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Master's Thesis of Public Administration

**Assessing the Policy Process of South
Korea's Ban on Japanese Fishery
Imports**

**: Using the Matrix between Goal Ambiguity and
Conflict**

**한일 수산물 WTO 분쟁 사례 연구
: 정책목표의 모호성과 행위자 간 갈등을 중심으로**

August 2019

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Assessing the Policy Process of South Korea's Ban on Japanese Fishery Imports

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Abstract

This study examines the dispute of South Korea's ban on Japanese fishery imports since the Fukushima nuclear crisis in March, 2011, up to the Japanese government's complaints to WTO and the final dispute outcome in April, 2019 in view of the policy implementation theory. Without a clear perception of who should be protected, and what should be done, the South Korean government's response had drifted from the beginning and the situation was further exacerbated by the conflict among stakeholders at every moment of crisis in the policy process. Although Korean government won a dramatic victory in the final trial, the question remains why the dispute, which could have been ended in the first trial, lasted. The results of the analysis through Richard Matland's ambiguous-conflict matrix are as follows. First, the Korean government, which must protect the public health and safety from radioactively-contaminated Japanese fisheries, failed to find a consistent policy goal throughout the dispute process. Second, in the midst of a policy drift, conflicts between the central government and the government-consumer group emerged, as well as a diplomatic conflict with Japan. As a result, over the past eight years, the Korean government went through a process of semi-experimental implementation → political implementation → symbolic implementation. The South Korean government's defeat in the first trial was a foreseeable outcome. The Korean government did not fully understand the international norms and had given up the opportunity to learn from past policy mistakes. Although the related ministries should have discussed the problem head-to-head, the implementation process of the ban on imports shows that each had different agendas. Finally, the study draws policy implications for better managing

future disputes in dealing with similar cases.¹

Keyword: Nuclear accident, World Trade Organization(WTO), SPS agreement, provisional measure, ambiguity-conflict model

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¹ This thesis builds upon and further validates author's manuscript entitled "South Korea's Import Ban on Japanese Fishery Products: What Went Wrong and What Went Right?" (co-authored with Min Gyo Koo).

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Chapter 1. Introduction

In March, 2011, a 9.0-magnitude earthquake on Japan's north-eastern coast caused an explosion in Fukushima Dai-ichi Nuclear Power Plant (FDNPP), resulting in a radiation leak. The Korean government immediately banned imports of more than 50 fishery products from eight provinces, including Fukushima. Furthermore, in September 2013, additional actions were taken to ban imports of all fishery products from eight provinces nearby Fukushima. In June, 2015, Japan filed complaints to World Trade Organization (WTO) and requested consultation with Korea under the Committee on Sanitary and Phytosanitary (SPS committee). After failing to reach an agreement, Japan requested the establishment of a panel, arguing that Korea's imports ban is beyond the international standards and is not based on scientific risk assessment, therefore it has infringed the Agreement on Sanitary and Phytosanitary Measures (SPS). The South Korean government, however, contended that the measure was reasonable not only because it followed the provisional measure under Article 5 of the SPS Agreement, but also because its geographic proximity to Japan could bring significant damage through radioactively contaminated food.

WTO panel report, released on February 22, 2018, concluded that the Korean government's ban on imports of Japanese fisheries in 2011 and 2013, was reasonable but a continued measure was in violation of the SPS Agreement. The panel focused on the fact that South Korea did not collect additional information and did not conduct a continuous reassessment.² The panel also ruled against Korea because Korea requested additional inspections only to Japanese fisheries

² In fact, Korea's 'Committee of Japan Radioactive Safety Management' abruptly stopped its research activities in June, 2015, after Japan's complaint to WTO.

products, maintained more stringent trade measures than necessary, and did not provide sufficient information on trade restrictions(WT/DS495).³ What is important here is that the panel had been watching the South Korean government's every move. In other words, each policy measure and the entire process of its execution played a decisive role in the panel decision. Thus, no government policy with regards to trade issues is free from international norms.

After the reporting of panel ruling in Korea, criticism of the outcome and the government's poor response was brought against the Korean government. The defeat in Korea was somewhat expected in that the initial steps and follow-up responses of the Korean government were poor. But there remain several unanswered questions. Why did Korea a leader in trade and foreign affairs, responded so poorly? Why had the import ban, a policy means to achieve the policy goal of public health and food safety, drifted?

Korea-Japan fisheries dispute is no different than any other trade dispute, as the complaint was filed in accordance with the dispute settlement body set by WTO against the importer's import ban. However, not only was it rare for imports of radioactively contaminated marine products to be an issue, but it was the first time that this issue became a trade dispute at the WTO under the SPS Agreement. The Korean government, which was an import-regulated country and in the position of a defendant, had difficulty setting sub-policy goals and policy tools despite its clear top-level policy goals of protecting the health and food safety for the people. Furthermore, conflicts among stakeholders over policy tools worsened the policy drift.

³ On April 9, 2018, South Korean government filed an appeal against a WTO panel report. However, it is likely to be a tough fight that Korea has already been defeated and has not provided enough information. The regulations require final outcome within three months from the date of appeal, but it is expected to take longer because some members of the appeals committee have been vacant recently.

There has been a lot of academic discussions on the topic at hand since March, 2011 when the first import ban was implemented. Most studies, however, have limited the interpretation and application of the SPS Agreements related to quarantine sovereignty, the impact of radiation risks on consumers' consumption behavior, and the food sector radioactive management system. None of the papers analyzed the issue in terms of the policy enforcement theory. Moreover, there are few studies in domestic policy studies that deal with this issue academically.

This study begins with a sense of the problem that since the dispute between Korea and Japan was a problem that occurred in the process of implementing import bans, the execution process must be analyzed in order to understand trade disputes and the decision. The reason why the same claim showed different results in the first and final trial was because of the Korean government's abrupt response without a clear perception of who should be protect from whom. In other words, the ban on Japanese fishery products drifted from the beginning and thus aggravated rather than solved the problem. Furthermore, the study argues that conflicts between stakeholders at every process also affected the policy drift. This study proceeds as follows.

Section 2 analyzes issues related to the SPS Agreement, introduces the principles of panel rulings, and provides a brief overview of the Korean government's legal response and logic. And Matland's ambiguity-conflict model is reconstructed to analyze the Korean government's response process in view of the policy implementation theory. The Matland model, which provides a typology of policy implementation by looking at goal ambiguity and conflicts as key variables, is suitable for analyzing the type of policy change and process in an integrated perspective, taking into account both the downward factors (policy goal ambiguity) and the upward factors (conflicts among stakeholders). The purpose of this study is

to explain why Korean government's policy drifted, despite the opportunities to correct and compensate policy errors during the process of implementation.

Section 3 finds that the imports ban dispute underwent three sequential stages from March, 2011 to April, 2019. The first stage, from March, 2013 to July, 2013, can be classified as a semi-experimental implementation in that the Korean government simply followed the Japanese government's initial quarantine measures without a proper understanding of the effects of radioactive contamination on marine products. This was followed by a political implementation in the period from July, 2013 to May, 2015 because the Korean government implemented strong ban on the import of Japanese marine product after rumors of radiation leaks spread. Moreover, the Korean government was in the face of conflicts within the government ministries and an opposition from the Japanese government. Finally, after June, 2015, when Japan's complaint to WTO challenged to the Korean government's previous ban on imports, the Korean government went into limbo again. This period is classified as a symbolic implementation in that the Korean government maintained the import ban due to public opinion gripped by fears of radioactive contamination, but did not take measures to support it both substantively and normatively.

Finally, Section 4 summarizes the analysis results and draws policy implications for better dealing with similar cases.

