Interest Group Politics in America*, London, Prentice-Hall, 1982, p.5.

<sup>6</sup> M. Olsen, Jr., *The Logic of Collective Action*, Cambridge, Harvard University Press, 1965, pp. 1-2.

<sup>7</sup> An U.S. industry official said, “Korea has been the third or fourth largest market for meat, so it’s pretty important. We see considerable potential for growth in the Korean market. We have spent a lot of time working on the Korean market.” Personal Interview A.

<sup>8</sup> Probably, a U.S. food firm, which had a trade problem with Korea, resorted first to its industry association, and then the association pushed USTR to sort out the problem. Other firms or small business groups with similar problems might take the same course. They

large group. “The outcome of the political struggle among various groups in society will not be symmetrical...The small oligopolistic industry seeking a tariff or a tax loophole will sometimes attain its objective even if the vast majority of the population loses as a result.” Olsen said.<sup>9</sup>

### 8.3 Government Institution

The United States’ one-sided win could be well explained by abilities of the two governments. Institutionalists insist that government agencies play a positive role in the political process as independent actors in their own right. Government officials as policy experts develop and shape the understanding of policy issues and alternatives.<sup>10</sup> Regarding this dispute, the two governments were in the same situation in that they had to make a solution to satisfy both their domestic interest groups and the other government. But, there was a big difference in exploring the solution between the two governments.

*In the U.S. case*, first, the government agencies associated with this dispute had the same position in opening the Korean meat market.<sup>11</sup> They had no reason to object to it. Thus, they could be unified and efficient. Furthermore, the efficiency was supported by the structure of government trade agencies. USTR could handle the dispute with much discretion because it had a comprehensive negotiation authority endowed by the U.S. trade laws. Throughout the negotiations, USTR took its initiatives in dealing with this dispute. It persuaded the meat industry to withdraw its Section 301 petition before the APEC

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respectively tried to be given a priority to their interests in the negotiation process. Thus, USTR could not ignore any interest raised by the small groups.

<sup>9</sup> M. Olsen, Jr., *op.cit.*, pp. 127-8.

<sup>10</sup> M. Noland, ‘Chasing Phantoms: The Political Economy of USTR,’ *International Organisation* 51, 3, Summer 1997, pp.367-8.

<sup>11</sup> From the perspective of the U.S. trade policy, opening foreign markets for U.S. exports has been given a priority by the U.S. government as discussed in Chapter 4.

conference. By leaving the lobbying of the industry alone, USTR could drag the Congress into the dispute in a smooth way. Before taking this dispute to the WTO, USTR contacted other countries and got favourable responses to support the U.S. side. It also pursued a resolution of all of the food issues rather than only the sausage issue through the WTO procedures. By taking the Florida-citrus issue to the WTO procedures,<sup>12</sup> USTR sent a signal to the Korean government that a possible WTO action on this dispute was not just a threat, but real. Furthermore, USTR rejected Section 301 retaliatory actions based on the violation of the bilateral agreements despite the strong demand of the industry. In addition, other trade problems such as popcorn inspection and chocolate labelling occurred. USTR resolved them by properly linking them with this impending shelf-life dispute. The Korean government accepted the U.S. complaints on these issues to make a favourable atmosphere for the shelf-life dispute. By employing proper negotiation resources, USTR well managed to resolve trade issues. In short, USTR played an independent role throughout the negotiations.

The most important objective of USTR was to insure a substantial increase of U.S. exports. When actions were necessary, USTR took them. In this context, we might understand the reason why USTR did not take the panel procedure: Even if USTR ultimately won the case in the panel: (1) there is a risk that the panel would decide a starting time of the implementation of the manufacturer system later than the time the Korean government proposed in the April plan based on the current Korean poor distribution system. In addition, the U.S. meat industry cannot export its products until the new system is implemented because the interim measures may be ignored in the panel, (2) there is another risk that Korea's defeat could have frustrated Korean consumers, and

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<sup>12</sup> USTR might think that this dispute was easy to be addressed under the WTO dispute settlement procedure.



provoke them to launch an campaign against U.S. products. For these reasons, it is clear that the negotiation process was much shaped by USTR's initiative.

On the other hand, *in Korea*, Ministries associated with this dispute had slightly different positions. The Economy Coordination Meeting did not manage efficiently the various Ministries' positions. Even though many Ministries were involved in the dispute, there was no single agency that could address this dispute firmly with responsibility in the context of the overall trade relationship with the United States. Because of the structural defect of the government organisation, the government often lost the time to take a proper action to resolve this dispute. If the government resolved the dispute at the first stage, it could prevent the dispute from spreading into other agricultural and food products. By losing proper time, the government led itself to a much more burdensome situation in which its negotiation position was weakened. The government raised its voice when it thought its negotiation positions as an import country was superior to the U.S. side. But, after the dispute was moved into the formal negotiation process, it lost its power and was compelled to accept the U.S. requests. Wherever the reason lies, in government organisation problem or government administrative culture, it may be true that the government did not respond properly to this dispute with an initiative. In addition, the government did not try to discuss the issues with the interest groups, therefore it had no opportunity to adjust their positions to each other and failed to drag the interest groups into the negotiation process. The interest groups' pressures could be a good excuse against the U.S. pressures. Under this situation, it would be impossible to produce a solution to compromise the conflicting interests between the interest groups and the U.S. side.

If the Korean government had an agency like USTR, the results of the negotiations might have been different.<sup>13</sup> For this reason, the current Korean government reformed its trade organisations in 1998, and established a new organisation taking exclusive charge of trade issues within the Ministry of Foreign Affairs. As a result, the previous Ministry of Foreign Affairs changed into the Ministry of Foreign Affairs and Trade. It is strange that the Korean government gave up the panel proceeding. Even if the government failed the case completely in the panel, it would provide a good position in persuading the Korean people to introduce a manufacturer system because the international organisation proved the current system to violate the international standards. If possible results of the panel are more favourable to the government compared to the April plan, which was presented by the government just before the WTO procedure, it would be a chance to demonstrate to the United States that the bilateral dialogues and consultations, which the government preferred, could be a good method in resolving their bilateral trade disputes. The government hurried to settle the dispute before President Kim's Washington visit, so it could not help accepting most of the U.S. requests and faced vigorous resistance from Koreans. Considering the results of President Kim's visit, we cannot find any reason to justify the concessions. Rather, more persuasive were the interest groups' assertions that the concessions were nothing but a pork-barrelling to the United States for the President's visit. If the government judged that there was no chance to win the dispute in the panel, it should have sought to settle the dispute as early as possible. In a reverse case, it should have completed the whole dispute settlement procedures of the WTO. But, the government stopped halfway. In this sense, the Korean government also shaped the result and process of the negotiations, through not necessarily to its advantage.

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<sup>13</sup> It is likely that the agency, which has a comprehensive authority on trade issues, had tried to settle the dispute before it was enlarged, or it would finish the panel proceeding

In short, it is evident that government agencies affected outcomes and process of trade negotiations. Government agencies were not simple conduits between private sector trade demands and foreign governments. The problem-solving ability of the Korean government was limited compared with that of the U.S. government. Considering the U.S. unified professional approach and the Korean makeshift approach in dealing with this dispute, there is no doubt that the United States held a considerable advantage.

#### **8.4 Combination of The Three Factors**

Which is the most salient factor to shape the outcomes of this negotiation? Based on the above, it is evident that the three factors affected the outcomes and process of the negotiations. But, we do not know that to what extent the three factors affected the final outcomes. Some aspects of the dispute can be dominated by one factor, whereas other aspects can be explained by other factors. It is virtually impossible to calculate the exact extent of each factor's influence. However, the negotiation power particularly attracts our attention. The progress of the negotiation could be well understood from the angle of changes of negotiation powers. Negotiators also admitted the importance of negotiation power. But, a critical problem is how we can find out negotiation power and the extent to which other factors, like the efficiency of the national trade institutions, contribute to it. For this study, we devised a particular approach to negotiation power. The three factors could be integrated through this approach.

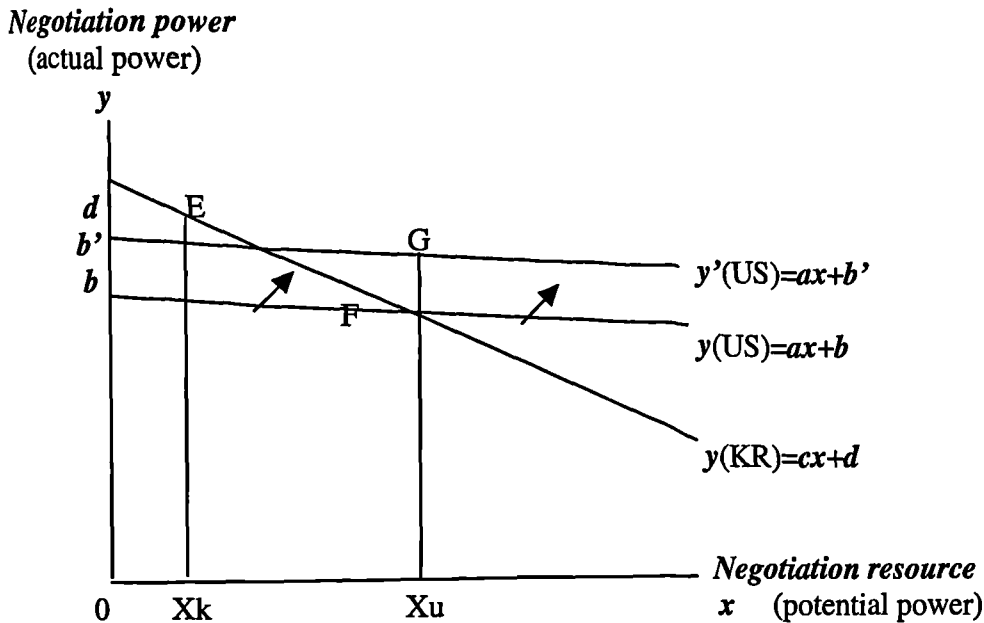
Based on Figure 8-1, we will explain the evolution of the negotiation process for the dispute. The approach used in this study says that negotiation power is determined by

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insofar as it had entered into the WTO procedures. It is strange that the government gave up the panel procedure.

the three factors: the issue at stake, negotiation resources, and negotiators' ability.<sup>14</sup> Negotiation power continuously changes itself with time. As a negotiation is proceeding, negotiators seek to increase their negotiation power by mobilising negotiation resources.

Figure 8-1 Integration of the Three Factors<sup>15</sup>



<sup>14</sup> In this case, the negotiators' ability accounts for the government agencies' ability. These government agencies' abilities normally depend on both organisational factors and its members' individual ability or speciality.

<sup>15</sup> As discussed chapter 3, in Figure 3, the normal  $a$  and  $c$  of the two functions, representing the extent of the negotiators' ability to mobilise negotiation resources fully and effectively, dictates the slope of line. Within a short-term perspective, negotiators' ability can be regarded as fixed because it takes a long time to improve it. Competent negotiators normally use the negotiation resources effectively even if given the same ones. Thus, the country with competent negotiators has a flatter line, that is,  $a$  is larger than  $c$ . The normal  $b$  and  $d$ , representing a country's situation on the current issue, decides the starting point of the lines. When we consider the issue, two countries are in different positions. Korea is in better position than the United States because Korea is a big buyer of U.S. meat products. So Korea is in better position in terms of the issue itself. The variable  $x$  represents the negotiation resources that a country owns. Good negotiation resources make the negotiation much easier because the negotiators can use them to pressure the other country during the negotiation process. In this sense, the United States has good negotiation resources such as Section 301. The lines of the functions are downward because the effectiveness of negotiation resources will decrease as  $x$  moves to the right along axis X. See Chapter 3, Section 3.2.1 *The New Approach to Negotiation Power*.

Namely, they are supposed to continuously move  $x$  to the right in the course of the negotiation process. Considering the July agreement, the final points of the two countries are equivalent to  $X_u$  for the United States and  $X_k$  for Korea. And, the final negotiation power of each country, representing the all actual powers converted from negotiation resources by the negotiators during the negotiation process, is rectangle  $ObFX_u$  for the United States and rectangle  $OdEX_k$  for Korea. Indeed, the United States could fairly move  $x$  to the right by mobilising its negotiation resources efficiently. Consequently, the area of the U.S. rectangle is much bigger than that of Korea's. Namely, when the Agreement was reached, the United States reversed its position from weak to strong in terms of actualised negotiation power and accomplished a much advantageous outcome as much as the gap between the two rectangles.

If so, what factors force  $x$  to move to the right along axis  $X$ ? As suggested in chapter 3, the movement of  $x$  depends on two factors; *To what extent a country has negotiation resources linked with the issue at stake and to what extent negotiation resources are converted to the actual power in the negotiation process by the negotiators.* The latter is more important. Even if the United States is in a superior situation in terms of legal aspects, the superiority itself cannot be a negotiation power unless the United States actualises it. In reality, USTR continuously insisted the legal superiority during the bilateral consultations, and finally took the dispute to the WTO procedures. So, USTR could much enhance its negotiation power, even though the superiority was not officially proved in a WTO panel.<sup>16</sup> Accordingly, the same negotiation resources could be transformed into negotiation power in different extents.

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<sup>16</sup> In fact, whether the issue in question is harmonised with the international agreements is significant in the WTO dispute settlement procedures. Without a legal basis, any country can not beat the other side because the WTO procedures are a legal process. Thus, the legal superiority on the issue can much reinforce the negotiation power.

we saw in this case, the U.S. meat producers, which are well-organised and self-interest oriented, utilised a wide variety of lobbying resources to secure their objectives. They forced USTR to initiate Section 301 investigation, whereas they mobilised negotiation resources out of the Administration's control by themselves. That is, they provided USTR with the concrete problems which they faced with in the Korean market and dragged the Congress into the dispute. When USTR accepted their claims such as Section 301 investigation, they virtually affected the negotiation power by causing USTR to move  $x$  to the right. When they mobilised the Congress out of USTR's control, they caused the line  $y(\text{US})=ax+b$  to move upward because this action is an external factor of the function. This action's effect on the negotiation power is equivalent to rectangle  $bb'GF$  in Figure 3. In short, they contributed to increasing the U.S. negotiation power as a whole.

