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Green Growth and WTO Rules: Harmonization from Korea's Perspective

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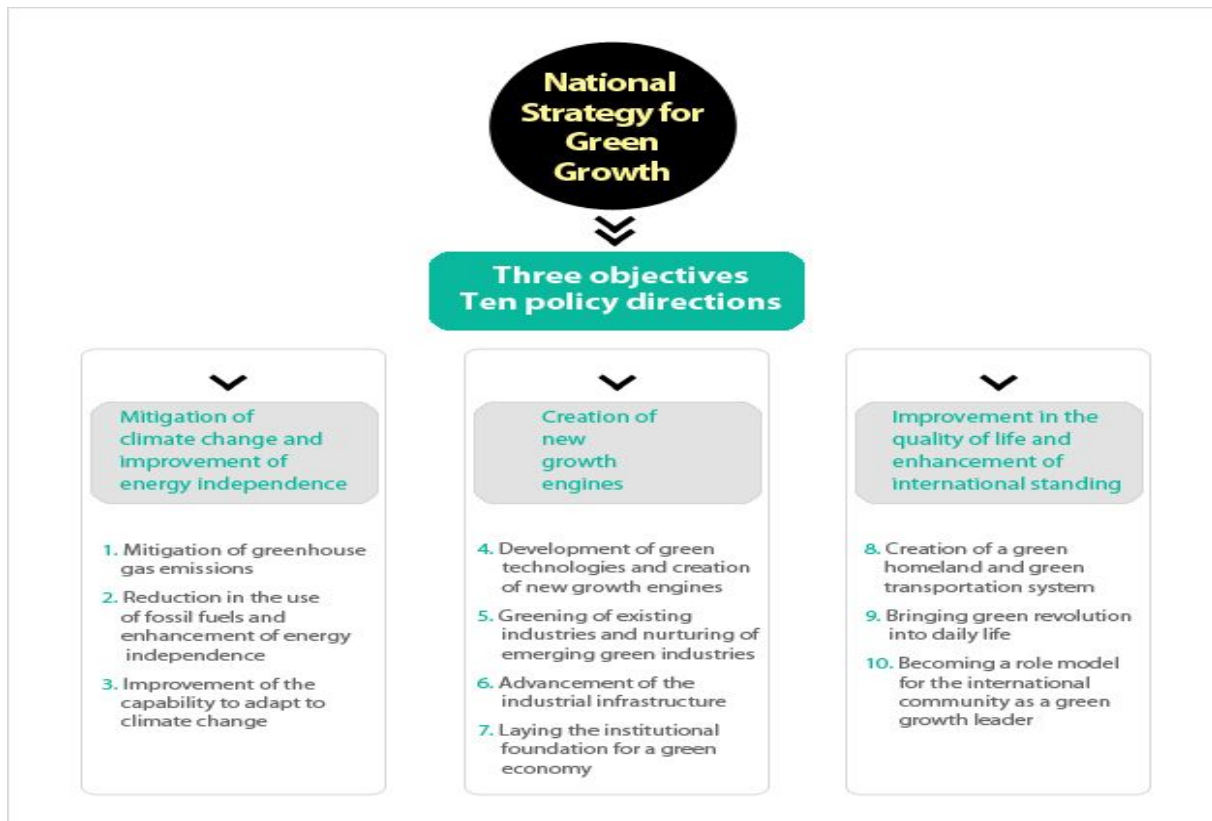
Korea's National Strategy for Green Growth

In the full recognition of seriousness of climate change problems, Korea announced a new policy towards greening its economy. In his address marking the 60th anniversary of Korea's foundation in 2008, President Lee Myung-bak declared 'Low Carbon Green Growth' as the country's new vision to lead the country's development for the next decades. In 2009, the government announced the 'National Strategy for Green Growth' up to 2050, to

be gradually implemented through five-year plans.

The national strategy envisages three main objectives, such as (1) mitigation of climate change and the strengthening of the country's energy independence, (2) creation of new growth engines, and (3) improvement of the quality of people's lives and enhancement of Korea's international status. These goals are pursued by 10 designated policy directions, such as mitigation of greenhouse gas emissions, development of green technologies, creation of a green homeland and others.

Figure 1. National Green Growth Strategy



Source: Presidential Committee on Green Growth

In 2009, Korea enacted a Framework Act on Low Carbon Green Growth subsequently elaborated by new laws and administrative regulations. The Framework Act represents a milestone in the national development strategy, approaching green growth in a comprehensive and systematic manner.

A number of governmental measures taken to implement the green growth policy have a certain impact on international trade and may thus be subject to global trade rules administered by the World Trade Organization (WTO). This fact suggests that Korea, as a WTO member, should design and conduct its green growth policy in harmony with WTO rules. This can be achieved in two ways. First, through observance of WTO rules at the domestic level, Korea will be able to avoid trade

disputes with its WTO partners over its 'green' measures. Second, harmonization of multilateral trade and climate change policies at the international level will contribute to greater coherence between the WTO system and the global climate change regime. This will, in turn, lead to more harmonious co-existence of domestic green measures – taken as part of implementation of international climate change obligations – with WTO disciplines.

Harmonization of Green Growth and WTO Rules at Domestic Level

1. Market Opening

With the enactment of the Act on the Allocation and Trading of Greenhouse-gas Emission

Permits in 2012, Korea has launched its own emissions trading system (ETS) which will be working as from 2015.

ETS and other green measures such as carbon taxes (fiscal charges on the carbon content of products) or Bonus-Malus measures (incentives or penalties for the purchase of products, e.g. cars, depending on the level of the carbon content) are used in many countries.

