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KOREAN ODA STRATEGIES FOR RESOURCE DIPLOMACY TOWARDS AFRICA: LEARN THE ‘ANGOLA MODE’ OF CHINESE ODA STRATEGIES*

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Abstract

Due to various conflicts in MiddleEast Asia, the main global oil exporter, the procurement of energy has become more competitive in the world. In addition, the demands of newly industrialised countries such as China for resources intensify the competition in the world. However, Africa has emerged as a new strategic region for the procurement of natural resources, and following the Second World War, China has bolstered its alliance with African countries by providing its Official Development Assistance in the region. As a result, China has successfully met its resource requirements. However South Korea’s ODA is mainly concentrated in Asia for geographic reasons: South Korea relies highly on imports for the procurement of resources. South Korea must provide its ODA in Africa in order to increase its self-sufficiency in resources. Then will South Korea be released from the criticism that it should transfer its ODA focus from Africa to Asia and from the lower middle-income countries to the least developed countries and other low-income countries. In a reality where the world continually experiences economic recession, South Korea should not only consider the recipients’ needs but also its economic interests when it provides its ODA, a so-called win-win situation.

Key words: Resource diplomacy, Chinese ODA, Africa

* This article is a revised version of the master’s degree dissertation of Jihwan Park
INTRODUCTION

Due to the unstable circumstances of Middle East Asia, such as the Iraq war beginning in 2003, on top of the demand for oil and other natural resources from newly industrialised countries such as China and India, the price of energy and natural resources has increased sharply. In response to high prices for oil and other natural resources, countries that must import these resources, including the Republic of Korea [hereafter South Korea], tend to compete to procure resources for the sustainable development and future of their countries. In order to secure this procurement, newly industrialised countries are increasing their foreign aid to many of the poor but natural resource-rich countries in Africa (see Klare, 2002). Chinese foreign aid, for example, has recently been greatly increased in Africa. The Chinese economy has grown rapidly during the last decades and it became an oil-importing country in 1993 (Seo, 2005). As the demand for energy and natural resources in China has explosively increased, the level of oil dependence on oil-exporting countries has also increased. As a result, China seems to be vulnerable in its procurement of energy. In response to this, China has been endeavouring to procure natural resources as a survival strategy. Chinese leaders compete with other natural resource importing countries (such as newly industrialised countries) for procurement through their natural resource strategies. Through this active natural resource diplomacy, China has achieved a remarkable outcome.

South Korea joined the DAC in 2009, and the role of Korean Official Development Assistance (ODA) is gradually increasing in poverty alleviation, in accordance with the world trend of ODA. There is a dilemma for South Korea: should they set their ODA strategies

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1 The natural resource diplomacy is hereafter referred to as the all actions of countries for securing and procuring resources.
based on the world ODA trend which is poverty alleviation or on natural resource diplomacy? Shifting the Korean ODA focus from Asia to Africa can achieve both aims and resolve the dilemma. For South Korea, it is important to look at the Chinese ODA strategies for its natural resource procurement. Resource-rich African countries, such as Cameroon, Chad, and Congo, periodically establish policies which limit the procurement of energy and other natural resources by limiting the participation of the share in multinational corporations or increasing the unit price of the share. That is, the energy and natural resource market has been worsened by the international and domestic factor of intense competition between countries which require natural resources.\(^2\)

The question is why is the procurement of resources so important? Resources are broadly used for all parts of industry. Industrialisation is one of the strongest vehicles for the development of countries and boosting their economic growth. One of the main objectives in development literature is economic growth (see Allen & Thomas, 2000). Thus it is important to look at Chinese ODA strategies in this region in relation to South Korea’s natural resource diplomacy. It is also important to establish Korean ODA strategies based upon those of China and their possible impact on South Korean economic development (Seo, 2005).

This paper states that the success of Chinese natural resource diplomacy is based on Chinese ODA strategies, and that South Korea should adjust its strategies in natural resource diplomacy. By shifting its ODA focus from Asia to Africa, South Korea can deflect OECD’s criticism that South Korea’s ODA is focused too much on Asia (lower middle income countries).

METHODOLOGY

This research applies qualitative research methods using secondary data from: research papers and reports of China’s foreign aid to Africa; official publications of: intergovernmental organisations, the OECD, the South Korean government; and South Korean and Chinese domestic and foreign press releases. Heaton (1998) argues that secondary data is appropriate for qualitative research, because this data is from a wide range of sources which involves different perspectives and helps build conclusions. In addition, using secondary data saves time and cost for researchers. It restrictively uses the statistics that have been investigated and drawn upon by other researchers. These have to be secondary sources, because the Chinese government does not reveal its accurate aid figures (Lum et al. 2009). This paper also thoroughly analyses one case study which is on China’s ODA performance in Sudan. Ghauri and Gronhaug (2002) assert that this case study give us a better understanding of this research topic. Therefore, the Sudan case study provides deep insights into China’s ODA to Africa for their economic interests, and suggests interesting implications on South Korea’s ODA strategies.

The research findings about China’s ODA to Africa, elaborated upon in the next sections, are mostly sceptical in terms of its aid effectiveness. In addition, the research on South Korea’s ODA only points out problems and criticisms of the aid projects, along with the world aid trend, because South Korea and China are also development examples. However, this paper does not focus on the aid effectiveness of recipients but on economic and political interests of the donor countries when providing ODA. This paper assumes that providing ODA gives the donor countries economic growth. In addition many researchers argue that it is difficult to estimate the exact volume of Chinese ODA, because China does not draw up ODA statistics based on the concept of ODA by the OECD. Another limit
of this paper comes from Chinese foreign aid shares characteristics - China does not exactly reveal its ODA.

The purpose of this paper is to seek and suggest implications on South Korea’s ODA strategies for the procurement of resources by assessing and comparing the Chinese and South Korean ODA. This paper has three research questions:

- How do China’s ODA strategies satisfy its ODA goals?
- What strategic problems does South Korea have in order to secure resource demands?
- What implications do China’s ODA strategies towards Africa suggest for South Korea’s ODA strategies?

THE ODA OF CHINA AND SOUTH KOREA TOWARDS AFRICA

Chinese ODA towards Africa

China’s ODA strategy was undertaken in 1953, when it started as wartime aid to its ally, North Korea. However, its basic concepts were announced in 1964 during a state visit to Mali by Prime Minister Zhou Enlai. They are (Chin and Frolic, 2007: 5):

- Emphasize equality and mutual benefit
- Respect sovereignty and never attach conditions which interfere with domestic affairs
- Provide interest-free or low-interest loans
- Help recipient countries develop independence and self-reliance
- Build projects that require little investment and can be accomplished quickly
- Provide quality equipment and material at market prices
- Ensure effective technical assistance
- Pay experts according to local standards

These principles have guided and are important to understanding the characteristics of Chinese ODA. Chin and Frolic (2007: 5) argue that China has given aid based on these concepts, mainly to newly independent countries in Asia, Africa, and Latin America. They have done this in order to prevent the international influence of Taiwan (regarded as a break-away province), and to secure supporters for ‘communist internationalism’ by spreading anti-capitalism and anti-imperialism. The success of those strategies was seen in the Chinese return to the United Nations thanks to 26 votes in support from African countries and the accompanying deprivation of UN representation of Taiwan. However, during the 1970s and the 1980s, the Chinese government was facing the question of how China’s ODA could increase efficiency with a limited national budget and increased demand for ODA in developing countries. It was an especially important task to calm the domestic hostility against the ODA. This hostility was due to the fact that more than 100 million Chinese suffered from extreme poverty. As a result, some projects were undertaken which did not burden the Chinese economy. For example, China actively participated in the management of ODA projects, and sent experts to coordinate recipients’ corporations and Chinese corporations (Nam, 2009).

Since 2000, China’s ODA strategies have been carried forward in accordance with the Chinese national strategy of entering the global market. China encouraged foreign investment in Chinese corporations, especially in state-owned corporations, by providing incentives using its foreign exchange reserves (Antkiewicz and Whalley, 2007; OECD, 2008d). The ODA of China played a very important

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3 See United Nations General Assembly Resolution 2758
part in its entering the global market. It is usually difficult to attract corporations’ material investments in equipment in developing countries due to its scale and risk. However, China has promoted this by supporting the corporations with ODA capital (Nam, 2009). Thus, expanding the business of Chinese corporations during this period was closely related to Chinese ODA (Nam, 2009).

China’s ODA actions in Africa have recently been more active than at any other period. Former Chinese President Hu has already performed several state visits to the region, and he has also sent many senior government officials in order to secure ties with African countries. At the same time South Korean Presidents have visited only a small number of times (Kim, 2007). In addition, China often promises to increase its ODA volume. In 2000, China promised 1 Billion USD of debt relief to African countries during a China-Africa Forum (BBC, 2000), and also 5 billion USD of soft loans and grants in 2007 (Guardian, 2007). In 2009, China assured the region of 10 billion USD in concessional loans and promised to build 100 clean energy projects for climate change in Africa (Jakarta Globe, 2009). Lum et al. (2009: 9) argue that the traditional ODA projects of China in the region are becoming “much grander development projects that serve China’s direct economic interests”.

Tong Xiaoguang, a researcher with the Chinese Academy of Engineering (CAE), expects that China’s dependence on imported oil will soar to 60% by 2020 and 65% by 2030 (Xinhua, 2011). In addition to this, dependence on imported natural gas will rapidly increase (Seo, 2005). In response to these increases in dependence on imported oil and natural gas, China prioritises energy security and has long term energy procurement strategies. The energy problems that China faces are a result of its industrialisation and the accompanying increase in energy use. These problems are likely to

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4 Loans that have long repayment periods or low interest rates.
continue as a by-product of its economic development.

The Chinese government attempts to procure resources based on its predictions of the global energy market being disturbed. The President of China (the PRC) and other senior government officials endeavour to secure this diplomatically and the ODA of China functions as one of its most important strategies (Jeong, 2008). The importance of the alliance with African countries can be seen in the several visits by the President and other high level government officials.

In the last few years, the volume of China’s ODA towards Africa has grown dramatically. Chinese aid in the region is annually estimated to be approximately 1.4 billion USD to 2.7 billion USD, with a significant amount of concessional loans between 8 billion and 9 billion USD (Brautigam, 2008; Davies, 2007). However the World Bank and the Chinese government indicate that there was 7 billion USD in infrastructure financing and 9.5 billion in economic cooperation in Africa in 2006 (Tattersall, 2008). In addition, the China Development Bank found 5 billion USD China-Africa Development funds for various development projects (Miller, 2009).

Table 1. Selected African Countries with Large Reported Aid and Investment Projects, 2002-2007

<table>
<thead>
<tr>
<th>Country</th>
<th>Main Exports to China</th>
<th>Pledged Aid, Loans, Credit Lines, and Investments</th>
<th>Major Types of Financing (as reported)</th>
<th>Major Types of Projects Financed (as reported)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>Oil</td>
<td>$7.4 billion</td>
<td>Loans, Interest-free loans, Credit lines</td>
<td>Infrastructure (Railways)</td>
</tr>
<tr>
<td>Congo (DRC)</td>
<td>Oil, Minerals</td>
<td>$5 billion</td>
<td>Loans</td>
<td>Infrastructure, Mining</td>
</tr>
<tr>
<td>Sudan</td>
<td>Oil</td>
<td>$4.2 billion</td>
<td>Investment, Loans, Grants</td>
<td>Oil refining; infrastructure, hydropower, humanitarian</td>
</tr>
<tr>
<td>Country</td>
<td>Main Exports to China</td>
<td>Pledged Aid, Loans, Credit Lines, and Investments</td>
<td>Major Types of Financing (as reported)</td>
<td>Major Types of Projects Financed (as reported)</td>
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</tr>
<tr>
<td>Gabon d</td>
<td>Oil, Minerals</td>
<td>$3 billion</td>
<td>Investment, Grant</td>
<td>Iron ore mining, infrastructure, Port facilities, Hydropower</td>
</tr>
<tr>
<td>Mozambique</td>
<td>Wood, Ores</td>
<td>$2.4 billion</td>
<td>Debt cancellation, Concessional loans, Grants</td>
<td>Dam construction, Infrastructure, National stadium</td>
</tr>
<tr>
<td>Equatorial Guinea b c</td>
<td>Oil</td>
<td>$2 billion</td>
<td>Concessional loans, Credit lines</td>
<td>Not specified</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>Oil drilling rights</td>
<td>$2 billion (includes 2008 aid of $150)</td>
<td>Loans, Grants, Investment</td>
<td>295.5</td>
</tr>
<tr>
<td>Nigeria a b</td>
<td>Oil</td>
<td>$1.6 billion</td>
<td>Debt cancellation, Investment, Grant</td>
<td>Offshore oil development, Infrastructure (railways), Medical training</td>
</tr>
</tbody>
</table>

*Source: NYU Wagner School (2008)*

a. major African trading partner of China
b. loan payments in oil
c. major African oil supplier of China
d. loan payments in minerals

As a result, Angola became the second largest source of imported oil to China with 17.46 million tons, after Saudi Arabia with 22.18 million tons in 2005. Angola, Sudan, Congo, and Equatorial Guinea were the top 10 oil exporters to China in 2005 (FOCAC, 2006). Almost 70% of ODA and investment financing of China on infrastructure were concentrated in Angola, Nigeria, Ethiopia, and Sudan, from which China mainly imports its oil (Lum et al., 2009). Consequently, China procured 38.34 million tons of oil from Africa in 2005. This was roughly one third of China’s total oil imports (FOCAC, 2006). For example, China provided Angola with 2 billion USD of loans and grants, and imported 465,000 barrels of oil per day in the first six months of 2007. Sudan also provides roughly 60% of output oil to China (Hanson, 2008).
Lum et al. (2009: 4) lists the impact areas of Chinese ODA. They are:

- Loans and grants are often made available relatively quickly and easily – without the political, economic, social, and environmental conditions\(^5\) and safeguards and bureaucratic procedures that major OECD aid donors, multilateral financial institutions, and multinational corporations typically impose.
- China often promotes economic projects in countries, areas, and sectors that developed country governments and multinational corporations have avoided because they have determined them to be unfriendly, too arduous, or unfeasible.
- Many China-funded or China-built public works in foreign countries, such as national cultural centres, stadiums, and highways, are highly visible and provide tangible, short-term benefits.
- Such aid and investment activities are often announced at bilateral summit meetings with great fanfare, powerfully symbolizing the friendship between China and other developing countries.

As Table 1 shows the ODA projects of China are largely related to infrastructure. Moyo (2009) states that China’s ODA and investments in infrastructure promote productive activities in Africa, and help African countries to achieve sustainable development. Oya (2006) points out that Chinese ODA flows to Africa serve an important function: the economic development of the least developed countries. The author further states that net capital flow to Africa decreased by 25% during the 1990s. Michel and Beuret (2009) further argue that the appearance of China in Africa fills the gap left

\(^5\) It means there is no condition to interfere domestic affairs. China does impose condition by its tied aid.
by the the departure of Western countries after they failed to stimulate growth in the African economy.

China’s ODA has no conditionality\(^6\). This means there is no condition to interfere with domestic affairs. Xiaoyun examines that “China’s no-conditionality aid provides possible ways [sic] of developing a self-driven agency for for African countries”\(^7\). China argues that economic development can be achieved without interference in recipients’ domestic affairs, through investment in trade, infrastructure, and the social system (Kang, 2007). Furthermore, the Chinese government is attempting to spread its domestic model of economic development, which is the government led market economy development model, the so-called Beijing Consensus. Zheng (2008) argues that this is justifiable as Western donor countries require westernised systems of governance which require democracy, governmental reform of recipients, and/or a high level of privatisation of the recipients’ domestic market. Hence African countries which have inequality and human rights issues, due to the relatively non-transparent political system, the institutional unrest, the underdeveloped economy, support the Chinese development model rather than that of Western countries. The reason is that the Chinese model only concerns economic issues without bringing in the political problems of recipients. Wells (1983) further maintains that it is because the techniques and facilities that China provides through its ODA projects are more suitable than the ones from developed countries’ ODA projects, (very high techniques and materials.) However, there is criticism which states that Chinese

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\(^6\) Conditionality in the sentence indicates the ones which interfere domestic affairs of recipients and thus prerequisites to receive the aid. However conditionality which is imposed on tied aid, mentioning in section 4 and 5, do not interfere domestic affairs of recipients but are part of ‘terms of reference’ implementing aid projects.

\(^7\) See http://www.oecd.org/dataoecd/27/7/40378067.pdf The ‘Beijing Consensus’ is the Chinese market development model which encompasses the policies that each country should join the world economic system while maintaining its own values (see Ramo, 2004)
ODA offsets the effects that other donor countries and NGOs have made for governmental reform and transparency of recipients. In addition, China has increased its loans to the world’s poorest countries. These countries have received debt relief from other donor countries, which might yet worsen debt problems (McGreal, 2007). However Foster et al. (2009) argue that the Western donors did not give debt relief to one third of the African countries which China gave debt relief to. Besides, African countries have received 780 billion USD of Chinese debt relief.

With regard to China’s ODA many African people seem to view it positively. In terms of the West’s opinion that China’s ODA to corrupted dictatorships with no-conditionality is invading Africa, for example, African people think that the dictatorships initially prospered with the West’s aid in the past (Kang et al., 2010). According to a survey conducted in 15 African countries in 2007, opinions about China were positive. People living in the African countries responded that Chinese economic growth would be beneficial for their economies (Moyo, 2009). More than 90% of respondents in Côte d’Ivoire and Mali, for instance, have a positive view of China, as do 81% of respondents in Senegal and Kenya. In Ghana and Nigeria, three-fourths of respondents have a good feeling towards China and this figure was two-thirds in Ethiopia. Furthermore, people in most of these countries responded that China’s influence in their countries is greater than that of the US. In Ethiopia, 61% of respondents are in favor of China and 34% are not, while 54% of the people think positively of the US and 34% do not (Moyo, 2009).

However China’s ODA has been criticised in terms of its purposes, which are the procurement of natural resources for economic de-

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8 Western donor countries cancelled an aid meeting due to the concerns about the transparency when Angola spends the ODA capital in 2005, but shortly thereafter, China provided Angola with 2 billion USD of loans and obtained an oilfield development concession (Kaplinsky et al., 2007).
velopment. Nonetheless there are other countries that provide ODA for their own economic and political reasons. Japan, for example, clearly states in its ODA Charter that the purpose of its ODA is to "ensure Japan’s security and prosperity" and that global poverty reduction is not the first priority of Japan’s ODA.\textsuperscript{9} In other words, the Japan’s ODA is provided based on its own foreign policy for Japan’s security and prosperity. This is why the tied aid rate of Japanese ODA is high. The US has also provided its ODA in South Korea since 1945.\textsuperscript{10} The US has spent a significant amount of ODA disbursements on mutual security in South Korea. The largest amount of American ODA was employed in order to prevent the spread of communism by securing South Korean independence from North Korea.\textsuperscript{11} In other words, the US provided its ODA mainly based on their political purposes, not poverty alleviation, in South Korea. Consequently, the purpose of China’s ODA, which is securing China’s resources demands for its economic development, can be also justified. Moreover, the negative aid effectiveness of China’s ODA is controversial depending on the scholars. One of Chan’s ODA characteristics, ‘no conditionality’ encourages ownership of recipient countries which meet the Paris Declaration on Aid Effectiveness.\textsuperscript{12}

Along with the positive effects of China’s ODA, China also achieved its economic goals through their ODA strategies to Africa. China procures copper and cobalt from, respectively, The Democratic Republic of Congo (DRC) and Zambia, and iron ore and platinum from South Africa. They also procure timber from Gabon, Cameroon, and Congo. Additionally, China obtained mines in Zambia, textile

\textsuperscript{9} See Japan’s ODA Charter
\textsuperscript{11} If one country in a region became communised, then the surrounding countries would follow in a domino effect (Eisenhower, 1954).
\textsuperscript{12} See http://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm
factories in Lesotho, shares in the national railway of Uganda, and timber in the Central African Republic (Kang et al., 2010).

**South Korea towards Africa**

The start of ODA in South Korea was the invitational training of trainees from developing countries in 1963 (KOICA, 2011). Since then, South Korea has been implementing various ODA programs including loans, technical cooperation and emergency relief. The basic policies of Korean ODA are to select its recipients from countries that dispatched their troops during the Korean War, to ‘focus on’ resources-rich Asian countries, and to ‘improve national image’ in Vietnam where South Korean troops fought with the US military (KOICA, 2011).

Despite billions in development aid from international societies, Africa has been in a poverty trap for a long period of time. In particular Sub-Saharan Africa has been facing chronic poverty and MDGs (Millennium Development Goals) that international societies have established to be achieved by 2015 are not feasible until then. In order to contribute to achieve MDGs in Africa, South Korea is also expanding its ODA volume. South Korea announced ‘Korea’s Initiative for Africa’s Development’ in March 2006 which included the tripling of Korea’s ODA to Africa by 2008 (MOFA, 2006), and has increased its ODA volume from 100 million USD to 260 million USD to fulfil the pledge and to contribute to humanitarian assistance and building infrastructure (Prime Minister’s Office, 2012).

South Korea is also participating in innovative development funds such as the Muskoka Initiative on Maternal, Newborn and Child Health and Air-ticket Solidarity Contribution (Prime Minister’s Office, 2012). South Korea is focusing its ODA on health, drinking water development, education, rural development in Sub-Saharan
Africa (the least developed countries) while focusing on ICT, public administration systems, and industrial energy in North Africa.

However the proportion of South Korea’s ODA spent in Africa is too low and the number of countries in which South Korea provides its ODA is too high. In other words, the portion for each country in Africa is too low. In fact, the top 2 countries in Africa received 22.174 billion KRW of its ODA, which is 28% of total ODA to Africa (own calculation). Thus the two countries share 4.2% of the total ODA flow of South Korea, and the rest of the 45 African countries receive roughly 10.7% of total South Korea’s ODA. This amount is insignificant for making an impact on poverty reduction or expanding the influence of South Korea for securing resources (OECD, 2008c). There is only one African Country among the top 10 recipients of South Korea’s ODA (KOICA, 2010). This pattern of spending is neither in accord with the global ODA trend towards poverty alleviation nor with China’s ODA strategies for resources. China provides the largest portion of its ODA in Africa in order to secure its resources. South Korea should focus its ODA more closely on Africa, especially resource-rich countries such as Sudan, Angola, and DRC. Those countries are both the world’s poorest countries and resource-rich countries. Thus aiding them would meet both South Korea’s economic interests and the world ODA trend.