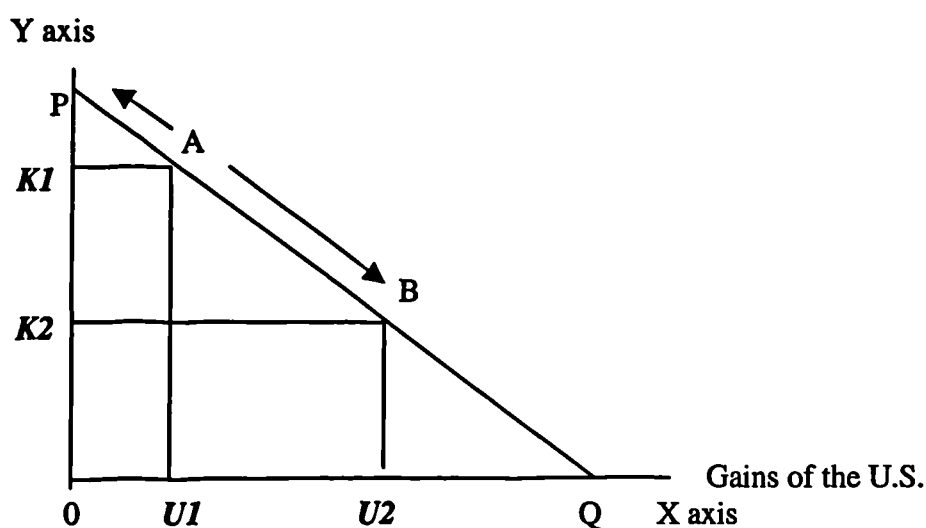
If the balance of negotiation powers of the two countries was maintained to the end, namely if the Korean economy was not so dependent on the U.S. market, the threat of Section 301 retaliatory action would not be effective and Korea would continue a legal battle by mobilising all possible legal issues under the WTO procedures. Like the banana dispute between the United States and European Union, the two countries might keep the dispute unresolved for a considerable time and then might reach an agreement different from the final Agreement. If the Korean interest groups had mainly consisted of self-interest oriented groups and had a proper channel to convey their interests to the Korean government like the U.S. interest groups, the Korean government could not have conceded its positions completely as it did in the July Agreement. But, above all, it looks like the Korean government did not play a proper role in dealing with this dispute. Thus, it brought a defeat on itself. The Korean government's resort to a temporary expedient could not cope with the U.S. expert and strategic attack. In this context, Korean mass media has severely criticised the inefficiency of the government's trade administration. This criticism

again seemed to cause the government to stumble into another trade dispute. It looks like that the Korean government was caught in a vicious circle.

If negotiation power decides the outcome of negotiation, it should be examined in the context of gain and loss. As discussed in chapter 4, This dispute is a kind of zero-sum game or distributive issue in that a country generally has no benefit but faces a loss in the case of opening its markets coercively by external pressures. Korea would not open its market, whereas the United States forced Korea to open its market. In the short term, it is evident that benefits from opening the market belong to the United States.

**Figure 8-2 Distributive Issue**

Gains for Korea



Source: J. Rojot, *Negotiation: From Theory to Practice*, London, Macmillan Academic and Professional Ltd, 1991, p.88.

Figure 8-2 shows a zero-sum game.<sup>17</sup> Korea as the import country was in a good position in the beginning of the dispute. Whether the sausages stranded in the port of Busan could be allowed to enter the Korean market depended on the Korean government.

<sup>17</sup>J. Rojot, *Negotiation: From Theory To Practice*, London, Macmillan Academic and

But, it is true that Korea has unnecessary regulations relating to the issues raised by the United States. Such unreasonable shelf-life requirements need to be changed for its own benefit regardless of U.S. pressure. Those unreasonable regulations resulted in massive destruction of food products after the expiry of their shelf-lives. The losses were estimated at approximately \$470 million (in Korean currency 331 billion won) in 1991, constituting 4.16 percent of total domestic food sales.<sup>18</sup> In this sense, the two countries started negotiating from point *A* not point *P* in Figure 4, representing a favourable situation to Korea. During the negotiations, USTR forced point *A* to move on axis *X* by mobilising negotiation resources, whereas Korea failed to move point *A* to the axis *Y*. The final negotiation powers of the two countries would determine the point on line *PQ* where the agreement will lie. Considering the agreement, point *B* would be the final point of this dispute. Thus, it is clear that Korea suffered a net loss from point *K1* down to point *K2*, whereas the United States gained from point *U1* to point *U2*. The United States gained at the expense of Korea. If the Korean government tried to resolve the sausage problem at an early stage, it could have settled the dispute with a smaller loss. By losing the proper time to resolve the dispute at a low cost early, it had to pay a high cost later.

As a conclusion, we can say that negotiation power is the salient factor to determine the process and results of the negotiations for this dispute.<sup>19</sup> As observed in this case, negotiation power is not determined in a vacuum condition but as a living organism it changes itself throughout negotiation process by way of the intervention of negotiators or the concerned actors. This conclusion is consistent with Krasner's study results. He pointed out the critical role of negotiation power, saying that "In recent years

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Professional Ltd, 1991, pp.87-8.

<sup>18</sup> *Korea Herald*, 'Shelf life of U.S. frozen sausage to be extended from 30 to 90 days,' 25 September 1994, p.3.

<sup>19</sup> Here, the negotiation power means an integrated concept including government agencies and interest groups that affect the negotiation power directly or indirectly.



distributional questions have precipitated conflict over the allocation of the radio spectrum and over international telecommunications. The outcome of these disputes has been determined primarily by the relative bargaining power of the states involved.”<sup>20</sup> Then, as a policy agenda, what should we do if we want to increase or enhance the negotiation power? More specifically, what does the Korean government need to do? Based on the findings of this research, I suggest some policy alternatives in the next section as the concluding remarks.

## 8.5 Policy Proposals

Based on the conclusion, I suggest policy proposals to strengthen negotiation power of the Korean government in terms of trade negotiation between Korea and the United States. In this research, the factors influencing negotiation power are *the issue at stake, negotiation resources, negotiators' ability* and as an external factor, *interest groups*.

With respect to trade issues, what is required is to change the Korean law or practices in trade to come into conformity with the WTO agreements or international standards. WTO has developed a new strengthened trade dispute settlement procedure by removing deficiencies of the GATT system. Under the WTO procedure, any member country can complain about trade practices that violate the WTO rules or nullify or impair WTO benefits. Moreover, considering that the WTO procedure is a legal process, if Korea has trade practices inconsistent with the WTO rules, the practices are fairly destined to be challenged by trade partners, and then forced to be removed by the WTO. Thus, the Korean trade practices should be harmonised with international standards to avoid unnecessary trade disputes. Insofar as there is no problems in issues, the Korean

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<sup>20</sup> S.D. Krasner, 'Global Communications and National Power: Life on the Pareto

government will not lose cases. This also strengthens the Korean government's negotiation power under any negotiation procedures.

With respect to negotiation resources, this research selected three factors as important negotiation resources in the market access disputes between Korea and the United States: *trade dependence, the Section 301, and the WTO procedure*. In relation to the trade dependence, the Korean government should lessen the Korea's export-dependence on the U.S. market. Although the export-dependence has continuously decreased over the last decade, the government should exert efforts to diversify Korea's export market as much as possible in that the export-dependence basically constraint the negotiation power of the Korean government. On the other hand, considering that the United States could not disregard the Korean market as the fifth or sixth trade partner, the government also needs to proactively take advantage of the U.S. export-dependence on the Korean market by raising unfair U.S. trade barriers to limit Korean exports to the U.S. market. These efforts could increase its exports and enhance its negotiation power.

Regarding the U.S. Section 301 action itself, virtually nothing can be done in that the Section 301 action is a unilateral application of the U.S. domestic law. But, since the United States is much more constrained in using Section 301 because of the WTO dispute settlement procedure, the government need not be easily swayed by the threat of Section 301 sanctions. The government could respond to Section 301 retaliatory actions through the WTO procedure. Article 23 of DSU prohibits a unilateral action to resolve trade

disputes.<sup>21</sup> It offers some implication to the Korean government that the EU referred the Section 301 of the U.S. trade law itself to the WTO, although it withdrew the filing. Regarding the WTO procedure, the government should change its stance to it, and proactively use it in addressing other countries' trade barriers as well as defending its legitimate trade practices. The WTO procedure ultimately should be the main route of the government in resolving its trade disputes with trade partners including the United States.

With respect to negotiators' ability, two points are proposed. First, the Korean government needs to consider reforming its trade Ministries. In this sense, the Kim Dae Joong Administration improved its trade organisation by establishing a new organisation taking exclusive charge of trade issues within the Ministry of Foreign Affairs in 1998. But, considering that the Korean administration culture is more or less authoritative, and that most trade issues are supposed to be coordinated by Ministries, the most important thing is how to secure the President's attentions on the trade disputes. Thus, the Korean government needs to set up an agency under the President as is the case in the United States. USTR was created by the Congress,<sup>22</sup> but Korea is required to create that kind of agency for the Administration's efficiency in trade administration. The agency should act

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<sup>21</sup> The concerned provision of DSU is that: Article 23 [Strengthening of the Multilateral System] 1. "When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding.

2. In such cases, Members shall: (a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding." See WTO, *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), <http://www.wto.org/wto/dispute/dsu.htm>

<sup>22</sup> USTR is created because "legislators in 1961 decided that the State Department needed to be replaced as the head of U.S. trade delegations by a more hard-nosed, domestically

as a policy broker and a problem solver among Ministries charged with trade administration. In a global economy, trade administration is getting more important and the necessity of dealing with trade disputes from the national perspective is increasing. Another proposal is about how to improve negotiator's individual ability. First and foremost, considering that the Korean government normally rotates its officials in their posts every three years, it should allow its officials responsible for trade negotiation to work in the same post for a considerable term, which contributes to enhancing their speciality. In addition, the government needs to build a data bank system of trade information including all the previous negotiation cases in order to prepare for possible trade negotiations. This system also would help to complement the frequent changes in the personnel. Continuous training programmes should be provided for trade officials to keep up with the rapidly changing international economy. It also should be emphasised that they, especially trade negotiators, must become fluent in English. Negotiation cannot co-exist with language problems.

Finally, with respect to interest groups, the Korean government should re-establish the relationship with its interest groups, broadly the private sector. The era of the government-initiated economic development has ended, rather the private sector is virtually playing a trigger role in achieving a high level of Korea's economic growth. Under this circumstance, it is illogical for the private sector to be alienated from the government policymaking process. By establishing a new institutional apparatus, the government should ensure that interest groups participate in the process. On the other hand, interest groups, broadly the general Koreans should change their perceptions of international trade. Insofar as Korea intends to achieve its economy development through the export-oriented economic policy, they should admit that Korea cannot increase its

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sensitive bureaucracy." See Stephen D. Cohen, Joel R. Paul, and Robert A. Blecker,

exports without opening its market to trade partners in a global economy. In fact, many Koreans have considered the U.S. demand to open the Korean market as unfair pressure, but in many cases, the concerned Korean practices have been inconsistent with the international standards, and further the open market measures to some degree contributed to improving the Korean economic structure.<sup>23</sup> To keep out imports is not the best policy for the Korean economy. Thus, the Koreans need to see trade disputes in a balanced manner. All the above proposals could strengthen Korea's negotiation power against the United States as well as other countries.

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*op.cit.*, p.109.

<sup>23</sup> Ki Ho Jang, 'Re-recognition of Korea-U.S. Trade Relations,' *Foreign Relations*, Korean Council on Foreign Relations, Vol. 37, March 1996, p.56. [In Korean]

# Appendix I

## THE PETITION AND THE COMMENTS<sup>1</sup>

### 1. Major Issues

#### 1.1 Shelf-Life for Sausages

##### □ The U.S. Side

The following table 1, from the Food Safety Code, shows applicable shelf-life times in Korea for the relevant meat products. After being aware of increasing market penetration by U.S. exporters, the Korean government seized on a loophole in the Korean Food Safety Code to erect a non-tariff barrier to trade in U.S. sausages. Korean customs officials previously had classified U.S. sausages as “frozen” pursuant to category 3(2), which provides for a 90-day shelf-life for sausages. Upon “discovery” in February, 1994 that U.S. sausages were also heat-treated, officials reclassified U.S. sausages under category 3(1) covering “heated” products without prior notification to U.S. producers or the United States government. Since there exists no dual category for “heat-treated and frozen” sausages, Korean officials viewed the “heated” characteristics of U.S. sausages as trumping the “frozen” attribute, which reduced by 60 days the applicable shelf-life period and effectively halted U.S. sausage imports to Korea.

The Korean government’s reclassification occurred despite the frozen form of the sausages and despite the illogical and trade-restrictive consequences of its action. Heated products obviously require shorter distribution periods to ensure safety, but only when they are not frozen. In the United States and in international trade generally, the recognised and accepted distribution times for frozen sausages, cooked

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<sup>2</sup>This has pulled *directly and partly* out of the “*Petition on Korean Restrictions Affecting U.S. Meat Imports*” submitted on November 18, 1994 by the National Pork Producers Council, The American Meat Institute, and the National Cattlemen’s Association to USTR, and the “*Comments to the Section 301 Petition*” presented on December 14, 1994 by the Korean government to USTR. The contents have been arranged by each issue to clarify the controversies of the two sides. See USTR, Open Documents on the Shelf-life Case in Reading Room.

and uncooked, is from 90 to 180 days.<sup>2</sup> Thus, the reclassification of imported sausages to a meat category with a more stringent shelf-life period represents nothing more than an unjustified non-tariff barrier (“NTB”) adopted to protect the Korean market from U.S. imports. It is well known that because of a critical lack of cold storage facilities in Korea, and because of the transportation distances involved, virtually all U.S. sausages sold in Korea must be frozen.

**Table A-1. Distribution Periods of Meat and Meat Products**

Description of Goods	Storage Temperature (0 C)	Distribution Period
<b>3. Sausages, Mixed Sausages:</b>		
1) Heated Product;	0 to +10	30days
2) Non-heated Products;		
- Chilled	0 to +5	25 days
- Frozen	below -15	3 months
3) Sterilised Products	room temperature	90 days
<b>6. Packed Meats:</b>		
1) Beef	-2 to 0	14 days
	below -12	4 months
	below -18	6 months
2) Pork	-2 to 0	10 days
	below -12	2 months
	below -18	4 months
<b>10. Hamburger Patties:</b>		
	below 0	25 days
	below -12	30 days

Nor is there any scientific justification for an absolute prohibition on imports of frozen sausages. For instance, in the United States, virtually all hot dogs are frozen prior to consumption by individuals. To the extent that the reclassification constitutes a *de facto* ban on frozen sausages, it should be viewed as simply another NTB designed to ensure that U.S. sausages do not reach the Korean market.

<sup>2</sup> Attachment 5 contains a letter from a U.S. sausages manufacturer stating that frozen sausages can be maintained for over one year or more, and that the average shelf-life for refrigerated sausages (heat at 40 F or less) is 70 days, or over twice as long as the

□ The Korean Side

To the allegation that the Korean government intentionally took a late March 1994 measure [prohibited heat-treated sausages from being distributed in a frozen state] in order to stop the increasing import of U.S. sausages. This allegation is groundless and false. The Petition is silent on the grounds which led the U.S. Meat Industry to allege that the Korean government's motives in taking such measures were to halt trade. It is an irresponsible act for the U.S. Meat Industry to infer, without concrete evidence, bad faith on the part of a sovereign nation. The Korean government hereby testifies that its actions in March were not intended to erect a barrier to the imports of foreign sausages.

What really happened was that importers continuously obtained permits for the last four years for cooked frozen sausages by disguising them as uncooked, frozen sausages. No government would allow such irregularities to continue once they are uncovered. The Korean government could not condone such irregularities simply because they had been permitted, rightly or wrongly, in the past. The measures were of a corrective nature, which is quite appropriate and legitimate.