These green measures increase prices of goods and may cause carbon leakage problems. To maintain fair competition between domestic and foreign goods, governments may wish to apply various border adjustment measures targeting imported goods. This raises the question of compatibility of such measures with certain market-opening provisions of the WTO, including the non-discrimination principles under Articles I and III of the General Agreement on Tariffs and Trade (GATT), GATT Article II on scheduling of concessions and others.

To date, no specific green measure adopted by the Korean government has been challenged in the WTO. Nevertheless, the government should keep on monitoring dispute cases involving other countries' climate change measures.

One of the most controversial issues in the application of market-access rules is the distinction between green and non-green products for the purpose of differential treatment. For instance, if two facially similar products (including those of the foreign origin) with different carbon content are differently treated through taxation or other regulatory measures, complaints about an alleged violation of the non-discrimination principle could be raised in the WTO. Should these products be found to be not like products, Article XX may be invoked for justification of discriminatory

treatment. Notably, paragraph (b) of Article XX provides a legal defense for WTO violations 'necessary to protect human, animal or plant life or health,' and paragraph (g) justifies restrictive measures 'relating to the conservation of exhaustible natural resources'.

2. Industrial Subsidies

Industrial incentives are an important part of Korea's green growth policy. Korea has provided a wide range of promotion measures for the nurturing of green industries, the production of renewable energy, the implementation of various R&D projects, and the stimulation of production or consumption of green products. The government designated 27 core green technologies as new growth engines for Korea.

Table 1. Green Growth Budget

(Trillion Won, %)					
Area	Total	2009	2010-11	2012-13	Increase Rate
1) Climate change mitigation & energy independence	56.9	8.6	29.2	19.2	14.0%
2) Creation of new growth engines	28.6	4.8	10.7	13.1	9.4%
3) Improvement of people's lives and enhancement of Korea's international status	27.9	5.2	10.5	12.2	3.6%
Total budget	107.4	17.5	48.3	41.6	10.2%

Source: Presidential Committee on Green Growth

Green stimulus targeting specific enterprises or industries falls under regulation of WTO's

subsidy disciplines. Although Korea's green subsidies have not, so far, caused any serious problem in WTO multilateral procedures, other countries' subsidies aimed at mitigation of climate change have become targets in recent dispute cases. As of 1 August 2012, three complaints have been filed with the WTO, two of which targeted Canada's feed-in tariff program and one challenged China's wind power subsidies. Notwithstanding the comparatively small number of disputes, Korean policy makers should bear in mind, and in fact be prepared, that this number will increase over time.

On the other hand, some of the Korean green subsidies have already been dealt with in countervailing investigations. For instance, the United States (US) investigated Korea's programs relating to energy-saving equipment, R&D for green technologies and renewable energy, the energy savings fund and etc. The Department of Commerce's determination of countervailability of these programs is one of the most remarkable points having far-reaching implications for Korea's green stimulus policy.

3. Technical Requirements

Technical regulations and standards constitute another important part of Korea's green growth policy. These measures fall within the scope of the WTO Agreement on Technical Barriers to Trade (TBT). Korea's green-growth TBT measures can be grouped into four big categories, such as the energy efficiency management system, the certification of new and renewable energy facilities, automobile fuel efficiency and CO₂ emission requirements, and environmental labeling. To date, Korea has concluded mutual recognition agreements on eco-labels with nine countries, including Thailand, Japan, Australia, China, US, Canada and others.

Figure 2. Korea's Environmental Labels



Source: Korea Environmental Industry & Technology Institute

The TBT Agreement requires that WTO members notify their technical regulations affecting trade of other members whenever a relevant international standard does not exist, or a proposed regulation does not comply with the existing international standard. In the period between 1995 and 2011, Korea submitted 24 environmental TBT notifications to the WTO. Ten of the 24 notifications were related to energy efficiency, CO₂ emission and other green technical requirements. Main target products were automobiles, electric appliances and electronics.

Although no complaints over Korean green-growth TBT measures have been brought to the WTO dispute settlement procedures, some of them have been discussed in the TBT Committee. During 1995-2011, there were 26 cases of raising specific trade concerns about Korea's technical requirements, of which 4 cases concerned green-growth measures on car fuel efficiency and emission, as well as the certification of certain renewable energy products, such as thin film solar cells.

Harmonization of International Regimes for the Sake of Green Growth

1. Greening the WTO

In order for the WTO to become more 'envi-

ronment-friendly', the current Doha negotiations should be successfully completed. The Doha agenda on trade and environment mandates members to negotiate on three issues, such as (i) clarification of the relationship between WTO rules and multilateral environmental agreements (MEAs), (ii) enhancement of cooperation between MEA Secretariats and the relevant WTO committees, and (iii) reduction of trade barriers to environmental goods and services. To accelerate negotiations on environmental goods and services, Korea could put forward the idea of plurilateral negotiations in the WTO based on APEC's initiatives on trade and environment. Korea could also initiate discussion in the rules negotiations aimed at rendering climate change subsidies non-actionable under the current WTO subsidy disciplines.

Moreover, the Korean government should establish environmental impact assessments (similar to those existing in the European Union, the US or Canada) for its trade treaties so

as to ensure that, inter alia, WTO agreements entered into by Korea properly reflect its environmental concerns. In this way, Korea could have an indirect influence on the greening of the WTO.

2. Making the Global Climate Regime more 'WTO-friendly'

Finally, greater coherence between the WTO system and the global climate change regime under the United Nations Framework Convention on Climate Change (UNFCCC) could also be achieved through making the latter more WTO-friendly. In this respect, Korea should support the proposal of several countries to discuss within the UNFCCC framework the impact of climate-related response measures on trade, but oppose the idea of introducing a total ban on unilateral response measures. Such a ban would come into conflict with the WTO's general exception clause (GATT Article XX) – a provision that can be invoked to justify environment protection measures. **KIEP**