Chapter 2. Theoretical Background and Analysis Frame

2.1 Significance of the SPS Agreement and its main contents

General Agreement on Tariffs and Trade (GATT) 1947-system exceptionally allows members' import regulation to protect health of human and animal under the 20th section(b). As the Technical Barriers to Trade (TBT) emerged as an issue for major trading countries, the plurilateral TBT Agreement called Standard Code was adopted in the Tokyo Round, 1964-79, and it deals with requirements for food safety and sanitary measures of flora and fauna. Under the 1979 TBT convention, signatories could not follow technical measures on trade when international standards could not protect their hygiene. However, the treaty did not reach multilateral agreements because it only applied to countries that ratified the treaty. Later, in Uruguay Round, 1986-93, the need for multilateral discipline of the SPS measures was raised, and agreed based on the draft of Dunkel Text in 1991, then in effect after 1st January, 1995(Goo and Choi, 2019)

Although the SPS Agreement explicitly acknowledges that members have the right to take measures for the protection of human, animal or plant life or health (SPS Article 2.1), it could not be applied in a way which would constitute a disguised restriction on international trade (Article 2.3). The SPS Agreement emphasizes that it should be based on scientific evidence and shall not be maintained without sufficient scientific evidence (Article 2.2).

The guidance that scientific evidence is particularly important is Article 5, which sets out assessment of risk and determination of the appropriate level of sanitary or phytosanitary protection. The Article 1 considers that members could ensure their SPS measures by taking risk assessment techniques developed by the

relevant international organizations and by taking into account available scientific evidence (Article 5.2). In assessing the risk, members shall take into account as relevant economic factors: the potential damage about loss of production or sales, the costs of control, and the relative cost-effectiveness (Article 5.3), and as the objective of minimizing negative trade effects (Article 5.4). Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations. (Article 5.5) and ensure that the measures are not more trade-restrictive than required (Article 5.6).

WTO does not recognize officially law the precautionary principle of general international law that can take in the case that scientific evidence is insufficient but severe damage is expected. However, Article 5.7 allows temporary measure to be taken when there is a concern of serious damage although scientific evidence is insufficient. In this case, four requirements are required to take provisional measure: (1) adopted in respect of a situation where relevant scientific evidence is insufficient, (2) imposed on the basis of available pertinent information, (3) accumulates the additional evidence necessary for a more objective as risk assessment, (4) reviews the measure within a reasonable period of time. If any of these four requirements were not held to be cumulative, the provisional measure shall not be taken (Goo and Choi, 2019).

Japan claimed that Korea's import ban is inconsistent with Article 2.3 because Korea arbitrarily and unjustifiably discriminated Japanese products by constituting a disguised restriction on international trade. Moreover, Korean government failed to comply with the transparency requirement in Article 7. In response, Korea responded that import ban was not only a temporary measure under Article 5.7, but also considered the possibility of greater damage to radioactive contaminated food from geographic proximity to Japan.

2.2 Matland's Ambiguity-Conflict Matrix

It is necessary to understand the interpretation and application of the Korean government's SPS Agreement on import ban of Japanese fisheries products and to accurately understand the decision made by the dispute settlement system, in particular the interim measures of Article 5.7. Above all, the ambiguity of the policy goal is at the back of the Korean government's current ban on import since its beginning in 2011. In addition, multi-stage conflict structure composed of Korean central government, civic group, consumer and Japanese government contributed to the policy change.

Research on legal interpretation of the SPS Agreement (Gang, 2013; Jung, 2013; Ryu, 2015) and consumer studies/food awareness of radioactive risks to domestic consumers (Lee, 2011; Deok He, et al, 2013; Hwang and Lee, 2014; Kim and Baek, 2016; Kim and Kang, and Kwon, 2016; Jang and Kim, 2016; Joo and Yoo, 2016; Ha and Song, 2016; Lee and Ko, 2017; Kim, 2018) abounds. But few studies have analyzed this issue from the perspective of policy formation, decision making and execution process.

In response, this study seeks to overcome the limitations of existing research by reorganizing the dispute between Korea and Japan from the perspective of policy implementation by combining discussions on goal ambiguity and policy conflict. To achieve this purpose, Matland's policy implementation model provides a useful framework for analysis (Cohen, et. Al, 2005; Ellis, 2015).

Matland presented a model of the policy implementation process on the basis of two factors: ambiguity of policy goal and conflict among interest group. A low level of ambiguity and conflict means administrative implementation, a high level of ambiguity and conflict means symbolic implementation, a high level of

ambiguity and low level of conflict means experimental implementation and a low level of ambiguity and high level of conflict means political implementation.

Table 2.1 Matland’s Ambiguity-Conflict Matrix

		Level of Conflict	
		Low	High
Level of Goal Ambiguity	Low	administrative implementation <i>resources</i>	political implementation <i>power</i>
	High	experimental implementation <i>contextual</i>	symbolic implementation <i>coalition strength</i>

Source: Matland(1995: 160)

First, administrative implementation has the purpose and technical means for solving problem, so the outcome of the policy depends on the availability and degree of resources necessary for policy implementation. Because administrative implementation is less ambiguous and less contentious, it develops normative means and standard operating process to stratify tasks. Thus, a relatively stable form of implementation can result in uniform implementation (Matland, 1995: 160-163).

Second, experimental implementation occurs in situations where policy goals are vague and means required to realize a policy is also uncertain. The outcome of the policy is determined by contextual conditions. In other words, there can be wide variety of outcomes depending on the actors and resources involved in policy implementation.

Third, political implementation has low policy ambiguity but high level of conflicts among stakeholders who have different policy goals and means, therefore,

the policy is determined by power relationships. There is a tendency to be heavily influenced by external actors, and there is no choice but to gain support and reach agreement through forceful means (Matland, 1995: 163-165).

Fourth, symbolic implementation occurs when policy goals are vague and the level of conflict is high. The power relationship controls the outcome of implementation, but unlike political implementation, there are various interpretations of policy means due to the high ambiguity of the policy goals. Therefore, the role of the experts about the interpretation is important. The results of implementation are affected by the power relationships of the unions formed by stakeholders (Matland, 1995: 168-170).

The above-mentioned model of Matland has the advantage of systematically classifying the types of policy implementation according to the degree of ambiguity in policy and conflicts among stakeholders about policy means. However, in the Matland model, the goal ambiguity is focused on the ambiguity of the unit of policy, so there is a limitation as an analytical framework when various organizations participate in, and each unit of organization has goal ambiguity (Jensen, et. al, 2017). In addition, since Matland does not present specific factors that determine the level of conflict, additional factors are needed to be used as an analytical framework for this study. Thus, in this study, goal ambiguity theory is used to expand and reinterpret the model of Matland, and for identifying conflict levels, the model conceptualization needs to be improved by understanding the relationship among stakeholders about the policy goal and means.⁴

⁴ It is pointed out that, in theory, there can be a multicollinearity issue between ambiguity and conflict levels, which are independent variables of Matland model. Matland also explained that since conflicts tend to decrease because of the higher level of ambiguity in the policy goal, ambiguity in the policy goal can generally be proportional to the level of conflict (Matland, 1995: 158). Further analysis of the correlation between ambiguity and conflict is required, taking into account the probability of multicollinearity (Seo and Goo,

2.3 Analysis framework

1. Ambiguity in policy goal

A single situation can be perceived in different ways (Feldman, 1989: 5), which means there are competitive interpretations to a situation (Chun, 2004b: 3). In this regard, when a number of different interpretations are possible, the goals of the organization are lost meaning and ambiguous (DiMaggio, 1987; Feldman, 1989; Kelemen, 2000; Chun and Rainey, 2005; Lee, Rainey and Chun, 2010; Jung, 2014). Chun and Rainey (2005) develop four dimensions of goal ambiguity: mission comprehension ambiguity, directive goal ambiguity, evaluative goal ambiguity, and priority goal ambiguity to explain which goals in organization make competitive interpretation.

First, mission comprehension ambiguity refers to the number of competitive interpretation that occurs in understanding, explaining, and communicating the mission of an organization. The easier to understand and communicate the mission, the less diverse interpretations become, so the leaders of organizations strive to enhance member's commitment and sense of mission (Chun, 2004a: 55).