The short-sighted policies of South Korea are also problematic when it provides ODA. As for China, their ODA strategy aims to procure raw materials and natural resources, which are the basic sources for the development of their industries. South Korea’s ODA strategy is used to increase a small number of corporations in Africa. In addition, South Korea’s bilateral aid to lower middle-income and upper middle-income countries was as high as 49% of its total in 2012 while to the least developed countries it was 35% and it should be decreased. Table 2 shows South Korea’s bilateral aid to each region.
The amount of China’s ODA capital is much higher than that of South Korea. South Korea cannot simply use the same approach as China since South Korea does not have the financial firepower of China. Nonetheless, it is important for South Korea to reduce the number of recipients in Africa for a more meaningful impact of ODA on both South Korea and the recipients. As the OECD points out, South Korea provides a meaningless amount of ODA in Africa; most priority recipients are Asian countries which do not consist of the least developed countries such as the Philippines and Vietnam.

China provides the largest amount of its ODA in Africa, particularly in the least-developed countries such as Sudan, Angola, and Nigeria, and has already secured a significant amount of resources and raw materials for its industries. However, South Korea is lagging behind the Chinese in this area. According to the report of MOFAT (2008), South Korea’s dependence on imported oil was 97% in 2007, while China’s dependence was 55% in 2010 (Xinhua, 2011). The degree of South Korea’s self-sufficiency in terms of other resources is also very low. It was only 4% of natural gas, 26% of bituminous coal, 10.2% of iron ore, none of uranium, 0.2% of copper, 33.2% of zinc, and 5% of rare earth materials (MOFAT, 2008). The

### Table 2. Bilateral ODA by Income Groups

<table>
<thead>
<tr>
<th>Income Group</th>
<th>Per cent share</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2008</td>
</tr>
<tr>
<td>Least developed</td>
<td>27</td>
</tr>
<tr>
<td>Other low-income</td>
<td>1</td>
</tr>
<tr>
<td>Lower middle-income</td>
<td>38</td>
</tr>
<tr>
<td>Upper middle-income</td>
<td>18</td>
</tr>
<tr>
<td>Not categorised</td>
<td>17</td>
</tr>
<tr>
<td>Total bilateral allocation</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Korea Exim Bank Stats
MOFAT report suggests that the South Korean government should strengthen its alliance with Africa. The report argues that Africa’s oil reserves are relatively low, compared to the Middle-East (61.9%) and Eurasia (11.7%), but the amount of oil that is annually found is higher than in other regions. For example, one third of the newly found oil in the last five years was from Africa. Consequently, by aiding those African resource-rich countries based on consistent policies, South Korea would gain three benefits. First, South Korea could expand African markets which are not yet well developed by other countries and thus less competitive. Second, although South Korea provides its ODA to some African dictatorships or corrupt governments, those are also the least developed countries. Thus, as a DAC member, South Korea could have the justification of combating poverty alleviation in those least developed countries by offering its ODA. In addition, South Korea can gradually induce democratic reform of a dictatorial government like South Korea has done with North Korea (‘the Sunshine Policy’). On the other hand, traditional European donors have also provided their ODA to Sudan, a dictatorship not condemned by international society. The reason is that they are the leader of international society and many other countries competitively join in providing their ODA to Sudan to secure Sudan’s natural resources. The Chinese government has also strongly built its political and economic alliance with Sudan. Thus Sudan has become a main source of Chinese oil import. The Sudan case study described in the following section has important implications for South Korea’s ODA strategy in Africa.
CASE STUDY

Sudan is one of the main oil exporters in Africa, and many developed countries such as the US and European countries, have conducted diplomacy to procure oil production in the country. However, China provides Sudan with a significant amount of its ODA to procure the oil production in the country. Sudan now exports 60% of its oil production to China (Hanson, 2008), which is 6% of Chinese oil import. In addition, China built an oil pipeline with 215 million USD of loans in Sudan, and holds 41% of the stake in Melut oil field production (50% of Sudanese oil output production) (Kim, 2007). Along with the Chinese support, Sudan has produced oil and exported it, thus promoting its economic growth as a ‘Dubai in Africa’. The country which has invested the most in Sudan is China; the amount is roughly 4 billion USD. The China National Petroleum Corporation (CNPC) notably holds a great deal of Sudanese oil production, such as oil wells, petroleum refineries, and oil pipes (Nirkkonen, 2008). This success of the Chinese resource security results from the Chinese ODA performance in Sudan over a number of years. Thus, the following section examines the political history between China and Sudan and how China has provided its ODA to Sudan; and how this relates to South Korea's efforts in Sudan.

Political and economic relations between China and Sudan

In 2009, diplomatic relations between China and Sudan has been established for 50 years (1959-2009.) For five decades, the intensive partnership has been strengthened through its political and economic performance. In 2008 trade between those two countries was 7.1 billion USD (Wei, 2009).
On the other hand, South Korea’s ODA in Africa is modest. Only one African country, Tanzania is in the top 10 recipients of Korea’s ODA. Korea provides only 14.9 per cent of its ODA to 47 African countries while it provides 54.5 per cent of its ODA to 32 Asian countries. This Korean government action shows that they underestimate the importance of Africa.

The previous Chinese Prime Minister Zhou Enlai visited Khartoum, the capital of Sudan in 1964 during his state visits to African countries (Chin and Frolic, 2007). By that time, Chinese foreign policies already focused heavily on the political goal of marginalising Taiwan around the world, as mentioned above. Chinese ODA to and political relations with Sudan were insignificant but were greatly exaggerated in official announcements. However, Chinese economic performance in Sudan was stimulated by oil discovery in the 1990s (Large, 2009). After Sudanese independence from the United Kingdom in 1956, trade between China and Sudan was negligible. In 1977, China gave 20 million USD in a loan to Sudan and Mozambique based on Economic and Technical Cooperation Agreements (Fernado, 2007). Until the early 1990s, Sudan’s main export goods to China were cotton, sesame and scrap metal (Askouri, 2007). At the moment, China requires more oil than it can produce domestically for its rapidly growing economy and China started to consider the importance of resource-rich countries in terms of its energy diplomacy. This led China to expand its influence in Sudan (Bahgat, 2007). Economic and political Sino-Sudanese relationships became more developed, and were improved by frequent visits to Sudan by Chinese senior government officials.
'Angola mode’ and Sudan

The main characteristic of China’s ODA strategy in Africa is the so-called ‘Angola Mode’, which is also used in Sudan. The most urgent problem that African countries have for their economic development is the lack of basic industries due to long-lasting conflicts and wars. Many developed countries have provided loans in order to promote those industries in the region, but their approach was different from the one that China has used. In the past, the traditional manner of repayment of loans that developed countries maintained was financial, and this has not led them to obtain resources in recipient countries. Additionally, it was difficult for those countries to collect the principal amount lent, due to the economic situations based on the wars and the conflicts in Africa. This caused difficulties for transfers of technology and economic development in Africa. However, China has used a new approach to secure technical exports and resources for its economic development through the development of Africa’s infrastructure for their industries. China prevents uncertainty that can occur through the collection of its loans. China provides its ODA mostly through tied aid and only allows Chinese corporations to join the ODA projects. Thus, many Chinese corporations actively join projects that develop and procure resources based on tied aid. The Sudanese government does not directly provide the required capital for investments, but they provide mining or oil concessions to Chinese corporations. Capital is transferred between the Sudanese and Chinese governments, and corporations by the China Exim Bank (Figure 1). China’s Exim Bank offers capital to Chinese corporations which intend to carry out the

13 The concept whereby recipient countries do not have the credit for loans, but the resources which those countries have is the collateral to pay back the loans. The term ‘Angola mode’ is derived from the Angola package whereby the country pays back its loans with its resources (see Pan, 2006).
Sudanese development projects (for Sudanese infrastructure,) and the Sudanese government controls Chinese corporations in order to achieve the projects (Orr, 2008).

**Figure1.** Angola Mode (Capital Flows)

<table>
<thead>
<tr>
<th>Beneficiary African Country</th>
<th>China</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awards licence to extract resources</td>
<td>Provides payment in oil / minerals for loan</td>
</tr>
<tr>
<td>Beneficiary Government</td>
<td>China EXIM Bank</td>
</tr>
<tr>
<td>Instructs company to priority infrastructure projects</td>
<td>Provides loan for project construction</td>
</tr>
</tbody>
</table>

Source: Rajith, 2008

There are currently more than 30 billion USD spent on the Angola Mode projects between China and African countries such as Angola, Nigeria, the DRC, and Gabon. Sudan and China proceed with half of the projects (Rajith, 2008). The Angola Mode minimises the risks of China’s ODA projects, and allows China to consistently procure resources in Sudan. From a Sudanese perspective, the Angola Mode offers a great deal to develop infrastructure and industries; this is a ‘win-win strategy.’ The amount of oil imported by China from Sudan has increased from 3.31 million tons in 2000 to 4.84 million tons in 2006. This is 6% of China’s total oil importation (Kim, 2007). “CNPC owns 40 per cent - the largest single share - of the Great Nile Petroleum Operating Corporation which is a consortium that dominates Sudan’s oil field.” (Goodman, 2004). The success of the Greater Nile Project won African countries’ favor. This is thanks to China’s ODA policy which excludes political ideology from economy.
China’s ODA in Sudan

Despite the revenue from massive oil production, Sudan has relied heavily on a large amount of foreign aid from developed countries. Sudan, which received an average 1.743 billion USD of gross bilateral ODA from the DAC countries in 2007 and 2008, is currently one of the top 10 recipient countries in the world (OECD, 2010).

China’s ODA to Sudan has flowed in since the 1970s but during the 1970s and the 1980s, the main sources of ODA to Sudan were the International Monetary Fund (IMF) and the World Bank. As mentioned above, the Sudanese Civil Wars resulted in the disengagement of the traditional donors’ projects based on its loans. From the mid-1990s, the ODA from the two major sources and the other traditional Western donors to Sudan, has eventually declined. Sudan thus needed other sources of foreign aid and China emerged. Chinese growing economic interests met the Sudanese demands for foreign aid. As a result, China’s ODA to Sudan increased, and its ODA accounted for 58% of total ODA that Sudan received during 2005-2007 (Mohamed Nour, 2011).

According to the Central Bank of Sudan annual reports (1999-2009, the share of China’s ODA in total ODA that Sudan has received accounted for 7%, 8%, and 7% in 2002, 2003, and 2004 respectively, while the Chinese share in 2005, 2006, and 2007 constituted 76%, 24%, and 73% (Mohamed Nour, 2011). In 2008, China’s ODA volume plummeted to 22 million USD. This was along the same trend of global total loans and grants that Sudan received (Figure 2). A possible interpretation of this declining trend of China’s ODA and the other donor’s ODA volume is the global economic crisis in 2008, which shrank global economies. However, the portion of China’s loans and ODA to Sudan is notable, as higher than 90%. This is probably due to China’s economic strategies, so called win-win, which also increase China’s tied aid rate to Sudan.
An intensive political relationship between China and Sudan emerged in the 1990s. This is also manifested in China’s ODA trends. Between 1970 and 1989, China provided Sudan with only 89.3 million USD of ODA but from 1990 to 2008, Chinese ODA soared to 2.4 billion USD. This is 96% of total Chinese ODA from 1970 to 2008 (Table 3).

**Figure 2.** Grand Total Loans and Grants and China Total Loans and Grants to Sudan

![Grand Total Loans and Grants and China Total Loans and Grants to Sudan](source)

*Source: own work based on Mohamed Nour, 2011*

<table>
<thead>
<tr>
<th>Period (1970-2008)</th>
<th>China total ODA</th>
<th>Distribution of the share in total (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970-1979</td>
<td>22.5</td>
<td>1%</td>
</tr>
<tr>
<td>1980-1989</td>
<td>66.8</td>
<td>3%</td>
</tr>
<tr>
<td>1990-2008</td>
<td>2399.3</td>
<td>96%</td>
</tr>
<tr>
<td>Total 1970-2008</td>
<td>2488.6</td>
<td>100%</td>
</tr>
</tbody>
</table>

*Source: Sudan Ministry of Finance and National Economy (2008), cited in Mohamed Nour, 2011*
The sectors in which China’s ODA is distributed have also changed. For example, none of China’s ODA projects during the 1970s and the 1980s were related to the energy industry, and only three projects were infrastructure projects, whereas during the 1990s and the 2000s almost half of them were either energy related projects or infrastructure projects (see Maglad, 2008). China has increased the volume of its ODA and shifted towards specific sectors; this is probably due to the Chinese economic interests in meeting their resource demands and the influence of the Angola Mode from the 1990s.

It is worth noting that other donor countries have also offered far more loans than grants to Sudan (Mohamed Nour, 2011). China’s ODA follows the world ODA trend in Sudan. In addition, Sudan is one of the African countries which could not receive any benefit from the debt relief initiatives of the Western donors; China is the only country to give debt relief to Sudan. For example, China forgave 6 million USD of debt relief in 2010 (Sudan Tribune, 2010). Some may still argue that China’s ODA focus on loans towards Sudan may worsen the debt issue in the country. However, China’s loans with a high rate of tied aid are based on its experience of economic development and thus it may also assist Sudanese economic development. In response to the argument of the effectiveness of grants and loans, Odedokun (2003) argues that grants encourage the consumption of recipients but discourage investment, and tend to be spent inefficiently. Cohen et al. (2006: 1) develop the argument by stating that “A switch from concessionary loans to grants may limit resources to the poorest countries, worsen their incentives for fiscal discipline and efficiency, and raise the burden of adjustment from exogenous shocks”. Consequently, Chinese ODA strategies to Sudan aim for mutual benefits. This implies that China can stimulate their industries due to the great success of securing resources in Sudan and thus maintains its economy growth.
CONCLUSION

After the end of the Korean War in 1953, South Korea was completely destroyed, but it is now one of the most successful countries thanks, in part, to global ODA. South Korea finally shifted from being a recipient country to completely being a donor country since the World Bank erased South Korea from the list of recipient countries in 2006 (KOICA, 2008). In response to the world’s ODA, South Korea has also been providing ODA to the world. However, South Korea now confronts challenges from the international society, asking it to improve its aid effectiveness. This is as a result of South Korea joining the DAC. According to the OECD, its rate of loans and tied aid are too high. As a result, South Korea intends to gradually decrease the rate of the loans and the tied aid and increase grants.

On the other hand, China has also provided its ODA around the world since the 1950s. However, China faces severe criticisms that China provides its ODA in order to secure oil and other resources purely in order to meet its resource requirements. In addition, China’s ODA is criticised for requiring only Chinese laborers and engineers for its projects. Some may argue that China’s ODA does not improve the labor market in Africa and only limited technology transfer is achieved. Nonetheless, China’s ODA leaves important implications for South Korea’s ODA strategies in the region. Although some of the countries to which China provides its ODA are not democratic, they are the least developed countries in the world. Thus, aiding those non-democratic African countries could be justified and would even give benefits to South Korea. Even in terms of the high rate of tied aid and the loans, China believes that the conditionality (imposed on recipient countries based on the experience of their economic development through their tied aid,) would foster economic growth of recipient countries. This gives the im-
pression that South Korea should not decrease its loan rate and tied rate. South Korea cannot simply follow Chinese ODA strategies. The main reason that South Korea cannot follow Chinese ODA strategies and shift its ODA focus from Asia to Africa is because South Korea holds its comparative industrial advantage in Asia. However South Korea can still maintain its comparative industrial advantage in Asia by maintaining its net ODA but only providing its increased ODA to Africa. Some still argue that what Africa wants from South Korea is technology transfer and education. That is absolutely right. That is why South Korea should focus its grant on technology transfer and education while its loan focus could be on infrastructure.

Many argue that South Korea should strictly carry on the recommendation of the DAC in terms of its high rate and tied aid as other DAC members. However the world saw the political unrest in the Middle East Asia in the last decades, and recently democratic revolutions in many Middle-East Asian countries may cause problems for South Korea to secure its resource needs. South Korea is not an explicitly developed country. South Korea cannot simply consider only other’s benefits. South Korea needs to focus on ODA that is mutually beneficial. African countries are getting more and more stable politically and economically. Thus South Korea should shift its ODA focus from Asia to Africa to ensure resource diplomacy and promote its national image as a member of the DAC. Some may call the idea in question. ‘Asian countries are the major market for Korean products. Should it still consider them as its major ODA countries?’ Then why does South Korea still need to maintain its focus on Asia although the market share of South Korea is already great? South Korea should rather pay more attention to Africa than Asia in the future. The ODA focus of South Korea on Africa would give benefits not only to Korea but also to Africa in terms of those countries’ economic development. South Korea should also adopt the ‘Angola mode’ in order to minimise the risk of providing loans to Africa and thus for economic growth.
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The Paris Declaration on Aid Effectiveness


WHY NO SPILL-OVER EFFECT BETWEEN THE TWO KOREAS?
WHY NO SPILLOVER EFFECT BETWEEN THE TWO KOREAS?

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Korea Military Academy

Abstract

This study aims to examine why the South Korean government’s engagement policy toward North Korea did not create a functionalist spillover effect. In pursuit of this goal, we address two questions: (1) What factors make North Korea especially supportive of inter-Korean dialogue on low-level politics; and (2) have these factors created a favorable condition for inter-Korean dialogue on high-level politics? Analysis of 455 inter-Korean dialogues indicates that North Korea made use of inter-Korean dialogue as a means of enhancing its chance for regime survival. The major findings go as follows. First, the agenda of the inter-Korean dialogue that North Korea may want to discuss with South Korea may vary according to political conditions that North Korea is encountering. Second, if North Korea’s economic instability increases, North Korea tends to call for economic talks and military talks that all seem to be associated with North Korea’s intention to seduce South Korea to provide North Korea with greater government aid. Third, an increase in South Korean government aid to North Korea failed to produce a condition favorable for further inter-Korean reconciliation and integration.

Key words: Liberalism, Spillover effect, Inter-Korean dialogue, Engagement policy
In recent years, inter-Korean relations have been strained. Therefore, it is often argued that the South Korean government has to resume an engagement policy toward North Korea to promote an inter-Korean reconciliation. This perspective is closely associated with liberalism in international relations, which suggests that an increase in exchange and communication between the states to deal with technical, and not political, issues promotes inter-dependency and cooperation (Mitrany, 1966). From this perspective, an inter-Korean exchange is supposed to produce a spillover effect into inter-Korean dialogue on high-level politics and thereby pave the way for further reconciliation between the two Koreas. However, this approach has been criticized by advocates of the containment policy toward North Korea because the South Korean government’s cooperative gesture toward North Korea merely resulted in North Korea’s hostile acts and provocations.

The goal of this study is to explain why the South Korean government’s engagement policy toward North Korea necessarily fails to create a functionalist spillover effect. According to the neo-functionalist perspective, the spillover effect to the process of reconciliation does not necessarily appear if power elites resist efforts to advance integration (Haas 1958, xxxiv). If it is taken into consideration that the North Korean regime’s fundamental objective is regime survival, then there is a great possibility that North Korean power elites put priority on self-preservation before any dialogues take place (Cha 1997, 63-92). In spite of the extensive debate about the North Korean regime’s vulnerability to the functionalist strategy advocated by the South (Baek 1988, 232), however, the extent

1 The views expressed here are the opinions of the author and as such do not represent the official position of the South Korean government.
to which inter-Korean dialogue and, afterwards, inter-Korean exchange and cooperation has contributed to promoting inter-Korean reconciliation has been largely unexplored.

Therefore, the present study addresses two questions: (1) What factors make North Korea especially supportive of inter-Korean dialogue on low-level politics; and (2) have these factors created a favorable condition for inter-Korean dialogue on high-level politics? To answer these questions, this article is structured in the following manner: We will first review the historical development of inter-Korean dialogues to identify conditions favorable for inter-Korean dialogue, and then we will develop a hypothesis of this study. Second, after briefly discussing the data and the methods used to analyze it, the results of our analysis of 455 different cases of inter-Korean dialogue will follow. Finally, the concluding section summarizes the findings from this analysis and provides an implication on the effect of inter-Korean dialogue on inter-Korean integration.

HISTORICAL DEVELOPMENT OF INTER-KOREAN DIALOGUE

North Korea's long-term strategy toward inter-Korean dialogue can be construed as an attempt to create an atmosphere favorable to overthrowing the anti-communist South Korean regime. Korea gained independence from Japanese colonial rule (1910-1945) when Japan surrendered in the Second World War in 1945. Under the Cold War structure, the U.S. military occupied the southern half of Korea and the Soviet military occupied the northern half of Korea, dividing Korea into communist North Korea and anti-communist South Korea along the 38th parallel. Even though there were several negotiations by Korean leaders to establish a unified Korea through their own domestic efforts, the two separate Korean governments
were born in 1948 with support from their respective patron superpowers. From the beginning, ideological conflict between the two Koreas was inevitable. On June 25, 1950, North Korea invaded South Korea without a declaration of war. The Korean War lasted for three years until an armistice was signed on July 27th, 1953, resulting in the two Koreas perceiving the other as an uncompromising enemy.

In the 1960s, North Korea implemented two strategies to unify with the South: Psychological warfare and revolutionary guerrilla warfare. In the early 1960s, North Korea attempted to exploit South Korea’s social disorder to expand revolutionary forces in the South. In April, 1960 a popular uprising overthrew ardent anti-communist President Syngman Rhee (1948-1960) who called for a ‘March to the North’ to crush the communist regime in the North. In this atmosphere, South Koreans said (Kim 2008, 110), “Let’s go to the North. North Koreans, come to the South. We will meet at Panmunjom.” As North Korea wanted to take the power in the South by taking advantage of this social disorder, on August 15th, 1960 North Korean leader Kim Il-sung offered a peace proposal, requiring that the two Koreas recognize the other's political system and promote economic and cultural exchange and cooperation with each other. In the late 1960s, North Korea put priority on guerrilla warfare and became more hostile toward the South because General Park Chung-hee had led a military coup in 1961, suppressing South Korea’s public passion for unification (Scalapino and Lee 1972, 647). As a consequence, the number of North Korean subversive activities soared from 88 in 1965 to 985 in 1968 (Baek 1988, 182).