The petition also attempts repeatedly to highlight the fact that Korea "reclassified" frozen, cooked sausages subject to a 90-day shelf life to heated sausages subject to a 30-day shelf life. But a glance at the Food Code would suffice to reveal that this allegation is groundless. The Food Code has never had such a category as heat-treated and frozen sausages, but only heat-treated and chilled sausages. From these facts, it logically follows that there cannot be any "reclassification."

Korea's Food Code sets the shelf life for heat-treated<sup>3</sup> sausages at 30 days when preserved in a chilled state and it is silent about the shelf life of heat-treated sausages preserved in a frozen state.<sup>4</sup> The absence of a shelf life for heat-treated, frozen sausages in the Food Code reflects the belief that heat-treated sausages can be best maintained when they are preserved in a chilled, not frozen, state. According to

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standard Korea is imposing on frozen and heated U.S. sausages. See *The Petition*, p.10.

<sup>3</sup> "Heat-treated" sausages are those which are heated for thirty minutes at more than 63 degrees Celsius, or any sausage which undergo heating or sterilisation in an equally effective way. See *The Comments*, p.14.

<sup>4</sup> This regulation has been in existence ever since the first shipment of heat-treated, frozen sausages arrived at the Korean port in 1990. See *The Comments*, p.14.



the Korean scientists, heat-treated sausages are susceptible to a risk of infection by micro-organism or of having its integrity and taste unfavourably affected, when the condition of the sausages fluctuates between a frozen and thawed state which is often the case with much of the frozen food in Korea. Further, there are as yet only a few distribution outlets in Korea which are equipped with the facilities to sell food products in a frozen state.

The Petition also claims that, generally in international practices, the recognised and accepted distribution time for frozen sausages, cooked and uncooked, is from 90 to 180 days. It appears that the Petition's allegation on "general international practice" is based on a letter from a U.S. sausage manufacturer. Yet, no proof has been suggested that indicates even the existence of such internationally recognised norm, let alone the standard shelf life of 90 to 180 days. Contrary to the Petition's allegation, a scientific study widely accepted in the United States classifies "precooked frozen sausages" as products with "storage lives of three months or less."<sup>5</sup> Further, according to a survey conducted by the Korean government of the practices adopted by major advanced and middle-income countries, the shelf life of sausages varies from country to country and there is no definitive internationally established standard. The shelf life is basically set in accordance with the country's current level and practice of packaging, storage and distribution of the products.

Even against this background and the negative backlash from consumer groups, the Korean government announced on September 23, 1994 that it will establish a shelf life of three months for cooked, frozen sausages. The new shelf life will go into effect around the end of 1994 upon completion of the revision process of the Food Code.<sup>6</sup> It should be noted here that the Petition, although submitted after the announcement, failed to mention this development.

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<sup>5</sup> Marcus Karel, Owen R. Fennema and Daryl B. Lund (eds.), *Principle of Food Science, Part II: Physical Principles of Food Preservation*, Marcel Dekker, Inc., p.204, See *The Comments*, p.15.

<sup>6</sup> The rationale for setting 3 months as the shelf life for cooked, frozen sausages was based upon the analysis by Korean food experts of the data that the United States has provided, including the current Institutional Meat Purchase Specifications (IMPS) approved by the U.S. Department of Agriculture. *The Comments*, pp.15-6.

## 1.2 Frozen Beef Patties

### □ The U.S. Side

Although the Korean government began to permit imports of frozen beef patties as a result of the SBS Agreement, these products remain subject to a restrictive, 30-day shelf-life limitation in response to increasing pressure from Korean producers. However, as with sausages, the 30-day distribution period on frozen beef patties, (25 days if stored from 0 to minus 12 degree Celsius), barely allows time for shipment and customs clearance. While the 1994 revised Food Safety Code “omits” beef patties from its shelf-life requirements altogether, it is unclear whether these products will be assigned a new, equally prohibitive, shelf-life in the future.

There is no scientific basis for a 30-day period for frozen beef products, which can safely be stored for as long as one year. Such a restriction operates as an absolute ban on imports of frozen beef patties inasmuch as transportation time to Korea, customs clearance, and internal distribution often can, and do, take longer than 30 days. Since ocean transport and customs clearance procedures do not affect Korean Producers, these shelf-life requirements place Korean producers at a significant advantage in marketing frozen beef patties.

The Korean economic counsel, Mr. Kim, acknowledged the restrictive nature of the shelf-life requirements regarding “sausages, fresh chilled pork and beef in vacuum-packaged cuts, and frozen beef patties.”<sup>7</sup> Mr. Kim stated that the Korean government is prepared to review the “scientific appropriateness” of the shelf-life standards, in apparent acknowledgement that these requirements have no scientific basis.

### □ The Korean Side

The Petition asserts that the 1994 revised Food Code “omits” beef patties from its former shelf life requirement of 30 days (or 25 days if stored from 0 to minus 12 degree Celsius). This is an incorrect portrayal of the shelf life for hamburger patties under the July 1994 revision of the Food Code. The old Food Code established separate categories for “hamburger patties” and “mince and processed meat products.” This classification left some room for confusion, since beef patties are

essentially one of minced and processed meat products. Accordingly, a separate shelf life for beef patties was deleted in the revised Food Code. However, beef patties are now classified as minced and processed meat products and, as a result, enjoy a longer shelf life—i.e., 30 days to 3 months, depending upon whether or not they are heat-treated. The following is the shelf life for each type of minced and processed meats:

Type	Temperature	Shelf life
Heat-treated	0 – 10 C	30 days
Non-heat treated	below –15 C	3 months
Sterilised	room temperature	3 months

No record shows that the U.S. Meat Industry attempted to seek a clarification of the shelf life of the hamburger patties under the new provision from the pertinent authorities of the Korean government. The allegation is just based upon its own wrong interpretation of the Food Code.

### 1.3 Fresh and Chilled Vacuum-Packed Pork and Beef Cuts

#### □ The U.S. Side

Perhaps the most blatant of all the Korean import restrictions is the enforcement of a 10-day shelf-life requirement on all fresh and chilled meat products, including beef and pork vacuum packed cuts.<sup>8</sup> As testimony to the restrictive effect of this requirement, there has been limited or no trade in fresh and chilled beef and pork since Korea “liberalised” trade in pork products on January 1, 1994 and beef products under the SBS Agreement. This is not surprising inasmuch as there is a minimum “time on the water” period of 13 days to reach Korea, three days longer than the applicable shelf-life period of ten days.

<sup>7</sup> Letter from J. Kim on June 10, 1994 to Meat Industry Trade Policy Council at Attachment 2. See *the Petition*, p.11.

<sup>8</sup> The Korean 10-day standard is based on an outdated standard for trade in “hot” carcasses and cuts. However, today’s international standards are based on vacuum-packed technology, providing a 100-day shelf-life for beef and 40-day shelf-life for pork. See *The Petition*, p.12.

The United States is the world leader in technological improvements in red meat industry. Scientifically accepted standards applicable to international trade in vacuum packed beef and pork cuts are 100 and 40 days, respectively, and the U.S. industry routinely ships product to foreign destinations under these standards. The 10-day shelf-life regulation was brought to the attention of U.S. importers and the U.S. government only after the SBS had been negotiated, and despite Korean commitments in the 1989 Letters to disclose import regulations affecting trade in agricultural products.

In addition, despite the 10-day shelf-life requirement, Korean customs officials have subjected U.S. products to inspection procedures lasting from 14 to 28 days. The 10-day shelf-life requirement alone is enough to prevent any U.S. fresh/chilled meat products from entering the Korean market, even if it were possible to transport product to Korea in a single day. The 14-day inspection period, purportedly a relatively “fast” turn-around by Korean standards, is at least three times longer than the international inspection standard of two or five days. The combination of the restrictive shelf-life regulation and burdensome inspection procedures has halted exports of chilled pork and drastically curtailed exports of chilled beef, in contravention of Korea’s bilateral trade agreement obligations. The current, actual monetary loss for fresh, chilled products due to the Korean restrictions is staggering. The U.S. Meat Industry estimates a 1994 actual lost export revenue on fresh/chilled beef and pork products at over \$215 million.

#### □ The Korean Side

The shelf life for fresh and chilled pork (10 days) and beef (14 days), had been in place prior to the import liberalisation of beef and pork. It is understood that the length of shelf life for fresh and chilled beef and pork in the U.S. is similar in range. Moreover, a recent survey conducted by the Korean government on practices of advanced and middle-income countries indicates that most of these countries adopt a similar or shorter range of shelf life for fresh and chilled meat. For example, in Australia, shelf life for fresh and chilled meat is seven days for beef and five days for pork while in France, it is four days for both beef and pork.<sup>9</sup>

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<sup>9</sup> In Belgium, the shelf life for fresh and chilled meat is one week for beef and two weeks for pork, See *The Comments*, p.17.

The Petition claims by presenting various documents that “scientifically accepted standards applicable to international trade in vacuum-packed beef and pork cuts are 100 and 40 days, respectively.” However, scientific evidence supporting this claim is to be found nowhere in these documents. The first document entitled “Microbiology of Ready-to Eat Meat and Poultry Products” explains that ready-to-eat pork products that are processed through smoking treatments or other methods, not fresh or chilled ones, may remain of acceptable quality for 97 days. Another paper, “The Storage Life of Chilled Pork Packaged Under Carbon Dioxide,” explains in detail that an atmosphere of CO<sub>2</sub> can more than double the storage life obtained in vacuum packs. It further discloses, however, that vacuum-packed pork stored at 3 degrees Celsius emitted “unacceptably strong” odour after 11 days and their odour, flavour and colour became unacceptable after 3 weeks because of the development of bacteria. The other two papers presented by the Petition in this regard do not mention the shelf life of vacuum-packed meat at all.

It should be noted that no separate shelf life has yet been set on vacuum-packed cuts of fresh and chilled meat in the Korean Food Code, since they are relatively new to the Korean market. However, the Korean government is prepared to establish separate shelf lives for these products, once sufficient scientific grounds are provided in accordance with the previously mentioned guidelines<sup>10</sup> for the extension of shelf life.

In addition, with regard to the Korean inspection procedures, the complaint of the U.S. Meat Industry is groundless and misplaced. The current Ministerial Regulation for the Implementation of the Law on the Prevention of Cattle Epizootic Diseases stipulates that inspection of imported fresh, chilled, and frozen cut meats should be completed in three days, except under special circumstances, i.e., when lab testings are required. Even when a longer period of inspection is required, the testing

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<sup>10</sup> In an effort to provide an easy and transparent procedure for the extension of shelf life, the Korean government plans to establish a guideline that will stipulate a detailed procedure for manufacturers/foreign exporters to appeal for the extension of any given shelf life mandated in Food Code. Under the proposed guideline, the results of tests conducted by manufacturers and exporters are recognised as a basis for the extension of the shelf life of their products while previously the test results of only authorised research institutes or labs were recognised. In this regard, the proposed guideline, if adopted, will function as an interim measure for the smooth transition to the shelf life system based upon manufacturer’s autonomous determination. A copy of

should be completed within a maximum period of 7 days. In an effort to expedite and simplify the sanitary inspection procedure for beef (fresh, chilled, or frozen), the Korean government has been implementing a program under which once an initial shipment of beef is determined as appropriate in a laboratory test, the subsequent shipments of beef produced by the same company are exempt from any laboratory test for the following four months.

On the other hand, there is a possibility that when the Petition mentions "inspection period," it might have been in fact referring to the entire time spent between the arrival of shipments and the completion of their actual customs clearance.<sup>11</sup> Yet, it is generally accepted that inspection period starts when importers file an application for inspection and ends when they receive a clearance permit. Delays at the pre-application stage caused by the backlog of cargo on the dockyard are not counted as part of the inspection period. This kind of *de facto* delay is unavoidable and beyond the control of the Korean government, given the current shortage of infrastructure and facilities in Korean ports. It should be noted that this type of delay is experienced not just by U.S. meat exporters but by all shipments entering Korean ports these days. Moreover, this *de facto* delay should be differentiated from *de jure* delay caused by slow administrative procedures. The Korean government, being aware of this problem, is planning a long-term project to expand the infrastructure in major ports.

#### 1.4 Tendering Procedures

##### □ The U.S. Side

Korean bidding procedures for meat contracts have a similarly trade-restrictive effect on U.S. meat imports. Although Korea normally allows seven days between announcing a bid offering in an English newspaper and the date of the bid opening, in the past this period has been limited to as little as three days. For example, a recent

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the draft guideline was provided on October 27, 1994 to the U.S. government for its comments, See *The Comments*, p.7.

<sup>11</sup> The entire time spent before any cargo is taken out of the customs zone is composed largely of two parts: (1) the time spent before the customs clearance procedures, and (2) the time spent in completing these procedures. The delay, if any, in the clearance of cargo out of the customs zone is mostly attributable due to the first phase, i.e., the

bid invitation for frozen pork published in the Korea Herald on September 13, 1994, called for bids to be made three days later on September 16, 1994. Similarly, the Korea Livestock Trading Corporation (“KLTC”) issued a bid notice on August 24, 1994, with a bid opening date of August 29, 1994. This notice permits the KLTC to award the contract based on estimated time of arrival and requires shipment, to an inland warehouse designated by the KLTC, by September 7, 1994, only nine days from bid opening.

Thus, it is virtually impossible for U.S. products to participate meaningfully in the tender process. Korean tender requirements are further exaggerated by the stringent Korean shelf-life requirements and lengthy quarantine inspection procedures that render participation in the tender process meaningless.

#### □ The Korean Side

The Petition claims that it is virtually impossible for U.S. producers to participate meaningfully in the tender process conducted by the Korea Livestock Trading Corporation (KLTC). Indeed, there have been cases when bid invitations were not announced well in advance of the bid opening. The short notice before tender invitations has often been deemed inevitable because of the urgency with which meat should be purchased to meet the unexpected shortfalls in domestic supply.

However, the Petition’s contention that its meaningful participation in the tender is virtually impossible is an exaggerated description of the real situation. Foreign exporters usually participate in the tender through their agents in Korea. Furthermore, tenders are offered frequently and the conditions for these tenders have remained more or less the same, except for the quantities of each pork cuts offered for a bidding. This means that the practical difficulties associated with short-notice bid invitations are not as prohibitive as is claimed by the Petition. This is evidenced by the fact that Denmark, a country far away from Korea, has been the greatest beneficiary of the tender procedures in Korea.

More importantly, the tender procedures are designed to purchase foreign meat products alone. There cannot be any discrimination between domestic and foreign bidders as far as the tenders are concerned. Therefore, the Korean government or purchasing agencies have no motivation to block the participation of any particular

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time spent before an application for clearance procedures is filed while the shipment

foreign country in the tender. Despite all this, the Korean government feels the need to provide a longer lead time for the bid offering. Accordingly, the Korean government is ready to make every effort to ensure that the relevant domestic purchasing entities provide a sufficient period of advance notice, at least 7 days prior to their bidding, when they plan to offer a bidding.