Second, directive goal ambiguity refers to the number of competitive interpretation in translating an organization's mission into specific directives (Chun, 2004a: 55). For instance, because of ambiguous terms in the law, it is difficult for public officials to draw clear guidelines for action in the policy implementation process (Lerner and Wanat, 1983).

Third, evaluative goal ambiguity refers to the number of competitive interpretations in assessing how far organizations have achieved their mission (Chun and Rainey, 2005). When evaluating organizational performance, the goal

need to be transformed into performance indicators (Grizzle, 1982). But when organizations lack objective performance indicators, they focus on workload-oriented indicators rather than on performance indicators (Merton, 1957). As with other organizational goals, evaluation ambiguity is no an entirely new concept (Chun, 2004a; Chun and Rainey, 2005).

Fourth, priority goal ambiguity is defined as the number of competitive interpretations that occur in determining the priority of a number of goals. Prioritizing means recognizing one goal is prioritized over another at a particular point in time or integrating the linkage of goal-means (Richards, 1986; Chun, 2004).

Research on factors affecting goal ambiguity has also emerged. Lee et al. (2009) focus on the political environment, suggesting that the higher the political salience of president, congress and the media, the more goal ambiguity increases. Jung (2009) attempted to study the impact factors of the goal ambiguity of a policy project as a unit of analysis, and argued that management capabilities, project types, assessment years, project scale, budget growth, political partisanship, and institutional type influence goal ambiguity at a statistically significant level. This study focuses on political, administrative, and business characteristics factors noted by Kwon Tae-wook and Chun Young-han (2015) that affect goal ambiguity.

First, the complexity of political demands in political factors arises when the needs of various participants and competitive interests are put into the policy process. Because government policy project should meet the needs and expectations of external environments composed of various stakeholders (Meier, 2000), the complexity of political needs can be viewed as an independent variable affecting ambiguity. Political attention is also a factor to consider, which increases the likelihood of political actors in the external environment of the organization,

such as president, congress and media, influence in policy goals (Lee et al., 2009: 265). Moreover, political attention on each policy project would also have similar outcome (Kwon and Chun, 2015).

Second, administrative factors are associated with planning activities to clearly set goals for the policy project (Jung, 2009: 79). The higher the planning ability, the more specific a set of target groups established and resources can be allocated according to the wishes of the respective departments (Kwon and Chun, 2015: 173). In addition, the level of goal ambiguity may be reduced through management activities of assessment and structured relation of various actors involved in a financial management or policy project (Lee, 2006; Kwon and Chun, 2015: 173).⁵

Third, directness in business characteristics means whether government performs all roles exclusively or quasi-government or non-government institutions take over the executive duties (Chun, 2007). As the scale of policy projects increase, the functions and goals become more diverse. In addition, levels of ambiguity increase when budgets are rigid or without growth (Marginson and Ogden, 2005; Jung, 2009).

2. Conflicts between policy goals and means

In the concept of Matland (1995), conflict is largely an independent variable, but the exact concept of it is not addressed. Conflicts occur when there is no consensus on the distribution of limited or reciprocal resources between two or more individuals, groups, organizations, or communities (Brickman, 1974; Rubin et al., 1994; Plowman, 1995; Jung, 2010: 4). Policy conflicts, in particular, are

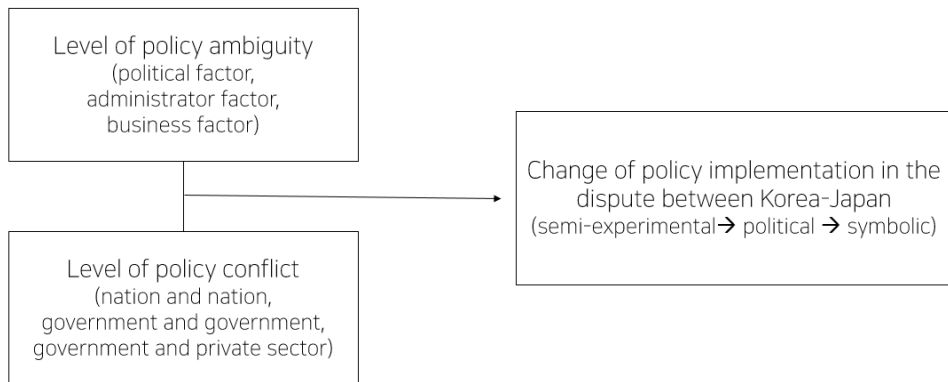
⁵ Scholars paying attention to public management leadership argue that managers and leaders have a significant impact on the level of goal ambiguity. This is because it is one of the administrator's major responsibilities to clarify the goal or to present a level of achievement in specific performance (Jung, 2009).

situations in which multiple stakeholders deal with policies that are directly related to their interests or collide when organizations disagree with them. This aspect of conflict is also associated with the means to implement policies, which also arise when different means are proposed to achieve the goals. For example, a reduction in environmental pollution may be an agreed-upon goal, but conflicts arise when stakeholder prefers different ways to implement this policy (Matland, 1995: 157).

Various levels of conflict arose among stakeholders in the fisheries dispute between Korea and Japan. Above all, Korea and Japan were at odds over their interests. Within South Korea, there were conflicts over different policy means between the ministries concerned, and socially there were conflicts between the government and the consumers. Therefore, in this study, we are going to examine conflicts between countries, within government, and finally between government and society in three stages, how each conflict with policy goals and means affected the policy implementation process.

<Figure 1> shows the conceptual framework that analyzes the level of ambiguity in policy goals determined by political, administrative, and business factors, and how the level of policy conflict caused by differences in policy goals and means have affected policy implementation in the dispute between Korea and Japan.

Figure 1 Conceptual framework



The level of conflict over Korean government’s policy goals fluctuated greatly following the announcement of Japan’s July 2013 nuclear power plants crisis and the Japanese government’s complaints to WTO in June 2015. Therefore, the period is divided as follows: (1) March, 2011 (Fukushima nuclear accident) ~ July, 2013 (the announcement of the nuclear radiation leak), (2) July, 2013 ~ May, 2015 (complaint to WTO), (3) June, 2015 (after Japan’s complaint to WTO) ~ Current. Process tracing method is used as an analysis method by utilizing the WTO panel reports, press release of Office for government policy coordination, Ministry of agriculture, food and rural affairs, Ministry of trade, industry and energy, Ministry of food and drug safety, Ministry of foreign affairs, Nuclear safety and security commission, and Ministry of ocean and fisheries. In addition, the paper seeks to increase the leverage of causal inference by conducting expert interviews directly or indirectly participating in the policy process to obtain information on context, process, and linkage mechanisms.⁶

⁶ The interviews were conducted in March, 2018 with a former senior official at the Ministry of trade, who participated in the dispute, and a member of the civilian experts’ committee who reevaluated the feasibility of import regulations.

Chapter 3. Analysis Results

3.1 Semi-experimental implementation: March, 2011 ~ July, 2013

On March 11, 2011, a hydrogen explosion occurred in Fukushima 1 nuclear power plant due to the massive earthquake and tsunami in Japan, resulting in a radiation leak. Lee Myung-bak government immediately banned 50 of the imported fishing products in eight prefectures including Fukushima. Its ban mirrored restrictions imposed by Japan. However, the government's initial response was passive. With the public increasingly uneasy in March, 2012, Lee Myung-bak government dramatically enhanced standards for all Japanese food imports (Ministry of agriculture, food and rural affairs, 2012.03.29.). At this time, the Korean government had no clear perception of the objective and rationale for the ban other than its ambiguous policy goal of ensuring public health and food safety. Therefore, there was no conflict between ministries over policy means. At that time, there were no signs of conflict between the government and the private sector or with the Japanese government, as Korean consumers were also less anxious due to the government's import ban.

