

# An Analysis of Korean Legislative Development in Relation with Economic Growth

– Agricultural Policy and Law –

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# Abstract

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## I . Background and Purposes

- This is one part of a research series which aims to analyze the development process of legislation in various areas in relation to the economic growth in Korea, and make suggestions for legislative development in developing and transition countries.
- The analysis and evaluation of the development process of Korea's agricultural laws may provide implications to developing countries where agriculture is the main industry or where a high portion of population is engaged in agricultural industry as they go through the process of industrialization and open to the global market.

## II . Main Contents

- Chapter 2 will survey the process of Korea's economic growth and the changes to agricultural industry.
- Generally in the West, accumulated agricultural surplus provided the financial support for industrialization and economic expansion, while Japan achieved industrialization and modernization of agriculture at the same time. However, Korea displayed a unique pattern where

agriculture served as the main industry until right after the Korean War, but agricultural surplus was accumulated only after modernization of agriculture after industrialization.

- The portion which agriculture takes in Korean economy has been steeply decreasing and was expected to continue to decrease. However, in the past decade, there has been a paradigm shift in understanding agriculture which started to fuse with other industries and technologies, and this shift may bring a change in the definition of agriculture.
- Chapter 3 divides and characterizes each period according to the changes to agricultural industry in relation to economic development in Korea, and introduces the a few laws that reflects the policy and the economic situation of each period.
- Chapter 4 evaluates the agricultural laws of each period by analyzing the achievements and weaknesses of the laws.
- Chapter 5 suggests implications on the ownership and conservation of farm land and on food security for developing countries based on Korean agricultural laws as evaluated in Chapter 4.

### **III. Expected Effects**

- The development process of Korean agricultural legislation which is analyzed in chronological steps is expected to provide

implications on what must be considered at each economic stage from Korean experience.

▶▶ Key Words : Legislative exchange, Economic growth, Legislative development, Korean agricultural law and legislation

# Contents

Abstract .....	3
Chapter 1. Introduction .....	11
Section 1. Necessity and Purpose of the Study .....	11
Section 2. Scope and Methodology .....	15
Chapter 2. Korean Economic Growth and Development of Agricultural Policies and Laws .....	19
Section 1. Correlation Between Economic Growth and Agriculture .....	19
1. General theory on economic growth and agriculture .....	19
2. Korean economic growth and agriculture .....	20
Section 2. Change in and Prospects of the Agriculture Environment in Korea .....	22
1. Changes to the proportion of agriculture in the overall economy .....	22
2. Changes and prospects of internal and external agricultural environment .....	24
Chapter 3. Development of Korean Agricultural Laws .....	29
Section 1. Pre-farmland Reform Period .....	29
1. The Joseon Dynasty period (1932-1897) .....	29
2. The Korean Empire period (1987-1910) .....	30

3. Japanese colonial period (1910-1945) .....	31
4. The U.S. military government period (1945-1948) .....	33
Section 2. Reformation Period : Independence-1960s .....	35
1. The First Constitution of the Republic of Korea .....	36
2. Farmland Reform Act .....	37
Section 3. Modernization Period : 1960s - 1970s .....	39
1. Development and preservation of farmland .....	39
2. Modernization of agricultural communities .....	44
Section 4. Restructuring and Opening Period :	
Late 1970s - 1990s .....	47
1. Income increase .....	47
2. Structural improvements and the preparation for opening .....	51
3. Enactment of the Farmland Act .....	56
Section 5. Transitional Period : Post-2000 - .....	58
1. Framework Act on Agriculture, Rural Communities, and Food Industry .....	60
2. Improvement of Quality of Life of Farmers, Foresters and Fishers and Promotion of the Development of Agricultural, Mountain, and Fishery Areas Special Act .....	62
Chapter 4. Analysis and Evaluation of the Korean Agricultural Policy and Law .....	63
Section 1. Evaluation of the Laws in the Reform Period .....	63
Section 2. Evaluation of the Laws in the Modernization Period .....	65