In the early 1970s, North Korean focus shifted to peace negotiations again for two reasons. First, the antagonistic characteristics of the inter-Korean relationship of the 1960s changed in this period due to a détente in Sino-US relations. The United States and China, having a common interest in maintaining the Sino-American détente, wanted to reduce military tensions on the Korean penin-
sula. As South Korea and North Korea were sponsored by the U.S. and China respectively, normalization of foreign relations between the U.S. and China forced the two Koreas to begin negotiations with each other. Second, though North Korea’s military budget had soared in the 1960s, as it had shifted its unification policy toward revolutionary guerrilla warfare, Pyongyang recognized that revolutionary guerrilla warfare could not be successful in the South. Thus, North Korea had to reduce military expenditure to relieve the country’s economic strains (Baek 1988, 216). Therefore, Donald S. Zagoria and Young Kun Kim (1976, 26) argue that North Korea had no other options due to “the strong desire of both Moscow and Peking not to be involved in another war on the Korean peninsula…and the internal economic problems faced by the North Korea itself.”

It is also important to note that in the early 1970s, South Korean leader Park Chung-hee and North Korean leader Kim Il-Sung made use of inter-Korean dialogue to consolidate their authoritarian power, simultaneously. After the military coup of 1961, Park Chung-hee was democratically elected as president in 1963 and 1967. In 1969, President Park revised the constitutional restriction that prevented him from running for a third term to be elected as president in 1971. In 1972, he declared martial law. During this same period, North Korean leader Kim Il-sung was also involved in an internal power struggle with the Kapsan faction. It was during this state of affairs that the two Koreas’ high-ranking officials visited each other for Red Cross talks in 1971 and finally issued a ‘South-North Joint Statement’ on July 4th, 1972, which was the first agreement between the two Koreas on how to achieve reunification since the armistice of 1953. Successfully seizing firm control of the government, the party, and the military by changing the North Korean constitution in 1972, however, Kim Il-sung, who wanted to prevent inter-Korean dialogue from jeopardizing his power and prospect, suspended all inter-Korean activities in 1973 (Yang 1974, 54-65).
In the 1980s, North Korea renewed its peace offensive. In September, 1984, North Korea offered relief goods to the South Korean flood victims. The South Korean government accepted them, because “the Seoul government...intends to build up mutual trust between the two sides through economic exchange. The North Korean offer, if realized, would mean the beginning of a kind of economic exchange between South and North Korea” (The Korea Harold 1984). Based on this line of thought, South Korea, in October 1984, proposed the idea of holding talks to discuss the issue of bilateral trade and economic cooperation. After North Korea had accepted the proposal, the historic inter-Korean economic talks were held on November 15th, 1984. In this atmosphere of reconciliation, the two Koreas agreed to a reunion of families separated by the Korean War and an exchange of cultural performances in 1985 for the first time since the war had ended. North Korea’s shift to peace negotiation in the 1980s could be attributed to the weak North Korean economy that had been deteriorating since the 1960s. The fact that the North Korean economy grew worse made it impossible for the country to pay off its foreign loans, thus causing internal instability associated with economic difficulties and a resulting internal power struggle (Kim 2010, 299). Therefore, it was said (Donga-Ilbo 1984) that “North Korea, under the de facto bankruptcy of its economy, seems to have decided to choose the pragmatist line.”

In response to its economic instability in the 1990s, North Korea had a chance to exploit the South Korean government’s engagement policy toward North Korea. The policy was intended to promote inter-Korean exchange and reconciliation. Contrary to his predecessor, President Kim Young-sam (1993-1997), who called the North “a cursed regime soon to collapse” (Kim 2008, 110), President Kim Dae-jung (1998-2002) implemented an engagement policy, the so-called ‘Sunshine Policy.’ South Korea’s shift in North Korean policy resulted in a large-scale inter-Korean economic cooperation. In this atmosphere of reconciliation, North Korea allowed many South
Koreans to visit Mountain Kumgang, and the Kaesung Industrial Complex (KIC) was built in North Korea. President Roh Mu-hyun (2003-2007) adopted his predecessor’s Sunshine Policy, increasing the total number of inter-Korean dialogues. However, inter-Korean dialogues were temporarily stopped under Lee Myong-bak’s presidency (2008-2012), as President Lee Myong-bak had generally taken a hard-line policy toward North Korea since 2008.

In this state of affairs, North Korea’s military provocations against the South have become bolder, resulting in the sinking of the Cheonan warship and the shelling of Yeonpyeong Island in 2010. In the wake of escalating military confrontations between the two Koreas, Saenuri Party candidate Park Keun-hye made a public promise to pursue a process of trust with the North to stabilize inter-Korean relations. As Park Keun-hye was elected the president of South Korea in December, 2012, this gave hope for resuming the inter-Korean dialogue. On February 12th, 2013, however, North Korea conducted its third nuclear test, despite pressure from the international community to dissuade it. Following international sanctions against North Korea, North Korea escalated unprecedented military tensions aimed toward South Korea, announcing the annulment of the Korean War Armistice Agreement and shutting down the Kaesung Industrial Complex (KIC). Even though the two Koreas agreed to reopen the KIC in September 2013, the inter-Korean relations have remained stagnant. In this state of affairs, it is often argued that the South Korean government has to first resume inter-Korean dialogue on low-level politics, which is usually assumed to accelerate inter-Korean exchange and cooperation. Then, it is worth asking the first question of this study as to what factors make North Korea especially supportive of inter-Korean dialogue on low-level politics.
Hypotheses

The brief historical review gives an implication that North Korea’s motives for participating in inter-Korean dialogue were most likely two-fold: To reduce regime instability and to exploit the South Korean government’s cooperative attitude toward North Korea. However, deciding what agenda will have a top priority during a mutual exchange and cooperation between the states is determined not by low politics or high politics, but by the practical problems that the state cannot deal with in the traditional manner (Miller 1971, 178-190). This leads to the fundamental argument of this study that the agenda of the inter-Korean dialogue that North Korea may want to discuss with South Korea may vary according to conditions that North Korea is encountering at the time.

First, the increasing economic instability is likely to make North Korea supportive of economic talks and military talks that all seemed to be closely associated with North Korea’s desire to seduce South Korea into providing greater government aid to North Korea. While ministerial talk and general-level talk usually put more focus on confidence building measures in conflict resolutions, working-level talk and contact usually concentrate more on the issue of military support for inter-Korean exchange and cooperation. North Korea has to hold working level military talks and contact between military officials to eliminate barriers that prevented the South Korean people from crossing the border if North Korea intended to increase economic gain from South Korea. These propositions suggest the first hypothesis of this study that if economic instability increases, North Korea is likely to call for economic talks and military talks, which is positively associated with South Korean government aid to North Korea, as shown in Figure 1.
Second, the spillover effect to the process of reconciliation appears if an increase in South Korean government aid to North Korea creates a condition favorable for political talks and other inter-Korean talks (humanitarian talks and socio-cultural talks). However, increasing South Korean government aid to North Korea may produce the undesired outcome of the North Korean people assuming a favorable attitude toward the South Korean regime, encouraging North Korean people to deviate from compliance with the North Korean regime. If it is taken into consideration that North Korean power elites put priority on self-preservation before any dialogues take place (Cha 1997, 63-92), then there is great possibility that the North Korean regime appears to be very cautious about inter-Korean dialogue when it suffers from political instability. These propositions suggest the second hypotheses of this study that the strength and direction of the effect of South Korean aid to North Korea on political talks and other inter-Korean talks varies according to the degree of North Korean political stability, as shown in figure 2.
DATA AND METHODS

The analysis of the present study builds upon two sets of secondary data sources to measure two dependent variables: South Korean government aid to North Korea and inter-Korean dialogue. We use data from South Korea’s Ministry of Unification, aimed at obtaining information on South Korean government aid to North Korea as well as frequency of inter-Korean dialogue by agenda. South Korea’s Ministry of Unification classifies inter-Korean dialogue into five categories: Political talk, military talk, economic talk, humanitarian talk, and socio-cultural talk. Data on South Korean government aid to North Korea and 455 cases of inter-Korean dialogue was taken from 1989 to 2011.

In order to obtain a measure of the economic instability and the political stability, we use two sets of secondary data sources. First, in measuring the economic instability, it was assumed that economic instability is proportional to increases in the North Korean military budget. North Korea’s heavy investment in military buildup has been pointed out as a cause for North Korea’s calling for inter-Korean dialogue (You 1989, 375). Data on North Korea’s military budget was collected from data on government expenditure presented by North Korea’s Supreme People’s Assembly (The Sejong Institute 2011, 151). Second, in measuring the political instability, the present study used the rule of law index, one of the World Bank’s Worldwide Governance Index (WGI), which refers to “the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the court, as well as the likelihood of crime and violence.” Data from 1996 to 2012 is available. For the analysis of this paper, the present study standardized two variables,

South Korean government aid to North Korea and North Korea’s military budget, to make interpretations easier afterwards and to avoid multi-collinearity.

In examining the mediating effect of economic talks and military talks between North Korean economic instability and South Korean government aid to North Korea, this study follows suggestions by Baron & Kenny (1986, 1177): (1) “the independent variable must affect the mediator in the first equation,” which regresses the mediator on the independent variable; (2) “the independent variable must be shown to affect the dependent variable in the second equation,” which regresses the dependent variable on the independent variable; and (3) “the mediator must affect the dependent variable in the third equation,” which regresses the dependent variable on both the independent variable and the mediator. “If these conditions all hold in the predicted direction, then the effect of the independent variable on the dependent variable must be less in the third equation than in the second.” Then, the present study uses hierarchical regression to examine the effect of political instability on other inter-Korean dialogues, controlling for the effect of South Korean government aid to North Korea.

**RESULTS**

Correlation and multiple regression analyses were conducted to examine the relationship between five agendas of inter-Korean dialogue and various potential predictors. Table 1 summarizes the descriptive statistics and correlations for the variable considered in the analysis of this study. As can be seen, military talks and economic talks are positively and significantly correlated with South Korean government aid to North Korea (r=.853 and r=.878) and North Korean economic instability (r=.464 and r=.526), indicating that North Korea tends to call for military talks and economic talks when it
faces economic difficulties and that military talks and economic talks tend to cause South Korea to increase its government aid to North Korea. Political talks are negatively and significantly correlated with economic instability \((r = -.483)\), indicating that North Korea tends to reject political talks when it faces economic difficulties. It is also worth noting that military talks and economic talks were strongly correlated \((r = .932)\) and that political talks and humanitarian talks were strongly correlated \((r = .478)\).

<table>
<thead>
<tr>
<th>Table 1. Descriptive statistics and correlations</th>
<th>Mean</th>
<th>S.dev</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political talks</td>
<td>8.95</td>
<td>16.3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Humanitarian talks</td>
<td>2.47</td>
<td>2.50</td>
<td>.478</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Socio-cultural talks</td>
<td>1.86</td>
<td>2.91</td>
<td>.033</td>
<td>.283</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Military talks</td>
<td>2.08</td>
<td>3.11</td>
<td>-.075</td>
<td>.189</td>
<td>.186</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Economic talks</td>
<td>4.39</td>
<td>6.50</td>
<td>-.103</td>
<td>.278</td>
<td>.225</td>
<td>.932</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S. Korean aid</td>
<td>0</td>
<td>1</td>
<td>-.111</td>
<td>.242</td>
<td>.174</td>
<td>.853</td>
<td>.878</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Economic instability</td>
<td>0</td>
<td>1</td>
<td>-.483</td>
<td>-.057</td>
<td>-.225</td>
<td>.464</td>
<td>.526</td>
<td>.547</td>
<td></td>
</tr>
<tr>
<td>Political stability</td>
<td>-1.92</td>
<td>.161</td>
<td>.483</td>
<td>-.031</td>
<td>.008</td>
<td>.020</td>
<td>-.024</td>
<td>.118</td>
<td>-.713</td>
</tr>
</tbody>
</table>

*Note: Correlations in bold are significant at \(p < 0.05\)*

The present study follows Baron and Kenny’s (1986) suggestions to enact the mediation test. In the first step of analysis, I appraised the main argument of this study that North Korean economic instability can accurately predict the total number of military talks and economic talks. The results show that North Korean economic instability is significantly and positively affected to total number of inter-Korean military talks and economic talks \((\beta_{military \; talks} = 1.44, \; p < .05; \beta_{economic \; talks} = 3.42, \; p < .05)\). The second step of analysis regressed South Korean government aid to North Korea on North Korean economic instability. The results show that North Korea
economic instability is significantly and positively associated with South Korean government aid to North Korea (β = .547, p<0.01). Finally, the multiple regression analysis was conducted to examine the effect of independent variables and mediator simultaneously. As can be seen in Table 2, the military talks and the economic talks had significant positive regression weights (β military talks = .245, p<.05; β economic talks = .125, p<.05), indicating that an increase in military talks and economic talks was expected to increase South Korean government aid to North Korea, after controlling for the North Korean economic instability. The full model with independent variables and mediator was able to account for 73.3% and 76% of the variance in South Korean government aid to North Korea. Table 2 presents the adjusted R2, which is intended to control for overestimates of the population R2 resulting from small samples. The results support the first hypothesis of this study that economic talks and military talks have a full mediation effect between North Korean economic instability and South Korean government aid to North Korea. This is to say that North Korea has strategically made use of South Korea’s cooperative attitude toward North Korea to reduce its regime instability.

Table 2. Testing mediation effect of economic talks and military talks

<table>
<thead>
<tr>
<th>Variable</th>
<th>Step 1</th>
<th>Step 2</th>
<th>Step 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependent Variable</td>
<td>Military Talks</td>
<td>Economic Talks</td>
<td>South Korean Aid</td>
</tr>
<tr>
<td>Economic Instability</td>
<td>1.44(.602)*</td>
<td>3.42(1.20)*</td>
<td>.547(.182)*</td>
</tr>
<tr>
<td>Military Talks</td>
<td></td>
<td></td>
<td>.245(.039)*</td>
</tr>
<tr>
<td>Economic Talks</td>
<td></td>
<td></td>
<td>.125(.018)*</td>
</tr>
<tr>
<td>Constant</td>
<td>4.39(1.18)*</td>
<td>2.08(.589)*</td>
<td>0.00(.178)</td>
</tr>
<tr>
<td>Case</td>
<td>23</td>
<td>23</td>
<td>23</td>
</tr>
<tr>
<td>Adjusted R2</td>
<td>.243</td>
<td>.178</td>
<td>.266</td>
</tr>
<tr>
<td>F-value</td>
<td>8.06</td>
<td>5.79</td>
<td>8.99</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: * p<.05
If economic talks and military talks are categorized into one group, which is closely related to North Korea’s intention to increased economic gain from South Korea, military talk is more likely to be held simultaneously with economic talk rather than other inter-Korean talks. The present study constructed a Matrix Mij to indicate how many inter-Korean dialogues on one agenda (i) led to another agenda (j) for the years between 1989 and 2011. As there were a total of 455 cases of inter-Korean dialogue in the given period, a total of 454 shifts among five agendas appear in Table 3. Results show that 45% of inter-Korean dialogues on military issues led to other inter-Korean dialogues on economic issues (bold number in Table 3). We confirmed this finding again by examining all pairs of inter-Korean dialogues that were sequentially held within 7 days. If the time interval between two sequential inter-Korean dialogues is condensed into one week, 53% of inter-Korean dialogues on military issues led to other inter-Korean dialogues on economic issues.

### Table 3. Shifts of agendas between two sequential inter-Korean dialogues

<table>
<thead>
<tr>
<th>From To</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Humanitarian</td>
<td>10</td>
<td>20</td>
<td>15</td>
<td>8</td>
<td>4</td>
<td>57</td>
</tr>
<tr>
<td></td>
<td>0.18</td>
<td>0.35</td>
<td>0.26</td>
<td>0.14</td>
<td>0.07</td>
<td>1</td>
</tr>
<tr>
<td>2. Political</td>
<td>21</td>
<td>154</td>
<td>18</td>
<td>4</td>
<td>9</td>
<td>206</td>
</tr>
<tr>
<td></td>
<td>0.1</td>
<td>0.75</td>
<td>0.09</td>
<td>0.02</td>
<td>0.04</td>
<td>1</td>
</tr>
<tr>
<td>3. Military</td>
<td>4</td>
<td>7</td>
<td>21</td>
<td>11</td>
<td>4</td>
<td>47</td>
</tr>
<tr>
<td></td>
<td>0.09</td>
<td>0.15</td>
<td><strong>0.45</strong></td>
<td>0.23</td>
<td>0.09</td>
<td>1</td>
</tr>
<tr>
<td>4. Economic</td>
<td>17</td>
<td>10</td>
<td>40</td>
<td>24</td>
<td>10</td>
<td>101</td>
</tr>
<tr>
<td></td>
<td>0.17</td>
<td>0.1</td>
<td>0.4</td>
<td>0.24</td>
<td>0.1</td>
<td>1</td>
</tr>
<tr>
<td>5. Socio-cultural</td>
<td>5</td>
<td>14</td>
<td>7</td>
<td>1</td>
<td>16</td>
<td>43</td>
</tr>
<tr>
<td></td>
<td>0.12</td>
<td>0.33</td>
<td>0.16</td>
<td>0.02</td>
<td>0.37</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>57</td>
<td>205</td>
<td>101</td>
<td>48</td>
<td>43</td>
<td>454</td>
</tr>
</tbody>
</table>
Finally, the present study used hierarchical regression to test the second hypothesis of this study that North Korea’s political stability has a modifying effect on the relationship between South Korean government aid to North Korea and inter-Korean dialogue other than military talks and economic talks. The first model shows political talks, humanitarian talks, and socio-cultural talks as dependent variables and South Korean government aid to North Korea as an independent variable. In model 1, South Korean government aid to North Korea did not have a statistically significant effect on political talks, humanitarian talks, and socio-cultural talks. In model 2, however, South Korean government aid to North Korea has a statistically significant effect on political talks ($\beta = 3.157$, p<0.05), humanitarian talks ($\beta = 1.109$, p<0.05), and socio-economic talks ($\beta = 1.535$, p<0.05), controlling for North Korea’s political stability. It is also important to note that political stability is positively associated with political talks, while it is negatively associated with humanitarian talks and socio-cultural talks. Even though, North Korea’s political stability did not have a statistically significant effect on those inter-Korean talks, model 2 is better than model 1 because it produced a significant increase in R2.

**Table 4. Testing mediation effect of economic talks and military talks**

<table>
<thead>
<tr>
<th>Variable</th>
<th>Political talks</th>
<th>Humanitarian talks</th>
<th>Socio-cultural talks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Model 1</td>
<td>Model 2</td>
<td>Model 1</td>
</tr>
<tr>
<td>South Korean aid</td>
<td>-1.823</td>
<td>3.157*</td>
<td>.605</td>
</tr>
<tr>
<td></td>
<td>(3.54)</td>
<td>(1.06)</td>
<td>(.529)</td>
</tr>
<tr>
<td>Political stability</td>
<td>14.553</td>
<td>-1.268</td>
<td>-1.268</td>
</tr>
<tr>
<td></td>
<td>(7.20)</td>
<td>(3.09)</td>
<td>(3.09)</td>
</tr>
<tr>
<td>Constant</td>
<td>8.956*</td>
<td>19.257*</td>
<td>2.478*</td>
</tr>
<tr>
<td></td>
<td>(3.46)</td>
<td>(8.01)</td>
<td>(5.18)</td>
</tr>
<tr>
<td>Case</td>
<td>23</td>
<td>13</td>
<td>23</td>
</tr>
<tr>
<td>Adjusted R2</td>
<td>-.034</td>
<td>.510</td>
<td>.013</td>
</tr>
<tr>
<td>F-value</td>
<td>.26</td>
<td>7.26</td>
<td>1.31</td>
</tr>
</tbody>
</table>

*Note: * p<.05
The results explain well why South Korea’s engagement policy has failed to create a functionalist spillover effect between the two Koreas. If North Korea faces economic instability, North Korea wants to exploit South Korean government aid to North Korea, suggesting inter-Korean dialogues on economic and military agenda. However, South Korea’s government aid does not have a significant effect on inter-Korean dialogue on other agendas if North Korean political instability is not controlled for. This is at least in part because North Korea that has strong intentions to effectively resist the spill-over effect of a functionalist approach advanced by South Korea will prevent South Korea from imbuing North Korean society with capitalist thoughts and practices. As a consequence, it is not difficult to conclude that South Korea’s functionalist approach to unification highlighting unconditional inter-Korean exchange and cooperation will ironically promote perpetuation of division because North Korea has made use of inter-Korean dialogue as a means of enhancing its chances for regime survival.

CONCLUSION AND DISCUSSION

This paper attempts to explore the effects of inter-Korean dialogue on inter-Korean reconciliation and further political integration, which has been neglected in the previous literature. Two hypotheses were tested using data on 455 inter-Korean dialogues. First, inter-Korean military talks and economic talks reflected North Korea’s strategic intention to cope with its economic instability. The effect of this dialogue is not a more reconciliatory atmosphere but a more tense relationship with South Korea because for North Korea “all diplomacy is a continuation of war by other means” (Saturday Evening Post, 1954), as suggested by Chou En-Lai. Second, military talks and economic talks were found to cause an increase in the to-
tal volume of inter-Korean aid to North Korea with a higher level of statistical significance. However, an increase in South Korean aid to North Korea alone failed to produce favorable conditions for other inter-Korean dialogues. It was North Korea’s political instability that made South Korean aid to North Korea have a statistically significant effect on inter-Korean dialogue other than military talks and economic talks, albeit this finding was statistically insignificant.

The results give an implication that even if President Park Geun-hye wants to open the way for inter-Korean dialogue to promote reconciliation, North Korea may make a strategic judgment of setting an agenda favorable to its own interests. In the current situation, North Korea is less likely to accept South Korea’s proposal for inter-Korean dialogue for two reasons. First, data analyzed here refutes South Korea’s approach to reunification, which is similar to that of the functionalist perspective; economically oriented dialogue is likely if inter-Korean exchange and cooperation can contribute to strengthening North Korea’s economic recovery with no threat to its political legitimacy. Second, if it is taken into account that the North Korea leadership has recently tried to consolidate its power base with purgation of Chang Sung-taek, there is little possibility that North Korea would come to the dialogue table (unfavorable in its attempt to tighten the control of the regime) (Armstrong 2005, 1-10).