The theoretical model used in this study expects experimental trials in high level ambiguity and low level conflict situations. The experimental implementation is a situation in which the preferences of participants are ambiguous and the skills needed to implement the policy are uncertain. Policy results are determined by contextual conditions at hand, and strong uncertainty prevents each policy means from forming a framework. Sometimes policies are created first when there are no realistic means of enforcement due to widely supported causes. According to Matland, experimental implementation is done through uncertain decisions in

difficult situations, such as the trash can model (Matland, 1995: 166).

In experimental implementation, it is difficult to implement because of the insufficient information and the imperfect environmental factors. Therefore, learning about policy goals and means is more important than making successful results. That's why we can look at experimental implementation as an opportunity (Matland, 1995: 167). However, during this time, Korean government did not fully consider the goals and means. As a result, the lack of preparation at this time led to an overreaction in the next period and thus provided the Japanese government an excuse to file a WTO complaint. The opportunities for spontaneous learning that should have been fully utilized during this period was lost as Korea faced the need for involuntary learning after the WTO complaint. Thus, the moment was not an experimental one in the most accurate sense, but a semi-experimental implementation.

1. High-level policy goal ambiguity: mission comprehension ambiguity

This period was marked by mission comprehension ambiguity. As the public increasingly became uneasy about the radioactive food imports, Lee Myung-bak government should have concentrated on public safety and risk management. This is because they did not fully understand about the level of radioactive contamination of seawater caused by the nuclear fallout and its impact on the marine products. The goals and means of the proposed policy were also ambiguous. In the end, the Korean government was criticized for being passive in its behavior because they just followed the policy implemented by Japan, the country where the accident occurred, rather than actively developing policy options. In other words, 50 items in eight prefectures that Lee Myung-bak government had banned

immediately were also banned by the Japan government from exporting. However, China and Taiwan responded more actively to all food products produced in respectively 10 and 5 prefectures after the radiation leak.⁷

After the nuclear crisis, Japan strengthened its own radiation standards for public health and safety. Then Lee Myung-bak government followed Japan's radioactive Caesium standards from 370Bq/kg to 100Bq/kg. Other neighbor countries such as China, Taiwan and others immediately took active measures after the accident, but Korea, which is geographically closest to Japan, only followed Japan's standards. Some media criticized the Korean government for being too cautious not to cause controversy over quarantine sovereignty, but soon languished because there was no clear rule of judgement (Jung, 2012). The government lacked management and ability to cope with the nuclear accident in neighboring countries, and failed to prepare measures for the safety of the people.

The Korean government's response is typical of an experimental implementation. The government had to come up with some measures to protect the public health and safety from the marine products, but it did not fully understand the issue and accepted the Japanese government's measures experimentally.

Lee Myung-bak government's nuclear friendly policy is not completely irrelevant. On the day of the Fukushima nuclear power plant crisis, President Lee Myung-bak attended a groundbreaking ceremony for constructing a South Korean nuclear plant in the United Arab Emirate, and emphasized that Japan's nuclear accident is an opportunity for Korea (Jeon, 2011). However, he was indifferent the

⁷ At the time of 2011 radiation leak, China administration banned imports of all food products produced by 10 prefectures of Japan, and Taiwan also did it (excluding alcohol beverages), including Fukushima, Ibaraki, Dokoku, Gumma and Chiba prefecture, and responded more safely to the danger situation as neighboring countries.

growing public anxiety over the nuclear accident. In other words, there was no accurate perception and understanding of what to do and why it had to be done.

Government should make all-out efforts to protect the safety of the people and try to secure public trust in a crisis. But the government at that time didn't have the experience and expertise required to assess the leak's impact on public health and safety, and failed to recognize what to do. For these reasons, this period showed high-level of ambiguity.

2. Low level of conflict

From the nuclear accident to July, 2013, Lee Myung-bak government and ministries responded passively. Ministry of agriculture, food and rural affairs focused on follow-up measures such as expanding the radiation inspection of Japanese marine products and strengthening control over the country of origin (Ministry of agriculture, food and rural affairs, 2011.03.15.; 2011.09.23.). Ministry of food and drug safety was passive because they only represented response and management trend about Japan radioactive accident, explanation of rumors, import prohibited marine products, and notice of radioactivity test results.⁸ Office for government policy coordination held a good safety policy committee and planned to serve as a control tower for food safety policies such as management of imported food (Office for government policy coordination, 2011.03.23.), but did not take any action before the issue of radiation leak. In March, 2012, Ministry of agriculture, food and rural affairs announced that it would strengthen the standard of radioactive cesium for all imported Japanese food products, but it was not much different from the measures the Japanese government implemented earlier. When

⁸ A press release of Ministry of food and drug safety
(<http://www.mfds.go.kr/index.do?mid=1074>)

major problems such as radiation accidents occur, conflicts over the overlapping functions of related ministries, opinion difference in priorities, and decisions on how to implement are generally seen. However, there was no such conflicting situation within the Korean government.

The passive response of the related ministries is because of the green-growth policy trend in Lee Myung-bak government. The government, stressing nuclear facilities as a new growth engine, put a lot of effort and national resources to build nuclear power plants in the United Arab Emirates. In this trend, Ministry of food and drug safety has taken only minimal steps for safety management. They were concerned that if the nuclear accident and food safety issues are highlighted, it would throw a wet blanket over the government's nuclear friendly policy. In addition, after the change of government in January, 2013, administrative reform was delayed due to the delay of the initial government reorganization and ministry appointment process, and the vacuum of administration and the absence of ministry leadership made officials apathetic (Lee, 2013).

The Korean government did not impose such aggressive import bans as China and Taiwan, and the diplomatic conflict between Korea and Japan did not occur because Korea only followed the standards and measures proposed by Japan. This is because a cautious approach prevailed in government. At that time, Ministry of foreign affairs and Ministry of agriculture, food and rural affairs said that strict import inspections could lead to trade friction between Korea and Japan, and therefore, import ban should be implemented carefully (Kang, 2011). Indeed, European Union (EU) strictly implemented import bans on the U.S. genetically modified organism (GMO) products and Hormone-treated beef due to public

unrest.⁹ In addition, in the case of China-U.S. poultry dispute, U.S. lost the case because they did not provide adequate evidence about risk.¹⁰

In addition, although some media released the public voice about their concerns, consumer groups did not take significant actions.¹¹ Despite the nuclear crisis, the government eased consumer anxiety with the minimal import ban which followed the standard of Japan.

3.2 Political implementation: July, 2013 ~ May, 2015

On July 22, 2013, Japan's Tokyo Electric Power Corporation announced that contaminated water from nuclear power plant was flowing into the sea. It did not deny that highly concentrated radioactive contaminated water is flowing into the

⁹ The GMO dispute between U.S. and EU began in the late 1990s when EU strictly restricted U.S./ imports of GMOs. Under EU's import ban, Europe's share of U.S. corn imports fell from 86 percent in 1995 to 10 percent in 2000. United States and other GMO exporting countries, including United States, which suffered huge losses due to the EU's import restriction, filed a complaint against WTO in May, 2003. EU claimed the measure was a temporary measure under Article 5.7 of SPS Agreement, but in November, 2006, the panel report rules that EU is taking illegal import bans on GMOs because of lack of scientific evidence and risk assessment results. A similar ruling was made in the beef dispute between U.S. and EU ahead of the ruling. The panel, which was set up to resolve the conflict, recommended lifting EU's ban on U.S. hormone imports, because there was no scientific evidence to raise the issue on the stability of beef infected with growth hormones in 1997. EU appealed immediately, but in January, 1998, the appellate body ruled in favor of the panel's decision. In 2005, EU filed a complaint with WTO against both United States and Canada in that their retaliatory tariffs were illegal. In October, 2008, appellate body made a vague ruling that EU could continue to ban imports of certain hormone beef while allowing U.S. and Canada to continue to impose retaliatory tariffs (Goo and Choi, 2019).