1. Evaluation of the laws on farmland improvement and preservation .....	65
2. Evaluation of the laws on modernization of farming communities .....	66
Section 3. Evaluation of the Laws in the Restructuring and Opening Period .....	67
Section 4. Evaluation of the Laws in the Transitional Period .....	69
1. The Agriculture, Rural Communities, and Food Industry Framework Act .....	69
2. The Improvement of Quality of Life of Farmers, Foresters and Fishers and Promotion of the Development of Agricultural, Mountain, and Fishery Areas Special Act .....	70
Chapter 5. Implications and Conclusion .....	73
Section 1. Possession of Farmland .....	74
Section 2. Farmland Conservation .....	75
Section 3. Food Policy .....	77
References .....	81

## Chapter 1. Introduction

### Section 1. Necessity and Purpose of the Study

In just a half century after colonization and war, South Korea attained rapid economic growth called the ‘Miracle of the Han River’. At the period of liberation from Japanese colonial rule in 1945, the country was a typical agricultural nation with 77% of its population engaged in agriculture. Starting with farmland reform after liberation, South Korea continued to improve agricultural productivity through modernization of agricultural technologies, including varietal improvement and mechanization. During this process, agriculture provided the money needed to implement post-war restoration and lay the foundation for economic growth, playing an important role in Korean economic growth.

However, the adverse effects of the government’s export-driven economic development policy, which inclined towards industrialization starting in the 1960s, cemented the problem of inferior agricultural living environments and reduced farmland and agricultural populations. Subsequent global trade deals, with market openings, commenced in earnest in the late 1980s also hit Korean agriculture with a series of setbacks.

As the economic engine of South Korea gradually diversified into heavy industry, service business, and IT, agriculture and agricultural communities were pushed out of policy priority, and without consistent policies or laws needed for continuous agricultural development, many laws became established and amended in a stopgap, makeshift manner.

Without any fundamental solution to the above-mentioned chronic problems, Korean agriculture continued to be pushed towards a vulnerable state, which

led to a national and social problem characterized by a significantly low degree of food self-sufficiency and the breakup of agricultural communities. At present, the degree of food self-support is the lowest among OECD member countries; as shown in <Table 1>, self-sufficiency in rice, the staple crop of South Korea, is 83%, and the self-sufficiency rate of the grain overall is under 50%.

<Table 1 : Self-sufficiency in grain in Korea (2003-2004, feed grain not included)>

(Unit : %)

	Food Self-sufficiency							
	Total	Rice	Pearl barley	Wheat	Corn	Bean	Root and tuber crops	Other
2003	53.3	97.4	50.0	0.50	3.5	29.0	109.1	16.4
2004	50.2	96.5	56.9	0.50	3.3	25.0	107.6	11.6
2005	54.0	102.0	59.0	0.40	3.4	30.9	109.2	12.8
2006	52.7	98.5	43.6	0.30	3.5	40.4	09.3	11.0
2007	51.6	95.8	52.3	0.30	3.2	34.5	109.1	10.4
2008	51.8	94.3	47.1	0.50	4.9	29.5	109.0	8.6
2009	56.9	101.1	48.4	0.90	4.7	33.7	109.3	9.8
2010	54.0	104.6	25.4	1.70	3.8	32.4	109.4	10.6
2011	44.5	83.0	23.7	2.20	3.3	22.5	107.1	7.3

Source : e-narajipyo (Statistics Korea). Feb. 2012. “Trends in production and consumption of agro and livestock products (Ministry of Agriculture, Food and Rural Affairs Food policy and data)”.

Recently, however, awareness of agriculture and agricultural communities is turning around. The spread of the awareness of the global food crisis and the so called ‘wellbeing’ lifestyle is bringing back interest in agriculture,

especially in the bio- and food industries, and in response to new economic environments created in as a result of the food security crisis and FTAs with powerful agricultural countries, political and legislative efforts regarding agriculture have begun to appear.

This study was conducted to provide a review and analysis of the advantages and disadvantages of agricultural policy and laws by economic growth in pursuit of identifying new policy directions to suit the current transition of agricultural policy and laws, considering the criticism that there have been no consistent policies or laws to back the sustainable development of agriculture which was the original basis for Korean economic growth.