### **1.5 Requirement that KMIA Supergroup Purchases Be Repackaged Prior to Resale**

#### **□ The U.S. Side**

Under the 1993 SBS Agreement,<sup>12</sup> neither the Korean government nor any other supergroup may impose restrictions on meat products imported under the SBS system, including processing requirements, labelling, pricing, marking or packaging requirements, or other barriers to legitimate importation, distribution, and sale, that create unnecessary obstacles to trade or otherwise undermine the objectives of this Agreement.

Since early 1994, the Korean government has not allowed members of the Korean Meat Industries Association, (“KMIA”), to market U.S. wholesale beef without processing it in Korea, in direct contravention of the terms of the SBS.<sup>13</sup> The burdensome effect of these requirements on U.S. meat producers is obvious, having created a tremendous disincentive to purchasing and selling U.S. beef in Korea.

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is waiting in line for its turn to be unloaded, See *The Comments*, p.19.

<sup>12</sup> The 1993 SBS Agreement indicates the July 1993 Record of Understanding On Market Access for Beef signed between Korea and the United States, See *the Petition*, p.23.

<sup>13</sup> According to the Petition, the SBS arose out of the GATT panel dispute settlement proceeding involving Korean import restrictions on beef<sup>13</sup> and aimed to fully establish free-market conditions for the importation and distribution of imported beef in Korea. At the core of the agreement is a mechanism establishing annually increasing minimum access levels, or base quotas, for imported U.S. beef products. The SBS is also intended to guarantee direct commercial relations between foreign suppliers and Korean retailers and distributors, and to ensure that growing volumes of beef will be sold through commercial channels, known as “supergroups,” and not through a Korean government-owned corporation. These supergroups are authorised to directly contact foreign beef sellers to obtain imports. In addition to the SBS’s base-quota system, the SBS also includes provisions expressly proscribing certain behaviour with respect to the importation, utilisation and distribution of SBS products, See *The Petition*, p.15.



In June 1994, at the fourth quarterly SBS consultation, Korea rejected a U.S. proposal seeking to eliminate the repackaging requirement. As justification for its response, Korea argued that the KMIA constituted a group of meat-processing companies rather than a supergroup, and was therefore not subject to the terms of the SBS. However, Article II of the SBS clearly defines the term “supergroup” and expressly lists the KMIA as a supergroup to which the provisions of Chapter IV, Article 6 apply.

□ The Korean Side

Contrary to the U.S. allegation, the Korean government has never claimed that the KMIA<sup>14</sup> is not a supergroup subject to the terms of the SBS agreement. The Korean government explained, on numerous occasions, to the U.S. government the reasons why the member companies of the KMIA may not by its nature engage in the pure distribution of the meats the KMIA imports under the SBS system and why the ineligibility of the KMIA’s member companies to do so is not inconsistent with the SBS agreement.<sup>15</sup> The Korean government also provided a non-paper to the U.S. government explaining in detail the reasons why a request to allow member companies of the KMIA to engage in the pure distribution of imported meats could not be accommodated. The U.S. government has not yet responded to this non-paper in writing.

The requirement that the beef imported by the KMIA should be processed by its member companies (end-users) before being marketed is not a restriction newly imposed by the Korean government. This requirement is a natural corollary of the *raison-etre* of the KMIA.<sup>16</sup> The KMIA, a supergroup in the capacity of an association of meat processors, may only supply its members with raw for the purpose of being processed. Article IV. C. 6 (a) of the 1993 ROU clearly stipulate that “beef imported under the SBS system must be distributed and sold through legal channels in

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<sup>14</sup> The KMIA is a misnomer. A literal translation of its Korean name should be “Korea Meat Processor’s Association.” See *The Comments*, p.22.

<sup>15</sup> The most recent notable occasions include the second and third rounds of quarterly beef consultations held on June 29 and October 7, 1994, See *The Comments*, p.21.

<sup>16</sup> The KMIA’s membership is provided for in Article 5 of the statute of the KMIA. Membership is open to those engaged in the manufacturing or processing of edible meats and licensed by MOHSA. Those who merely resell beef, either raw or processed/manufactured, are not eligible to become a member of the KMIA, See *The Comments*, p.22.

conformance with Korean regulations." It must be noted that the terms of business for KMIA members and the scope of the activities within the SBS system had already been defined in the statute of the KMIA,<sup>17</sup> as well as in the relevant laws and regulations of Korea that existed at the time of the 1993 ROU consultation.

Under the 1993 ROU, the supergroups that participate in the SBS system are allowed to import beef on behalf of their respective affiliated end-users. Likewise, the KMIA imports beef under the SBS system on behalf of their member companies—meat processors. Negotiators of both governments were well cognisant of the role or authority of each supergroup and the business scope of its members when they concluded the 1993 ROU. This is clearly indicated in papers prepared by the U.S. negotiators when the U.S. side suggested the concept of supergroups to Korea during the negotiations held in Washington in April 1993.

## 1.6 Fixed Weight Requirements

### □ The U.S. Side

The Korean government also maintains fixed-weight requirements for the retail packaging of all imported meats under the SBS system that similarly restrict trade in U.S. meat products. Moreover, these requirements are different from the weights required for retail packages of Korean beef. The existence of different weight requirements for imported beef packages, as well as the discriminatory application of these requirements, clearly violates the SBS's provisions regarding packaging.

### □ The Korean Side

This allegation is outdated, since the fixed weight requirements for retail sale packaging previously applied to the KMIA was already lifted as of June 1994, as agreed upon between the two governments. Currently, there is no weight requirement on the sale of packaged SBS beef at retail outlets.<sup>18</sup>

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<sup>17</sup> The statute and changes therein were approved by KMIA under the Food Sanitation Law. The statute was enacted in August 1986 and most recently amended in March 1991, two years prior to the 1993 ROU on market access for beef, See *The Comments*, p.22.

<sup>18</sup> The only exception is for packaged, grass-fed beef imported by KCSC (Korea Cold Storage Company, Ltd.) and NLCF (National Livestock Cooperatives Federation) under *the general tender system* (not the SBS system). However, it is under the

## 1.7 Interpretation of Minimum Purchasing Requirements As Fluctuating Quotas

### □ The U.S. Side

Korea has proposed an interpretation of the SBS's minimum purchasing requirements that would effectively override the central objective of the SBS Agreement. At the fourth quarterly SBS consultation held in June 29, 1994, the Korean government offered a troubling interpretation of the SBS's minimum purchasing requirements with respect to U.S. domestic cattle that would directly contravene the foundation of the agreement. Specifically, Korea has stated its intention to lower the SBS minimum purchasing requirements if the Korean domestic cattle market appears to be affected by liberalised trade with the United States. This action would effectively lower the mutually established base quotas and turn the minimum purchasing requirements into a new quantitative restriction in violation of Korea's bilateral obligations to the United States.

### □ The Korean Side

During the consultations, the Korean government indeed suggested a concept of a quota credit. The suggestion was tabled as a means of coping with the negative reaction of the Korean public with regard to the mechanism through which the import quota of beef was implemented. This idea was rejected by the U.S. side.

It is a commonplace that new suggestions or interpretations are tabled in bilateral consultations. What is illogical is the Petition's claims that the mere suggestion of the new concept of a "quota credit" violates the 1993 ROU. As reiterated during the consultations, the Korean government had no intention of undermining the implementation of the 1993 ROU and the results of UR negotiations by unilaterally interpreting the existing provision of the Agreement.

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jurisdiction of the Korean government to impose such requirements on beef imported under the general system on the basis of the reasonable need. It is to be noted that the relevant provisions of the 1993 ROU on beef, Article IV. C. 6 (a) in particular, which obligate the Korean government not to impose certain unnecessary requirements, are applicable only to beef imported under the SBS system. See *The Comments*, p.23. The whole text of the 1993 ROU can be found; U.S. Department of Commerce, Market

## 1.8 Standards for Residue Testing

### □ The U.S. Side

Korea has implemented other practices related to red meat standards and testing that violate its obligations to eliminating import restrictions under the SBS and unreasonably restrict trade in meat products. Specifically, while the Korean MAFF (Ministry of Agriculture, Forestry and Fisheries) maintains a list of residue tolerance levels for beef and pork products and allegedly conducts tests on residue levels in domestic livestock, particularly pork, the results of such tests are not publicly available. The absence of transparency with respect to these test results suggests that domestic meat products do not undergo any testing at all, and thus, that Korea's residue tolerance standards are not forced against Korean meat products. This lack of enforcement results in a dual standard since Korea maintains and enforces strict residue tolerance levels for imported pork products.

### □ The Korean Side

The Korean government makes it clear that tests on residue levels are conducted for both domestic and imported meat products in accordance with its laws.<sup>19</sup> The MAFF conducts residue tests on domestic livestock products such as beef and pork and, if residues are found surpassing the tolerance level, analyses their causes and formulate plans to prevent the residues.

The U.S. industry's assumption that domestic meat products do not undergo any testing at all, because the result of such tests are not published, is misplaced. Every year, almost forty-five thousand random tests are conducted on domestic products and the test results are used as a basis for the special administrative monitoring over farms where such livestock are produced.

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Access and Compliance(MAC), Trade Compliance Center(TCC),  
<http://www.mac.doc.gov/tcc/treaty.htm> (1999)

<sup>19</sup> The relevant laws are the Food Sanitation Law, the Livestock Sanitation Processing Law and their respective implementation regulations, See *The Comments*, p.24.

## 1.9 Noncompliance with Standards Codes

### □ The U.S. Side

The Korean government fails to follow internationally recognised standards endorsed by Codex, the GATT-sanctioned, international food regulations and standards oversight body. Specifically, Korea has refused to recognise results of laboratory tests conducted outside of Korea that are consistent with Codex-approved standards. Korea's failure to recognise and acknowledge these test results violates its obligation of equivalency in the maintenance of standards, which is required by the provisions of the newly agreed Sanitary and Phytosanitary Agreement urging Korea to bring its import restrictions into conformity with the GATT.

### □ The Korean Side

It should be pointed out that few, if any, countries accept Codex standards exactly as they are. Even the United States maintains sets of residue standards different from Codex standards.<sup>20</sup> It is true that Codex does provide a reference in establishing each country's residue tolerance level, but the Codex standards are not the absolute standard each country is obliged to accept. Instead, the international norm is for each country to set its own standards in consideration of a variety of factors, including people's eating habits.

As indicated in the Petition, the Korean government does not recognise the results of laboratory tests conducted outside of Korea, whether or not the tests are consistent with Codex-approved standards. But the same is true with the United States. Further, the Korean government is not aware of any foreign country which accepts unilaterally the results of laboratory tests conducted by agencies other than its own authorised laboratory agencies. Accordingly, Korea's non-recognition of foreign test results cannot be deemed a violation of its international obligations.

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<sup>20</sup> In the "Report on U.S. Food Safety and the Uruguay Round: Protecting Consumers and Promoting U.S. Exports," which was prepared by the Office of the USTR in June 1994, the U.S. government clearly indicates that "while the SPS agreement contains a general obligation to use international standards, it protects the United States' ability to use more stringent standards if the relevant Codex standard does not provide an adequate level of food safety." It further states that as is currently the case, U.S.

## 1.10 24-Hour Temperature Reduction Requirement on Pork

### □ The U.S. Side

Another restrictive regulation resulting from the 1994 revision to the Food Safety Code relates to pork chilling time and also operates as a *de facto* ban on U.S. pork products. Specifically, Korea requires that pork as raw material must be chilled and kept below 5 C within 24 hours from slaughter. The procedures followed in U.S. pork slaughterhouses, however, make it impossible to comply with the Korean standard. Ironically, the technology used in the United States is the most efficient technology in the world, and is not used in Korea. Clearly, Korea's attempt to impose this stringent requirement represents yet another attempt to keep U.S. pork imports out of Korea.

### □ The Korean Side

The Petition portrays Korea's 24-hour temperature reduction requirement as representing an attempt to keep U.S. pork imports out of Korea. Yet, this argument is not supported by actual practice. A survey of the practices of other countries conducted by the Korean government indicates that many countries adopt a 24-hour or even shorter temperature reduction requirement on pork, as opposed to the allegedly efficient 48-hour method. For example, in Australia and Belgium, pork meats must be chilled immediately after slaughter while in Switzerland, they must be chilled as soon as possible after slaughter.<sup>21</sup>

Despite the practices of other countries, the Korean government is ready to review this requirement in the context of the overall revision of its Food Code scheduled for April 1995 once it is proven that the 48-hour method is scientifically sound and free from any sanitary problems.

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regulatory agencies will only adopt Codex standards when they meet U.S. safety requirements and statutory mandates. See *The Comments*, p.25.

## 2. Whether the Korean Practices violate the U.S.-Korea bilateral trade agreements?

### 2.1 The 1989 Exchange of Letters

#### □ The U.S. Side

The 1989 Letters<sup>22</sup> noted that the 62 subject agricultural products would be open to importation without restriction in the years indicated on the Letters. Sausages were scheduled for import liberalisation without restriction on January 1, 1990. Pork cuts were scheduled for liberalisation without restriction on January 1, 1991. The Korean government agreed to provide transparency to their protected agricultural markets by disclosing import restrictions affecting agricultural products, particularly meat products. Paragraph 7 of the 1989 Letters states, “the Korean Government will provide the U.S. Government with a listing of individual laws pertaining to agricultural products, a list of products covered by such laws and the description of import restriction for these products.”

In addition, the 1989 Letters required the respective governments to consult with each other regarding matters arising out of the letters. Paragraph 11 embodies the spirit of the 1989 negotiations, requiring the parties to refrain from any action affecting trade in the delineated agricultural products.<sup>23</sup>

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<sup>21</sup> In Japan, pork meats are customarily chilled around 4 degrees Celsius within 4 hours after slaughter. In Germany and Mexico, a 24-hour reduction requirement is adopted, See *The Comments*, p.26.

<sup>22</sup> According to the U.S. side, on May 25, 1989, an Exchange of Letters (“1989 Letters”) occurred between United States Trade Representative Carla Hills and the Korean Ambassador Tong-Jin Park. The 1989 Letters provided the framework for the liberalisation of Korean import restrictions on 62 specific products, including beef and pork sausages and vacuum-packed pork cuts. The 1989 Letters were successfully concluded, in part, as a result of a 1988 Section 301 petition filed by the AMI on high-quality beef, See *The Petition*, pp.21-2. On the other hand, the Korean side stated that as part of its overall market opening measures, the Korean government announced on April 8, 1988 its plan to further liberalise agricultural imports, which was later confirmed in its May 1989 Exchange of Letters with the U.S. government. The 1989 Letters covered sixty-two agricultural products in which the U.S. government expressed interest, See *The Comments*, p.8. The full text of the 1989 Letters can be found; U.S. Department of Commerce, Trade Compliance Center(TCC), <http://www.mac.doc.gov/tcc/treaty.htm> (1999)

<sup>23</sup> Paragraph 11 of the 1989 Letters states: Both Parties agree that the terms and conditions of this letter are to remain unimpaired by restrictions or requirements

Without question, the ban on the circulation of sausages in frozen form, reclassification of the applicable shelf-life period for beef and pork sausages from 90 to 30 days, and the 10-day shelf-life assessed on imported pork cuts, restrict trade and, on the basis alone, are inconsistent with the unrestricted trade liberalisation required by the 1989 Letters. Moreover, these import restrictions were previously unknown and undisclosed to U.S. producers and the U.S. government, and are therefore contrary to the transparency obligations imposed by the terms of the 1989 Letters.