¹⁰ In 2004, several countries, including United States and China, banned poultry, including chicken, from being imported due to the spread of bird flu worldwide. Months later, China lifted the ban, but U.S. continued to maintain restrictions on import from China. China demanded WTO panel set up in June, 2009, and the panel report adopted in October, 2010 ruled that U.S. did not provide a risk assessment and maintained import restrictions without scientific evidence which infringed Article 5.1, 5.2, and 2.2. It also ruled that U.S. claims that Chinese poultry is more dangerous than other WTO member's products have been violated in that it is arbitrary and discriminatory (WT/DS392/R).

¹¹ Conservative media such as Chosun, Joongang, Dong-A, and progressive newspaper like Hangyoreh, Kyunghyang voiced the public concerns voer radioactive-contaminated Japanese marine products.

ocean and may have flowed into the Pacific Ocean (Nam, 2013). Public unease and concern increased because of Korea's geographic proximity to Japan and Park Geun-hye government announced a 'temporary special measures' to strengthen the ban on fish imports on September, 6 with Ministry of foreign affairs, Ministry of security and public administration, Ministry of ocean and fisheries, Ministry of agriculture, food and rural affairs, Ministry of food and drug safety, Nuclear safety and security commission. It banned the import of all marine products from eight prefectures around Fukushima, and required other nuclear test to trace amounts of radioactive materials such as cesium or iodine found in Japanese food, and strengthened the criteria for detection of cesium. Park Geun-hye government had clear goals to totally ban imports of Japanese fisheries products at that time. However, it was not the result of a systematic learning from previous experience, but the result of external events such as the leak of contaminated water from nuclear power plant and the deterioration of domestic public opinion. Therefore, the implementation of this period was influenced by political motivation from the start. Moreover, political phenomenon of policy implementation accelerated as conflicts arose not only between Seoul and Tokyo but also among related ministries over the strict import restrictions.

This period is characterized by 'political implementation'. Political implementation occurs when actors have different policy goals and policy means, but in the end, the outcome of the policy is determined by the relationship of power. During this period, political focus of the issue was raised due to the influence of domestic public opinion, which was reflected in the implementation process.

1. Low-level of policy goal ambiguity

With the Japanese government's announcement of a nuclear leak, radioactive

contamination became a big issue both domestically and abroad. People's anxiety was amplified and media reports were critical. Political attention was raised also because it is an issue directly related to health. As political and media attention increased due to bad public opinion, Park Geun-hye government started to have strong and clear goals. Mission comprehension ambiguity of the previous period was greatly reduced with clear goal to secure public health and safety. The Korean government made efforts to ease public anxiety, including expanding inspections on food safety. Nuclear safety and security commission periodically announced the results of the radioactive environmental inspection, and Ministry of ocean and fisheries also expanded the disclosure of the radiation safety survey and strengthened crackdown on its origin. In September, 2013, a temporary special measure was taken to prohibit the import of all marine products from the eight prefectures around Fukushima after a meeting of related ministers, including Ministry of agriculture, food and rural affairs, Ministry of food and drug safety, Ministry of foreign affairs, Ministry of security and public administration, Nuclear safety and security commission, Ministry of ocean and fisheries. They also decided to require additional verified certification for other types of nuclear tests if a small amount of cesium is found in marine or livestock products outside the eight prefectures. The inspection criteria for domestic food products also followed Japan's elevated standards following the nuclear accident (Ministerial meeting, 2013.09.06.). After the implementation of temporary special measures, the Japanese government constantly complained, but Park Geun-hye government strongly rejected.¹² As the public opinion worsened, the president took an interest

¹² For example, Japanese government requested for lifting of Korea's import regulations at the Korea-Japan foreign ministers' meeting in September 2013, however, Korean government rejected because it was a preventive and tentative step that was inevitably taken by spreading public fear and decreasing sales.

and took active action, reducing the ambiguity of policy goals.

According to the World Health Organization's Health Risk Assessment report at the time, cancer risks in other countries were not expected to increase significantly after the Fukushima accident, but increased in certain age and gender of residents near Fukushima prefecture (Codex Alimentarius Commission, 2013: 2). This is based on the possibility of radioactive contamination of the sea and marine products after Fukushima nuclear accident. If there was a possibility of radioactive contamination in fish products, it was persuasive to argue that there was no reason to delay strong import control for the sake of scientific uncertainty, as it was appropriate not to import them. Korea, in particular, was at great risk due to its close proximity to Japan and the high volume of trade in marine products with Japan (Ryu, 2015: 267).

Park Geun-hye government formed 'experts' committee of radiation safety management' twice in order to justify temporary special measures, and reviewed a report on the results provided by Japan. In addition, a group to conduct local survey was sent to Japan which inspected the status of safety management by visiting Japan's fisheries wholesale and private inspection agencies, government agencies, local government, and consumer groups.

In September 2014, when temporary special measures were taken one year later, six related ministries (Ministry of agriculture, food and rural affairs, Ministry of trade, industry, and energy, Ministry of food and drug safety, Ministry of foreign affairs, Nuclear safety and security commission, Ministry of ocean and fisheries) announced that this measure could be taken under the SPS Agreement. Therefore, the need for a rational review of scientific feasibility arose (Related ministries, 2014.09.15.). They announced that the government would conduct a new review in January 2015 with a plan for a second local investigation. The temporary measures

were positive in that they eased people's anxiety about food safety. However, WTO dispute settlement process worked against the Korean government as shown in the following section in that this measure didn't follow the official risk management procedure and was only decided by the ministers' meeting.¹³

2. High-level of conflict

In this period, external conflicts as well as internal conflicts occurred. Externally, conflicts arose as Japan protested against Korea's strong actions¹⁴, and internally, conflicts between government and consumers were prominent.

The temporary special measures further worsened Korea-Japan relation. Since the inauguration of Park Geun-hye government, the Korea-Japan summit did not take place until May, 2015 because the president was pro-China and anti-Japan. Strong import ban in this political context caused friction with Japan.

Meanwhile, conflict among government ministries was not ostensibly revealed, but the different policy goals and means pursued by each ministry have increased the conflict. This was caused by the lack of coordination needed to bring

¹³ According to Article 24.1 of Korea Oceanic and Marine Disease Control Act, "the importation of designated quarantine materials produced or shipped in or through the region designated by Ministry of ocean and fisheries" is prohibited. And under Article 26.1 of the enforcement rules of same Act, the Minister of ocean and fisheries will report the import ban region. However, Korea's measure on September 6, 2013 did not take steps that Minister of ocean and fisheries designates eight prefectures as import ban region, following the Article 24.1.1 and the enforcement rules of same Act 26.1. Instead, it was a strong temporary special measures because it was decided after a meeting of related ministers and consultations between government and ruling party. This appears to have been government's strategic move to minimize trade friction with Japan by clarifying that the measure was a temporary measure under Article 5 of the SPS Agreement (Jeong and Jang, 2015, 26-27).

¹⁴ According to an interview with an official at Ministry of trade, Japan asked Korean government to discuss lifting the import ban on fisheries products by using Korea-Japan Fisheries Agreement as a bargaining chip because Japan could become a radioactive country if Japan complaints to WTO. He said that if Korea accepts the bargaining chip, Korean government may appear to be taking a step back to the public, so turned down the deal.

together goals among ministries. Office for government policy coordination with focus on public opinion led the temporary special measures because it was important to secure public confidence through the presentation of strong policies. Ministry of food and drug safety also announced that they had set up a new inspection center to strengthen inspection of imported marine products and planned to conduct a local survey in Japan (Ministry of food and drug safety, 2013.10.31.). Ministry of agriculture, food and rural affair also kept disclosing the result of radiation safety and announced that all domestic agricultural products must comply with the safety standards (Yoon, 2013).

Public opinion in Korea worsened since Japan's announcement of a radioactive water leak. When Prime Minister Chung Hong-won ordered punishment of those who spread rumors (Hwang, 2013), six ministries under the Prime Minister announced a ban on all imports of Japanese marine products in September, 2013. They took strong measures focusing on appeasing public opinion. However, right after the announcement of its implementation, there was a great controversy as the Minister of ocean and fisheries said that there was no problem with the existing import ban from a scientific standpoint (Ministry of ocean and fisheries, 2013.09.11.). Furthermore, Ministry of ocean and fisheries hesitated the temporary special measures, claiming that Korea's radiation detection standards are the strictest in the world (Ministry of ocean and fisheries, 2013.09.11.).