Given the fact that one of the causes of excessively frequent establishments and amendments to agricultural policies and laws is under-representation of legal experts in the agricultural legislation process, it is necessary to objectively examine and review the development process of agricultural policies and laws in order to fulfill the goal of Korean agricultural legislation advancement.<sup>1)</sup>

Furthermore, this study is expected to offer references to future agricultural policy and lessons to developing countries whose primary industrial basis is agriculture. As mentioned above, it is a fact that agriculture had been neglected in South Korea until the recent turning point, and still has many problems to be solved. Nevertheless, this study will be able to offer lessons to the developing countries that wish to learn Korea's advanced agricultural technology and knowhow on productivity increases by providing legislation data and information on the trials and errors South Korea has undergone.<sup>2)</sup>

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1) Song, Jae-II. Jan. 23rd, 2012. Review opinion from the first policy staff committee meeting of the Korea Legislation Research Institute Office of Comparative Law Research.

2) This study is a follow-up study to : Lee, Jun-Seo. 2011. "A study on Model Legislation

In particular, Korea's rapid economic growth model is very unique, and its impact on agriculture differs from the Western economic development model that attained industrialization after an agricultural revolution according to the general economic logic that "agricultural surplus in the early stage of economic development plays an essential role in economic growth,"<sup>3)</sup> or the Japanese economic development model that attained both agricultural growth and industrialization simultaneously.<sup>4)</sup> Most developing countries interested in introducing the Korean economic growth model are characterized by the fact that agriculture is their major industry, and it is thought that when transferring the Korean economic growth model to these countries, it is also necessary to collect information on Korea's trials and errors related to agricultural policies and laws as legislative information, providing them together.

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for Assistance in Legal Reform", KLRI; Lee, Jun-Seo. 2012. "An Evaluative Analysis of Korean Legislative Development in Relation to Economic Growth - Environmental Policy and Law-", KLRI, 2012.; Cho, Hye-Shin. 2012. "An Evaluative Analysis of Korean Legislative Development in Relation to Economic Growth - Environmental Policy and Law -Establishment of the Capital Market-", KLRI; Kim, Eun-Hwan. 2012. "An Evaluative Analysis of Korean Legislative Development in Relation to Economic Growth - Formation of Social Infrastructure-", KLRI; and Lee, Ji-Yoon. 2012. "An Evaluative Analysis of Korean Legislative Development in Relation to Economic Growth - Consumer Protection Law", KLRI, 2012. This study does not deal with the demand of Asian countries for the Korean development model as such was explained in details in the preceding studies. For information on the demand for agricultural knowledge and information, however, see Kim, Gyeong-Deok and Kim, Jeong-Seung. Oct. 2010. "Strategies for supporting agricultural technology for developing countries in joining with the OECD/DAC", Korean Rural Economic Institute.

3) Kim, Yong-Taek. Sep. 2006. 'The role of agricultural surplus in the early stage of economic development : comparison between South Korea, Japan and Taiwan,' Rural Development Administration conference Material on 'Agricultural Modernization and Economic Development in East Asia.' p.286.

4) See Kim, Yong-Taek. Sep. 2006.

## Section 2. Scope and Methodology<sup>5)</sup>

Until now, there have been many studies on the history of agricultural policy or the history of major industries according to economic development.<sup>6)</sup> This study, however, will differentiate itself by focusing not only on the chronological study of legislation in relation to industrial policy, but also by analyzing the accomplishments and weaknesses of the legislative development of each chronological period.

In addition, for those countries to which this study attempts to provide guidance, there are still many where tenant farming still exists or the systematic legislation needed for farmers to own and manage farmland independently does not yet exist. This study, therefore, will examine Korean agricultural policies and laws from the Joseon Dynasty period where tenant farming and free trade of farmland were allowed.

Chapter 2 will examine the general correlation between economic growth and agriculture, as well as the characteristics and particulars of the Korean economic growth model in relation to agriculture. Changes in the status of agriculture as an industry, along with the prospect on agriculture, will also be looked into.

Chapter 3 will divide the period from the Joseon Dynasty period to the present into smaller periods according to the characteristics of the time, from an agricultural perspective and legislative response, and analyze the

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5) For an explanation and justification of legislative development progress analysis and evaluation by economic growth, which forms the study methodology employed in this study, see pages 20-21 of Lee, Jun-Seo, 2012.