In addition, the regulations embodied in the Korean Food Safety Code were adopted in 1989 and were well known to Korean officials while the 1989 Letters were being negotiated. Nonetheless, the Korean government withheld disclosure of these restrictive import regulations, to be used to curtail trade in sausages and pork cuts as U.S. imports rose and established footholds in the Korean market. To date, the Korean government's actions have cost U.S. producers an estimated \$20-30 million, a sum that continues to grow. Instead, in interim 1994, U.S. sausage exports to Korea declined by 37 percent. In short, the NTBs imposed by Korea on U.S. meat products clearly violate the letter and spirit of the 1989 Letters as both direct and indirect restrictions on U.S. agricultural products.

#### □ The Korean Side

In principle, the Korean government faithfully fulfilled its commitments under the 1989 Letters, liberalising the importation of many agricultural products. The Petition contends that certain provisions of Korea's sanitary and phytosanitary regulations are inconsistent with the "unrestricted" trade liberalisation that it claims was required by the 1989 Letters. However, a careful scrutiny of the 1989 Letters and their background reveals the fact that the 1989 Letters were never intended to deny the legitimate right of the Korean government to safeguard the health of its people by regulating the quality and safety of food products. The wording "without restrictions" was included in the 1989 Letters to ensure that the Korean government would lift the quantitative import restrictions on individual products covered by the 1989 Letters.

It is generally accepted that laws and regulations designed to maintain a certain minimum quality level or to ensure the safety and health of citizens do not constitute unjustifiable non-tariff barriers to commerce. This point buttressed by the

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directly or indirectly affecting importation of agricultural products covered by this



Agreement of Technical Barriers to Trade of GATT, which states in its preamble that “no country should be prevented from taking measures necessary for... the protection of human, animal or plant life or health...” The right to establish and enforce safety and health standards is implied in all trade agreements, including the 1989 Letters. Therefore, the allegation on the Petition is incorrect when it claims that the mere existence of the Korean food regulations constitutes a “restriction on trade” and thus violates the 1989 Letters. It should be reminded that the United States also maintains restrictions on the import of foreign meat products in accordance with its strict quarantine regulations.

As the Petition acknowledges, the shelf life regulations on these products had been in effect before the bilateral agreements were executed. They were published upon their adoption in the official gazette of the Korean government and have remained available to interest parties. It is inconceivable for Korean government to conceal from U.S. producers and the U.S. government the regulations it had made public. The awareness on the part of traders of food products, including U.S. exporters, of the regulations is apparent from the fact that shelf life labels have been affixed in accordance with relevant regulations at the time of the customs clearance of their products. It would be unreasonable to contend that just because the U.S. producers and the U.S. government failed to have knowledge of Korea’s published regulations at a certain point, the Korean government violated its transparency obligations.

The Petition also alleges that the Korean government failed to disclose relevant regulations in accordance with its commitment under the 1989 Letters. This allegation is false because in March 1990, the Korean government handed over to the Office of the USTR a list of individual laws and the restrictions under these laws in accordance with the 1989 Letters. This list was entitled “List of Agricultural Products and Description of Import Restrictions Pertaining to Individual Laws, as of December 31, 1989.”

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letter, See *The Petition*, p.21.

## 2.2 The 1990 Record of Understanding and the 1993 Simultaneous-Buy-Sell Agreement

### □ The U.S. Side

Subsequent to the 1989 Letters, and as a result of two GATT panel determinations,<sup>24</sup> the Korean government signed the April 1990 Record of Understanding on beef ("1990 ROU") with the United States liberalising import restrictions on beef. The ROU provided for a joint study of the structural weakness of the Korean livestock industry, set base (minimum) quota levels for imports of U.S. beef for calendar 1990-1992, and called for implementation of a simultaneous buy/sell system. Pursuant to the terms of the 1990 ROU, the United States government suspended further action in its investigation of Korean beef import policies and practices, and eventually terminated the pending Section 301 investigation on high quality beef. The 1990 ROU directly led to the signing of the second Understanding in July 1993, the so-called the 1993 Simultaneous-Buy-Sell Agreement ("1993 ROU" or "1993 SBS")<sup>25</sup>

In paragraph I.A of the 1990 ROU, the Korean government reaffirmed its undertaking to eliminate its remaining import restrictions or otherwise bring them into conformity with GATT provisions. The SBS agreement prohibited the Korean government and Korean supergroups<sup>26</sup> from imposing import restrictions or other NTBs on trade in beef.

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<sup>24</sup> The recommendations of the GATT dispute settlement panel report on Korean import restrictions on beef (L/6503) and the report of the GATT Balance of Payments Committee (BOP/R/183/Add.1) concerning Korea. *Record of Understanding between the government of republic of Korea and the government of the United States of America on beef* (in April 1990), See U.S. Department of Commerce, Trade Compliance Center, <http://www.mac.doc.gov/tcc/treaty.htm> (1999).

<sup>25</sup> The second Understanding is "*Record of Understanding between the government of the United States of America and the government of the Republic of Korea on market access for beef.*" See U.S. Department of Commerce, Trade Compliance Center, <http://www.mac.doc.gov/tcc/treaty.htm> (1999). And, This understanding became effective on July 15, 1993 and now governs U.S.-Korea trade in beef products. The 1993 SBS provided for increasing minimum yearly base amounts of beef to be imported into Korea from the United States. The SBS modified and extended the base quota purchase requirements established in the 1990 ROU, and permitted end-users in Korea to directly contact and negotiate terms of sale with U.S. exporters of beef for the first time. See *The Petition*, p.23.

<sup>26</sup> "Super-group" means an organization or association of end-users that has the right to import beef under the SBS system and, as appropriate, allocate SBS sub-shares

However, the *de facto* ban on various U.S. red meat imports triggered by the Korean government's enforcement of its regulations in a discriminatory manner is an express violation of the SBS's categorical prohibition on restrictions on trade in beef. This prohibition applies regardless of product type, whether fresh, chilled or frozen and expressly forbids any other barrier to legitimate importation that undermines the objectives of the SBS.

Korea's processing and weight-based packaging restrictions on imported beef products also constitute exactly the type of conduct that the SBS was intended to curtail. While the Korean government has argued that its processing and repackaging restrictions are justifiable and applicable to the KMIA as a meat processing organisation, the facts clearly contravene this argument. The KMIA is, in fact, one of Korea's largest supergroups, and is expressly designated as such under Article II of the SBS Agreement. Accordingly, denial of the terms of the SBS to meat products imported through the KMIA constitutes a denial of U.S. rights under the SBS. Given that the KMIA is the primary vehicle for marketing U.S. beef imports in Korea as established by the SBS, the trade-restrictive effect of the repackaging requirement is obvious. The Korean government should not be allowed to circumvent its obligations under the SBS by recasting the KMIA as a processing organisation.

Collectively, these practices demonstrate that Korea has failed to honour both the spirit and the letter of the SBS. Not surprising, the net effect of Korea's conduct is reflected in the dismal volume of U.S. beef products imported into Korea during the past two years.

#### □ The Korean Side

The Petition quotes repeatedly Article IV. C. 6 (a) of the 1993 SBS agreement Record of Understanding on Market Access for Beef ("1993 ROU") and incorrectly interprets the article. The article reads:

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among its affiliated end-users, and shall include the following entities, subject to the conditions and terms specified in this Understanding: the National Livestock Cooperatives Federation and its subsidiary companies (NLCF); Korea Cold Storage Company, Ltd. (KCSC); Korea Tourist Hotel Supply Center (KTHSC); Korea Meat Industries Association (KMIA); Korea Super Chain Association (KOSCA); and a non-tourist restaurant organization (NTRO) to be formed for the purpose of importing

Except as otherwise specified in this Understanding, there shall be no restrictions placed by the ROKG or any super-group on beef (regardless of country of origin, product type, or specification, whether grass-fed or grain-fed or whether fresh, chilled or frozen) imported under the SBS system, including processing requirements, labelling, pricing, marking or packaging requirements or other barriers to legitimate importation, distribution, and sales, that create unnecessary obstacles to trade or otherwise undermine the objectives of this Understanding. Beef imported under the SBS system must be distributed and sold through legal channels in conformance with Korean regulations.<sup>27</sup>

This article clearly does not prohibit the Korean government from imposing any restrictions on imported beef. A careful reading of the article speaks for itself. The wording “that create unnecessary obstacles to trade” was borrowed from the GATT/TBT agreement and was adopted through long and heated discussions between the negotiators of both governments. Therefore, the meaning of the phrase can hardly be misinterpreted. This provision never denied the Korean government’s legitimate right to impose justifiable and necessary requirements on the importation, distribution and sales of beef. Rather, it prohibits the Korean government from imposing any arbitrary or unnecessary obstacles to trade.

This provision further states that the beef imported under the SBS system must be distributed and sold in conformity with Korean regulations. It is thus clear that certain restrictions may be imposed on beef imported through the SBS system to ensure that beef is distributed and sold through legitimate channels. This means that the legitimacy of restrictions should be determined in accordance with whether they are necessary to achieve justifiable purposes, including, but not limited to, the maintenance of a sound domestic distribution system. For example, labelling or processing requirements for beef may be introduced to prevent the irregularities of disguising imported beef as domestic Hanwoo beef.

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and allocating imported beef, See *The 1993 ROU*, Chapter II. Definitions, <http://www.mac.doc.gov/tcc/treaty.htm> (1999).

<sup>27</sup> *The 1993 ROU*, Chapter IV, paragraph 6(a), <http://www.mac.doc.gov/tcc/treaty.htm> (1999).

The Petition further states that “the de facto ban on various U.S. red meat imports triggered by the Korean government’s enforcement of its regulations in a discriminatory manner is an express violation” of the SBS Agreement. Contrary to the allegation of the Petition, the U.S. share of Korea’s beef imports has steadily increased from 37.6 percent in 1991 to 44.0 percent in 1993. As the above statistics shows, clearly, there is no de facto ban on U.S. red meat imports.

It is not clear what the alleged “discrimination” is referring to. What is clear, however, is that the Korean government never enforced any relevant regulations in a discriminatory manner so as to result in a de facto ban on various U.S. red meat imports.

### **3. Whether the Korean practices violate section 301 or GATT?**

#### **□ The U.S. Side**

Section 301 of the Trade Act of 1974, as amended, is a broad grant of authority designed to permit the President to defend the economic interests of the United States against unfair trade practices of other countries.<sup>28</sup> It also reflects Congress’ determination that the United States aggressively enforce its rights under all trade agreements. Emphasising the President’s authority to retaliate against certain types of acts, policies, and practices, Section 301 defines the terms “unreasonable” and “unjustifiable.” An “unjustifiable” practice is any act, policy, or practice that is in violation of, or inconsistent with, the international legal rights of the United States. On the other hand, an “unreasonable” practice can be “any act, policy, or practice that, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable.” Section 301 further provides that “unreasonable” includes, but is not limited to, any act, policy, or practice that denies fair and equitable opportunities, among other things.

Aside from the violations of specific provisions of the U.S.-Korea bilateral agreements discussed above, the restrictive trade practices violate Korea’s overall

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<sup>28</sup> Section 301(a) authorises the President to take action: (1) to enforce the rights of the United States under any trade agreement; or (2) to respond to any act, policy or practice of a foreign country or instrumentality that (a) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade

undertaking to liberalise trade in U.S. meat products and reduce import barriers. Specifically, through its lengthy inspection and meat tendering procedures, as well as by imposing dual standards and testing requirements, Korea has continued to erect restrictive NTBs with the effect of limiting, rather than enhancing, market access opportunities for U.S. meat producers.

In short, the Korean practices are inconsistent with, and deny benefits to, the United States under various bilateral trade agreements concluded with Korea. These practices are otherwise unjust, unreasonable and burden and restrict United States commerce. Accordingly, the Korean practices are actionable under Section 301. Moreover, while not discussed in the context of this petition, Korea's actions with respect to U.S. meat imports also contravene Korea's obligations to the United States under the GATT.

□ The Korean Side

The Korean government strongly doubts that the Petition is actionable under Section 301, given that the petitioners' allegations have been rebutted point by point by its Comments. The Korean government points out that most of the points raised by the petitioners correspond to one of the following: (1) incorrect presentation of facts and backgrounds; (2) unfounded allegations based upon logically-flawed arguments; or (3) allegations made without mentioning the measures and plans taken or announced by the Korean government.

Moreover, the Petition alleges that Korea's actions with respect to the U.S. meat imports contravene Korea's obligations to the U.S. under GATT. Since the Petition does not specify in what concrete aspects Korea's actions are inconsistent with GATT, the Korean government is not in a position to respond to this allegation. However, the Korean government reserves the right to contend the GATT compatibility of its measures and policies through an appropriate international apparatus. However, being conscious of the need to update its food-related system in line with the rapid technological development, the Korean government is willing to accommodate any reasonable and logical advice suggested by foreign governments or private entities, including the U.S. Meat Industry.

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agreement; or (b) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce.

## APPENDIX II

### QUESTIONS OF USTR FOR THE WTO CONSULTATIONS<sup>29</sup>

#### 1. Legal Basis

Q: What is the legal basis for shelf-life requirements?

- Please provide copies of all relevant laws, Presidential decree, and Ministerial regulations and guidelines, and all modifications and amendments.
- When and why were shelf-life requirements originally enacted?
- When and why the law been amended?

Q: What is the legal basis for the examination of imported products for compliance with shelf-life requirements?

- If different from above, please provide copies of all relevant laws, Presidential decree, and Ministerial regulations and guidelines, and all modifications and amendments.

Q: What is legal basis for the examination of domestic products for compliance with shelf-life requirements?

- Does it differ from the legal basis for testing imported products? If so, how and why?

#### 2. General Agreement on Tariffs and Trade (GATT)

##### Article III: 4

**“The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.”**

Q: Are domestic meats and meat products subject to the same shelf-life standards as imported products?

Q: Are all imported food products examined for compliance with shelf-life standards?

- If not, which products are exempted?

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<sup>29</sup> Internal document of USTR.

Q: Are imported products examined for compliance with shelf-life standards after the time and point of importation?

Q: Are all domestic food products examined for compliance with shelf-life standards?

-If not, which products are exempted?

Q: How and where are domestic products examined for compliance with shelf-life standards?

Q: At what point in the production/distribution process are domestic products examined for compliance with shelf-life standards? [Wholesale handler level? Retail level?]

Q: How frequently are domestic products examined for compliance with shelf-life standards?

Q: With respect to imported products, what percentage fails to pass shelf-life standards?

Q: With respect to imported products that fail shelf-life standards, what is the disposition of the products?

- How frequently is the product destroyed?
- How much imported product was destroyed in 1994? 1993? So far this year?

Q: With respect to domestic products, what percentage of products fails to pass shelf-life standards?