We could not test directly whether the inter-Korean dialogue has been conducive to inter-Korean integration. However, the data suggests that inter-Korean dialogue might have a negative effect for two reasons: First, the mutual exchange and cooperation in low politics does not necessarily produce a spill-over effect into high politics because North Korea has used high-politics talk and low-politics talk simultaneously for further perpetuation of hostilities between the two Koreas. Second, even though there is little evidence that North Korea has intensively diverted foreign assistance to support the North Korean military (Manyin and Nikitin 2013), there are still se-
rious worries about the possibility of diverting economic benefit for military purposes (Pennington 2011). In such a case, inter-Korean exchange and cooperation cannot make the inter-Korean integration better. One result of this analysis shows that North Korea tends to induce South Korea to provide it with greater government aid when North Korea increases military spending.

Another issue is to provide an answer to the question of what South Korea may regard as the most effective way to promote inter-Korean exchange and cooperation. Even though South Korea has made some reconciliatory gestures, if the situation is that North Korea’s major concern is to survive, other incentives are not taken into account. Therefore, it is better for South Korea to call for a dialogue on the issue of practical problems that North Korea is less likely to consider primarily as a potential threat toward the current regime and cannot deal with in the traditional manner, as suggested by A. J. Miller (1971, 178-190). Perhaps inter-Korean exchange and cooperation to reform North Korea’s healthcare system, which has little possibility of being diverted to military buildup, is much more efficacious in promoting inter-Korean exchange and cooperation than inter-Korean trade because North Korea desperately needs to accept medical assistance to provide its people with relevant health facilities, goods, and services (Amnesty International 2010, 2).
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The Korea Herald, September 15, 1984.


CAN NORTH KOREA FOLLOW THE “CHINESE WAY”? 53

The Tricky Case of Constitutionalizing a Socialist Regime

Paul Andre  Lille Catholic University

Abstract

Since the very beginning of the reform policy, China has implemented a process of Constitutionalisation in order to maintain the regime. This process evolved from “rule of law” to “rule by law”. Constitutionalisation in China has been featured by reform gradualism, the willingness of establishing a legal system which helps maintaining the CCP in power, and the willingness to achieve transition to “market economy with socialist characteristics”. In many respects, this process experienced in China could be a model for North Korea if the DPRK would aim at boosting its ailing economy and diminishing diplomatic tensions. Being the result of strong pragmatism, this model looks likely to evolve. The new CCP leadership seems to change the regime toward more centralism and conservatism. For North Korea, many obstacles remain. Constitutionalizing the DPRK along the Chinese path would imply questioning the juche theory which acts as the strongest legitimizing aspect. North Korea would also have to overcome the vast gap in basic perceptions between the DPRK and international society.

Key words: Constitutionalism, socialist regimes, China, North Korea, Chinese Dream

In early March 2014, two events could give an impression of an evolution within the two last socialist regimes of North-East Asia (China and North Korea) - or at least they could give an impression that the rule of law could be implemented in these regimes. On the Chinese side, the second session of the Twelfth National People's
Congress stressed “for further fulfilment of rule of law, protection of people’s rights and interest and safeguarding justice”. The Chairman of the National People’s Congress (NPC) Standing Committee Zhang Dejiang highlighted that NPC “will adhere to the principle of integrating the leadership of the Party, the people’s status as masters of the country and rule of law.” On the North Korean side, parliamentary elections were held on March 9th 2014 in order to renew the Supreme People’s Assembly. These were the first elections since Kim Jong-un came to power in December 2011. It would be easy to mock the lack of democracy in these two “political moments”. Although Beijing and Pyongyang have presented a mockery of the parliamentary system, it would be a cheap analysis to put one’s mind at ease by seeing in these processes only propaganda aiming at providing a glimmer of respectability to dictatorships. Indeed, why should this absolute dictatorship - some might call it a “feudal modern monarchy” - need the pretence of democracy?

At the same time - and it is certainly no coincidence - the UN Food and Agriculture Organization (FAO) and the World Food Program forecast that the corn output would not be enough to fulfil the nation’s demand. Therefore the Democratic People’s Republic of Korea (DPRK) is in a recurrent situation of food shortage even to the point of starvation. Beyond the sole issue of Kim Jong-un’s strengthening authority within the Worker’s Party of Korea’s apparatus, it is the very question of the survival of the communist model

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2 Ibid.
4 “N. Korea to be 340,000 tons of grain short in 2014”, Yonhap, February 2nd, 2014 http://english.yonhapnews.co.kr/northkorea/2014/02/02/78/0401000000AEN20140202000600320F.html
which is at stake.

In this respect China, a long time principal support, has advocated for years that Pyongyang implement institutional changes in order to ensure the sustainability of the communist regime. The idea is that North Korea could follow the example provided by post-Maoist China. The two situations present many similarities. Mao Zedong, Kim Il-sung and Kim Jong-il all established an authoritarian rule which relied on the supremo’s cult based on personality. They all lead their respective countries to poverty, and economic and diplomatic dead-end. Lessons from the Constitutional debate during the reform period in China can be meaningful to study the process of power consolidation of Kim Jong-un. This “Chinese way” presents two main advantages for the North Korean regime. First, the Chinese example can provide a path of governance for the Democratic People’s Republic of Korea (DPRK). Since 1992 (when China established a bilateral relationship with South Korea, which worsened Sino-North Korean ties), China has been encouraging the DPRK to introduce Chinese-style economic reforms. Indeed, the process speaks for itself because within three decades China has managed to jump from a poor society to an intermediate wealthy society.\(^5\) If this would happen in North Korea, it would certainly strengthen the regime. Moreover, adopting Chinese-style institutional reforms would cool down international tensions over North Korea. This would for sure reinforce Beijing’s support because China’s long-standing policy vis-à-vis North Korea could be summed up “no war, no mess, no nukes” (buzhan, buluan, buhe).

At the same time China - under obvious differences considering its level of development - is experiencing an issue which may appear very different in form but which remains fairly close in content. This has been illustrated by the recent debate in China on

\(^5\) According to National Bureau of Statistics, China Statistical Yearbook, 2012 the GDP per capita in 1978 was RMB 381 and it was RMB 35,083 in 2011.
the importance and shape of the rule of law in the country - as the recent debate over the Chinese Dream or the agenda of the twelfth parliamentary session of the NPC have recently proven it. Indeed this debate is of prime importance because it underlines the incomplete dimension of Chinese reform policy. In this respect, the attractiveness of a model, in this case the Chinese Dream, can be measured on the current results.

In this very particular context the issue of institutionalism in the governance of a socialist regime is at stake. This paper will attempt to understand the link established in post-Maoist China with constitutionalism and the lessons that can be learned for North Korea.

The first section will study constitutionalism in China. The legal process and political dimension of constitutionalisation will be analysed so as to establish in section 2 the main features of this constitutionalisation process. In the third section, the question of the sustainability of these two regimes will be tackled. The unfinished aspect of constitutionalisation reveals the debate - over the concept of the China Dream - of the evolution of the regime. This Chinese experience can provide several clues for the understanding of the evolution of the North Korean regime.

CONSTITUTIONALISM IN CHINA

**Historical background**

This is an old issue, the relationship between politics and law has often been complex and conflicting. It can even be considered that it began with the quarrel with Confucianists and Legalists in ancient China. When Confucius advocated the “rites” (li) i.e. benevolence, education, the “royal way” (gentle methods) and the “gov-
ernment by junzi” (gentlemen), the Legalists - as Han Feizi (韓非) - despite the “rites”. Legalism backed a “government by law” which should be less random and less arbitrary. This debate might appear trivial except that the legal system in China is a major issue of political questioning throughout the country’s history and especially in modern times (i.e. the mid-19th century). In modern China, Constitutional law is largely the result of Western influence which impacted legal reforms in the late-19th century and early-20th century. Somehow Constitutional thinking is not a natural development of Chinese legal institutions. Indeed China raised the debate over Constitutionalism only at the end of the Qing dynasty for practical reasons.

As the collapsing Manchu Empire was threatened to be split up by foreign powers (Japan, Russia, Great Britain, France and Germany), the Imperial Court considered that the power of Western nations laid in the very nature of their political institutions i.e. their Constitutional government. The project of transforming an autocratic Empire was not driven by the willingness of ensuring and implementing civil rights - as it could have been the case in Great Britain, for example. This reform aimed at increasing the nation's power. Thus, within less than a century China has experienced almost everything: the reform of the Manchu empire which aimed at building a British style Constitutional Monarchy (Hundred Days’ reform); then came the project of a nationalist republic which tried to synthesize Chinese tradition and Western separation of powers (Kuomintang system of the Five Yuans); then came a soviet-style Marxist legal system; then came the Maoist attempt to eradicate any legal system during the Cultural Revolution (1966-1976). And since the beginning of the reform policy in 1978, it seems that laws are enacted at the same pace of the Chinese GDP! The current Constitution (宪法 _ xianfa) in PRC was enacted in 1982. It was amended several times but it still reflects the guidance of the CCP since reform policies were launched by Deng Xiaoping at the Third Plenum.
of the Eleventh Central Committee of the CCP in December 1978. This Constitution follows the period of the Cultural Revolution when law was banished and condemned as being counter-revolutionary.

**Political framework**

Concretely, the reform of the legal framework started with a Deng Xiaoping speech when the then-Chinese supremo re-established the “socialist legality”. In the early 1980s the standard in legal issues becomes the “rule of law” (法治 _ fazhi [1]). This fazhi [1] concept is pretty close to the Western “rule of law” understood in its political dimension. Therefore there is a real break with the previous period when the standard was the “government of one man” (人治 _ renzhi). At this point, a clear parallel can be established with the North Korean situation. The regime established by Kim Il-sung relies on the supremo and the hereditary dimension of the DPRK has certainly strengthened this aspect. This logic - in Maoist China as in the Kim dynasty in North Korea - symbolizes the cult of personality and the importance of apparatchik networks within this kind of socialist regime. According to French sinologist Stéphanie Balme⁶, in 1978 PRC there was no willingness to take up the historical model of the rule of law’s position as is the case today. According to Deng Xiaoping’s own words, democracy must be embodied in laws in order to ensure that the institutions and rules will not change no matter the leadership or the political orientation. During the first stage of reforms (1978-1992), the law is seen as a

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legitimizing tool in the service of the Party. Although the then-new leadership aimed at a break with the Maoist period, it did not want, however, a break with the history of the Chinese Communist Party. But here may be the first difference with the case of North Korea.

In the Chinese case, the restoration of legality had the ambition to put forward a Party’s authority undermined by the Cultural Revolution. But it also aimed at ending the Maoist style governance. Nevertheless in the current North Korean situation, Kim Jung-un does not need this. Actually the situation is the very opposite. The young socialist leader owes his legitimacy to his affiliation with the previous leaders. However, it is possible that he needs legality (or a semblance of legality) to ensure his authority over the Party. Indeed it seems difficult for him to always purge the regime of opponents. Legality also allows the young Kim to set his country back when it comes to international relations and thus could be a precious point when negotiating international aid. In this respect, the Chinese example provides a path of the institutional arrangements that could be implemented in North Korea in order to allow economic reforms without questioning the power of the single party. As Peking University Korean Studies Professor Jin Jingyi noted: “The paradox of North Korea thus lies in its continuing adherence to Stalinist socialism which is both the source of its regime’s longevity and the cause of most its problems.”

The idea remains that the purpose of the legal system is not to limit the authority of the Party but it is rather to reinforce the Cultural Revolution Party authority. The instrumental and political dimension of law is claimed as a social and political transformation and modernization under the rule of the CCP. The way how law should - and will - be used evolved, and this change was reflected

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7 JIN Jingyi “Prospects for Reform in North Korea” in SERI Quarterly, October 2012, p114-120.
8 BALME, op.cit.
at the lexical level. During the 1980s, the term法治 [1] (rule of law) will be phased out in favor of its homonym: 司法 [2] (法制) which means “legal system”. Using this term 司法 [2] no longer refers to the formal necessity of the establishment in China of a “rule of law” for the preservation of the political system as a whole. Ronald Keith explains that the Party leadership wants to use the law in a new institutional balance of power strategy aimed at preventing arbitrary rule and the political comeback of hostile to open door policies (ultra) leftist conservatives. During the eighties, various crisis marked China in the first stage of reforms: the wall of Democracy (1979), 1983 protests, 1986 and 1989 events. These civil society movements encouraged then-in office reformist leaders to evolve the role of law to avoid a political comeback of “old conservative” Maoists. In the 1982 Constitution, China is referred to as “socialist Rechtsstaat” (state of law) (shehui zhuyi fazhi [1] guojia). When Constitutional amendments were passed in 1989, one ideogram was changed (article 5) which induced a radical change of meaning. The new principle of “rule of law” (literally “government in accordance with law” — 司法国) replaced the positive principle of a political system bound by legal principles (司法国 — 以法治国 “rule by law”), no matter what the legal standard. Changing the character 司 (third tone) by 司 (first tone) means that the legal system relies on the law and conforms to the law — while 司 only means “to use of”.

Legal framework

The legal framework in China has evolved from legal nihilism to the current situation as chart 1 shows. China’s Constitution has been amended four times since its adoption in 1982: in 1988, 1993, 1999 and 2004. Amendments passed in 1988, 1993, and 1999 reflect the evolution of the concept of socialism. In this respect, the Constitutional revision of 1999 shows the consensus within the CCP leadership on the nature of “socialism with Chinese characteristics” and the greater protection afforded to “capitalist economic practices”. Thus the 1982 Constitution reflects the Communist Party’s vision of the regime. Article 18 provides a formal Constitutional basis for foreign investment protection. Article 11 authorizes the development of individual economy as a complement to the socialist economy - within the limits prescribed by law. Article 10, for the first time in the Constitutional history of the PRC, defines the landed property. The Constitutional revision of 1993 was one of the most important ideologically. Following the adoption at the 14th Congress of the CCP’s notion of “socialist market economy”, the terms “socialist market economy” replaced those of “planned economy” and the terms “state owned enterprises” (Guoyou) replaced “state-run economy” (guoying). Provisions about state planned economy are deleted and replaced by other provisions which aim at reinforcing/strengthening economic legislation and macroeconomic control.
Chart 1. Steps of constitutionalizing the Chinese Socialist Regime

**Step 1: Building a new socialist regime (1949-1955)**

Law is used to consolidate the new regime and it is also used to prevent the comeback of the previous political order.

De-construction of the pre-revolutionary legal order.

**Step 2: Legal nihilism (1955-1976)**

Legal though is pointed out as counter-revolutionary.

Abolition of laws and legal institutions.

Current North Korean Situation?

**Step 3: return of “socialist legality” (1978-1992)**

Law is a tool to ensure the sustainability of the regime. A new legal system is built.


Open-door policy and the necessity of safeguarding political stability have led the establishment of a legal system. Albeit legal institutions are not fully autonomous from the political power, they have system effects on the regime.

**Step 5: Claims for a stage of reforms (2008-?)**

The question remains to know whether constitutionalisation will implement rule of law or if it will strengthen (as the China Dream let imagine it) "democratic centralism".
During Maoism, law was perceived as an unbearable burden for the revolution. Mao’s idolatry made a clean sweep of the legal system established in the past. A simple sentence by Mao was considerably more important than a law. The Party’s policy completely replaced the role of law. Virtually no new legislation has been enacted for over ten years. The reform policy implies the use of law. Since 1978 some commentators have even qualified this intense legal production as a “legislative frenzy”. This return of law in China was however progressive. The first step of this process can be seen in 1978 at Deng Xiaoping’s 10th CCP Central Committee speech. This was the occasion for the “little helmsman” to reintroduce the concept of “socialist legality”. In other words, this marked the beginning of a new stage in Chinese politics because since then the Party-state aimed at restoring its authority by using law. In terms of political analysis, the concept of “socialist legality” is important because it formalizes the abandonment of Maoism when power relied on a charismatic domination - to use the typology of Max Weber. The very task of the reform policy through the concept of “socialist legality” is to shift to legal-rational authority which implies a submission to the institution of the Party-state and not to the person of the ruling leader. This also partly explains why Deng has always been opposed to any cult of personality. Another step was reached in 1996 when then-supremo Jiang Zemin used the expression of “socialist rule of law”. In 1999 this concept was introduced into the Constitution.

The last Constitutional amendment suggests that the regime has

12 ibid. p 551
some confidence in the version of socialism as it is defined today. The latest Constitutional changes are the implementation of ideological evolutions at the 16th CCP Congress in 2002. The various amendments can be divided into five categories: “the carrying of a new guiding principle; explicit recognition of human rights; better protection of private property; a new more civil approach of the state of emergency; and some other technical changes”\textsuperscript{13}.

LESSONS OF THE CHINESE EXPERIENCE

Gradualism of the reform

The Constitutionalisation of the regime in post-Maoist China occurred in a particular political and historical context. This very context allows us a better understanding of the logic and purpose of leaders when they launched this reform program. This modernization policy somehow must be understood as an adaptation policy to the world. Since reforms were launched in 1978, this adaptation relied on both a redefinition - actually a downsizing - of the political sphere and an undeniable modernization of the state apparatus and its relationship with the society\textsuperscript{14}. This very process is at stake in the evolution of the legal framework in China. Downsizing the political sphere leaves a gap for/to the law. If a number of issues are not resolved in a political manner, then another standard must be found. As China is aiming at becoming a modern nation, law is becoming the tool to manage various relationships. Thus the devel-

\begin{itemize}
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Development of economic law for example came as a substitute for regulation of relations between economic agents (previously purely/only political.) According to Cabestan\textsuperscript{15}, law contributes to predictable medium-term CCP monopoly and the seizure of the economy by the CCP.

If the break was real in 1978, it was a break with Maoist political campaigns and not with the history of the People’s Republic of China. The instrumental and political dimension of law is claimed as a means for social and political transformation and modernization under the authority of the Communist Party\textsuperscript{16}. This trend has been reinforced during the second phase of reforms (1992-2008). Law allows an adaptation of the Party-state from constraints due to an increasing integration into the global economy. Law ensures stability at a time when the legitimacy of supremoes (Jiang Zemin as Hu Jintao) exclusively relies on institutions. It should be noted that since 1992, the state - or rather the Party-state which officially presides over the destinies of China - has deeply changed. It seems that these transformations have been undertaken with the best cost-benefit by the nation’s leadership in order to perpetuate the CCP dictatorship. This is done by modernizing and adapting the state apparatus to a new economic, social and international environment. Reforms of the legal system follow the same path of the economic system i.e. legalization was first spontaneously and locally developed to then be later institutionalized. Thus the transition from one economic system to another (namely from a soviet planned economy to a semi-market economy) has been notably successful because of the legal system. This system was the result of the vast movement of experimental legal reforms - literally “law test” (shixing fa). Ji Weidong\textsuperscript{17} has shown that this shixing fa process represents about 25%
of the 713 laws and decrees enacted between 1979 and 1985.

Therefore what is at stake is the historical process of legal state building. But this process is accomplished outside any historical determinism regarding the future framework of a rule of law which should follow the model of historical pattern. It is all the more true that the Chinese regime is seeking to oppose an alternative model to the one which appeared and was developed in the West.\(^\text{18}\)

The development of law is therefore the result of the political agenda. Indeed constitutionalisation became an issue when the socialist leadership considered that legal system a tool to achieve economic objectives. Comparing the Maoist period (1958-1977) with the reform period (1978-2008) a clear difference appears regarding law and legal output in China. Maoism established the disappearance of law. This trend started during the anti-rightist movement in the summer of 1957 and it would be amplified during the Cultural Revolution. The starting point of this law eradication process was a huge controversy in China about the survival of a “bourgeois law”. Some fundamental principles such as the independence of justice were considered as counter-revolutionary. Moreover, a feature of the Maoist period was the strong isolationism of China. This happened when the USSR and its satellites broke down. But it was also due to the fact that no Western country did recognize RPC. In such a context there was a total rejection of any legal input from abroad. This situation is very similar with post-1989 North Korea.

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\(^{18}\) BALME, op.cit. p587.
Law as a means of strengthening and serving the interests of the CCP

Even in building a legal framework of reforms, China never aimed at limiting the power of the ruling CCP. It is the opposite. The purpose of the Constitutionalisation process was to strengthen the authority of the Party. In this respect, several major Constitutional principles can be highlighted.

The first major Constitutional principle can be found in the preamble of the Basic Law. The Constitution has integrated the political doctrine of the CCP. This was first translated into the use of Deng Xiaoping’s “four basic principles” in the preamble of the Constitution. Then the Basic Law has recently incorporated in its theory Jiang Zemin’s theory of the “Three represents”. As Hong Kong Baptist University professor Jean-Pierre Cabestan reminds us, “some Chinese legal scholars have questioned the constitutional value of the preamble of the Constitution. But Beijing authorities have always refused to remove this introduction to the body of the Basic Law. It is the sole allusion to the leading role of the Party. Nevertheless this passage determines the way Chinese institutions actually work19.

The coexistence of democratic centralism and the system of people’s congresses is an essential principle of all Leninist party’s organization. Since the early years of the regime, democratic centralism has also become a Constitutional principle. If the concept was already present in the previous Constitutions, it can be considered that the 1982 Basic Law has emphasized the principle of popular assemblies. Article 3 states:

The state organs of the People’s Republic of China apply the principle of democratic centralism. The National People’s Congress and

the local people’s congresses at different levels are instituted through
democratic election. They are responsible to the people and subject to
their supervision. All administrative, judicial and procuratorial organs
of the state are created by the people’s congresses to which they are
responsible and under whose supervision they operate. The division
of functions and powers between the central and local state organs is
guided by the principle of giving full play to the initiative and enthu-
siasm of the local authorities under the unified leadership of the cen-
tral authorities.

Here lays the fundamental contradiction of the current Chi-
nese political system. China is formally a parliamentary regime
since congresses are sovereign. But in fact, two ideas deprive these
congresses of any concrete power. Indeed the notion of democratic
centralism, which is understood by Chinese authorities in its Le-
nin-Stalinist meaning, and the notion of “unified leadership of the
central authorities” (zhongyang de tongyi lingdao) are incompatible
with the idea of parliamentary power.