6) For example, Ministry of Government Legislation. 1999. '50 Year History of Legislation in the Republic of Korea,' and Ministry of Government Legislation. 2012. '60 Year History of Legislation in the Republic of Korea. 2012.'

progress and development of agricultural policies and laws. The period has been divided into the : reformation period, modernization period, opening period, and transitional period. Although it was also possible to divide the period into decades (i.e., the 60s, 70s, and 80s) or into different governments, this study named each divided period based on the periodic characteristics related to individual issues faced by developing countries, such as land reform, agricultural modernization, agricultural opening, and changes in awareness of agriculture, and this periodic categorization was also expected to make it easier to illustrate the legislative strategies South Korea adopted to address those issues in order.

As emphasized earlier, studies on Korean agricultural policies and laws fall behind other developed countries, and it is a prevalent criticism that even the concept or scope of agricultural policies and laws has not been yet established.<sup>7)</sup> The necessity for systematic study of agricultural policies and laws is widely agreed upon, and in an effort to define and systemize agricultural law, the following definition of agricultural law was made.

The traditional definition of agricultural law is “a law required to support and protect agriculture to secure equality with other industries, and includes farmland law, agricultural organization law, agricultural distribution law, and agricultural finance law”, while the modern definition is “a law required to fulfill the role of agriculture according to changes over time” and includes agricultural environment law, agricultural food law, agricultural biotechnology law, and agricultural international trade law.<sup>8)</sup>

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7) Park, Su-Hyeok. Jun. 2009. ‘History and Theory of Korean Agricultural Laws,’ Land Law Vol. 25-1, pp.30, 33.

8) Geum, Tae-Hwan. Apr. 2012. ‘Problems in Korean agricultural laws,’ Administrative Law Study Iss.32, p31.

In order to analyze changes and developments in agricultural legislation which cover a variety of policies and laws according to period, a broad understanding of agriculture, its relationship with other industries, and national agricultural policy by period should be had. However, as this report was conducted in a short period time, it has not dealt with more in-depth consideration of the concept and definition of agricultural law, expecting such to be dealt with through further studies. This study considers the policies and laws directly related to agriculture to include policies and laws in a variety of areas, including those related to farmland, agro-industry, agricultural communities, and the food industry.

For agricultural policies and laws, there has been no framework law or equivalent comprehensive law for a long period time in Korea. Instead, agricultural policies and laws were established and amended many times to respond to the issues of each period. For this reason, this study will not deal with a vast store of agricultural policy and law, but will rather focus on several laws that best suit the characteristics of each period, and also introduce other related laws where necessary.

Chapter 4 will attempt to analyze and evaluate the laws introduced in Chapter 3, Chapter 5 will conclude the research by making suggestions for developing countries from the Korean agricultural policies and laws development process that can be drawn from Korea's experience.

While this research will be conducted mainly through literature studies and chronological analysis, it will also reflect legislative experts' opinions.



## Chapter 2. Korean Economic Growth and Development of Agricultural Policies and Laws

### Section 1. Correlation Between Economic Growth and Agriculture

#### 1. General theory on economic growth and agriculture

In general, agricultural surplus accumulates with an increase in agricultural productivity, enhanced by factors such as continuous capital acquisition, technological innovation, accumulation of labor skills and experience, and system changes. A widely held theory that agricultural surpluses accumulated through enhanced agricultural productivity in the agricultural sector are utilized as the financial resources needed for industrialization.<sup>9)</sup>

In other words, in a nation's long-term economic development process, the agricultural sector provides a low-cost labor force and financial resources to the non-agricultural sector, plays a role as market for consumer goods manufactured from the industrial sector, and contributes to the non-agricultural sector by improving agricultural productivity through such process, forming a virtuous cycle.<sup>10)</sup>

Agricultural surplus does not necessarily precede industrialization, however. Whereas Western Europe achieved an agricultural revolution based on enhanced agricultural productivity and led an industrial revolution through agricultural surplus, reflecting aspects of this economic theory, Japan saw a

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9) Kim, Yong-Taek. Sep. 2006. p286

10) Song, Si-Gang. 2007. 'A study of the Farmland Act : farmland regulations and urban planning,' Hongik Univ., p7.

sharp increase in agricultural productivity in the early stage of its economic growth and accumulated an agricultural surplus while attaining industrialization at the same time.<sup>11)</sup>

From an economic standpoint, it is found that a closed economy first creates a surplus in the agricultural sector and uses that surplus as the financial resources needed for industrialization, as shown in Western Europe, while in an open economy, creation of agricultural surplus is not necessarily a precondition to industrialization, which is the case with South Korea.<sup>12)</sup>