Q: With respect to domestic products that fail shelf-life standards, what is the disposition of the product?

- How frequently is the product destroyed?
- How much domestic product was destroyed in 1994? 1993? So far this year?

### **3. Agreement on the Application of Sanitary and Phytosanitary Measures**

#### **Article 2 – Basic Rights and Obligations**

**“2. Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific evidence, except as provided for in paragraph 22.”**

Q: Are shelf-life requirements necessary to protect human life or health?



- If so, please describe in full.

Q: Do you have any scientific evidence that shelf-life requirements are necessary to protect human health?

- If so, please provide copies of all such scientific evidence.

Q: Is each and every Korean shelf-life standard based on scientific evidence?

- If so, please provide copies of all such scientific evidence.

**“3. Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.”**

[Same as Article III questions]

#### **Article 5 – Assessment of Risk and Determination of the Appropriate Level of Sanitary and Phytosanitary Protection**

**“1. Members shall ensure that their sanitary and phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organisations.”**

Q: Was a risk assessment performed for the shelf-life requirements?

- If so, when was the risk assessment performed?
- If so, were risk assessment techniques developed by relevant international organisations taken into account? In what manner and to what extent?
- Please provide us with copies.

Q: Do you have a risk assessment which justifies each shelf-life standard on the basis of safeguarding human life or health?

**“4. Members should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimising negative trade effects.”**

Q: What did Korea determine to be the appropriate level of protection reflected in its shelf-life standards?

- If so, when was this determination made?
- Please provide copies.

Q: How did Korea take into account the objective of minimising negative trade effects when determining the appropriate level of protection reflected by shelf-life requirements?

- When establishing its shelf-life standards, did Korea perform an assessment of the impact on trade?
- If so, was any negative impact on trade identified?

Q: Has the impact of shelf-life requirements on imported products been any different than on domestic products?

**“5. With the objective of achieving consistency in the application of the concept of appropriate level of sanitary and phytosanitary protection against risks to human life or health, or to animal and plant life or health, each Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade. Members shall co-operate in the Committee on Sanitary and Phytosanitary Measures in accordance with paragraphs 38, 39 and 40 of this Agreement to develop guidelines to further the practical implementation of this provision. In developing the guidelines the Committee shall take into account all relevant factors, including the exceptional character of human health risks to which people voluntarily expose themselves.”**

Q: Is the appropriate level of protection reflected in Korea’s shelf-life requirements different than the appropriate level of protection determined for purposes of the chemical residue testing system?

Q: What justifies the variations in shelf-life standards for meat and meat products?

- E.g., why are the shelf-life standards for frozen marinated poultry different from frozen beef or frozen beef, pork and chicken patties?

Q: How do the various shelf-life standards reflect consistency in the application of the concept of appropriate level of protection against risks to human life or health?

- Do you have scientific evidence which justifies the distinctions in shelf-life requirements for different products?
- Do you have scientific evidence which justifies the distinctions in the appropriate levels of protection reflected in Korea’s shelf-life requirements and other Korean sanitary measures?

**“6. Without prejudice to paragraph 10, when establishing or maintaining sanitary or phytosanitary measures to achieve the appropriate level of sanitary and phytosanitary protection, Members shall ensure that such measures are not more trade restrictive than required to achieve their appropriate level of protection, taking into account technical and economic feasibility.”**

Q: Has Korea evaluated alternative means to achieve Korea's chosen level of protection?

Q: Has Korea evaluated the alternative of manufacturer specified use-by dates?

- If so, how was the alternative system found to fail to achieve Korea's appropriate level of protection?
- Please provide copies of any documentation.

## Appendix III

### THE SHELF-LIFE AGREEMENT REPUBLIC OF KOREA AND UNITED STATES OF AMERICA<sup>30</sup>

July 20, 1995

H.E. Mr. Donald Kenyon  
Chairman, Dispute Settlement Body  
World Trade Organization  
Centre William Rappard  
Rue de Lausanne 154  
1211 Geneva 21

Dear Mr. Chairman:

The Governments of the Republic of Korea and the United States of America wish to notify the Dispute Settlement Body that they have reached a mutually satisfactory solution, with respect to the products referenced in the attached annexes, to the matter raised by the Government of the United States in WT/DS5/1, dated 5 May 1995.

The agreement is set forth in the attached annexes. The treatment accorded in the annexes to imported products shall be no less favorable than the treatment accorded to like products of national origin or to like products of any other country.

This agreement is without prejudice to the rights or obligations of either Member under the Agreement Establishing the World Trade Organization.

Sincerely,

The Honorable Michael Kantor  
United States Trade Representative  
Washington, D.C.

His Excellency Park Kun Woo  
Ambassador  
Embassy of Korea  
Washington, D.C.

Attachments

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<sup>30</sup> The two governments sent this letter to Dispute Settlement Body, Committee on Technical Barriers to Trade, Council on Trade in Goods, Committee on Sanitary and Phytosanitary Measures, and Committee on Agriculture of the WTO. See, U.S. Department of Commerce, Market Access and Compliance, Trade Compliance Centre, <http://www.mac.doc.gov/tcc/treaty.htm>

## ANNEX 1 -- SHELF LIFE

### I. With Respect To Imports Into Korea:

#### 1. Vacuum-packed chilled beef and pork.

(a) Effective July 1, 1996, the shelf life of vacuum-packed chilled beef or pork described in HS headings 02.01 (.10, .20, .30) and 02.03 (.11, .12, .19) shall be determined by the manufacturer of the beef or pork.

(b) During the period October 1, 1995, through June 30, 1996, the shelf life specified by the Government of Korea for vacuum-packed chilled beef or pork described in HS headings 02.01 (.10, .20, .30) and 02.03 (.11, .12, .19) shall be:

(i) 90 days for beef, and

(ii) 45 days for pork.

#### 2. Frozen meat

(a) Effective July 1, 1996, the shelf life of any frozen meat shall be determined by the manufacturer of the meat,

(b) During the period October 1, 1995, through June 30, 1996, the shelf life specified by the Government of Korea for frozen meat shall be:

(i) 3 months for sausages and minced meat described in HS headings 16.01.00 and 16.02 (.10, .20, .31, .39, .41, .42, .49, .50, .90);

(ii) 9 months for pork and poultry described in HS headings 02.03 (.21, .22, .29) and 02.07 (.21, .22, .23, .41, .42, .43, .50); and

(iii) 12 months for beef described in HS headings 02.02 (.10, .20, .30).

#### 3. Other frozen foods

(a) Effective July 1, 1996, the shelf life of any frozen food described in the following HS headings, other than a food referred to in paragraph 2, shall be determined by the manufacturer of the food:

03.06 (.11, .12, .13, .14, .19)

04.06 (.10, .30, .90)

04.08 (.19, .99)

07.10 (.10, .21, .22, .29, .30, .40, .80, .90)

08.11 (.10, .20, .90)

16.04 (.11, .12, .13, .14, .15, .16, .19, .20, .30)

16.05 (.10, .20, .30, .40, .90)

19.05 (.10, .20, .30, .40, .90)

20.02 (.10, .90)

20.04 (.10, .90)

20.08 (.11, .19, .20, .30, .40, .50, .60, .70, .80, .91, .92, .99)  
20.09 (.11, .20, .30, .40, .50, .60, .70, .80, .90).

(b) During the period October 1, 1995, through June 30, 1996, the shelf life specified by the Government of Korea for any frozen food described in the following HS headings, other than a food referred to in paragraph 2, shall be 9 months:

03.06 (.11, .12, .13, .14, .19)  
04.06 (.10, .30, .90)  
04.08 (.19, .99)  
07.10 (.10, .21, .22, .29, .30, .40, .80, .90)  
08.11 (.10, .20, .90)  
16.04 (.11, .12, .13, .14, .15, .16, .19, .20, .30)  
16.05 (.10, .20, .30, .40, .90)  
19.05 (.10, .20, .30, .40, .90)  
20.02 (.10, .90)  
20.04 (.10, .90)  
20.08 (.11, .19, .20, .30, .40, .50, .60, .70, .80, .91, .92, .99)  
20.09 (.11, .20, .30, .40, .50, .60, .70, .80, .90).

#### **4. Other foods**

Effective October 1, 1995, the shelf life for dried, packaged, canned or bottled products, other than those foods specified in paragraphs 1 through 3, shall be determined by the manufacturer of the product.

## **II. In General:**

### **1. Storage Temperature.**

(a) Effective July 1, 1996, the storage temperature of a product subject to a shelf life requirement by the Korean Food Code shall be determined by the manufacturer of the product when such a shelf-life requirement is removed.

(b) During the period October 1, 1995, through June 30, 1996, the Government of Korea shall ensure that it will not abuse the current requirements for storage temperature of any product in the Korean Food Code for the purpose of restricting trade.

### **2. References to Harmonized System headings and subheadings.**

Beginning October 1, 1995, the Government of Korea shall notify other members of the World Trade

Organization (WTO), through the WTO Secretariat, the corresponding Harmonized System tariff heading or subheading for each item subject to a shelf life requirement in the Korean Food Code or successor measure, or for which such a shelf-life requirement is removed or proposed to be removed. The subheading shall be at least at the 6-digit level, if one exists under the Harmonized System, otherwise it shall be at the 4-digit level.

### **3. Implementation.**

The Government of Korea shall not take measures that have the effect of, directly or indirectly, requiring or encouraging local governments or non-governmental entities within its territory to act in a manner inconsistent with the provisions of this Annex.

### **4. Definitions.**

As used in this annex;

- (a) "chilled" means at a temperature from -2C to 0C and not previously frozen as well as currently in an unfrozen state;
- (b) "frozen poultry" includes all prepared products of poultry;
- (c) "HS" means Harmonized System;
- (d) "include" means include but is not limited to;
- (e) "meat" includes beef, pork, and poultry and all their prepared products; and
- (f) "shelf life" of a product means the period between the date of manufacture of the product and the date by which a product must be sold at the retail level.

## **ANNEX 2 -- OTHER MEASURES CONCERNING MEAT**

### **1. Residue tolerances.**

No later than July 1, 1996, the Government of Korea shall ensure that any maximum residue level it maintains for imported excretory organ meats is consistent with the international standards established by the CODEX Alimentarius Commission.

### **2. Pork chilling.**

The Government of Korea shall extend the chilling period for pork from the current 24 hours to 48 hours.

### **3. Tendering procedures.**

The Government of Korea shall provide at least 7 days advance notice prior to offering a tender for the purchase of pork and shall provide a period of at least 30 days for arrival of the product to fulfil the contract. Shorter tender and arrival periods are permissible only in the case of large-scale supply disruption resulting from natural disaster.

## Interviewees

- Kimberly A. Elliott, Washington D.C., 16 April, 1999, Research Fellow,  
Institute for International Economics.
- Dong Kun Kim, Daejeon, 31 August 1999,  
Minister of the Forestry Administration at Interview.  
The Present Vice Minister of MAF.  
Formally Agriculture Counselor of the Korean Embassy in  
Washington D.C.
- Min Kyung Sung, Telephone Interview ( late December, 1999),  
Deputy Manager, General Affairs Section, KMIA

Other Persons Who Wanted to Remain Anonymous.

## Bibliography

### 1. Books and Articles

- V.K. Aggarwal, R.O. Keohane, and D.B. Yoffie, 'The Dynamics of Negotiated Protectionism,' *American Political Science Review*, Vol.81, No.2, June 1987, pp.345-366.
- A.J.G. Aguirre, *Power Asymmetry and Negotiation: A Theoretical Analysis*, Kent Papers in International Relations, Series 1, No.11, Canterbury, University of Kent at Canterbury, 1992,
- G.T. Allison, *Essence of Decision: Explaining the Cuban Missile Crisis*, Boston: Little, Brown, 1971.
- D.N. Balaam and M. Veseth, *Introduction to International Political Economy*, New Jersey, Prentice Hall, 1996.
- D.A. Baldwin, 'Interdependence and power: a conceptual analysis,' *International Organisation*, Vol.34, No.4, Autumn 1980, pp.491-506.
- T.O. Bayard and K.A. Elliott, *Reciprocity and Retaliation in U.S. Trade Policy*, Institute for International Economics, Washington D.C., 1994.
- , 'Aggressive Unilateralism' and Section 301: Market Opening or Market Closing?, *The World Economy*, Vol.15, 1992, pp.685-706.
- T.O. Bayard and Soo-gil Young (eds.), *Economic Relations Between the United States*



*and Korea: Conflict or Cooperation?*, Institute for International Economics, Washington D.C., 1991.

J. Baylis and S. Smith, *The Globalisation of World Politics: an Introduction to International Relations*, Oxford University Press, 1998.

J.H. Bello and A.F. Holmer, 'The Heart of the 1988 Trade Act; A Legislative History of the Amendments to Section 301' J. Bhagwati and H.T. Patrick (eds.), *Aggressive Unilateralism*, London, Harvester Wheatsheaf, 1990, pp.49-89.

-----, 'U.S. Trade Law and Policy Series No. 24; Dispute Resolution in the New World Trade Organisation: Concerns and Net Benefits', *International Lawyer*, Vol.28 No.4, 1994, pp.1095-1104.

A F. Bentley, *The Process of Government*, Cambridge, Mass., Harvard University Press, 1967.

C.F. Bergsten and Il SaKong (eds.), *The political Economy of Korea-United States Cooperation*, Institute for International Economics, Washington D.C., 1995.

-----, *Korea-United States Cooperation in the New World Order*, Institute for International Economics, Washington D.C., 1996.

-----, *The Korea-United States Economic Relationship*, Institute for International Economics, Washington D.C., 1997.

J. Bhagwati, 'Aggressive Unilateralism: An Overview' J. Bhagwati and H.T. Patrick (eds.), *Aggressive Unilateralism*, London, Harvester Wheatsheaf, 1990, pp.1-45.

B. Bridges, *Korea and the West*, London, Royal Institute of International Affairs, 1986.

Soon Cho, *The Dynamics of Korean Economic Development*, Washington D.C., Institute for International Economics, March 1994.

S.D. Cohen, J.R. Paul and R.A. Blecker, *Fundamentals of U.S. Foreign Trade Policy*, Boulder, Colorado, Westview Press, 1996.

F.L. Davis, 'Interest Groups and Policymaking,' G. Peele, C.J. Bailey, B.G. Peters, and B. Cain (eds.), *Developments in American Politics*, 2<sup>nd</sup>, London, Macmillan Press Ltd., 1994, pp.85-108.

I.M. Destler, *American Trade Politics*, 3<sup>rd</sup> ed., Washington, D.C., Institute for International Economics, 1995.

D.H. Everson, *Public Opinion and Interest Groups in American Politics*, New York, Franklin Watts, 1982.