The 1982 Constitution reflects Deng Xiaoping’s ideas on China’s
modernization. Succeeding three Constitutions, the 1982 Constitu-
tion clearly reflects in legal terms the thoughts of Deng Xiaoping.
The preamble of the Basic Law includes “four basic principles”
highlighted by Deng himself. It is the affirmation of the socialist
way, the maintenance of people’s democratic dictatorship, the ex-
plicit reference to Marxism-Leninism, the Mao Zedong thought as
well as a the CCP leading role. The CCP policy is therefore given a
Constitutional form. The purpose is that the willingness of the CCP
is converted into the willingness of the state.

Granted many Constitutions are tinged with ideology, no text is
more ideological than the preamble of the Chinese Constitution. The
specificity of this preamble is its constant evolution. The pre-
amble reflects the personal stamp of the leaders. It is a political text

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20 CHEN Jianfu, op.cit.
on two levels. The first level of analysis of the Constitution provides the political thought of the ruling leadership at the head of the CCP. But on a second level, it cannot be forgotten to see the willingness of Chinese leaders to put their political thought in the Constitution as a strong legitimizing element. If the Party has almost always translated into Constitutional principles its political organization principles it is because the Constitution has an essential legitimizing role. According to the CCP, the Basic Law is as much a Constitution as a political programme. In this respect, the adjective “socialist” is non innocuous. It actually translates changes as the political thought of the ruling party.

The principles of state organization in China are the result of a deep political ambiguity. This ambiguity is specific to the Marxist-Leninist political thought but it is also accentuated by some Chinese characteristics. Marxist-Leninist thought is simultaneously rooted in the Leninist organizational mode - which places the Party above the state - and the system of liberal parliamentary representation. China has kept from Leninism the principle of “people’s democratic dictatorship” rule. Due to proletariat dictatorship, China practices democratic centralism. However at the same time, China has inherited (or adopted) from the enlightenment philosophy the idea that the state relies on a system of popular elected assemblies (People’s Republic). However, the principle of separation of powers has been consistently denounced by the PRC’s authorities (as the Soviet authorities did before in the USSR). Therefore China combines two types of legitimacy: revolutionary and democratic. In fact the power rests only in the first. But if the democratic legitimacy is not used, it is nevertheless mentioned over the last few years in order to justify the modernization of the legal system. It seems, as far as I am concerned, that this legal modernization does not aim at democratizing the regime. It seems to aims at being in line with the current global situation in order to ensure the sustainability of the political regime.
Legal reform allows carrying out economic reforms

After 1978 the economic reform policy relied on two main trends: (the development of) economy marketization and the deeper opening of China to the world. These two trends favored the return of law in the PRC. Before considering closely what this return has consisted of, let’s first focus on the logic at stake. How do these two political trends (marketization and open-door policy) have something to do with law? The transition from a planned economy to a market economy changes the nature of economic relations. In a planned economy, relations between agents are bureaucratic. Therefore a company which supplies another one - for instance - does not work according to a contract but because government oversees these two companies and sends orders to them. This order itself comes from the central commission plan directive. However in the context of a market economy an administrative relation is no longer possible insofar as entities do not necessarily belong to the same public service. They may even have no link with the government (as in the case of a private corporation). Law thus becomes a necessity to regulate economic activities. It helps to establish trust between agents and to ensure compliance with the commitments. This aspect of law is essential to the success of the reform policy which was desired and advocated by the successive Chinese leaders.

Bringing the logic of market and opening to foreign investments have led to profound changes to the Chinese legal framework. Indeed these reforms have led the Chinese system to adapt to international standards. When China remained a virtually closed nation, relations were largely informal or poorly institutionalized because every aspect of economic life (or life) went through the state. As new agents came (e.g. foreign investors), institutionalization occurred which explains this return of law. Indeed this can be considered as a return of law because prior to the reforms many aspects were not
tackled from a legal perspective. This was the case for economic issues.

Economic reform has not only created this economic law but it also allowed a change in the government governance through the process of institutionalization. This process was allowed by the return of law. Therefore, economic planning is not completely controlled by the political power because the Basic Law assigns it a goal. Article 15 of the 1982 Constitution states that “The state practices economic planning on the basis of socialist public ownership. It ensures the proportionate and co-ordinated growth of the national economy through overall balance. This balance is achieved by economic planning and the supplementary role of regulation by the market. Disturbance of the orderly functioning of the social economy or disruption of the state economic plan by any organization or individual is prohibited.” Chinese law has first made an effort of legalization aimed at defining and regulating by law the different sorts of plans (depending on the duration and the degree of binding force). Then with the legislation of the socialist market economy there has been an effort to regulate economic activity by law.

**Legal reform implies an adaptation of the Chinese regime to international standards**

The open-door policy was one of the top priorities of the Chinese government from the beginning of the reforms. However the Chinese government retained a certain mistrust vis-à-vis foreign models. For instance during his opening speech at the 12th CCP Congress on September 1st 1982 (the official starting point of eco-

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nomic reform policy), Deng Xiaoping said: “We shall unswervingly follow a policy of opening to the outside world and increase our exchanges with foreign countries […].” However in the same speech he specified: “[…] but mechanical application of foreign experience and copying of foreign models will get us nowhere.” And he later added: “At the same time, we shall keep clear heads, firmly resist corruption by decadent ideas from abroad and never permit the bourgeois way of life to spread in our country.” In other words, the Chinese government agreed to integrate into global economy. But there is a formal refusal of an evolution toward international (Western) standards. Thus “bourgeois way of life” clearly refers to democracy but also to some extent it refers also to private property. In particular, this means private property used in production and the possibility of lodging a complaint about noncompliance with the law (including contracts.) It must be remembered that when the reforms began China still had state ownership. The means of production and contractual relations were virtually non-existent. Opening its economy to the world, China necessarily had to develop its legal framework. One question however remains: to what extent does China being part of globalization modify the perception of law in China?

China has adopted an international trade oriented economic policy in order to deal with poverty and to reach the status of a developed nation. Indeed China needs foreign technology. In this respect the PRC is expected to provide an effective legal framework to attract foreign investments. Moreover this economic strategy heavily relies on exports. China - or at least Chinese firms - has to cope with foreign customers. As China goes further in its open-door and marketization policy, the need for harmonization with international standards becomes more urgent. This has consequences for legal aspects which are not directly related with commercial law but rather

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with economic law in the broad meaning: property rights, labour law, health standards, etc. There is another logic in addition to the necessity to build a legal framework to promote the economic development of the domestic market by making it safer (less random). Chinese economy has not only allowed foreign investments, it has also begun a process of extraversion. Many Chinese firms have invested abroad. In this context the need for a legal system became compulsory. Conforming to international standards, Chinese law allowed a minimization of various costs for companies involved in international economic relations. Actually, adapting one legal standard to another takes time and manpower. And, there is also the risk of mismatch between the two standards.

This attempt of building a Rechtsstaat does not necessarily imply a limitation of state power and the emergence of a degree of autonomy outside the Party-state. It should be remembered that a distinction exists in Chinese law between international contracts and national contracts. International contracts are subject to specific rules. Today as yesterday, the risk remains that “the transplantation” of foreign concepts can lead to failure of Chinese law that does not solve its century-long problem of adaptation to the reality of the nation and also its dependence vis-à-vis political power.

23 DELMAS-MARTY, op.cit, p552
An unfinished process

The contemporary period is then ambiguous because Beijing is trying at the same time to develop a legal framework and to limit the application of law (otherwise the monopolistic power of the CCP would be questioned). Two phenomena have emerged from this process of constitutionalisation. First, strong and competing legal bureaucracies have appeared. Because of the pragmatic and gradual approach of the process of constitutionalisation, the attributions are not necessarily allocated efficiently. This confusion of power runs counter to that desired by both experts and central government legal rationalisation. It creates a de facto balance of power among legal institutions. But the main problem is that the balance occurs not only between institutions but also within each institution. This creates locking of legal procedures. Second, the CCP’s influence in legal production as in legal agenda tends to be eroded. This influence erosion can be understood as a consequence of professionalization of legal activities i.e. more cases become more technical. This phenomenon is not restricted to China. Compared political sociology tells us there is a strong correlation between the degree of sophistication of the legal system and the political influence of this legal system. The more professional an institution is, the more power it tends to get.

But it cannot be forgotten that no major Constitutional progress has been achieved since the second stage of reforms was launched in 1992. This underlines two aspects. First, the Constitutionalism process was a pragmatic one, which means reforms were designed

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according to the current problems. But today’s China is no longer the same as it was two decades ago. Renmin University law professor Jiang Ping, who is often dubbed “the father of China’s legal reform”, urged the new leadership “to immediately build [political] institutions so as to ensure the rule of law in society.”

The second aspect is, as mentioned above, that the Basic Law translates the political orientations of the CCP. Every CCP General Secretary has labelled its political vision in the Constitution. It is interesting to note that the 2012-appointed General Secretary Xi Jinping proposed his vision of politics quickly after he secured his position as new supempo. This was known as the “Chinese Dream”.

**Limits for China: Is Xi Jinping’s “China Dream” a setback for constitutionalism?**

Constitutionalisation in China somehow relied on Deng’s famous adage: “Economic reform cannot succeed without political reform”. However one question remains: what kind of “political reform” is understood by the CCP leadership? Xi Jinping has always clearly stated he is following this line. For instance on December 9, 2012 the new General Secretary (also state president and commander-in-chief) said during an economics-focused seminar with Guangdong cadres and the leading entrepreneur in the city of Guangzhou: “The reforms will not stop and the pace of opening up will not slacken”. But Xi later stated more precisely what he understands as “political reforms”. The two above-mentioned aspects of the unfin-

25 Jiang Ping is quoted in Willy LAM “Xi Jinping’s ‘Southern Tour’ Reignites Promise of Reform” in *China Brief*, volume 12 Issue:24, The Jamestown Foundation, December 14, 2012.

ished Constitutionalism process (competing legal bureaucracies and CCP’s diminished influence in the legal process) are targeted by the new supremo. In this respect he aims at reinforcing the Constitutionalism process. “Not long after his ascendancy at the 18th Party Congress, General Secretary Xi pledged to introduce “constitutional socialism with Chinese characteristics,” that is, a socio-political system where the Constitution and the laws will be fully respected. There is a clear-cut indication that Wi, who has direct control over the country’s political-legal establishment - which oversees the police, state security, the prosecutor’s office and the courts -is adamant about using this formidable control apparatus to crush dissent. It is notable that in his report to the NPC, the outgoing President of the Supreme People’s Court Wang Shengjun affirmed the party’s unquestioned leadership over the judiciary. Wang urged judges and other “judicial workers” to profess “total loyalty to the party, the country, the people, and the Constitution and the law”. In other words, obeisance to the party has pride of place over respect for the Constitution and the law. This is true despite the fact that Wang also vowed to promote “public confidence in the judiciary” as well as “judicial fairness and integrity”.

As leader of the red prince faction, Xi has put weiwen or safeguarding political stability above reform. This has undeniable consequences over constitutionalisation. In this respect the new leadership considers that the main political objective is fulfilling the “Chinese Dream” (zhongguo meng). This expression which clearly refers to the American Dream may succeed in an endorsement of “bourgeois-liberal” vales and a faster constitutionalisation of the regime. As Wang Yiwei28, a political scientist at Beijing’s Renmin Uni-

versity, stated it was wrong to equate the China Dream with ideals such as “the dream of constitutional governance or the dream of human rights and democracy” because the zhongguo meng actually means “the sinocization of Marxism through taking into consideration China’s own conditions, so as to open up the path of socialism with Chinese characteristics”.

Achieving such a goal - also labelled as the “renaissance of the Chinese race” - implies, according to Xi²⁹, three prerequisites: following the “Chinese road”, “developing the Chinese spirit” and “concentrating and crystallizing China’s strength”. The last imperative about the concentration of powers refers, as mentioned above, to the fact that a number of key party and state organs have been strengthened considerably. “Structural changes in the party-state apparatus as well as personnel movements the past several months have demonstrated the premium that the Xi-Li leadership has emphasized concentration of powers as well as upholding socio-political stability. These developments also mark a departure from the dictums of late patriarch Deng Xiaoping about the devolution of powers and in particular, the separation of party and government, which was written into the Political Report to the 13th Party Congress of 1987. President Xi, however, obviously favors a different approach to governance. As Zhang Ping, the just-retired NDRC [National Development and Reform Commission] minister, put it during the NPC session, “China’s best advantage is the authorities concentrating the nation’s resources and efforts to do big things”. For President Xi, it is apparent that the Leninist doctrine of “democratic centralism” is the best way of realizing the China dream.

²⁹ Xinhua, March 17, 2013.
Limits for North Korea

The 1980s was a time of great confidence for North Korean leaders. China, however, faced massive turmoil during the Cultural Revolution. In this respect constitutionalism in China was first perceived as a “survival measure”. Nevertheless “North Korean President Kim Il-sung would eventually flirt with introducing some Chinese-style reforms in his own country, including passing a law that legalized inbound foreign investment.”  

But geopolitical changes during the brutal disintegration of the Soviet Union, the Tiananmen Square protests or the abandonment of communism in Eastern Europe, put a decisive end to DPRK’s attempt at reform. The fear of a German scenario (i.e. the complete absorption of East Germany by the West), the establishment of diplomatic ties of South Korea with China (and also with Russia) all convinced Pyongyang that orthodox Stalinism was the only way to ensure the survival of the regime. It somehow worked because North Korea did not collapse but it brought the country into great difficulties which eventually maintain the question of the survival of the regime. This is the reason that the evolution of the North Korean regime along the Chinese model came back on the agenda as the new supremo Kim Jong-un tries to consolidate its power.

According to the theory of public choice of rights, law can act as a system backup. At the macroeconomic level, Vorhies and Glahe  

31 VORHIES Frank & GLAHE Fred “Political Liberty and Social Development : An Empirical Investigation,” in Public Choice 58:45_71

higher productivity and a more egalitarian distribution of income. But a society which is at an equilibrium (a,a) can choose to stay even if it is known that the combination (b,b) would bring it greater wellbeing. It all depends on whether the transaction costs to move from (a,a) to (b,b) are too high. In the case of a democracy, this is a society choice (with different groups of various influence). In the case of the PRC, the influence of the CCP is such that it becomes hegemonic. The choice of changing the standard (whether it is legal nihilism, socialist legality or rule of law) depends only of this single agent.

Having stated this, if we consider the North Korean situation, it appears that the choice of changing a standard not only depends on the communist party but principally on the elites. Given the pyramidal dimension of the Worker’s Party of Korea, the interests of the ruling leader - namely Kim Jong-un - will have a particular weight into the final decision. Therefore constitutionalism in North Korea could be implemented on the first prerequisite that it will not weaken the supremo’s position. In this case, then comes another condition which is: change should increase the leader’s power. At this point it raises the question of the elements which could strengthen Kim’s position considering he already concentrates all levers of the party-state apparatus. Seen from Pyongyang, the very advantage of the constitutionalisation process is that it could boost an ailing economy and insofar ease international tensions. However as Jin Jingyi reminds us: “If Kim Jong-un promotes reform, he will do so signifying risk to his regime, and in contravention of the North’s tradition of Stalinist central control. Embracing reform would require a re-evaluation of the legacy of Kim Il-sung and Kim Jong-il, which would […] put the legitimacy of the regime in question. For this reason, it is difficult to expect the North to embrace Chinese-style reforms”33.

Two difficulties can be pointed out which can explain the reasons of Pyongyang’s reluctance to implement constitutional reforms. As previously mentioned, China’s constitutionalisation process began with an ideological shift. Reforming North Korea would mean denying “Juche” doctrine and the legacy of Kim Jong-il and Kim Il-sung. Denying these means denying Kim Jong-un’s own legitimacy as a ruler. The second main obstacle is that constitutionalisation allows economic reforms which are partly driven by foreign direct investments. Somehow the consequence of constitutionalisation is a relatively more open society. This condition seems not easily available for the North Korean dictatorship. However these two obstacles do not necessarily imply that changes are impossible. Since the DPRK does not allow new theory, the Chinese example cannot constitute an appropriate path. However, the regime could implement marginal reforms which have positive effects for the economy. This strategy could work in the short run. However in the middle or long run, as Jin Jingyi reminds us “in a strictly controlled society, nonetheless, even gradual and minimal changes can cause significant disruptions, meaning that every change in North Korea can have far reaching implications”\(^{34}\). In this context, another possibility - which cannot be excluded - is that the purge Kim Jong-un led soon after he reached supreme power was aimed at reinforcing his authority. Therefore, he does not even need to use his legitimacy as an heir. In this case, his intraparty power would be that important regime reforms could be conceivable. But this scenario implies a substitution legitimizing ideology. Up to now, there are too many unknown aspects to tackle this hypothesis.

\(^{34}\) Jin Jingyi, op.cit. p116.
CONCLUSION

As the China Dream debate shows, the same logic prevails in both DPRK and PRC (at different degrees). In short, the constitutional process in socialist regimes appears to be limited by the very nature of these regimes: democratic centralism, or Party monopoly of power, will prevail. For Beijing, law is tackled in a utilitarian aspect. Constitutionalism in China has become useful (even essential) as it contributes to safeguard social and political stability on which economic growth depends. Considerations of justice or the respect of human rights are then quite secondary concerns for the Chinese. Pragmatic and utilitarian Chinese law has first focused on the establishment of a legal framework for business and foreign direct investments – the presumed driving force behind growth. Therefore, the purpose of constitutionalisation in China being summed up in the creation of a “state of economic law”, leads to a meaningless concept. The notion of rule of law cannot be divided. Indeed the very principle of the rule of law is to regulate and to limit the power of the government by law. The concept of “state of economic law” would imply that the power of the government is only regulated in markets, but the other aspects of social life would support the omnipotence of the ruling party. Indeed this concept of “state of economic law” just does not match with the definition of the “state of law” or the rule of law.

The process of constitutionalisation China has experimented is nothing but the embodiment of the contradictions of a system which cannot get rid of the arbitrary. Internationalization of Chinese law has certainly allowed undeniable progress. However constitutionalism in China might not mean democracy or balance of power35. The return of law in China therefore does not necessarily

35 CHOUKHROUNE, op.cit.
imply the establishment of a rule of law. Granted there is no rule of law without a previously established legal corpus, nevertheless the reverse is not compulsory.

The question of political change in China is not one of reform, but whether the CCP’s administrative improvements to reorient governance actually address China’s problems, and if not, what then? Wang Yang, the newly appointed vice-Premier and well-known reformist cadre, identified “institutional obstacles” as the main problem. He said “if the reform 30 years ago solved the issue of ideology, now we have come to an issue of interests. Reform is like cutting one’s own flesh, so we need great determination”\textsuperscript{36}. No one is sure that either Xi Jinping or Kim Jung-un have enough determination to practice complete “constitutional surgery”.

\textsuperscript{36} Xinhua, March 17, 2013.
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People’s Daily, December 10, 2012
Abstract

In order to analyze the EU’s FTA strategies, this paper introduces a theory of three-level games, putting a two-level games theory in practice. Since Putnam suggested the theory of two-level games, many analysts have tried to apply it to international negotiations at the bilateral level. Putnam decomposes the international negotiation process into two stages. As authors apply this theory to a regional integration area such as the EU, the Community has rights to the Common Commercial Policy. In view of these, this article puts forward a number of hypothetical propositions. A theory of three-level games analytically breaks down the international negotiation process into three stages; international level, regional level and national level.

First, at the regional level, the Community takes a high standard of product and process regulation. Second, certain industries in each of the member states, forecasting comparative disadvantage, directly put pressure on the national level (level Ⅲ) or the regional level (level Ⅱ). Third, though each of the member states faces pockets of strong domestic pressure to protect certain industries, it is impossible to refuse to negotiate with other states at the international level. Also, the member states cannot establish any strategy such as package negotiation or negotiation between different issues. Forth, in particular, the EU carries its point to insist on KORUS parity in the case of Korea-EU FTA, to widen Korea’s win-sets.
In conclusion, the regional community with Common Commercial Policy, improves the standard of the multilateral agreement.

**Key words:** Two-level games theory, Theory of three-level games, European Union (EU), Korea-EU FTA, Common Commercial Policy

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**INTRODUCTION**

In the past, FTA negotiations have been regarded as the commercial policy of nations with low tariffs or highly liberalized markets. Nevertheless, large economic blocs such as the US and the EU have recently been striving to establish first-comer status in the market and to expand their influences by competitively concluding FTAs. As of 15 January 2012, some 511 notifications of RTAs (counting goods and services separately) had been received by the GATT/WTO; of these, 319 were in force.³

When considering facets such as the comprehensiveness and openness of concluding FTAs and the contents of the negotiations, FTAs are often categorized into “US-style” FTAs, “EU-style” FTAs, and “developing country-style” FTAs. In US-style FTAs, the degree of comprehensiveness, including the implementation period and scale of tariff liberalization, is high. In particular, the neo-liberalist disposition of US-style FTAs, which demand thorough liberalization, deregulation, and resolute standardization, is distinct and it has been pointed out that they tend to be harsh negotiations for their trading partners. In comparison, the existing assertion is that EU-style FTAs have traditionally considered reciprocity for its trading partner and negotiations are flexible by case.

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However, there is a need to rethink this assertion through an overall examination of the EU’s unique character and its recent foreign trade strategy. The EU has based its common commercial policy on the concepts of regionalism and multilateralism. That is, it is true that the importance of FTAs had been placed relatively low in its foreign trade strategy. The primary function of the FTAs the EU had concluded has been either as a temporary measure for European nations preparing for application as a Member State or to give preferential treatment to nations with which it has historically had strong relations. Therefore, relative consideration has taken precedence among reasons for concluding FTAs with specific trading partners, and if an analysis is to be done on the EU’s general strategy for FTAs, focus must be placed on its FTAs with Mexico, Chile, and Korea or FTAs currently in negotiation.