## 2. Korean economic growth and agriculture

Korean agriculture underwent an unprecedented rapid restructuring in the process of economic growth. The Korean economy developed primary, secondary, and tertiary industries consecutively over the last 50 years since the early 1960s. However, agricultural productivity in South Korea saw a great increase in the early 1970s, differing from the Western European model that saw industrialization after the accumulation of an agricultural surplus, and the Japanese model in which agricultural productivity increased and industrialization occurred simultaneously.<sup>13)</sup>

South Korea was able to attain industrialization without an accumulated agricultural surplus thanks to the introduction of foreign capital.<sup>14)</sup> The correlation between economic growth and agriculture in South Korea illustrates aspects of an open economy characterized by the accumulation of agricultural surplus after industrialization. This aspect is deemed more similar to the

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11) Kim, Yong-Taek. Sep. 2006. p286, 294

12) Id.

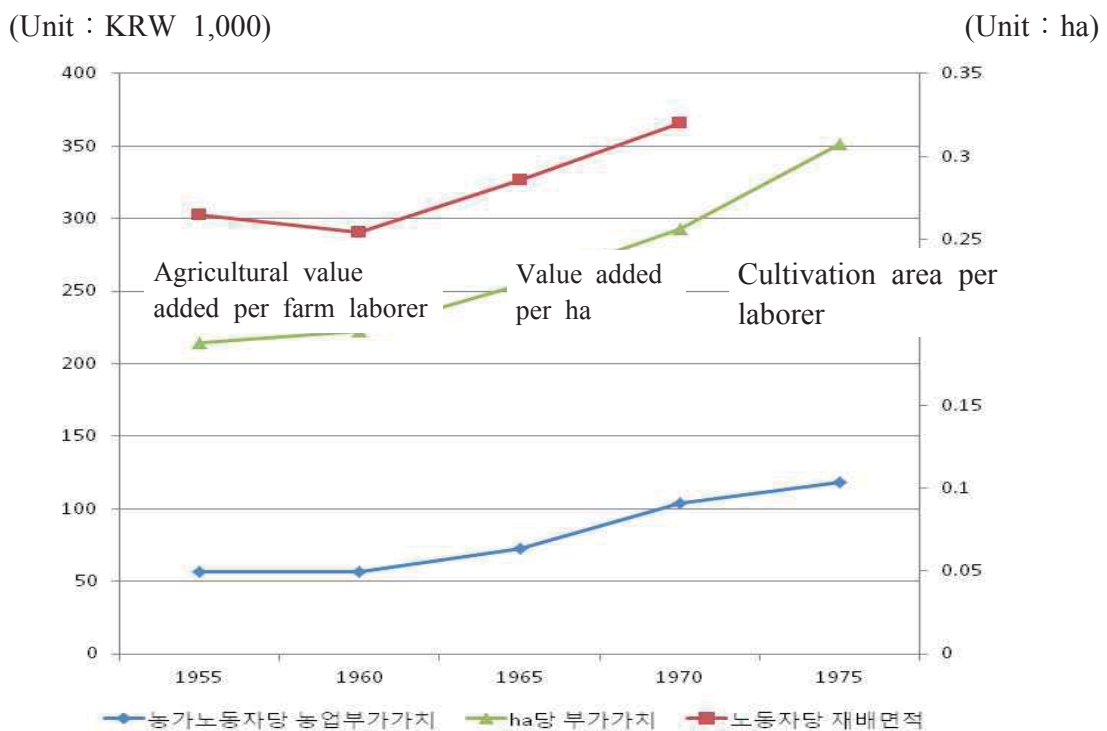
13) Kim, Yong-Taek. Sep. 2006. p294.

14) Id.

position and role of agriculture under open economic systems in developing and emerging countries in the process of rapid industrialization through foreign investment.

In South Korea, the agricultural surplus did not directly contribute to laying the basis for industrialization, but contributed to industrialization in different forms, including supplying food to urban dwellers, supplying an industrial labor force through rural exodus, maintaining rapid economic growth through agricultural growth, and investment in the education of young people who left agricultural areas.<sup>15)</sup>

<Figure 1 : Korean Farmland and Labor Productivity Trends (1955-1975)>



Source : Kim, Yong-Taek. 2006. “The role of agricultural surplus in the early stage of economic development : a comparison between South Korea, Japan, and Taiwan,” Rural Development Administration.