In August, 2013, Nuclear safety and security commission sent a PhD researcher from the Korea Institute of Nuclear Safety (KINS) to Japan until the problem of radioactive contaminated water was solved (Nuclear safety and security commission, 2013.08.29.). The on-site activities ended in December, 2013, only four months after they started. It was because the situation was over. Since then, there have been no Korean experts in Japan, and we have come to rely on the data

provided by the Japanese government (Kim, 2014). In October of that year, the commission announced that no artificial radioactive materials had been detected in the seawater testing of areas expected to have been affected by the Fukushima plant.¹⁵ It was a surprise announcement because the temporary special measures was made just a month ago.

Meanwhile, a committee of radioactive pollution civilian experts conducted a local survey in Japan twice in December, 2014 and January, 2015.¹⁶ It was aimed at easing public anxiety through closer investigation as a field investigation activity. However, the conflict erupted after media report that an official in Ministry of foreign affairs insisted lifting the provisional import ban during the committee's second local investigation in January, 15. The reason was that Korea-Japan relations should be normalized on the occasion of the 50th anniversary of diplomatic relations and that Korean actions could be filed with WTO due to possible violation of the trade law (Kim and Kim, 2015; Lee, 2015).¹⁷

As food safety management system became publicized through opinions from other ministries other than the responsible ministry, this non-official channels

¹⁵ Four sites in East China Sea and two sites in nearby Ulleungdo Island under the influence of Fukushima power plant were not detected artificial radioactive materials. And the results of environmental radiation measurement also maintained the normal (Nuclear safety and security commission, 2013.10.04.).

¹⁶ The first local survey (December 14-19, 2014) examined the comprehensive measures of Japanese government's marine products, including the status of radiation measurement results, radioactive contamination water management and preventive management. In second local survey (January 12, 2015), they visited Japan to check the status of distribution of marine products, private inspection agencies, and government agencies, and examine radioactive certification and management status of fishing area (Jung and Jang, 2015: 12).

¹⁷ In the absence of the results of the investigation, as the argument of the official became controversy, a ministry official explained that there is no decision yet. "Ministry of foreign affairs seems impatient for resolving relations with Japan, and it will not be effective in improving relations with Japan because they already represented the lifting of import ban," a government official said (Kim, 2015).

other than official decision-making channels raised criticism of the radioactive contamination management system that should be operated on scientific basis (Jeong and Jang, 2015, 13). Conflicts between ministries were not only because they had different priorities for policy goals, but they preferred different means to achieve the policy goal of national health and safety.

Conflicts between government and consumers stem from consumer distrust and discontent with the government. Despite government's announcement, many consumers, who lost confidence in the government's response and quarantine system, called for an all-out ban on imports of Japanese marine products (Kim, 2013). However, consumers had become distrustful of government as there was movement to lift the import ban under the insufficient public suspicion over Japanese fisheries products. 46 labor, citizen, religion, women, environment and human rights groups issued statements urging the government not to lift import restrictions, and public criticism spreaded on the Internet and social networks.

Ministry of food and drug safety began to consider lifting the provisional import ban on Japanese fisheries products on the basis of the data provided by Japan in September, 2014. However, as media and consumer groups raised their voices of concern, government made an explanation that it was organizing a private expert committee for reviewing temporary import bans (related ministries, 2014.09.15.). After a media reporting such government activity, the government hurriedly announced that it was only a meeting to form a civilian expert committee as a precursor, rather than lifting the import ban (Lee, 2014; Jung and Jang, 2015: 11-12). Accurate information provision and communication are important in crisis management, but as neither was met properly, the level of conflict between government and consumers was even higher.

3.3 Symbolic implementation: after June, 2015

Japan requested Korea to lift import restrictions as soon as possible, and continued to demand disclosure of information on whether Korea's measures are compatible with the international standards. As Park Geun-hye government was continuously unresponsive, the Japanese government requested for bilateral talk in Korea according to the WTO dispute settlement procedures. However, the talk ended after confirming the differences between the two sides. Japan claimed that Korea's actions were neither transparent nor based on scientific evidence, thus violating the SPS Agreement.¹⁸ As the Japanese government requested the WTO dispute settlement system to set up a panel on August 20, the panel was organized on September 28 and, the Korea-Japan dispute entered a new phase.¹⁹ Meanwhile, the Japanese government continuously expressed concern and regret over measures to regulate imports of marine products whenever Korea and Japan met in minister's meeting or committee of economy gatherings between Korea and Japan. Park Geun-hye government, however, refused to withdraw import bans, sticking to its original position of responding to the dispute settlement system.

In the end, the Korean government lost the first trial. WTO panel saw the

¹⁸ In response to Japanese government's claim, Korea government raised the following objections. First, the footnote in Annex 1 of the SPS Agreement (Definition) defines 'contaminants' as "including residues and external substances of pesticides and veterinary drugs". Therefore, radioactive materials, which are concerned to be contained in eight prefectures near Fukushima, are considered 'contaminants'. Second, 'sanitary or plant sanitation measures' as defined by the SPS Agreement means "protection of any human or animal life or health within the territory from the risk of additive, contaminants, toxins or disease causes in food". Thus, the temporary ban taken by Korean government is consistent with the purpose of protecting the lives or health of humans or animals in Korean territory from the risks that could arise from radioactive materials.

¹⁹ The composition of the panel was completed on 8 February, 2016. The panel, which started its first oral hearing in July of the same year, distributed the panel report to Korea, Japan and other member countries as third-party rights on October 16, the following year. The final panel report was circulated and released to WTO member countries on 22 February, 2018 (WT/DS495).

Korean government's ban on imports of Japanese marine products in 2011 and 2013 as a legitimate measure, but what was maintained after was in violation of Article 5 of the SPS Agreement on temporary measure. The Korean government did not take steps to maintain the provisional measure of four requirements required by the clause. In other words, the government did not take steps to collect additional necessary information for a more objective risk assessment and to review the provisional measures within a reasonable period.²⁰ They also judged that the Korean government's actions were arbitrary and unjustly utilized, thus discriminating against Japanese marine products and limiting trade more than necessary (in violation of Article 2 of the Agreement). In other words, even though Korea could achieve the proper level of protection only through the cesium test, requiring additional inspections is more than necessary. It also judged that Article 7 of the Agreement (Transparency) was violated because the items of import ban were not specifically stated on the Korean government homepage²¹ and they did not properly provided the information that the Japanese government requested for the second time ('14.11.13.) (WT/DS495).

The theoretical model used this study shows the characteristics of symbolic implementation when ambiguity and conflict levels are high at the same time. Symbolic implementation is mainly done in the process of maturing new policy goals, reaffirming existing policy goals, or exploring important values and

²⁰ The panel accepted Japanese government's claim and judged that Korean government's 2011 measure was based on information that existed at the time, but the 2013 measures violated scientific basis requirements by not doing so. It also ruled that although Korean government announced they would review in 2014, they did not implement it, and there was no record of taking specific action and no reasonable reason for the delay.

²¹ According to a panel report, Korean government 'simply' stopped providing data. Why did this happen? Unfortunately, the panel couldn't search the website of Ministry of food and drug safety because they stopped operation for a while due to suggestions on renewing its website during the period of parliamentary inspection (Interview of former official in Ministry of trade, industry and energy).

principles (Jeong, 2005). The implementation in this period illustrates this characteristic. With the advent of a new variable about WTO complaint, the Korean government reeled from the Japanese challenge on imports ban. When no ministry showed intent to solve problems or show leadership, there was also directive goal ambiguity and evaluative goal ambiguity. These government responses led to greater public distrust and increased internal conflicts. Still, by maintaining the existing import ban, the conflict with Japan only escalated and eventually no one could be satisfied. As such, the first trial was expected to lose. However, the first trial outcome was overturned on April 11 2019, breaking everyone's expectations. This has never happened in the SPS Agreement dispute. The WTO judged that Korea's import ban is neither arbitrary discrimination nor unfair trade restrictions. It is a reversal of the dispute settlement's decision. The same argument was rejected in the first trial and accepted in the final trial. So Why did the dispute, which could have been won in the first trail, continue unending?