This paper has selected the EU-Korea FTA in order to analyze the EU’s FTA negotiation strategy. This is because it is not only the most recent FTA the EU has concluded, it is also the case in which the EU has opted for FTAs as its primary strategy in its common commercial policy and started to adopt an active posture. The primary characteristic of the EU’s FTA strategy is revealed due to its nature as a regional union. Although the level of regional cooperation has intensified to a degree that was unheard of in the past, because the EU is an economic union composed of 27 Member States, there is a difference between its FTA strategy and that of a single nation. In the case of a single nation, when negotiations are entered into, sectors which are to be protected and sectors in which liberal-

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4 Examples include establishment of the European Economic Area (EEA), forming a customs union with Turkey, Andorra, San Marino, and concluding an FTA with Croatia, the Faroe Islands, Macedonia.

5 Cases of preferential agreements of the EU include FTAs with Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria, and Tunisia on the Mediterranean coasts and the Cotonou Agreement, which is a preferential agreement with ACP countries (Africa, Caribbean, Pacific Group of States).
ization is to be maximized are categorized and the level of negotiations is established, categorizing which trade models and non-tariff barriers are advantageous and disadvantageous. However, a regional union whose Member States are composed of both developed and developing countries has already experienced the internal integration process and a high level of re-regulation and deregulation as well as the elimination of tariffs within the union and the establishment of common tariffs for trade outside the union. Therefore, the EU requests the systems and criteria included in FTA negotiations to be at a level at or higher than multilateral trade negotiations. On the other hand, there is a strong tendency for its Member States to raise objections with regard to tariffs. The EU established a structure of relatively high common tariffs for outside nations in order to facilitate the trade diversion effect in the process of advancing regional cooperation, and thus when concluding an FTA, the opinions of the Member States may conflict with each other about the elimination of tariffs on the trade of goods and the execution period for tariff elimination. In particular, many Member States whose economic development is at a high or medium level react sensitively with regard to adversely affected industries, and the primary reason for this is homogeneity with the FTA trading partner.

This research applies Putnam’s two-level game theory in order to analyze the FTA negotiation strategy of the EU which differs from that of a single nation as stated above. Two-level game theory approaches and analyzes international negotiations when foreign policy and domestic politics are fused through a strategy which utilizes the domestic dimension (Level II) and the international dimension (Level I) at the same time. This theory emphasizes that negotiators stand at the border of a two-level game and play both games simultaneously. Also, there exists a dual negotiation strategy which receives limitations from both directions and at times uses those limitations for its advantage (Yang 2010). If this is to be applied to the EU, there is a need for a three-level approach consid-
ering the domestic dimension, the community dimension, and the international dimension. The primary objective of this paper is in examining the primary issues in the three-level negotiation process and formulating a theory by analyzing those differences.

The second section examines prior literature on two-level game theory and presents the theoretical propositions of three-level game theory related to regional union FTA negotiation strategy. It is estimated that, using these propositions as a foundation, three-level game theory will be useful in predicting the EU’s FTA negotiation strategy in the future and will also provide a theoretical foundation for analyzing common trade strategies of other regional unions.

The third section inspects these propositions of the three-level game theory through the case of the EU’s trade negotiations. As the EU is already at an advanced stage of integration, it has requested a level of systems and criteria in its FTA negotiations which is higher than that in multilateral trade negotiations. This can be verified in the analysis of the various controls, systems, and general regulations such as rules of origin, government procurement, and intellectual property rights. In this area, the concerns at the Member State level (Level III) and community level (Level II) in the three-level game are in harmony and are applied no differently than when there are only negotiations between the international and domestic levels. However, an analysis is conducted of the areas in which objections are raised among Member States when tariffs and non-tariff barriers are eliminated in order to pursue exclusive gains for the EU as a regional bloc. In these situations, the negotiation process between Level III and Level II actively influences the community level (Level II) and international level (Level I), resulting in a raise of bargaining power. In the EU-Korea FTA, Member States experienced difficulties in reaching an agreement with regard to the automotive industry. The areas in which disputes are raised within Member States are almost always industries in which loss is predicted; however, these are not always industries that suffer loss. If the gains and losses to all Mem-
ber States were homogeneous, the situation could be considered a matter which falls under two-level game theory.

This sort of analysis facilitates understanding of the current status of EU’s recent FTA negotiations as well as the general theorization of FTA negotiation strategy of advanced regional unions.

WHAT IS THREE-LEVEL GAME THEORY?

This section examines two-level game theory as asserted by Putnam (1988) and builds upon that theory to present an analytical framework for three-level game theory at work in the FTA negotiation process of regional unions.

Putnam (1988) emphasized the entanglement of international and domestic politics and presented a theoretical analysis of bargaining power, simultaneously considering the negotiation strategies of politicians and the limitations and opportunities that arise from both the international and domestic dimensions. Unlike previous international negotiation theories, this theory emphasizes the role of politicians as core and strategic actors. It emphasizes the bargaining power of politicians and draws attention to the active influence public opinion and political pressure in Level II has on bargaining power.

It is convenient analytically to break down the process into two stages:

- **the international dimension (Level I):** bargaining between the negotiators, leading to a tentative agreement
- **the domestic dimension (Level II):** separate discussions within each group of constituents about whether to ratify the agreement (Putnam, 1988).
Two-level game theory emphasizes the negotiator as the primary policy maker and explains that structure. Negotiators are sole or primary actors and are presupposed to be neutral parties without any particular policy preferences. The domestic level, Level II, is a game in which various domestic groups pursue personal interest, applying pressure to their government to select policies that would be favorable to their interests, while politicians pursue the expansion of their authority through the reshuffling of supporting groups, and the international dimension, Level I, is a game in which the player attempts to minimize unfavorable diplomatic results while maximizing their ability to satisfy domestic pressures (Yang 2000).

Due to the dual nature of this kind of win-set, a complicated relationship is established, deciding the size of one’s own win-set and gauging the size of the partner’s win-set in actual negotiations.

Given this set of arrangements, we may define the “win-set” for a given Level II constituency as the set of all possible Level I agreements that would “win”—that is, gain the necessary majority among the constituents—when simply voted up or down (Putnam, 1988). For two quite different reasons, the contours of the Level II win-sets are very important for understanding Level I agreements.

First, larger win-sets make Level I agreement more likely, ceteris paribus. By definition, any successful agreement must fall within the Level II win-sets of each of the parties to the accord (Putnam, 1988). The second reason why win-set size is important is that the relative size of the respective Level II win-sets will affect the distribution of the joint gains from the international bargain (Putnam, 1988).

6 Although a large win-set is desirable in order for an agreement to be reached, a kind of dilemma exists because a large win-set can also work unfavorably against oneself in the bargaining process with the trading partner. Negotiators often use the fact that their win-set is small to favorably sway negotiations; however, it may also cause problem of having to pay the trading partner side payments because of the need to excessively raise the size of the win-set from the beginning(Yang, 2010).
Then which factors decide the size of the win-set? Putnam (1988) presents three factors for this. These are categorized into Level II preferences and coalitions, Level II institutions, and Level I negotiators’ strategies (Putnam, 1988). That is, the distribution of the authority, preferences, and possibility of merging between Level II constituents has an influence on the size of the win-set, and ratification institutions within Member States are also applied as a primary factor as well. In addition, Level I negotiators’ strategies which are connected to domestic issues also become a primary variable.

The author estimates that utility of the two-level game theory

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7 Ratifiers’ preferences include variables such as how gains and expenses will be distributed, how much political influence the ratifier group has, how the union between ratifiers is composed, and whether the character of the issues is heterogeneous or homogeneous(Yang, 2010).

8 The factor of ratification institutions includes variables such as autonomy of the country, legal procedures, legal status of the agreement, and order within the party in power(Yang, 2010).

9 In accordance with the subject and object of negotiations, negotiation strategies in two-level game theory can be categorized as follows. If the subject of the action is the government and the objects of the action are domestic individuals or domestic organizations, there are “heel-grabbing strategy,” “political dispute strategy,” and “loosening the reins strategy.” A “heel-grabbing strategy” is a strategy in which the actor reduces the size of its win-set and raises its bargaining power through open promises with domestic hardliners. A “political dispute strategy” is a strategy in which the actor reduces the size of its win-set and raises its bargaining power by making a political issue out of an item, thereby activating inactive groups. Finally, a “loosening the reins strategy” is a strategy which increases the size of the partner’s win-set and elevates relative bargaining power by changing the general image of the item. If the subject of the action is the government and the objects of the action are foreign individuals or foreign organizations, there are “target item connection strategy” and “echo strategy.” A “target item connection strategy” is a strategy which increases the size of the partner’s win-set and elevates relative bargaining power by connecting items together, activating inactive foreign groups and changing the balance between competing forces. An “echo strategy” is a strategy which increases the size of the partner’s win-set by changing the general image of the item. If the subject of the action is the government and the object of the action is the partner government, an “inter-governmental consultation strategy” is a strategy in which agreement is facilitated by exchanging political assets, increasing the size of both win-sets. Furthermore, if a domestic individual or organization is the subject of the action, a “supra-national lobby strategy” can be used vis-à-vis the partner’s government or a “supra-national coalition strategy” can be attempted against foreign individuals or organizations as the objects of the action(Mo, 2004).
is sufficient in its application in international negotiations and, in particular, is appropriate in applying to FTA negotiations which have recently been the main type of regional agreements. It may be pointed out that there are issues in its presupposing a zero-sum game and neutral negotiators\textsuperscript{10} in negotiations in formulating a theory; however, this paper strives to control the above presuppositions in order to focus on the level of negotiation rather than the actors or the nature of the negotiation.

Then what occurs when this sort of negotiation process is applied to a regional union which has reached a stage of advanced economic integration? In the event that the union initiates and concludes an agreement, the level may be categorized into three levels. In addition to “internal pressure” and “external pressure” as outlined by the two-level game theory, there exists a political and economic system in the regional dimension as well.

- **Level I: international negotiations**
- **Level II: domestic negotiations**
- **Level III: regional negotiations**

- **Level II / Level III preferences and coalitions**
- **Level II / Level III institutions**
- **Level I negotiators’ strategies**

Since the beginning of the General Agreement on Tariffs and Trade (GATT), some experts have attempted to analyze jointly using the analysis of Common commercial policy (CCP) in the European

\textsuperscript{10}Moravcsik (1993), who carried out collaborative research on international negotiations with Putnam, pointed out the following concerning two-level game theory as outlined by Putnam (1988). He explained that Putnam regarded negotiators as neutral players who come to the negotiating table to simply represent domestic politics in international negotiations and did not consider individual preferences or political gain, and he further explained that in reality, there is a need to fractionalize the concept of win-sets into acceptability-sets preferred by the negotiator (Moravcsik, 1993).
Community. To explain the Common Agricultural Policy (CAP) Reform in the European Community, Lee (1997) examines the three levels. This important policy shift can be explained by expanding Robert Putnam’s two-level game framework to three levels, thereby taking into account the interaction of simultaneous negotiations occurring at the domestic level, the European Community level, and the international level (Lee 1997). Except for the CCP, three-level game theory is applied to practice, too. Reslow et. al. (2013) analyze EU external migration policy, according to this theory. They explain that links three sets of actors in two strategic interactions: member states, EU institutions and third world countries (Reslow et. al., 2013).

The existing two-level game approach is categorized into the international dimension and domestic dimension. However, regional unions have another community dimension which exists between those two dimensions. Therefore, in Level I, negotiations between nations, negotiations occur between the European Commission and the trading partner. Within each Member State, the stage of negotiations in which individuals, industries, and for-profit organizations apply policy pressure on their government in the domestic dimension may be termed Level III. When this occurs, the European Commission, which initiates negotiations over common commercial policy, takes the intermediary place at Level II. The biggest differences between two-level games and three-level games are in the third-level, Level II, which is the negotiation stage between the Commission and its Member States, and the role of Member States in Level III. There is a need to first observe the particular characteristics of the Common Market before extracting the general presuppositions for this theory.

The common market is an external customs union with internal common policies and thus the European Union must be analyzed from two aspects, the proposal of political plans and the selective strengthening of common policy. This may be otherwise expressed
as the presentation of the extensive frame and internal unification that is the European Union. That is, a regional union intensifies the degree of integration by simultaneously emphasizing its representative nature externally while promoting the strengthening of common policy and the formation of a single market within the region. Regional integration surpasses the simple meaning of market liberalization within the region, considering also the preparation of policies for damaged industries and areas along with plans for trade activation when a single market is formed. Toward this end, the early European Communities chose to complete the customs union and to strengthen common policies such as common agricultural policy (CAP).

Therefore, the union set forth to raise the level of general regulations to a level at or higher than a multilateral level by guaranteeing the free movement of production factors (Products, Services, Capitals and Labor) and executing common policies in addition to eliminating tariffs within the region. On the other hand, the union intended to set relatively high tariffs when establishing common tariffs in the customs union stage. These particular characteristics of economic integration are reflected in international trade negotiations.

First, the union generally aims to standardize the level of regulation on non-tariff barriers to the high level of the union when entering into FTA negotiations because regulations within the region are already at or above the level of multilateralism. In Level 1, the union attempts to raise their bargaining power by narrowing their win-set, emphasizing the high level of regulation within the region. The standard of procedural control is identified with the benefits that the partner gains from eliminating the relatively high common tariffs in an advanced market after concluding an FTA and having the standard of procedural control meet the level within the region becomes the primary objective. The objective is in raising negotiations over general regulations to a level at or higher than multilateralism,
making it possible to maintain a consistent common commercial policy in Level I. This shrinks the win-set of the community.

Second, it is important to note that the relatively high common tariffs are maintained at the advanced market level. Objections to FTA negotiations from Level III industries tend to stem from the removal of tariffs. Industries in Member States which are relatively inferior to those in the trading partner apply pressure to Member State governments or directly to the union.

Third, the aspect that the EU’s FTA strategy as its recent foreign trade policy is to curb the expansion of bilateral agreements by the US is strong. The EU put into effect an FTA with Mexico\(^{11}\) after the US-led NAFTA came into effect in 1994; it put into effect an FTA with Chile while the US-Chile FTA\(^{12}\) was in negotiations,\(^{13}\) and after an agreement was concluded in the US-Korea FTA, the EU-Korea FTA was promoted and put into effect before the US-Korea FTA. This promotion of FTAs as part of a strategy to curb American influence can be applied as another factor in the EU’s FTA bargaining power. Strategic FTAs to curb American influence raises the EU’s bargaining ability and greatly increases the size of their trading partners’ win-sets, favorably inducing negotiations. It also facilitates negotiations because the EU can request an agreement with a high level of liberalization as in FTAs concluded with the US.

Fourth, as Level II institutions (domestic institutions) are emphasized in two-level game theory, Level III institutions (domestic institutions) in three-level game theory are also primary. However, this paper focuses its emphasis on Level II institutions (community institutions). The influence of a country’s political institutions

\(^{11}\) The EU-Mexico FTA was put into effect on 1 July 2000 for goods and 1 October 2000 for services.

\(^{12}\) The US-Chile FTA was signed on 6 June 2003 and was put into effect on 1 January 2004.

\(^{13}\) The EU-Chile FTA was signed on 15 May 2005 and was put into effect on 1 February 2003 for goods and 1 March 2005 for services.
on a country and the union can be verified in prior literature. The institutions to note in three-level game theory may be considered a reflection of the situation in which the trading partner is a regional community comprised of many countries. As the trading partner is a single union, its institutional completion has a large connection to whether an agreement such as an FTA can be concluded.

Using these four characteristics as a foundation, the propositions of three-level game theory can be presented as follows.

1. **Level II / Level III preferences and coalitions**: Primarily when tariffs are eliminated by the trading partner, preferences between industries that are predicted to have relative superiority and coalitions between industries that are categorized as relatively inferior may appear. As the objective of negotiations over general regulations is at or above multilateral levels, a consistent common commercial policy can be maintained at Level I. The assertions of the side that experiences concentrated loss stands out rather than the side that experiences diversified profit. However, even if industries are homogenous, it can be said that situations are extremely limited in which all of the countries within a region are relatively inferior. When this occurs, individuals, industries, and for-profit organizations within Member States may apply pressure to Member States or apply direct pressure to the community in Level III. In the EU-Korea FTA, the EU identified the automobile industry as disputed industries and asserted strengthening of rules of origin and duty drawback schemes in the negotiation process as well as demanding the drafting of measures for market disturbance after the FTA came into effect.

When specified industries apply internal pressure to the country in Level III, a Member State cannot employ a package negotiation
strategy\textsuperscript{14} or a homogeneity-emphasis negotiation strategy in Level II, and objections to the negotiations itself arise. A country can categorize which industries will be favorably or adversely affected and which are homogeneous and heterogeneous in two-level game theory;\textsuperscript{15} however, a Member State cannot employ these sorts of negotiation strategy because the authority for commercial policy is relinquished to the union.

\textbf{② Level II / Level III institutions}: An advanced economic union in which the authority to enter into agreements is transferred to the union has a positive influence on international negotiations. In addition, in the event that the trading partner is a regional union, it is evaluated whether the union is a mature system in which decisions made in the community dimension can effectively control its constituents. In an advanced economic union, nations in the region must satisfy universal standards when entering into the union, allowing for complexities stemming from heterogeneous political systems to be controlled. Putnam (1988) explained that the domestic ratification process for international agreements reached in the international dimension can be described as a political process which mobilizes domestic support. In the EU, the European Parliament already exists in Level II. Therefore, ratification groups in Level III have a limited influence in the ratification process in Level II. The treaty conclusion process of the EU will be reviewed and re-ana-

\textsuperscript{14} A package negotiation strategy is a strategy which a group which would have opposed (or supported) negotiations if the issue had been singular supports (or opposes) a negotiation when another issue is connected\textsuperscript{a}(Yang, 2010).

\textsuperscript{15} A homogeneous issue is an issue in which the understanding of domestic ratifiers are identical and they request as much as possible from the negotiator, very often extremely restricting the size of the negotiator’s win-set. On the other hand, “heterogeneous issues” can generally be observed market liberalization negotiations of a single nation. For example, in the case such as when agricultural workers oppose negotiations but manufacturers adopt a supporting position, there is a high possibility that the size of the negotiator’s win-set will increase from the heterogeneous issue\textsuperscript{b}(Yang, 2010).
lyzed in Section 3. What is emphasized in this section lies in the event that the trading partner is a regional cooperative system rather than the parliamentary process and political processes within the EU. The focus is set on whether decisions made by the trading partner in the community dimension as a mature regional union can effectively control its constituents.

3 Level I negotiators’ strategies: The strategy of those charged with ratification in the union has an active influence on the size of the negotiation win-set. Strategic FTAs to curb American influence raises the bargaining power of the EU and increases the size of the trading partner’s win-set, facilitating negotiations. As they can make requests using the high standards for liberalization included in FTAs concluded with the US, this facilitates negotiations.

As for regulations on goods and procedural regulations, the orientation is toward standardization to the high level of the union. As the objective is in raising negotiations on general regulations at or above the level of multilateralism, it is possible to maintain a consistent common commercial policy at Level I. This shrinks the win-set of the union.

As there are three levels in a regional union, it can be predicted that more complicated situations may arise than in a two-level game theory; however, as the degree of economic cooperation in a union advances, social norms and regulations within the regional elevate to a level of multilateralism, thus allowing negotiations to be simplified and explained as they are in propositions 1 through 3. In the third section, these four propositions will be applied to the case of the EU-Korea FTA and their soundness will be inspected.
EU’s FTA Negotiation Strategy
As Seen Through an Analysis of the EU-Korea FTA

This section will apply the three propositions inferred in Section 2 to the case of the EU-Korea FTA in an attempt to inspect their validity. It may be judged that the EU-Korea FTA, as the most recent FTA the EU has put into effect and one executed based on its economic objective in its common commercial policy, is an appropriate case for the application of the propositions.

In the EU-Korea FTA, after the agreement came into effect, tariffs on over 90 percent of goods classified by both import volume and number of items are to be removed within 3 years with complete elimination of tariffs on goods within 7 years for Korea and within 5 years for the EU.16

Level II / Level III preferences and coalitions

(1) Primarily when tariffs are eliminated by the trading partner, preferences between industries that are predicted to have relative superiority and coalitions between industries that are categorized as relatively inferior may appear. As the objective of negotiations over general regulations is at or above multilateral levels, a consistent common commercial policy can be maintained at Level I.

16 With regard to the removal of tariffs on Korean goods classified by import volume and number of items, 69.4%/90.7% were targets for immediate elimination and 22.4%/5.1% were targets for elimination within 3 years, totaling 91.8%/95.8% after 3 years. With regard to the removal of tariffs on EU goods classified by import volume and number of goods, 76.7%/97.3% were targets for immediate elimination and 16.6%/2.1% were targets for elimination within 3 years, totaling 93.3%/99.4% after 3 years.
In this section, in order to inspect the propositions, the EU-Korea FTA negotiation process has been categorized into negotiations over removal of tariffs and negotiations over removal of non-tariff barriers. In particular, the analysis is focused on the automobile and textile industries as disputed items for the elimination of tariffs. In addition, negotiations over intellectual property rights in the EU-Korea FTA have also been focused on for the same end.

A. Trade of goods: Focus on automobiles

As the automobile industries of both Korea and the EU are in competition, the automobile industry has become a major subject of concession negotiations. The following <Table 1> is data on the removal of tariffs on major goods in the EU-Korea FTA. In comparison to Korea, the EU has relatively higher tariffs on automotive items such as automobiles, cargo trucks, and auto parts as well as on color TVs, color cathode ray tubes, and television receivers.\(^\text{17}\) Tariffs on automobile items are 8 percent for Korea and 10 percent for the EU and tariffs on color television items are 8 percent for Korea and 14 percent for the EU.