15) Kim, Yong-Taek. Sep. 2006. p295, 297.

## Section 2. Change in and Prospects of the Agriculture Environment in Korea

### 1. Changes to the proportion of agriculture in the overall economy

The proportion of agriculture has continued to decrease in the Korean economy overall. The proportion of agricultural investment to total investment in South Korea has continued to decrease, and given some indicators such as aging and reduction in rice cultivation areas, agricultural investment is anticipated to continue to decrease.<sup>16)</sup>

<Table 3 : Aggregate Agricultural Indicator Prospects and Trends (1970-2030)>

	Unit	1970	1990	2010	2020	2030	1990/ '70	2010/ '90	2030/ '10
No. of farm families	1,000 families	2,483	1,767	1,177	1,053	910	0.71	0.67	0.77
Farming population	1,000 persons	14,422	6,661	3,068	2,441	1,894	0.46	0.46	0.62
Ratio age 65 or over	%	4.9	11.5	34.9	41.6	50.5	2.35	3.03	1.45
Cultivation areas	1,000 ha	2,298	2,109	1,715	1,603	1,532	0.92	0.81	0.89
Rice cultivation areas	1,000 ha	1,203	1,244	892	816	758	1.03	0.72	0.85
Agricultural value added	1 billion won	10,762	16,827	24,452	23,580	23,051	1.56	1.23	1.11

16) Kim, Jeong-Ho, et al. Jul. 2012. 'Mid-and long-term agricultural administration issues and measures,' Korea Rural Economic Institute, p5.

Section 2. Change in and Prospects of the Agriculture Environment in Korea

	Unit	1970	1990	2010	2020	2030	1990/ '70	2010/ '90	2030/ '10
Farm income	10,000 won	650	1,895	3,212	3,464	3,752	2.92	1.69	1.17
Non-farm income ratio	%	23.1	25.7	40.3	47.0	48.8	1.11	1.57	1.21

Source : Kim, Jeong-Ho, et al. Jul. 2012. "Mid-and long-term agricultural administration issues and measures," Korea Rural Economic Institute, p5.

Around the time of liberation in 1945, 77% of the Korean population was engaged in agriculture, but this proportion has gradually decreased, and consequently the proportion of agriculture in the economy overall was also reduced. While a diminution of agriculture with economic growth is a common phenomenon in the world, South Korea underwent this shrinkage at unprecedented speed. Whereas the time taken until the proportion of agricultural GDP to overall GDP dropped from 40% to 5% took 120 years in Europe, 95 years in the U.S., and 75 years in Japan, it took just 30 years in South Korea.<sup>17)</sup>

In addition, it is evident that as the economy grew, production of laborintensive items such as rice, wheat, barley, and pulses decreased while protection of capital-intensive items such as medicinal crops, flowers, mushrooms, pork, chicken, duck, eggs, and milk increased.<sup>18)</sup>

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17) Kim, Jeong-Ho, 2010. "Agriculture in Korea", Korea Rural Economic Institute, p25. For comparison of changes in the proportion of overall agricultural production, see Kim, Yong-Taek. Sep. 2006, p290.

18) Lee, Tae-ho. 2005. 'Agricultural policy in post-modern society,' A study on agricultural management and policy, p510. See changes in agricultural production indicators by item between 1991 and 2003.

<Table 4 : Changes in the GDP and Employment Proportion of Korean Agriculture, Forestry, and Fisheries (1970-2005)>

(Unit : %)

Classification	GDP proportion				Employment rate		
	Agriculture, forestry and fisheries	Agriculture	Forestry	Fisheries	Agriculture, forestry and fisheries	Agriculture and forestry	Fisheries
1970	29.2	25.5	2.0	1.7	50.4	49.5	0.9
1975	27.1	24.0	1.5	1.7	45.7	43.1	2.5
1980	16.2	13.8	1.1	1.2	34.0	32.4	1.6
1985	13.5	11.6	0.8	1.7	24.9	23.7	1.2
1990	8.9	7.8	0.4	0.8	17.9	17.1	0.8
1995	6.3	5.5	0.2	0.6	11.8	11.2	0.6
2000	4.9	4.2	0.2	0.4	10.6	10.2	0.4
2005	3.4	3.0	0.2	0.2	7.9	7.6	0.3

Source : Kim, Jeong-Ho. 2010. “Agriculture in Korea”, Korea Rural Economic Institute, p28.