G. Feketekuty, 'U.S. Policy on 301 and Super 301' J. Bhagwati and H.T. Patrick

- (eds.), *Aggressive Unilateralism*, London, Harvester Wheatsheaf, 1990, pp.91-103.
- J.M. Finger, *A Rock and a Hard Place: the Two Faces of U.S. Trade Policy Toward Korea*, Policy Research Working Paper 1264, The World Bank, March 1994.
- J.E. Garten, 'Clinton's Emerging Trade Policy,' *Foreign Affairs*, Summer 1993, pp.182-189.
- S.R. Gill and D. Law, 'Global Hegemony and the Structural Power of Capital,' *International Studies Quarterly*, Vol.33, 1989, pp.475-499.
- R. Gilpin, *War and Change in World Politics*, New York, Cambridge University Press, 1981.
- J.M. Grieco, 'Anarchy and the Limits of Cooperation: a Realist Critique of the Newest Liberal Institutionalism,' *International Organisation*, Vol. 42, No. 3, Summer 1988, pp.485-507.
- P.M. Haas (ed.), *Knowledge, Power, and International Policy Coordination*, Columbia, University of South Carolina Press, 1997.
- P. Hall, *Governing the Economy: The Politics of State Intervention in Britain and France*, New York, Oxford University Press, 1986.
- M.T. Hayes, "The Semi-Sovereign Pressure Groups: A Critique of Current Theory and an Alternative Typology," *Journal of Politics*, Vol.40, 1978, pp.134-161.
- A.O. Hirschman, 'Beyond Asymmetry: Critical Notes on Myself as a Young Man and on Some Other Old Friends,' *International Organisation* 32, 1978, pp.45-50.
- R.J. Hrebennar and R.K. Scott, *Interest Group Politics in America*, London, Prentice-Hall, 1982.
- R.E. Hudec, 'Thinking about the New Section 301: Beyond Good and Evil' J. Bhagwati and H.T. Patrick (eds.), *Aggressive Unilateralism*, London, Harvester Wheatsheaf, 1990, pp.113-159.
- O.E. Hughes, *Public Management and Administration: an Introduction*, 2<sup>nd</sup> Edition, London, Macmillan Press LTD, 1998.
- G.J. Ikenberry, 'Conclusion: an institutional approach to American foreign economic policy,' *International Organisation*, vol.42, No.1, Winter 1988, pp.219-243.
- G.J. Ikenberry, D.A. Lake, and M. Mastanduno, 'Introduction: approaches to explaining American foreign economic policy,' *International Organisation*, Vol.42, No.1, 1988, pp.1-14.
- J.H. Jackson, *The World Trade Organisation*, London and Herndon, The Royal Institute of International Affairs, 1998.

- W.S. Jones, *The Logic of International Relations*, 8<sup>th</sup> ed., New York, Longman, 1996.
- R.O. Keohane, *After Hegemony, Cooperation and Discord In the World Political Economy*, Princeton, Guildford, Princeton University Press, 1984.
- R.O. Keohane and J.S. Nye, *Power and Interdependence: World Politics in Transition*, Boston, Little, Brown and Company, 1977.
- Chulsu Kim, 'Super 301 and the World Trading System: A Korean View, J. Bhagwati and H.T. Patrick (eds.), *Aggressive Unilateralism*, London, Harvester Wheatsheaf, 1990, pp.253-255.
- Kihwan Kim, 'Korea's "Globalisation" Policy and its Implications for Korea-U.S. Relations', C.F. Bergsten and Il Sakong (eds.), *The Korea-United States Economic Relationship*, Washing D.C., Institute for International Economics, 1997, pp.27-48.
- Namdoo Kim, *Measuring the Costs of Visible Protection in Korea*, Washington D.C., Institute for International Economics, November 1996.
- Youn Suk Kim and Kap Soo Oh (eds.), *The U.S.-Korea Economic Partnership*, Avebury, Ashgate Publishing Ltd., 1995.
- P.T.B. Kohona, 'Dispute Resolution under the World Trade Organisation: An Overview'. *Journal of World Trade*, Vol.28, No.2, 1994, pp.23-47.
- S.D. Krasner, 'Global Communications and National Power: Life on the Pareto Frontier,' *World Politics* 43, 1991, pp.336-366.
- , 'Regimes and the Limits of Realism: Regimes as Autonomous Variables,' S.D. Krasner, (ed.), *International Regimes*, Ithaca, Cornell University Press, 1983, pp.355-368.
- M. Kuroda, 'Super 301 and Japan, J. Bhagwati and H.T. Patrick (eds.), *Aggressive Unilateralism*, London, Harvester Wheatsheaf, 1990, p. 219-231.
- D.A. Lake, 'The State and American Trade Strategy in the Pre-Hegemonic Era,' *International Organisation*, Vol. 42, No.1, Winter 1988, pp.33-58.
- D.M. Leipziger and P.A. Petri, *Korean Industry Policy: Legacies of the Past and Directions for the Future*, World Bank Discussion papers 197, the World Bank, 1993.
- J. Lovell, *Foreign Policy in Perspective*, New York, Holt, Rinehart and Winston, 1970.
- E.D. Mansfield and M.L. Busch, 'The Political Economy of Nontariff Barriers: A Cross-National Analysis,' *International Organisation*, Vol. 49, Autumn 1995, pp.723-749.

- J.G. March and J.P. Olsen, 'The New Institutionalism: Organisational Factors in Political Life,' *American Political Science Review*, Vol. 78, 1984, pp.734-749.
- E.S. Mason, Mahn Je Kim, D.H. Perkins, Kwang Suk Kim, and D.C. Cole, *The Economic and Social Modernisation of the Republic of Korea*, Cambridge, Mass., Harvard University Press, 1980.
- M. Mastanduno, 'Setting Market Access Priorities: The Use of Super 301 in US Trade with Japan,' *The World Economy*, Vol.15, No.6, November 1992, pp.729-753.
- A.S. McFarland, *Public Interest Lobbies*, Washington, D.C., American Enterprise Institute for Public Policy Research, 1976.
- H. Milner, 'The Political Economy of U.S. Trade Policy: A Study of the Super 301 Provision' J. Bhagwati and H.T. Patrick (eds.), *Aggressive Unilateralism*, London, Harvester Wheatsheaf, 1990, pp.163-180.
- J. Mitchell, 'The Nature and Government of the Global Economy' A.G. McGrew and P.G. Lewis (eds.), *Global Politics*, Cambridge, Polity Press, 1995, pp.174-196.
- Chung In Moon, 'Irony of Interdependence: Emerging Trade Frictions Between South Korea and The U.S.,' in Manwoo Lee, Ronald D. McLaurin, and Chung In Moon, *Alliance Under Tension*, The Institute for Far Eastern Studies (IFES) International Relations Series No.16, Seoul, Kyungnam University Press, 1988, pp.47-77.
- A. Moravcsik, 'Taking Preferences Seriously: A Liberal Theory of International Politics', *International Organisation*, Vol.51, No.4, Autumn 1997, pp. 513-553
- P.M. Morgan, *Theories and Approaches to International Politics*, fourth edition, New Brunswick, New Jersey, Transaction Books, 1987.
- H.J. Morgenthau, *Politics Among Nations*, 4<sup>th</sup> ed., New York, Knopf, 1966.
- K. Moskowitz, 'Issues in the Emerging Partnership' K. Moskowitz (ed.), *From Patron to partner*, Lexington, D.C. Health and Company, 1984, pp.1-17.
- M. Noland, 'Chasing Phantoms: The Political Economy of USTR,' *International Organisation*, Vol.51, No.3, Summer 1997, pp.365-387.
- J.S. Odell, 'Growing Trade and Growing Conflict Between the Republic of Korea and the United States' K. Moskowitz (ed.), *From Patron to Partner*, Massachusetts, D.C. Health and Company, 1984, pp.123-147.
- , 'The Outcome of International Trade Conflicts: The US and South

- Korea, 1960-1981', *International Studies Quarterly*, Vol.29, 1985, pp.263-311.
- OECD, *Food Safety and Quality: Trade Considerations*, OECD Publications, Paris, 1999.
- , *OECD Economic Surveys: Korea*, OECD Publications, Paris, 1994.
- , *OECD in Figures*, 1999 Edition, OECD Publications, Paris, 1999.
- Young-Suk Ohm, 'Defining National Trade Policy Objective and Trade Diplomacy, The Sejong Institute, *Korea's Economic Diplomacy*, Seoul, The Sejong Institute, 1995, pp.487-518.
- M. Olsen, Jr., *The Logic of Collective Action*, Cambridge, Harvard University Press, 1965.
- E.C. Page, *Political Authority and Bureaucratic Power: A Comparative Analysis*, 2<sup>nd</sup> edition, London, Harvester Wheatsheaf, 1992.
- W.W. Powell and P.J. DiMaggio (eds.), *The New Institutionalism in Organisational Analysis*, Chicago, The University of Chicago Press, 1991.
- R.D. Putnam, 'Diplomacy and domestic politics: the logic of two-level games, *International Organisation*, Vol.42, No.3, Summer 1988, pp.427-460.
- A.H. Qureshi, *The World Trade Organisation*, Manchester and New York, Manchester University Press 1996.
- J. Rojot, *Negotiation: From Theory To Practice*, London, Macmillan Academic and Professional Ltd, 1991.
- M.P. Ryan, 'USTR's Implementation of 301 Policy in the Pacific', *International Studies Quarterly*, Vol.39, 1995, pp.333-350.
- Il SaKong, *Korea in the World Economy*, Washington D.C., Institute for International Economics, January 1993.
- J.J. Schott, *The Uruguay Round: an Assessment*, Washington, Institute for International Economics, 1994.
- , 'US Trade Policy: Implications for US-Korean Relations' T.O. Bayard and Soo-gil Young (eds.), *Economic Relations Between the United States and Korea: Conflict or Cooperation?*, Washington, Institute for International Economics, 1991, pp.83-105.
- M. Shibusawa, Z.H. Ahmad and B. Bridges, *Pacific Asia in the 1990s*, London, Royal Institute of International Affairs, 1992.
- J. Sloman, *Economics*, 3<sup>rd</sup>, London, Prentice Hall, 1997.

- S. Smith, K. Booth and M. Zalewski, *International Theory: Positivism and Beyond*, Cambridge University Press, 1996.
- Chan-Hyun Sohn, Junsok Yang, and Hyo-Sung Yim, *Korea's Trade and Industrial Policies: 1948-1998*, Korea Institute for International Economic Policy (KIEP) Working Paper 98-05, Seoul, Korea Institute for International Economic Policy, 1998.
- Byung-nak Song, *The Rise of the Korean Economy*, 2<sup>nd</sup>, Oxford, Oxford University Press, 1997.
- J. Stiglitz, 'Challenges for the U.S. and Korean Economies', C.F. Bergsten and Il Sakong (eds.), *The Korea-United States Economic Relationship*, Washington D.C., Institute for International Economics, 1997, pp.117-127.
- S. Strange, *States and Markets*, London, Pinter Publishers, 1988.
- R. Stubbs and G.R.D. Underhill (eds.), *Political Economy and the Changing Global Order*, London, Macmillan Press Ltd., 1994.
- D. Truman, *The Government Process*, New York, Knopf, 1971.
- J.A. Vasquez, 'The Realist Paradigm and Degenerative versus Progressive Research Programs: An Appraisal of Neotraditional Research on Waltz's Balancing Proposition', *American Political Science Review*, December 1997, Vol.91, No.4, pp.899-912.
- P.R. Viotti and M.V. Kauppi, *International Relations Theory*, 2<sup>nd</sup> ed., Boston, Allyn and Bacon, 1993.
- R.S. Walters (ed.), *Talking Trade: U.S. Policy in International Perspective*, Boulder, Westview Press, 1993.
- R.E. Walton and R.B. McKersie, *A Behavioural Theory of Labor Negotiations*, New-York, McGraw Hill, 1965.
- M.C. Webb, 'Understanding Patterns of Macroeconomic Policy Co-ordination in the Post-War Period', R. Stubbs and G.R.D. Underhill (eds.), *Political Economy and the Changing Global Order*, London, Macmillan Press Ltd., 1994, pp.176-189.
- K. Webb, *Prediction in International Relations: The Role of Power, Interest and Trust*, Kent Papers in International Relations, Series, No.11, Canterbury, University of Kent at Canterbury, 1992.
- D.B. Yoffie, *Power and Protectionism: Strategies of the Newly Industrialising Countries*, New York, Columbia University Press, 1983.
- Soo-Gil Young, 'Korean Trade Policy: Implications for Korea-U.S. Cooperation,'

T.O. Bayard and Soo-Gil Young (eds.), *Economic Relations between the United States and Korea: Conflict or Cooperation?*, Washington, Institute for International Economics, 1991, pp.119-158.

### **Books and Articles in Korean (In my own translation)**

American Studies Institute (ed.), *U.S. Trade Policymaking Process*, Seoul National University, 1995.

Dong Kyu Choi, 'Looking Back over the Korea-U.S. Negotiations on Autos,' *International Trade Law*, Vol.24, The Ministry of Justice, December 1998, pp.225-230.

Nak Gyun Choi, *World Trade Order and Korean Trade Policy*, Research Paper 98-62, Korean Institute for Industrial Economic and Trade, Seoul, 1998.

Jong Seon Ha, 'Korean Trade Policy at the Crossroad,' *International Trade Law*, Vol.6, The Ministry of Justice, December 1995, pp.180-190.

Jong Sung Hwang, 'Employer Groups' Young Rae Kim (ed.), *Interest Group Politics and Interest Conflicts*, Seoul, Hanwool Academy, 1997, pp.78-103.

Ki Ho Jang, 'Re-recognition of Korea-U.S. Trade Relations,' *Foreign Relations*, Korean Council on Foreign Relations, Vol. 37, March 1996, pp.51-57.

Ki Soo Kim (ed.), *Understanding of U.S. trade Policy*, Seoul, The Sejong Research Institute, 1996.

Kyu Tae Kim, *A Survey of the U.S. Trade Laws*, Research Paper 377, Korean Institute for Industrial Economic and Trade, Seoul, 1996.

Young Rae Kim, *Korean Interest Groups and Development of Democratic Politics*, Seoul, Daewangsa, 1990.

-----, *A Comparative Study on the Political Participation of Interest Groups Between Canada and Korea*, Ajoo Treatises on Social Science, Vol.10, 1995, pp.319-346.

-----, 'Development Process of the Korean Interest Groups,' Young Rae Kim (ed.), *Interest Group Politics and Interest Conflicts*, Seoul, Hanwool Academy, 1997, pp.65-77.

Korea Foreign Trade Association (KFTA), *The Trend of Korean-U.S. Trade Negotiation and Policy Problem in the Future*, Seoul, 1994.

Dal Gon Lee, *Negotiation*, Seoul, Bubmunsa, 1996.

Ho Chul Lee, *Japanese Economy and Trade Policy*, Seoul, Samsung Economic Research Institute, 1996.

Chang Keuk Moon, *Anatomy of Korea-U.S. Conflicts*, Seoul, Nanam Publishing House, 1994.

Chung In Moon, 'US Trade Policy and US-Korea Trade Relations', Ki Soo Kim (ed.), *Understanding of US Trade Policy*, Seoul, The Sejong Research Institute, 1996, pp.205-248.

Jae Yoon Park, 'The Vision of Commerce & Trade Policy for the New Economy,' *International Trade Law*, February 1996, Seoul, Ministry of Justice, pp.2-5.