1. High-level of goal ambiguity: directive goal ambiguity and evaluative goal ambiguity

Although Korea-Japan fisheries dispute entered a new phase due to Japan's complaint to WTO, the Korean government did not take any special actions except minimal steps in the dispute settlement system. After Japan's complaint, there was no movement by the Blue House. As no action was taken by the Blue House, there was a directive goal ambiguity among government ministries that did not know what to do, and it led to policy drift. After Japan's complaint was announced, Ministry of trade, industry and energy made a passive response such as some delay in organizing WTO dispute panel (Kim, 2015; Yoo, 2015). In addition, existing research activities were stopped for reasons that were not obvious. Above all,

Japan's radioactive contamination situation and food radioactive material management information had to be used as scientific basis for Korea's analysis, but no official government report had been released.²²

The Korean government's action contrasts with the Institut de Radioprotection et de Sûreté Nucléaire in France and Vienna Technology University in Austria that continuously released Japan's radioactive contamination monitoring. Of course, it is not always appropriate to take new measures after the dispute settlement process has begun, but the panel report shows how weak the Korean government's response was during this period. Until earlier periods, Ministry of food and drug safety had been in charge about this situation. However, when the Blue House and Office for government policy coordination paced up and down after the WTO complaint, even Ministry of foreign affairs and Ministry of trade, industry and energy had to come up with a strategy, but no one came up with proper measures with the increasing directive goal ambiguity within the government ministries.

As the panel report revealed, the Korean government's poor response was due to its huge evaluative goal ambiguity during this period. It is well seen that the Korean government has taken measures to deal with various legal issues, not only before the complaint but also after.

²² "The role of the committee was to reassess the validity of import regulations, and government's strong regulations in the first place was because of the impact of public opinion." Said a member of the committee. He also argued that the civil committee's activities have been suspended indefinitely as Japan filed a complaint WTO without prior notice to Korea. According to Song Ki-ho (2016), as Japanese government filed a complaint to WTO, the civil committee held on June 5, 2015 decided to postpone submitting the report and watch WTO action. In addition, the committee initially planned to collect not only surface water but also undersea soil and deep water by doing local survey, but withdrew the survey in response to Japan's objection of as excessive survey. Although the purpose of the investigation was to find out about radioactive contamination of marine products and the leakage of Fukushima nuclear power plant water, the committee just withdrew it. In the end, they missed an opportunity to secure data that can be used as decisive evidence during investigation of WTO panel.

First, for Korea to effectively respond to the dispute, it had to provide grounds for temporary special measures to be in accordance with Article 5 of the SPS Agreement. For Korea to maintain its import ban, it should have made efforts to collect additional information through objective risk assessments and to review its interim measures within a reasonable period. However, according to a document submitted to WTO by U.S., which participated in the dispute settlement system as third-party rights on August 2, 2016, the Korean government did not even properly claim Article 5.7 as the basic clause (WT/DS495). Also, as mentioned earlier, the Korean government suddenly stopped working on the civil expert committee. The survey of deep water and undersea soil, which could be the basis of rebuttal to Japan's claim, was not finished in response to the request by Japan. In addition, the failure to disclose the results of the survey would not provide a basis for maintaining the provisional measure.

Second, the most controversial issue in the case of fisheries dispute between Korea and Japan over the interpretation and application of Article 2 of the SPS Agreement, which bans the disguised restriction on trade through arbitrary or unjust discrimination, was that the additional inspection was only taken by the Korean government. As mentioned earlier, even though China and Taiwan have taken stronger measures than Korea, including banning imports of all food products from 10 and 5 prefectures respectively, Korea was the only country that required additional inspections. This was also the result of excessive measures taken without clear evaluation criteria and rationale.

After WTO panel's defeat in February 2018, the Korean government sought to maintain its existing measures rather than take immediate action under the WTO ruling amid growing anxiety over Japanese fisheries products. The government

also decided to file an appeal.²³ On April 11, 2019, the WTO ruled in favor of South Korea, reversing the first trial decision. The government was quick to schedule an official announcement because it was an unexpected result.²⁴

2. High-level of conflict

Even up to the moment this paper is being written, public anxiety over radioactive marine products has not been resolved. Although the Japanese government and Tokyo Electric Power Corporation have come up with various measures to prevent the leakage of contaminated water out of the nuclear power plant since September 2013, the contaminated water from the power plant is still flowing out. There are predictions that it will take more than 10 years for the problem to be finally resolved. In addition, Korean public's distrust of the Korean government, which had been sued by Japan without taking any action, has intensified (Jeong and Jang, 2015: 66).

The confrontation between Korea and Japan through dispute settlement procedures was also an extension of international conflicts.

First, Korea and Japan were at odds over the responsibility of proof under Article 5 of the Agreement. Under this provision, the responsibility of proof is on the country filing an appeal. The Korean government argued that although Japan did not file a complaint against Article 5.7, it was responsible for *prima facie*

²³ According to a joint ministries' press release on February 23, 2018, Korean government decided to take as follows, saying "public health and safety first": (1) The government is in the position that there is a problem with the panel decision, and will raise an appeal according to WTO dispute settlement procedure to fight this issue, (2) Regardless of the results of this panel decision, existing import regulations remain in place until the end of the dispute settlement procedure, (3) Prepare the appeal thoroughly and make every effort to prevent any radioactive food from being on our table.

²⁴ The government insisted on a background briefing without a broadcasting camera, but belatedly switched to an official briefing when news of the victory was made. Yoon Chang-ryul, head of the Social Policy Coordination Office at the office for Government Policy Coordination, said "We prepared a statement to prepare for the defeat." (Jung and Choi, 2019).

evidence that Korea's actions were consistent with the Article 5.7. However, Japan insisted that it was the responsibility of the applicant, so Korea has to take responsibility. After all, panel decided that Korea has the onus of proof.

Second, the four requirements for provisional measures should be met on a cumulative basis. The Japanese government concentrated on the fact that the Korean government's action did not have sufficient scientific basis, such as not utilizing information available at that time. In the end, the panel accepted Japan's claim and judged that Korea's actions failed to meet the requirements of the first two of the four requirements: (1) Measures introduced when relevant scientific evidence is lacking, (2) Action based on appropriate information available.

Third, the Korean government admitted that the import ban was discriminatory, but insisted that it was a legitimate measure to protect the health of the public because of the insufficient scientific evidence against the dangers of Japanese fisheries products. However, the panel judged that Korea's import ban and other additional inspection measures are too strong in terms of trade restrictions. The panel ruled that it is self-indulgent and unjustifiable because Korea did not implement the scientific risk assessment even though it was possible.

Fourth, the Korean government claimed that it posted the import ban through its website and media reports, and it had responded to Japan's two inquiries by setting up enquiries. On the other hand, Japan claimed that Korea's actions violated its obligations to publish properly and to provide answers and data through enquiries under Article 7 of the SPS Agreement and Annex B (1) and B (3). Panel judged that Korea violated Annex B (1) and B (3). Even if Korea disclosed the full import ban on violations about B (1) on its website, it did not specify the items under the import ban, and the additional test requirements were not enough for stakeholders including Japan to recognize any changes in the conditions.

Although Korea did not complete its answer to Japan's first request ('14.06.24.), it could not be said to be a violation of B (3) in that it had been trying to set up enquiries. However, the panel judged it was a violation of the second request ('14.11.13.) because the Korean government did not answer 'simply' and did not provide appropriate data.