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\(^{17}\) The WTO uses tariff shift rules for its Harmonized System (HS) negotiations. The HS item number required for this standard is comprised of ten digits, the first two digits indicating chapter, four digits indicating heading, and six digits indicating subheading (Lee, 2011).
Table 1. Data on the removal of tariffs on major goods in the EU-Korea FTA (tariff rates: %)

<table>
<thead>
<tr>
<th>Items</th>
<th>Korea</th>
<th>EU</th>
</tr>
</thead>
<tbody>
<tr>
<td>motorized vehicles</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Over 1500cc</td>
<td>(8%) within 3 years</td>
<td>(10%) within 3 years</td>
</tr>
<tr>
<td>under 1500cc</td>
<td>(8%) within 5 years</td>
<td>(10%) within 5 years</td>
</tr>
<tr>
<td>Hybrid</td>
<td>(8%) within 5 years</td>
<td>(10%) within 5 years</td>
</tr>
<tr>
<td>cargo trucks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full-size van</td>
<td>(10%) immediately</td>
<td>(10~16%) immediately</td>
</tr>
<tr>
<td>Under 5 Ton</td>
<td>(10%) immediately</td>
<td>(22%) within 5 years</td>
</tr>
<tr>
<td>Under 20 Ton</td>
<td>(10%) within 5 years</td>
<td>(22%) within 3 years</td>
</tr>
<tr>
<td>auto parts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>diesel engine parts</td>
<td>(8%) immediately</td>
<td>(2.7%) immediately</td>
</tr>
<tr>
<td>Car stereo</td>
<td>(8%) immediately</td>
<td>(14%) immediately</td>
</tr>
<tr>
<td>shifter</td>
<td>(8%) immediately</td>
<td>(4.5%) immediately</td>
</tr>
<tr>
<td>tier</td>
<td>(8%) immediately</td>
<td>(2.5~4.5%) within 3 years</td>
</tr>
<tr>
<td>vessel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vessel product</td>
<td>(0~8%) immediately</td>
<td>(0~2.7%) immediately</td>
</tr>
<tr>
<td>parts</td>
<td>(0~8%) immediately, within 3 or 5 years</td>
<td>(0~2.7%) immediately</td>
</tr>
<tr>
<td>color TVs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>on color TVs</td>
<td>(8%) immediately</td>
<td>(14%) within 5 years</td>
</tr>
<tr>
<td>color cathode ray tubes</td>
<td>(8%) immediately</td>
<td>(14%) immediately</td>
</tr>
<tr>
<td>television receivers</td>
<td>(8%) immediately</td>
<td>(14%) within 5 years</td>
</tr>
<tr>
<td>refrigerator</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refrigerator product</td>
<td>(8%) immediately</td>
<td>(1.5~2.2%) immediately</td>
</tr>
<tr>
<td>parts</td>
<td>(8%) immediately</td>
<td>(2.2%) immediately</td>
</tr>
<tr>
<td>air conditioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>air conditioner products</td>
<td>(8%) immediately</td>
<td>(2.7%) immediately</td>
</tr>
<tr>
<td>textiles and Clothing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pure wool</td>
<td>(13%) within 5/7 years</td>
<td>(8%) immediately, within 5 years</td>
</tr>
<tr>
<td>Knitted goods (ch. 61)</td>
<td>(8%~13%) immediately</td>
<td>(2%~12%) immediately</td>
</tr>
<tr>
<td>Fabric goods (ch. 62)</td>
<td>(8%~13%) immediately</td>
<td>(6.5%~12%) immediately</td>
</tr>
<tr>
<td>synthetic fiber (ch. 54/55)</td>
<td>(8%~10%) immediately</td>
<td>(8%) immediately</td>
</tr>
<tr>
<td>Items</td>
<td>Korea</td>
<td>EU</td>
</tr>
<tr>
<td>-------</td>
<td>-------</td>
<td>----</td>
</tr>
<tr>
<td>medical equipment</td>
<td>X-ray machine</td>
<td>(8%) immediately, within 3/5/7 years</td>
</tr>
<tr>
<td>Ultrasonic Image Technique machine</td>
<td>(8%) within 5 years</td>
<td>(0%) immediately</td>
</tr>
<tr>
<td>contact lenses</td>
<td>(8%) within 3 years</td>
<td>(2.9%) immediately</td>
</tr>
<tr>
<td>MRI machine</td>
<td>(8%) within 5 years</td>
<td>(0%) immediately</td>
</tr>
<tr>
<td>electrocardiograph</td>
<td>(8%) within 5 years</td>
<td>(0%) immediately</td>
</tr>
<tr>
<td>medicine and medical supplies</td>
<td>medicine product(retail/bulk)</td>
<td>(8%) immediately, within 3 years</td>
</tr>
<tr>
<td>vitamin supplements</td>
<td>(6.5%) immediately, within 3 years</td>
<td>(0%) immediately</td>
</tr>
<tr>
<td>hormone drug</td>
<td>(0%~6.5%) immediately</td>
<td>(0%) immediately</td>
</tr>
<tr>
<td>antibiotics</td>
<td>(6.5%) immediately</td>
<td>(0%) immediately</td>
</tr>
<tr>
<td>toiletries</td>
<td>cosmetic products</td>
<td>(8%) within 5 years</td>
</tr>
<tr>
<td>Face powder</td>
<td>(8%) within 5 years</td>
<td>(0%) immediately</td>
</tr>
<tr>
<td>perfume</td>
<td>(8%) within 3 years</td>
<td>(0%) immediately</td>
</tr>
<tr>
<td>lipstick</td>
<td>(8%) within 3 years</td>
<td>(0%) immediately</td>
</tr>
<tr>
<td>Hair rinse</td>
<td>(8%) within 5 years</td>
<td>(0%) immediately</td>
</tr>
<tr>
<td>nonferrous metals</td>
<td>Copper and copper product</td>
<td>(8%) immediately, within 3/5/7 years</td>
</tr>
<tr>
<td>Aluminum and aluminum product</td>
<td>(8%) immediately, within 3/5 years</td>
<td>(0%~10%) immediately</td>
</tr>
<tr>
<td>Petro-chemicals</td>
<td>synthetic resins</td>
<td>(6.5%) immediately, within 3/5 years</td>
</tr>
<tr>
<td>synthetic rubber</td>
<td>(6.5%) immediately, within 3/5/7 years</td>
<td>(0%) immediately</td>
</tr>
<tr>
<td>etc.</td>
<td>dress shoes</td>
<td>(13%) immediately</td>
</tr>
<tr>
<td>Leather bags</td>
<td>(8%) immediately,</td>
<td>(2.7%~9.7%) immediately, within 3 years</td>
</tr>
<tr>
<td>copy machine</td>
<td>within 3 years</td>
<td>(3%) immediately, (6%) within 3 years</td>
</tr>
<tr>
<td>paper shredder</td>
<td>(8%) immediately</td>
<td>(2.2%) immediately</td>
</tr>
</tbody>
</table>

In comparison to Korea, the EU has relatively lower common tariffs on other items such as vessel, refrigerator, air conditioner, medical equipment, medicine & medical supplies, toiletries, non-ferrous metals, and petrochemicals. Although the EU has only slightly lower tariffs on textiles, it was an item of dispute as it is a major trade item for both sides. In comparison, the EU had relatively high tariffs on automobiles, color televisions, and dress shoes and was concerned over competitive inferiority after the removal of tariffs. In particular, as automobiles are items of interest for both parties, they weren't included in items for the immediate removal of tariffs, and although it was agreed that tariffs on mid-sized cars would be removed within 3 years and within 5 years for compact cars, it was one of the most difficult categories in the negotiation process.

In the negotiations over automobiles, the Committee led the negotiations toward making concessions for setting the period for tariff removal at 7 years or more and strengthening regulations over non-tariff barriers, rules of origin and customs drawback. During the seventh round of negotiations in Brussels from 12 to 15 May 2008, the issue of certain concessions and rules of origin and non-tariff barriers on automobiles became core disputed issues (Lee et al., 2008). During the eighth round of negotiations in Seoul from 23 to 24 March 2009, the last round of negotiations before reaching an agreement, the major issues were objections over tariffs on pork and customs drawback.

The major non-tariff barriers on automobiles were safety and environmental standards. That is, the union focused their negotiations in standardization with the regional market as the orientation of their procedural regulations. First, the safety standards agreed upon

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18 In the EU-Korea FTA, the tariff elimination for Korean pork items were given safeguard which regulate the elimination of tariffs on frozen pork bellies within 10 years, frozen pork (other parts) within 5 years, and refrigerated pork bellies and other parts within 10 years (Ministry of Foreign Affairs and Trade, Office of Free Trade Agreement, executive office of FTA negotiation, 2010).
in the EU-Korea FTA are as follows.

**Article 3: Market Access**

Each Party shall allow on its market the products originating in the other Party, in accordance with this Article:

(a) (i) the competent approval authorities in the European Union shall accept for the purpose of EU type-approval any product that complies with the requirements listed in Table 1 of Appendix 2-C-2 as complying with the corresponding provisions of the applicable EU technical regulations;

(ii) Korea shall accept any product that complies with the requirements listed in Table 1 of Appendix 2-C-3 as complying with the corresponding provisions of the applicable Korea technical regulations;

(iii) The Parties shall harmonize the regulations listed in Table 2 of Appendix 2-C-2, in case of the European Union, and in Table 2 of Appendix 2-C-3, in case of Korea, with the corresponding UN ECE Regulations or Global Technical Regulations (hereinafter referred to as the ‘GTR’) within a period of five years of the entry into force of this Agreement, unless exceptionally a Party demonstrates that a specific UN ECE Regulation or GTR would be ineffective or inappropriate for the fulfillment of legitimate objectives pursued on the basis of substantiated scientific or technical information.\(^\text{19, 20}\)

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20 The Parties understand that the regulations covered by subparagraph (a)(iii) and (a) (iv) existing at the time of signature of this Agreement have not caused serious market access problems and under the provisions of these subparagraphs they will not result in worsening of the market access conditions as compared with the situation prevailing at that time(EU-Korea FTA http://www.fta.go.kr/eu/images/common/pdf_eng/12_Annex2C.pdf (2012. 10. 21.).)
Automobiles manufactured in accordance with Global Technical Regulations (GTR)\textsuperscript{21} and United Nations Economic Council for Europe (UNECE) regulations, which are similar to the domestic standards of both parties, are recognized as in compliance with the domestic standards of that party. In the negotiations over automobile safety standards, the EU agreed to accommodate existing domestic standards and to thereafter promote the homogenization of procedures through a regulation harmonization process. That is, Korea recognized 6 new safety standards items\textsuperscript{22} in addition to the existing 26 items as having equal importance and must undergo a harmonization process for the remaining 29 items\textsuperscript{23} within 5 years of the FTA coming into effect. As the EU’s standards are mostly in compliance with the UNECE, the EU only has to harmonize 1 item\textsuperscript{24} after the effectuation of the FTA. In addition, these items are not finalized, and

\textsuperscript{21}GTR’s focus on performance-oriented test procedures designed to quantify product behaviors as objectively as possible. In some cases, GTR’s set performance requirements or limit values for the results of the test procedures. The use of Global Technical Regulations is entirely voluntary, although Contracting Parties to the 1998 Global Agreement are nominally expected to transpose GTR specifications into their local legislation unless they specifically vote against adoption of a rule or otherwise signal their intent not to adopt a rule(Global Auto Regs.com, http://www.globalautoregs.com/gtr (2012. 11. 5.).).

\textsuperscript{22}The six newly recognized safety standards are regulations on fuel leakage in collision, bumper impact, seat belt assembly anchorage, child seat anchorage, and horn noise, stationary noise and silencer for vehicles(Ministry of Foreign Affairs and Trade, Office of Free Trade Agreement, executive office of FTA negotiation, 2010).


\textsuperscript{24}The item that the EU must harmonize within 5 years of the effectuation of the FTA is a regulation on impact protection for the driver from the steering control system. This regulation was established to reduce the danger of injury in the event of a collision with the front driver’s side of commercial vehicles(Ministry of Foreign Affairs and Trade, Office of Free Trade Agreement, executive office of FTA negotiation, 2010).
every three years, considering the development of international and domestic regulations, there will be a review of the list of recognized standards and standards to be harmonized and re-regulation of already observed items, items to be added, and items to be harmonized.

In conclusion, it can be understood that with regard to automobile safety standards, the EU is raising the standards of its trading partner Korea to global standards. That is, the procedural regulations related to automobile safety standards in the EU-Korea FTA can be considered appropriate for inspection of proposition 1.

The following may be presented as a case in which the procedural regulations of automobile environmental standards were oriented to standardization with the high level of the union. EU automobiles imported into Korea comply with Korean emissions standards and a separate average emissions standard is applied to manufacturers who sell less than 10,000 vehicles per year. The EU decided to recognize the Euro 6 OBD (On-Board Diagnostics)\textsuperscript{25} standard to be introduced in 2014 to be the equivalent to Korean standards (Ministry of Foreign Affairs and Trade, Office of Free Trade Agreement, executive office of FTA negotiation, 2010).

The negotiations over safety and environmental standards, which are non-tariff barriers in the automobile category, are the result of the high level of procedural regulations requested by the EU. In all of its procedural regulations, the EU adheres to principles of market liberalization and competition-orientation as pursued by multilateralism, which may shrink the size of their own win-set. This sort of consistency may at times demand higher than multilateral standards in negotiations over procedural regulations.

When regional cooperation is advanced, a union fundamentally

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\textsuperscript{25} OBD is a device which detects the working status of the emission system and alerts the driver of problems through the engine check alert in the automobile instrument panel (Ministry of Foreign Affairs and Trade, Office of Free Trade Agreement, executive office of FTA negotiation, 2010).
pursues exclusive competence and the transfer of trade from outside the region to within the region. In accordance, it executes policies which raise common tariff rates outside the region and strengthen the level of non-tariff barriers for goods which enter into the region. In regional unions which are comprised of various nations with different levels of industrial development such as the EU, there are many manufacturing sectors in which the end product is manufactured from various origins within the region. Therefore, when a union negotiates an FTA, it introduces regional value content rules as a principle for rules of origin, prepares a relatively high level of regional rules of origin, and doesn't recognize a customs drawback scheme.

In the EU-Korea FTA, these principles were strengthened and presented itself as the most disputed area in the negotiations. The EU requested a standard of 60 percent of domestic production for certain items of shared interest such as automobiles, electronics, machinery, steel, non-ferrous metals, and chemicals in the negotiations. The EU takes precautions against the gains from the FTA going to non-parties to the agreement (in this case, China and ASEAN) and adheres to this sort of principle; however, the EU has facilitated regional procurement through the introduction of the Pan-Euro-Mediterranean accumulation of origin, causing negotiations to be perceived as unfavorable for trading partners.

The following Table 2 is data on the rules of origin for the automotive sector in the EU-Korea FTA. The EU-Korea FTA combines and applies tariff shift rules and value added rules as a real modified standard for rules of origin.

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26 Tariff shift rules are rules which grant point of origin status to a completed product by recognizing a substantial shift when the tariff heading changes above a fixed amount, comparing the tariff heading of imported materials and the tariff heading of the completed product. They generally employ 4- and 6-digit HS designations (Bang, 2004).

27 Value added rules are rules which recognize that the point of origin of a completed product as the country in which the last substantial transformation took place as long as the value added in that country meets a fixed level. These rules are theoretically the most similar to rules of origin but are sensitive to changes in the exchange rate or price.
Table 2. On the rules of origin for the automotive sector in the EU-Korea FTA

<table>
<thead>
<tr>
<th>Items</th>
<th>The rules of origin</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fully assembled</td>
<td>Over 55 percent domestic parts</td>
</tr>
<tr>
<td>automobiles</td>
<td></td>
</tr>
<tr>
<td>Auto parts</td>
<td>Over 50 percent tariff shift rules or regional value added rules</td>
</tr>
<tr>
<td>Other automobiles</td>
<td>Regional value added rules or over 50 percent tariff shift rules</td>
</tr>
<tr>
<td>Railroad cars</td>
<td>Tariff shift rules</td>
</tr>
<tr>
<td>Bicycles</td>
<td>Over 55 percent tariff shift rules</td>
</tr>
</tbody>
</table>


The 60 percent regional value content and cumulation\(^{28}\) that was asserted by the EU in the negotiations was relaxed; however, it is clear that this regulation is of a standard higher than the international standard. The regulations state that fully assembled automobiles and bicycles must be comprised of over 55 percent domestic parts; over 50 percent domestic parts and the rules of origin for auto parts and other automobiles have been set at over 50 percent tariff shift rules or regional value added rules. If a comparison is made with the results of other FTAs concluded by Korea or the EU, the level of the rules of origin in the EU-Korea FTA can be discerned.

First, the rules of origin for automobiles (HS Chapter 87) in the EU-Mexico FTA and EU-Chile FTA follow Chapter 87 tariff shift rules or over 60 percent regional value added rules (Bang, 2004).

When comparing the rules of origin in the EU-Korea FTA with variables, and there are issues with the additional burdens of submitting and receiving verification on customs or trading parties. This can be generally found by dividing the value of the completed product (FOB standard) by the cost of imported materials (CIF standard) (Bang, 2004).

\(^{28}\) Cumulation refers to the method which observes both the change in tariff shift rules and value added rules.
those in the agreements with Mexico and Chile, it is evident that the terms agreed upon are clearly relaxed. However, when compared to the rules of origin in the US-Korea FTA which allows enterprises to choose between applying a net cost rule of 35 percent, a build-up rule of 35 percent, or a build-down rule of 55 percent\textsuperscript{29}, it is clear that the regulations of the EU-Korea FTA are at a considerable level. When considering the general trend of global sourcing in the automotive industry, it is estimated that this high level of regulation will have an influence on Korea as a major automobile producer.

In addition, with regard to goods regulations, the EU has adopted a basic position of refusing to recognize customs drawback in principle, and even if it were allowed, it is recognized that it would be extremely temporary. The EU has adhered to its position, reasoning that if customs drawback is recognized along with FTA preferential tariffs, it bestows dual benefits and in the end, gives benefits to third-party nations as well (Lee et al, 2009). A customs drawback scheme is maintained in the results of EU-Korea FTA negotiation; however, from 5 years after the effectuation of the FTA, it was stipulated that safeguard measures may be introduced which may limit customs drawback for applicable items in the event that certain conditions are met (Ministry of Foreign Affairs and Trade, Office of Free Trade Agreement, executive office of FTA negotiation, 2010).

While rules of origin which are the major area of regulations on goods and procedural regulations have been more relaxed than in the existing FTAs that the EU has concluded, the resulting level exceeds the international standard. FTA partners enter into negoti-
ations knowing of the EU’s consistently high level of regulations on rules of origin and must employ a negotiation strategy to realize a draft of an agreement which corresponds to this knowledge. It can be estimated that the maintaining of the customs drawback scheme, which is connected with rules of origin, is a successful result when compared with the results of EU’s previous FTAs. However, when considering that customs drawback schemes are allowed by the WTO and allowed in the US-Korea FTA, it is difficult to say that it is the result of elevated bargaining power. In particular, expropriating terms from the US-Korea FTA instead of the EFTA-Korea FTA with regard to the origin status acquisition of manufactured products from the Kaesong Industrial Complex may also be judged as the result of the EU’s bargaining power with regard to rules of origin.

B. Intellectual Property Rights

At the present, the importance of intangible assets in economic activity is gradually increasing and the importance of protecting intellectual property rights is increasing in the global economy in accordance with the rise in trade of intellectual property rights related goods and services. As free trade may become distorted if intellectual property rights are not appropriately and sufficiently protected, the topic has received much attention (Park, 2010).

The core disputed issues in the area of intellectual property rights in the EU-Korea FTA may be separated into three categories. There is a need to separate and examine these issues as first, the period of protection for copyright and neighboring rights of copyright, second, the introduction of artists’ resale rights, and finally, the geographical indication system.

First, the period of protection for copyrights in the EU-Korea
FTA was extended to 70 years after the death of the author/artist, and other neighboring rights of copyright inherited the contents of previous international agreements related to intellectual property rights. As the period of protection for copyrights in the WTO trade-related intellectual property rights (hereafter, TRIPs) is 50 years, the agreement in the EU-Korea FTA was concluded, exceeding the level of multilateralism.

Second, artists’ re-sale rights refers to the rights of an artist to receive a fixed amount of the resale amount when an artwork is resold. This was first introduced in France in 1920 and is now being carried out in over 40 nations, primarily in Europe (Ministry of Foreign Affairs and Trade, Office of Free Trade Agreement, executive office of FTA negotiation, 2010), where fundamental arts have been advanced. In 1948 the Berne Convention\(^ {30} \) adopted the same system; however, members of the convention may select whether to adopt artists' resale rights and Korea has not introduced such rights at present. The contents of the agreement are as follows.

Artists' resale rights in works of Art (Chapter 1, Article 10.10)

“The Parties agree to exchange views and information on the practices and policies concerning the artists’ resale right. Within two years of the entry into force of this Agreement, the Parties shall enter into consultations to review the desirability and feasibility of introducing an artists' resale right in works of art in Korea.”

Third, the introduction of the geographical indication system\(^ {31} \) can also be considered the result of comprehensively expanding the scope of intellectual property rights in the EU-Korea FTA. This

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\(^{30}\) The Berne Convention for the Protection of Literary and Artistic Works was signed in 1886 as a system which regulates copyrights in legal systems among nations in order to protect intellectual property rights(Park, 2010).

\(^{31}\) The geographical indication system is an indication system which specifies products which originate from certain areas, districts, or countries and possess a distinct character such as quality or reputation that essentially arise from its geographical source(Ministry of Foreign Affairs and Trade, Office of Free Trade Agreement, executive office of FTA negotiation, 2010).
is because, although TRIPs also includes the geographical indication system, the comprehensive coverage has been expanded in the EU-Korea FTA. TRIPs prescribes additional protection for the geographical indication of wine and spirits and prohibits the use of the indication of a place which is not the origin of the product even if the true origin of the goods is indicated, or the geographical indication is accompanied by expressions such as “kind,” “type,” “style,” “imitation,” or the like. These kinds of general regulations are the same as in the EU-Korea FTA; however, it includes the following two items which surpass the level of multilateral agreement (Park 2010).

- It includes the application of the geographical indication system to agricultural and food products. 63 agricultural products for Korea and 60 agricultural and food products for the EU have been designated as protected items, and even after the agreement comes into effect, other agricultural and food products may be added upon consultation (Ministry of Foreign Affairs and Trade, 2010).

- Items which have used general names for products for long periods of time and in good faith, such as champagne and cognac, are not recognized as targets for protection under the geographical indication system in TRIPs; however, they are included and regulated as targets for protection in the EU-Korea FTA.

In this way, the EU adheres to the multilateral principle as a regional union and furthermore has led negotiations indiscriminately in order to expand comprehensive coverage and elevate standards of value. In negotiations, the EU may emphasize its adherence to its

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principles and consistency as well as its objectives of regional cooperation, raising its bargaining power and expanding the win-set of its trading partner.