Kyung Seo Park, *International Political Economy*, 2<sup>nd</sup>, Seoul Bubmunsu, 1997.

Sig Yoon, Hang Koo Lee, and Young Joo Lee, *Trade Policy of the Clinton Administration and Korea*, Research paper 389, Korean Institute for Industrial Economic and Trade, Seoul, 1997.

## 2. Newspaper and Magazine Articles

*Financial Times*, May 18, 1998, Survey VI. 'The World Trade System at 50.'

*Journal of Commerce*, June 9, 1994, 'White House Adopts Tougher Stance on Meat Trade with South Korea.'

-----, May 4, 1995. 'US, South Korea to Settle 'Hog Dog' Row at WTO.'

-----, April 12, 1995, 'WTO Test Case Held Goal In US-S. Korea Flap.'

-----, April 15, 1995, 'US Food Exporters Seek A Bigger Slice of Korean Pie.'

-----, April 19, 1995, 'WTO Rules Hoped to Boost US Food Sales Abroad.'

-----, January 23, 1996, 'S. Korea to Ease More Shelf-Life Restrictions.'

*Wall Street Journal*, May 31, 1994, 'From Sausages to Autos, U.S. Products Still Face Trade Hurdles in South Korea.'

*Chosun Ilbo*, May 13, 1994 (<http://www.chosun.com/w21data/html/news>)

-----, October 3, 1994, p.25,

-----, February 7, 1995 (<http://www.chosun.com/w21data/html/news>)

-----, February 8, 1995 (<http://www.chosun.com/w21data/html/news>)

-----, April 12, 1995 (<http://www.chosun.com/w21data/html/news>)



-----, April 22, 1995, (<http://www.chosun.com/w21data/html/news>)

-----, June 10, 1995, (<http://www.chosun.com/w21data/html/news>)

-----, July 22, 1995, (<http://www.chosun.com/w21data/html/news>)

-----, July 14, 1995, p.8,

-----, January 21, 1999, (<http://www.chosun.com/w2data/html/news>)

*Donga Ilbo*, September 24, 1994, p.29.

*Hanguk Ilbo*, July 14, 1995, p.2, and May 11, 1997, Editorial.

*Hangyeore Sinmun*, July 14, 1995, p.2.

*Joongang Ilbo*, March 23, 1994 (p.21) September 26, 1994 (p.31), November 27, 1994

(p.2), October 3, 1994 (p.27), February 16, 1995 (Editorial), April 1, 1995 (p.6), May 5, 1995 (p.1), June 1, 1995 (p.25, p.27), June 10, 1995 (p.21), June 15, 1995 (p.44), June 16, 1995 (p.44), July 15, 1995 (p.25), July 18, 1995 (p.26), and July 22, 1995 (p.26).

*Kookmin Ilbo*, September 24, 1994, p.17.

*Korea Times*, September 24, 1994 (p.3), and September 25, 1994 (p.3).

*Korea Herald*, September 24, 1994, (p.3), and September 25, 1994 (p.3).

*Maeil Kyungje*, September 25, 1994. p.19.

*Munhwa Ilbo*, February 6, 1995, p.9.

*Yonhap Tongsin*, H1-042 S02-015, Economy (934), September 29, 1994.

-----, H1-547 S02-077 Economy (966), November 15, 1994.

-----, H1-342 S02-054, Economy (1190), November 16, 1994.

*Inside U.S. Trade*, Vol.12, No.20, May, 20, 1994, 'U.S. Threatens Action Against Korea Over Sausage Imports.'

-----, Vol.12, No.21, May 27, 1994, 'Meat Industry Calls For Super 301 Action on Korean Sausage Imports.'

-----, Vol.12, No.24, June 17, 1994, 'U.S. Plan on Korea Meat Limits 'Inadequate,' Industry Officials Charge.'

-----, Vol.12, No.30, July 29, 1994, 'U.S. Rules Out Super 301 in Dispute

over Korean Agricultural Access.'

-----, Vol.12, No.38, September 23, 1994, 'U.S. Considering Japan, Korea as Only Targets Under Super 301.'

-----, Vol.12, No.39, September 30, 1994, 'U.S., Meat Industry Reject Korean Plan to Change Sausage Standards.'

-----, Vol.12, No.40, October 7, 1994, 'Three U.S. Meat Groups File Section 301 Case Against Korea.'

-----, Vol.12, No. 44, November 4, 1994, 'U.S. Set to Launch Section 301 Investigation on Korean Meat Barriers.'

-----, Vol.12, No. 46, November 18, 1994, 'Meat industry vows to file new Section 301 case after talks fail.'

-----, Vol.12, No. 48, December 2, 1994, 'U.S. Formally Launches New Section 301 Case on Korean Sausages.'

-----, Vol.13, No.2, January 13, 1995, 'Korea Refutes Charges of American Meat Industry 301 Petition.'

-----, Vol.13, No.5, February 3, 1995, 'U.S., Korea Remain at Odds Over Issues Raised in Meat Section 301 Case.'

-----, Vol.13, NO.6, February 10, 1995, 'Senior USTR Official Sees Possible Trade Case Against Korea in WTO.'

-----, Vol.13, No.8, February 24, 1995, 'Korean Plan on Meat Shelf-life Falls Short of Industry Demands.'

-----, Vol.13, No.8, February 24, 1995, 'TEXT: Senate Letter on Korean Meat.'

-----, Vol.13, No.10, March 10, 1995, 'U.S. to Move to WTO Consultations in Meat Dispute With Korea.'

-----, Vol.13, No.13, March 31, 1995, 'U.S. to Notify Korea of WTO Talks Over Market Access Barriers.'

-----, Vol.13, No.15, April 14, 1995, 'U.S. Seeks WTO Consultations With Korea Over Testing Requirements.'

-----, Vol.13, No.17, April 28, 1995, 'U.S., Korea Wrestle With New Shelf-Life Requirement System.'

-----, Vol.13, No.19, May 12, 1995, 'U.S. Kicks off WTO Process Against Korea, Seeks Support From Others.'

- , Vol.13, No.24, June 16, 1995, 'Administration to Request WTO Panel in Korea Meat Dispute.'
- , Vo.13, No.27, July 7, 1995, 'U.S., Korea Try to Head off WTO Panel in Shelf-life Dispute.'
- , Vol.13, No.28, July 14, 1995, 'U.S. Threatens to File WTO Case Next Week in Korea Shelf-life Fight.'
- , Vol.13, No.29, July 21, 1995, 'U.S., Korea Reach Agreement to Settle Meat Dispute, Head off WTO Case.'
- , Vol.13, No.38, September 22, 1995, 'ACTPN Urges USTR to Launch Broad Attack on Korean Barriers in WTO.'
- , Vol.13, No.44, November 3, 1995, 'Administration Questions Implementation of Korea Meat Agreement.'
- , Vol.14, No.1, January 5, 1996, 'U.S., Korea Resolve Meat Dispute, Continue Fight on Other Products.'
- , Vol.14, No.2, January 12, 1996, 'Kantor Names Five Initial Targets of New USTR Monitoring Group.'
- , Vol.14, No.4, January 26, 1996, 'U.S., Korea Cut Deal on Food; U.S. Mulls WTO Challenge on Milk Issue.'

### 3. Internet Sources

WTO: <http://www.wto.org>

-----, 'Agreement on the Application of Sanitary and Phytosanitary Measures,' <http://www.wto.org/goods/spsagr.htm>

-----, 'Agreement on Technical Barriers to Trade,' <http://www.wto.org/goods/tbtagr.htm>

-----, 'Understanding on Rules and Procedures Governing the Settlement of Disputes,' <http://www.wto.org/dispute/dsu.htm>

World Trade Online: <http://www.insidetrade.com/>

AMI: <http://www.meatami.org/aboutami.htm>

NPPC: <http://www.nppc.org/NEWS/nppc.html>

NCBA: <http://www.beef.org/organzns/ncba.htm>

USTR: <http://www.ustr.gov>

USDA (Foreign Agricultural Service): <http://www.fas.usda.gov>

The Korean Ministry of Government Administration and Home Affairs:  
<http://www.mogaha.go.kr/ehtm/index.html>

National Statistical Office: <http://www.nso.go.kr/eindex.html>

MOHW: <http://www.mohw.co.kr>

MAFF: <http://www.maf.co.kr>

MFA: <http://www.mofat.co.kr>

CCEJ: <http://www.ccej.or.kr>

NCLF: <http://www.nlcf.co.kr>

NCAF: <http://www.nonghyup.co.kr>

#### **4. United States Documents**

ACTPN (Advisory Committee for Trade Policy and Negotiations), *ACTPN Recommendations on Korea*, September 1995.

AMI, NPPC, and NCBA, *Petition on Korean Restrictions Affecting U.S. Meat Imports*, November 18, 1994, USTR, Reading Room.

*Economic Report of the President*, 1998, <http://www.gpo.ucop.edu/catalog>

Letter of MITPC to U.S. Trade Representative Michael Kantor on April 8, 1994.

Letter of Representative Marjorie Margolies-Mezvinsky to Ambassador Seung-Soo Han on April 18, 1994.

Letter of Senator Donald W. Riegle, Jr. to Ambassador Seung-Soo Han on April 28, 1994.

Letter of Senator Sander Levin to Ambassador Seung-Soo Han on April 28, 1994.

Letter of USDA Secretary Mike Espy to Minister Sang-Mok Suh on May 13, 1994

Letter of MITPC to U.S. Trade Representative Michael Kantor on May 23, 1994.

Letter of U.S. Trade Representative Michael Kantor to Vice President of National Pork Producers Council, Mr. Alan Tank on May 25 1994.

Letter of Representatives to Ambassador Seung-Soo Han on June 24, 1994.

Letter of Ambassador James T. Laney to MOHW Minister Sang-Mok Suh on August 18, 1994.

Letter of USDA Secretary Mike Epsy to MOHW Minister Sang-Mok Suh on August 10, 1994.

Letter of Representatives to Ambassador Kun Woo Park on February 15, 1995.

Letter of Senators to Ambassador Kun Woo Park on February 17, 1995.

Letter of U.S. Trade Representative Michael Kantor to MFA Minister Ro Myung Kong on April 3, 1995.

Letter of Senators to President Clinton on July 17.

D.J. Lindner, *The Political Economy of the Won: U.S.-Korean Bilateral Negotiations on Exchange Rate*, International Finance Discussion Papers, No.434, Board of Governors of the Federal Reserve System, July 1992.

National Archives and Records Administration, *Federal Register*, Vol. 59, No.110, Thursday, June 9, 1994, Notices, pp.29863-4.

-----, *Federal Register*, Vol. 59, No.228, Tuesday, November 29, 1994, Notices, pp.61006-7.

*The 1989 Exchange of Letters, The 1990 Record of Understanding and The 1993 SBS Agreement*, U.S. Department of Commerce (Trade Compliance Center), <http://www.mac.doc.gov/tcc/treaty.htm>

The U.S. Embassy in Korea, *Backgrounder*, Press Office, May 23, 1994.

USTR, *1994 National Trade Estimate Report on Foreign Trade Barriers*, <http://www.ustr.gov/reports/index.html>

-----, *1995 National Trade Estimate: Republic of Korea*, <http://www.ustr.gov/reports/nte/1995/korea.html>

-----, *Report on U.S. Food Safety and The Uruguay Round: protecting Consumers and Promoting U.S. Exports*, June 1994.

-----, *Report to Congress on Section 301 Developments (Jan. 95-Jun. 96)*, <http://www.ustr.gov/reports/index.html>

-----, *Trade Policy Review of the United States: Report by the Government in 1996*, <http://www.wto.org/wto/reviews>

-----, *Press Release*, 'Identification of Trade Expansion Priorities Pursuant to Executive Order 12901, 94-50,' October 3, 1994.

-----, *Press Release*, 'Statement by Ambassador Kantor,' July 20, 1995.

-----, *Press Release*, 'USTR Monitors Korean Shelf-life Agreement,' No. 96-08, January 22, 1996.

## 5. Korean Documents

BFE, *Foreign Economy Coordination Committee Statute*, Presidential Decree, No.14268, 24 May 1994.

-----, *Press Release*, 'Korea, the U.S. Reached an Agreement to Settle the Shelf-life Dispute,' July 21, 1995.

BFE, MAFF, MTI, and MOHW, *Press Release*. 'The Results of the 18<sup>th</sup> Korea-U.S. Trade Subgroup Meeting,' April 30, 1995.

Letter of MOHW Minister Sang-Mok Suh to USDA Secretary Mike Espy on May 21, 1994.

Letter of KMIA to MOHW Minister Sang-Mock Suh on May 31, 1994.

Letter of Economic Counselor Jong-Hoon Kim to MIPTC on June 9, 1994.

Letter of Ambassador Seung-Soo Han to Representatives of the United States on July 1, 1994.

Letter of MFA Minister Ro-Myung Gong to U.S. Trade Representative on April 8, 1995.

KMIA, *Resolution on U.S. pressure on the Korean Meat Market*, November 25, 1994.

Korea Foreign Trade Association, *Trend of Korean-U.S. Trade Negotiation and Policy Agenda in the Future*, 1994.

MFA, *Press Release*, 15 December 1994.

-----, *Press Release*, 'The 16<sup>th</sup> Korea-U.S. Trade Subgroup Meeting,' April 5, 1994.

-----, *Press Release*, 'Comments on the Initiation of a Section 301 Investigation on Food Safety and Meat,' November 23, 1994.

-----, *Press Release*, 'Results of the Meeting Between Foreign Minister and U.S. Trade Representative Kantor,' February 7, 1995.

-----, *Press Release*, February 9, 1995.

-----, *Press Release*, 'The Shelf-life Problems for Meat and the U.S. Request of WTO Consultations on Inspection Clearance for Grapefruits,' April 6, 1995.

MOHW, *Press Release*, 'Improvement on Shelf-life System for Food Products,' September 23, 1994.

-----, *Press Release*, 'Improvement of Food Sanitation Laws,' February 13, 1995.

-----, *Press Release*, 'Preliminary Notification of the Revision Draft on the Food Code,' May 31, 1995.

MTI, *The Present Situation of U.S.- Korean Economic Relations*, 1997,

National Statistical Office, *Advance Report of Major Statistics*,  
<http://www.nso.go.kr/stat/other/e-speed.htm>

The Coalition of Consumers and Farmers for Imported Food Safety, *Statement*, July 21, 1995.

The Embassy of Korea in Washington, *Press Release*, November 22, 1994.

-----, *Comments to the Section 301 Petition Submitted by the National Pork Producers Council, the American Meat Institute, and the National Cattlemen's Association*, December 14, 1994, USTR Reading Room.

The Ministry of Justice, *Introduction to U.S. Trade Law*, Seoul, Changsin Publishing House, 1996.

....., *International Trade Law*, Vol. , June 11, 1999.

The National Farmer Groups Council, *Statement*, 21 July 1995.

The Korea Daily and Livestock Association, *Statement*, February 8, 1995.

The Korean Embassy in Washington, *Press Release*, 'The Outcome of the Technical-Level Meeting on Shelf-life Issue,' January 22, 1996.