Chapter 4. Conclusion and Policy Implications

The study analyzed the Korea and Japan fisheries dispute using the ambiguity-conflict theory. After the March 11, 2011 earthquake in Japan, the Korean government's import ban of Japanese fisheries was implemented in three major steps, depending on the degree of ambiguity of policy objectives and conflicts among stakeholders. The major events that played an important role in changing the goals of ambiguity and policy means were Japan's announcement of leakage of radioactive water in July, 2013 and Japan's complaint to WTO in June, 2015.

First, until the Japan's issue of contaminated water leaks became controversial (March, 2011 ~ July, 2013), the Korean government did not understand the severity of the public health and safety crisis caused by radioactive marine products, which quickly turned out to be ambiguous. There was no major conflict domestically and abroad. This period was considered as a semi-experimental implementation in that it showed some characteristics of experimental implementation but did not have sufficient policy learning that is usually shown in experimental implementation.

Second, the public sentiment erupted after Japan's massive spill of radioactive water into the sea, with the Korean government announcing temporary measures to impose a total ban on all marine products in eight prefectures in Japan. During this period (July, 2013 ~ May, 2015), the Korean government clearly recognized the goal of protecting the public health and safety, but there were internal discords between ministries, and external conflicts with Japan. Therefore, this period was characterized by political implementation.

Third, the period since June, 2015 shows the characteristic of symbolic implementation. Japan claimed that the Korean government's measures about

import ban on 28 kinds of marine products in eight prefectures and additional inspection certificates are breach of the obligations of the SPS Agreement. The Korean government stuck to the import ban due to public opinion gripped by radioactive fears, but did not actively respond to the WTO complaint. In February, 2018, the WTO panel ruled that the Korean government's import ban violated the provisions of Article 2.3 (discrimination), Article 5.6 (more trade restrictive than required), and Article 7 and Annex 2 (Transparency). The Korean government filed the appeal after the ruling. And in April 2019, a decision was made to overturn the first trial ruling for the first time in the history of the SPS dispute. It was an unexpected result. The government's mishandling of the case can be seen as failing to settle the dispute that could have been won in the first place.

The defeat of the Korean government in the first trial was foreseeable. The Korean government did not fully understand the SPS Agreement and the international standards, and took no considerable action regarding the insufficient information at hand. In response, public distrust and diplomatic conflicts intensified. Although related ministries should have discussed the issue head-to-head, the implementation process of the import ban showed the tendency of having different purposes while working together. The import ban of marine products passed through experimental and political implementation processes, and finally drifted toward a symbolic implementation. In the first and third period, the government's position was not established, and policy goals were blurred. In the second period, when the policy goal was relatively clear, the policy showed signs of drift due to differences in perceptions among related ministries, government-public, and Korea-Japan relations over specific policy means. Such a policy drift, or the lack of consistency provided a pretext for Japan to make Korea the sole target of complaint among several countries that have banned imports of Japanese

fisheries products. The Korean government also failed to come up with comprehensive measures at the government level due to the lack of understanding of SPS Agreement, radioactive contaminated food and differences in awareness among ministries. This was why the dispute, which could have been won in the first trial, was not over.

As discussed above, understanding the Korea-Japan marine product dispute and the WTO dispute panel decision has very important policy implications.

First, WTO's SPS Agreement aims to protect the public's food safety and the environment. As with the technical barriers to goods, however, hygiene and quarantine measures on food and plants in each country since the 1980s have been seen to protect domestic agriculture and livestock industries by restricting imports of foods and plants. In response, WTO has applied the criteria to discipline these measures by each country so that they do not become protective trade measures. However, critics say that the SPS deal is too dependent on science and technology. We should not abandon scientificism unilaterally, but that the justification for the SPS measure should not be overly imbued with science. For example, demanding too much scientificism in countries with a large number of agricultural and marine imports, such as Korea, can prevent people from maintaining their health and stability. In the end, it is important to secure expertise in this regard as this will be supplemented through the case of dispute settlement system (Goo and Choi, 2019).

Second, the main reason for the failure of Korea-Japan fisheries dispute in the first trial is because Korean government's import ban was not based on a scientific risk assessment, which requires institutional and administrative supplementation. Finding sufficient scientific evidence and conducting a risk assessment requires systematic investment in the areas of sanitation, such as recruitment of experts and acquirement of advanced equipments.

Third, Japan's complaint against Korea's ban on imports of marine products is the first case of SPS dispute over radioactive contaminated food. This made it difficult to prepare and the government was confused in the process. It is necessary to thoroughly study and prepare for the possible recurrence of such disputes. The panel's decision confirmed that even a small part of policy implementation is disadvantageous in the process of litigation. Therefore, ministries need to expand the recognition and understanding of the WTO dispute settlement system and SPS Agreement.

Fourth, because all trade disputes require cooperation from various ministries, the leadership of some related ministries or experts is insufficient. It is also necessary to secure the trust and support of politicians, the media and provide the public with sufficient information. Korea, which suffered a national turmoil and a paralysis of state affairs in 2008 when the mad cow disease crisis hit the country a decade ago, should try to expand the people's access to information services concerned with food safety. Furthermore, only when scientific inspection and the results are transparently disclosed, can the public support the government. Maintaining policy consistency and reducing confusion through this process will secure the public confidence in the government policies, and moreover, it will be able to build trust internationally.

Finally, this study is a single case study, and generalization of the conclusions reached in this paper is strictly limited. In order to test the veracity of the objective ambiguity-conflict matrix, more diverse case studies must be conducted.

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국문초록

한일 수산물 WTO 분쟁 사례 연구 : 정책목표의 모호성과 행위자 간 갈등을 중심으로

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본 연구는 2011년 3월 동일본 원전사고 직후부터 한국 정부가 취한 일본산 수산물 수입금지조치와 그에 대한 일본 정부의 WTO 제소, 2018년 2월 WTO 분쟁 패널의 1심 판정 결과, 그리고 한국 정부의 상소와 2019년 4월 최종 판정 등에 걸친 과정을 정책집행론의 관점에서 재구성하여 분석한다. 무엇으로부터 누구를 왜 보호해야 하는지에 대한 뚜렷한 인식이 없는 상황에서 졸속으로 이루어진 한국 정부의 대응, 즉 일본산 수산물 금지조치는 초기부터 표류했고, 정책집행 과정의 고비 때마다 불거진 이해당사자 간 갈등으로 인해 더욱 심화되었다. 비록 최종 심에서 극적으로 승소했지만, 1심에서 끝낼 수 있었던 분쟁이 왜 지속되었는가에 대해 의문이 남는다. Richard Matland의 모호성-갈등 모형을 통해 동 사례를 분석한 결과는 다음과 같다. 첫째, 방사능 오염 일본산 수산물로부터 국민의 건강과 안전을 지켜야 할 한국 정부는 분쟁 과정 내내 일관된 정책목표를 찾지 못했다. 둘째, 정책목표 표류 상황에서

일본과의 외교적 갈등은 물론 국내적으로 유관 중앙부처 간 갈등과 정부-소비자 집단의 갈등이 나타났다. 결과적으로 지난 8여 년간 한국 정부의 일본산 수산물 수입금지조치는 준수형적 집행 → 정치적 집행 → 상징적 집행의 표류 과정을 거쳤다. 1심에서 한국 정부의 패소는 예견된 사태였다. 한국 정부는 국제규범을 제대로 이해하지 못했으며, 정책 학습의 기회를 스스로 차버렸다. 문제해결을 위해 유관 부처가 머리를 맞대고 논의를 했어야 하지만 수입금지조치라는 정책 집행 과정에서는 동상이몽의 전형을 보여주었다. 끝으로 본 연구는 향후 한일 수산물 WTO 분쟁과 유사 사례에 대처하기 위한 정책적 시사점을 도출한다.

주제어: 원전사고, 세계무역기구(WTO), SPS 협정, 잠정조치, 모호성-갈등 모형

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