When this occurs, individuals, industries, and for-profit organizations within Member States may apply pressure to Member States or apply direct pressure to the community in Level III.

In the session of the Committee of Permanent Representatives (COREPER) on 9 September 2010, one day before the 10 September EU Special Diplomatic Session for the approval of the EU-Korea FTA, Italy expressed its resolute position to halt the approval of the FTA. Italy expressed that they could not agree to the agreement coming into effect if the article related to its automotive industry was maintained and emphasized anew that it would exercise its veto power in the Council of the EU. If an FTA is to be approved, it must be approved by a unanimous vote by its 27 Member States, and if Italy held fast to its assertion, there would be a setback in the agreement process. However, the actual acceptance/rejection process is carried out in the stage after the FTA has been initialed and before it is officially signed. Although the power to veto in the approval process for official signature after the agreement has come into effect and has been initialed exists as a legal procedure, it may be considered ineffective. In reality, Italy announced that it would withdraw its veto on the EU-Korea FTA and had decided to approve of its effectuation at the EU Summit on 16 September 2010. On the surface, Italy asserted that it was approving the FTA on the premise that safeguard regulations for the automotive industry would be...

33 KOTRA. “Italy the only nation to oppose the approval of the EU-Korea FTA.” http://www.globalwindow.org/wps/portal/gw2/kcxmli/04_Sj9SPykssy0xPLMnMz0vMOY_QjzKld423CDQASYGZAR76kehXiYIsS89b31fj_zcVPOA_YLc0lhyR0dFAHPA0Kw/1delta/base64xml/L3dJdyEvd0ZNQUFzQUvMEvVRS82X0Fw4?1=1&workdist=read&id=2124675, (2012. 10. 20.).
included; however, there is a different reason for the abrupt turn-around in its position over a period of only six days. As a Member State, Italy could not reverse a concluded agreement through its veto, and it was officially informing the union that the damage to its industries would be severe in an attempt to easily induce capital support from the union in the future. In addition, Italy was also appropriately carrying out its role conveying the message to the EU due to pressure at Level III, damaged industries and for-profit organizations in a Member State. Italy’s initial objection was to postpone the January 2012 entry into force. The reason was that it was estimated that its automobile industry was in a period of recovery and they wanted to prolong that period for as long as possible, and it was revealed that Italian industries were satisfied with the diplomatic results gained by the government.

Objections to agreements through legal procedures from Member States in a situation where trade policy is under the exclusive competence of the Union are extremely limited; however, as in the aforementioned case, this can be deduced as an inevitable situation in which political activity and pressure on the Union by a Member State arises in order to reflect pressure on a Member State from Level III industries, pressure on the Union by Level III industries, and gains for Level III industries.

34 Stamet SpA, an Italian auto parts enterprise, expressed its satisfaction with the diplomatic results gained by the Italian government and revealed that it seemed that the Italian automotive industry would be able to recover its competitiveness and regain its share in the global automobile market in the near future through the revolutionary corporate recovery policy underway in Turin (KOTRA, “A rapid turnaround for Italy through withdrawing its veto of the EU-Korea FTA.”

http://www.globalwindow.org/wps/portal/gw2/kcxml/04_Sj9SPykssy0xPLMnMz0vMOY_QjzKld423CDQASYGZAR76kehiXiYIisSB9b31fj_zcVP0A_YLc0IhyR0dFAHPAOKwl/delta/base64xml/L3dJdyEvd0ZNQUFzQUMvNEIVRS82X0VFOEw4?1=1&workdist= read&id=2124710, (2012. 10. 20.).
This sort of negotiation strategy happens because the authority for commercial policy is relinquished to the union. When specified industries apply internal pressure to the country in Level III, a Member State cannot employ a package negotiation strategy or a homogeneity-emphasis negotiation strategy in Level II, and objections to the negotiations itself arise. A country can categorize which industries will be favorably or adversely affected and which are homogeneous and heterogeneous in two-level game theory; however, a Member State cannot do so.

A great many of the factors which decide the win-set in international negotiations can be found in domestic negotiations. One of the factors which decides the win-set is a package negotiation strategy (in which connections are drawn between items). A package negotiation strategy may be considered successful in the event that a group that would have opposed an item if it had been a single issue changes to supporting the negotiation by connecting the issue with another issue that the group prefers (Yang, 2010). However, as the level of participation of Member States in the legal processes in Level II is low, they cannot initiate a package negotiation strategy by directly connecting different plans among themselves. Member States can only pressure the union on behalf of sectors which are the most politically disputed or industries which experience the biggest backlash. This is also the reason why a negotiation strategy which emphasizes heterogeneity cannot be employed. Whether an issue is heterogeneous or homogeneous affects the size of the win-set and it is possible to use this to raise one’s bargaining power, and the win-set of the trading partner can be increased primarily when heterogeneity is emphasized. This may be called heterogeneity-emphasis negotiation strategy and is possible to use through the thorough formation of strategy by politicians. However, as with the aforementioned package negotiation strategy, Member States cannot bring another issue to the forefront in order to use a hetero-
geneity-emphasis negotiation strategy. Therefore, Italy presented its opposition to the agreement and chose methods such as exercising its veto power in order to make a political point.

**Level II / Level III institutions**

2) An advanced economic union in which the authority to enter into agreements is transferred to the union has a positive influence on international negotiations.

As the subject of analysis of this research, the EU, is a regional union, the subject of international level negotiations is the Union, or more strictly speaking, the EU’s supra-national organization, the European Commission. The process from the time the EU enters into FTA negotiations to the time the agreement coming into effect is as follows.

Figure 1 shows the process from the selection of an FTA partner until official effectuation of the agreement. When a potential trading partner is decided through regional discussion, the Commission officially proposes the designation of that nation as a FTA partner. With regard to this, the Council accepts the decision and the Commission enters into negotiations.

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35 The Commission is charged with duties, including (1) proposing legislation, (2) upholding the Union’s treaties, and (3) managing and maintaining the various policies and trade relationships of the EU(Chae, 2011).

36 The Council is also referred to as the EU Council or the Council of the European Union and is an inter-governmental organization comprised of the ministers from each Member State. When the Committee submits a proposal, the Council executes its role as the EU’s legislative body, deliberating the proposal and making a final decision on whether the proposal will pass(Chae, 2011).
The Commission reaches a compromise on the agreement through negotiations with the trade representatives of the partner’s government, goes through the initialing process, and continues until the final signing of the agreement. The final signing of the agreement concluded by the Commission is done by the inter-governmental Council. The FTA which has received the final signature goes through the decisions in the Standing Committee and main session of the European Parliament before the provisional effectuation stage. In this process, the agreement receives consent in the International Trade Committee (hereafter, INTA), the Standing Committee of the European Parliament charged with FTAs, and is

37 One of the particular characteristics of the EU which is composed of various Member States is the initialing stage in which the agreement is translated into the official languages of the EU. The EU-Korea FTA was translated into 23 official languages of the EU and Korean.

38 The official signing of the EU-Korea FTA was completed by Steven vanackere, Minister of Foreign Affairs of Belgium (then President of the Council of the EU).
put on the agenda in the main session, and after it is passed by the Parliament, it is put into provisional effect. This is part of the EU’s ordinary legislative procedure, revised after the Treaty of Lisbon. After the legislative bodies of both parties have ratified the FTA and it has been put into provisional effect in order to effectively apply it, it must go through the ratification process in each Member State, and once the process is fully completed, the FTA is officially put into effect.

There is a need to examine what occurs in the process when a single Member State’s government raises an objection to the FTA. First, the exclusive right to common commercial policy such as FTAs belongs to the Union. The rights of the EU can be categorized into exclusive competence limited to the union as a whole, shared competence between the union and Member States, and actions to support, coordinate or supplement the actions of the Member States. Therefore, if an individual Member State adopts an opposing position, it can express that position through its representative in

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39 In the Treaty of Nice, legislative procedures were categorized into cooperative procedures, common decision procedures, consultation procedures, and agreement procedures. However, after the Treaty of Lisbon, these procedures were modified into two types of procedures; cooperative procedures were nullified, common decision procedures were changed into ordinary legislative procedures, and consultation and agreement procedures were changed into special legislative procedures. Special legislative procedures are special procedures recognizing the initiative of the European Parliament dealing with (1) the enactment of regulations regarding the election of Parliament members, (2) the enactment of regulations and general conditions regarding the execution of Parliament members’ duties, (3) the enactment of bylaws regulating the exercise of investigative powers by the Parliament, and (4) the enactment of regulations and general conditions regarding the execution of ombudsmen’s duties. Procedures not included in the above four categories are handled by ordinary legislative procedures (Chae, 2011).

40 Taking into consideration the nature of the EU being comprised of 27 Member States where each Member State requires a long period for ratification (ordinarily between 2 and 3 years), the EU introduced provisional effectuation when concluding FTAs, exercising the authority of the Union before ratification is done in each Member State (Korea-EU FTA http://www.fta.go.kr/eu/main/index.asp, 2011 (2012. 10. 20.).).

41 TFEU (Treaty on the Functioning of the European Union) “Chapter three. 3.2 Common Commercial Policy, (TFEU 20. 2.)”
the Council or they can postpone the process for a period of time through public opinion; however, they cannot vote down or object to the agreement. In the event that a Member State is expected to experience an economic blow through an FTA, it must express its opposing position through discussions during the negotiations or public hearings. There is a ratification process in the European Parliament; however, the Parliament is divided along ideological lines rather than country and therefore does not represent individual Member States, following the concept of supra-nationalism. In reality, in the process of promoting the EU-Korea FTA, Italy opposed the negotiations due to a predicted blow to their automobile industry; however, they were unable to effectively influence the process other than by postponing the potential effectuation of the agreement by six months.

Furthermore, in the event that the trading partner is a regional union, it is evaluated whether the union is a mature system in which decisions made in the community dimension can effectively control its constituents (Lee et al., 2008).

Also an advanced economic union in which the authority to enter into agreements is transferred to the union has a positive influence on international negotiations. There is a need to pay attention to the FTA negotiations between the EU and ASEAN. The European Commission decided to go for a regional approach on the ASEAN negotiations. In May 2007 the EU-ASEAN economic ministers meeting in Brunei agreed to enter into negotiations for a Free Trade Agreement. Seven negotiations rounds were held with the ASEAN. At the last round in March 2009, both sides agreed to take a pause in the negotiations in order to reflect on the appropriate format of future negotiations.42

After the negotiations between governments, the reasons for the EU’s cessation of FTA negotiations are as follows. First, there was no significant difference in the scale of economic development among the 10 Member States of ASEAN, making negotiations undesirable. That is, the majority of the ASEAN nations were developing nations, entering into negotiations with a desire to protect non-tariff barriers and having a negative attitude toward tariff elimination. This can be interpreted as a homogeneous issue strategy. The second reason was because of Myanmar, a Member State of ASEAN. Due to the human rights violations by the Myanmar government after the military junta cracked down on anti-government protests in 2007, the EU placed travel restrictions and froze assets of related government officials, and enacted an arms embargo and sanctions on lumber, metals, and precious metals coming into the EU. It was judged that unless reforms were carried out with regard to such actions by a government, it would be difficult to promote economic cooperation. In the union dimension, ASEAN has adopted a principle of noninterference with state sovereignty concerning its Member States and therefore, internal non-interference is always presented as a proposition. However, the EU is raised issues with the actions of a regional union that does not intervene in political instability of its Member States and in the protection of human rights in particular. In addition, the EU pointed out there were issues with a system in which ASEAN could conclude trade negotiations as a union and at the same time, its Member States can also promote FTAs separately. It was estimated that negotiations are limited if the union having complete authority to conclude the agreement. It was

43 KOTRA, “EU to commence FTA negotiations with Singapore and Vietnam – Immersion into bilateral negotiations with individual ASEAN Member States.” http://www.globalwindow.org/wps/portal/gw2/kxml/04_Sj95Pykssy0XPLMnMz0vM0Y_QjzKLD423CDQASYGzAR76kehIXYIsSB9b31fj_zcVP0A_YLcOlhyR0dfAHPA0Kw/delta/base64xml/L3dJdyEvd0ZNQUFzQUMvNEIVRS82X0VfOEw4?1=1&workdist=read&id=2115872 (2012. 11. 20.).
announced that the EU should be ready to engage in bilateral FTA negotiations with individual ASEAN countries. Such bilateral FTAs could constitute “building blocks” that the EU and the ASEAN may wish to consolidate in due course into a region-to-region agreement. In 2010, negotiations with Singapore and Malaysia were launched (KOTRA).

**Level I negotiators’ strategies:**

③ The strategy of those charged with ratification in the union has an active influence on the size of the negotiation win-set. Strategic FTAs to curb American influence raises the bargaining power of the EU and increases the size of the trading partner’s win-set, facilitating negotiations. As they can make requests using the high standards for liberalization included in FTAs concluded with the US, it facilitates negotiations.

As for regulations on goods and procedural regulations, the orientation is toward standardization to the high level of the union. As the objective is in raising negotiations on general regulations at or above the level of multilateralism, it is possible to maintain a consistent common commercial policy at Level I. This shrinks the win-set of the union.

Proposition 3 can be considered a Level I negotiation ratifying strategy which is held with importance in both two-level and three-level game theory. The Commission ratifier has been raising bargaining power beginning with its strategic choices in FTA partners in order to curb the US. This can be considered a characteristic which arises as a result of its curbing strategy with regard to the US as a strategy of the EU’s common commercial policy. The EU, in order to curb the expansion of the FTAs of the US, has actively pro-
moted FTAs. After the effectuation of the US-led NAFTA in 1994, the EU has promoted an FTA with Mexico and concluded an FTA with Chile for the same reason. In addition, after the effectuation of the US-Korea FTA, the EU actively promoted the EU-Korea FTA and although negotiations were initiated later, the EU-Korea FTA was put into effect first. This sort of FTA promotion stemming from a US curbing strategy has worked as another factor in the EU’s FTA bargaining power. The EU has been promoting FTAs with nations that have already gone through FTA negotiations with the US and using the degree of liberalization in those agreements to expand the win-set of its FTA partners. In addition, the FTA with the US serves as a basic draft for negotiations and a union which adheres to a principle of multilateralism or higher may more easily lead an agreement to fruition. In reality, in the EU-Korea FTA, the EU adhered to the KORUS Parity principle in the US-Korea FTA, thus increasing the size of Korea’s win-set and facilitating negotiations. The EU led the negotiations following a multilateral principle when the multilateral principle of the WTO was of a higher level and following the KORUS Parity principle when the US-Korea FTA negotiations were of a higher level. In addition, it can be said that the EU successfully negotiated an FTA with a strategy of curbing the US as the EU-Korea FTA also automatically included Most Favored Nation (MFN) treatment for the EU as it did for the US.

This sort of strategy has also shown itself in the EU’s selection of FTA partners since then.

Of these, there is a need to pay attention to the process of exchanging opinions in the EU-Japan FTA. As a highly developed economy and major global trader and investor, Japan is an important partner for the EU. In 2010, the EU was ranked 3rd in Japan’s imports 11.1% and exports 13.3%. And EU imports and exports of commercial services from and to Japan were 12.7 and 17.2 billion euro. The EU-Japan Summit held in Tokyo on 28 April 2010 entrusted a joint High-Level Group with the identification of options
for the comprehensive strengthening of all aspects of the EU-Japan relationship and defining the framework for implementing it. After the initial discussion over pursuing FTA negotiations, both parties performed a scoping exercise of the FTA. During that time, Japan had been searching for change in order to pursue a more active commercial policy. Japan, compared to its major competition in major industries Korea, was faced with falling behind in trade agreements and officially announced its participation in the Trans-Pacific Partnership Agreement (TPP) of which the US was a party. It asserted that it would enter into negotiations in the Comprehensive Economic Partnership in East Asia, a large area FTA with Southeast Asia, before the end of the year. In addition, the biggest objective of the Japanese government after the earthquake and tsunami that devastated the Northeastern coast of Japan on 11 March 2011 was economic reconstruction and, again emphasizing that the present was a very important period, displayed a strong will for realizing a EU-Japan FTA. In response, the EU requested that Japan show a clear intention toward eliminating tariffs and non-tariff barriers with the forthcoming FTA negotiations. The EU Commission and naturally European large enterprises had perceived that the Japanese government was blocking foreign enterprises from entering the Japanese market. In the government procurement market as of 2007, the EU had opened up a sizable market of 312 bn euros (2.5 percent of Europe’s GDP) to Japanese enterprises whereas the Japanese government opened a market of 22 bn euros (0.5 percent of Japan’s GDP) to European enterprises. In addition, the Japanese government did not recognize the international standard for items such as medical equipment and it was a problem that only 50 percent of European and American products could enter the Japanese

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While Japan also requested the immediate elimination of the EU’s tariffs on items such as automobiles and LCD TVs, the EU requested the commencement of inter-governmental negotiations as soon as possible. In light of this work, at the 20th summit on 28 May in Brussels, both sides agreed to start the process for parallel negotiations for a deep and comprehensive Economic Partnership Agreement (EPA). This addressed all issues of shared interest to both sides including tariffs, non-tariff measures, services, investment, Intellectual Property Rights, competition and public procurement. Summit leaders decided, to this end, that the two sides would start discussions with a view to defining the scope and level of ambition of both negotiations.

This sort of situation may be a case in which proposition 1 may be verified. That is, the union requested a rise in market liberalization and the level of regulation and the FTA partner requested first a discussion on the union’s items upon which high tariffs were placed. In addition, the primary issue in this process was the EU’s strategic response to the negotiations between Japan and the US. That is, there must be scrutiny and analysis of the process as a primary case of proposition 3. After officially announcing its participation in TPP, Japan completed negotiations with six nations, beginning with Vietnam; however, it experienced difficulties in its negotiations with the major parties including the US. In particular, the backlash from American sectors concerned with liberalization in the automotive and agricultural sectors was strong. There was

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45 KOTRA, “Japan requests a statement on the commencement of FTA negotiations at the summit with the EU in late July, a battle of nerves over the condition of announcing the commencement of FTA negotiations.” http://www.globalwindow.org/wps/portal/gw2/kcxml/04_Sj95PyKsyy0xPLMnMz0vM0Y_QjzKLD423CDQASYGZAR76kehKiYIIsSB9b31fj_zcVP0A_Lc0IhyR0dFAHPAOkw/delta/base64xml/L3dJdyEv0DZNUFzQUMvNEIVRS82X0f0Ew4?1=1&workdist=read&id=2135384 (2012. 12. 2.).

also discontent from the American insurance industry as Japan recently passed a revised draft of the postal service privatization law which was generally favorable for Japanese insurance industries.\footnote{HanKook Times, “Japan delays participation in TPP negotiations” http://news.hankooki.com/lpage/world/201204/h2012042002334922450.htm (2011. 12. 2.).} The EU has also strategically responded to this sort of progress in the trade negotiations between the US and Japan. This may be compared with the case in which EU-Korea FTA negotiations began after US-Korea FTA negotiations and yet the EU-Korea FTA came into effect first.

CONCLUSION

This paper applied the existing two-level game theory and introduced a three-level game theory in order to analyze the FTA negotiation strategy of the EU. This paper hypothesized the characteristics as follows when a regional cooperative union receives exclusive rights to common commercial policy and enters into commercial agreements such as FTAs and extracted propositions.

First, at the Level II and the Level III, primarily when tariffs are eliminated by the trading partner, preferences between industries that are predicted to have relative superiority and coalitions between industries that are categorized as relatively inferior may appear. Second, at the Level II and the Level III, an advanced economic union in which the authority to enter into agreements is transferred to the union has a positive influence on international negotiations. Finally, Level I, the strategy of those charged with ratification in the union has an active influence on the size of the negotiation win-set. Strategic FTAs to curb American influence raises the bargaining power of the EU and increases the size of the trading
partner’s win-set, facilitating negotiations.

In order to inspect the three propositions, this research analyzed the case of the EU-Korea FTA. This research categorized and analyzed the values and negotiation strategies the EU pursued in the EU-Korea FTA negotiation process into three levels—Member States, the union, and international levels. Furthermore, this paper also analyzed the breakdown of the EU-ASEAN FTA negotiations and the scoping exercise process before entering into FTA negotiations between the EU and Japan in order to inspect the propositions.

In conclusion, a regional union which adopts a common commercial policy orients itself toward market liberalization and openness as pursued by multilateralism such as the WTO and induces FTA negotiations in the same way. This verifies well that multilateralism and regionalism which seem to carry out exclusive objectives in the short run works toward one positive goal, which is outlined in GATT Article 24 of allowing territorial application, customs union and free-trade areas.48

Therefore, the development direction of multilateralism, regionalism, and bilateralism may be found using the analysis in this paper as a foundation. Furthermore, it may be estimated that this may serve as a theoretical foundation for finding an appropriate response strategy by gauging beforehand the FTA negotiation strategies of advanced regional unions.

By providing a basis for finding the development direction of multilateralism, regionalism, and bilateralism founded on an anal-

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48 General Agreement on Tariffs and Trade (1994), Part 3, Article 24, clause 4. “The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.” (Lee, 2005).
ysis of three-level game theory and serving as a theoretical foundation for finding an appropriate response strategy by gauging beforehand the FTA negotiation strategies of advanced regional unions, this paper is expected to have various policy implications in the future. Furthermore, even if the EU-Korea FTA has already come into effect, there are many sectors in which future negotiations must be initiated or must continue to occur. For example, a committee will be formed one year after the effectuation of the FTA to deal with the issue of Outward Processing Zones such as the Kaesong Industrial Complex. In addition, there is a need to review the negotiations related to investment protection\(^{49}\) and to prepare a foundation for satisfactorily resolving the promotion of cooperation and trade issues in the realm of chemicals as items related to the EU’s Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), which serves as a non-tariff barrier for chemicals, were included in the EU-Korea FTA. With regard to negotiations after the effectuation of an FTA such as these, there is a need for the Korean government to adopt an approach, reviewing the negotiation strategy of the EU through these propositions.

\(^{49}\) At the time of the EU-Korea FTA negotiations, the right to negotiate investment protection was maintained by Member States and outside of the authority of the EU Commission; however, the legal grounds for negotiations over investment protection were established as exclusive competence related to investments was bestowed to the Commission in accordance with the effect into force of the Treaty of Lisbon on 1 December 2009.
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