## 2. Changes and prospects of internal and external agricultural environment

With changes in internal and external circumstances, the role and importance of agriculture in the national economy can also be expected to change. The largest changes include the opening of the agricultural market and new trade systems derived from DDA and FTAs. To respond to this, it is necessary to establish active response systems, reinforce overseas expansion, and build up agricultural capabilities suiting the national status, because these changes can offer opportunities for Korean agriculture to penetrate new

markets, and can simultaneously be threats due to domestic market encroachment from cheap Chinese agricultural products.<sup>19)</sup>

The world is currently witnessing the formation of a basis for the second agricultural revolution whereby agriculture evolves into a cutting-edge industry in line with the advent of the bio-economic era derived from accelerated convergence of new technologies, including information technology (IT), biotechnology (BT), nanotechnology (NT), environmental technology (ET), space technology (ST), and cultural technology (CT).<sup>20)</sup> Based on BT, agriculture needs to reinforce IT, NT, convergence, and technology development. The convergence of new technologies is an opportunity for unlimited growth helping expand the scope of agriculture and creating new values, while BT-centered technology convergence is expected to enable production of customized beneficial agri-food, improving the health of the public and enhancing their quality of life.<sup>21)</sup>

Concerning changes in agricultural production due to global warming and limited resources, the annual mean temperate of the Korean peninsula has increased 1.5°C over the past 100 years, and accordingly the cultivation area of crops is quickly moving north, with some areas anticipated to be damaged by water resource shortages and reductions in agricultural production. In addition, the regional gap in agricultural production reduction is anticipated to widen over time. With increasing pressure on energy, food, and water resources of high strategic value due to global economic growth

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19) Park, Sung-Jae, et al. 2010. 'Visions and strategies for agriculture and fishing in farming and fishing communities in 2020,' Korea Rural Economic Institute, p3-15; Lee, Ju-Ryang and Jeong, Yoon-Jeong. 'Global comparison of agro-industry R&D investment productivity and portfolio analysis,' Science and Technology Policy Institute, p28-30.

20) Id.; Seong, Jin-Geun, et al. 2012. 'Agriculture is the future,' Samsung Economic Research Institute, p160.

21) See Lee, Ju-Ryang, et al.

and demand expected to exceed supply over the next 10 years, energy use is anticipated to see a fundamental change with natural gas and other alternative energy sources replacing oil. The agricultural sector also needs to prepare for these changes, by for example, developing technologies to address climate change, manage infrastructure facilities, improve legal systems, and prepare financial measures, as well as increasing the use of high efficiency energy and renewable energy, and changing paradigms by expanding resource-recycling, eco-friendliness, and ecologically sound agriculture.<sup>22)</sup>

There are also changes in awareness of domestic agricultural products in terms of the food industry. Anxiety about food consumption is growing as the temporal, spatial, and production stage distance between consumers and farmers widens dramatically, and with the frequent occurrence of food accidents, the food safety control required to address health risks has emerged as a core national strategic issue in many countries around the world. With the widening of distance between consumers and farmers, the importance of the food industry in the food chain has significantly increased. While the food industry appears an important market for agricultural products, it has still very little connection with domestic agriculture, and as a result, a large portion of the ingredients needed in the food industry are imported. Since the 1990s, many countries have sought to improve their food safety control through an overhaul of food safety management administration systems, but anxiety and distrust of food safety by consumers has not been easily dispelled.

More recently, some countries, particularly more developed ones, have vigorously sought to establish local food systems in an effort to narrow the distance between consumers and farmers, and interest in this system is also

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22) See Park Sung Jae, et al., p17.



increasing in South Korea. In developed countries, this new system tends to be included in national food policy rather than remain an alternative outside the national policy boundary. Examples of this program include Japan's local production for local consumption program, the U.K.'s local food and the U.S. and Canada's community food security (CFS). South Korea also needs to establish a food safety security system utilizing domestically produced agricultural products as soon as possible.

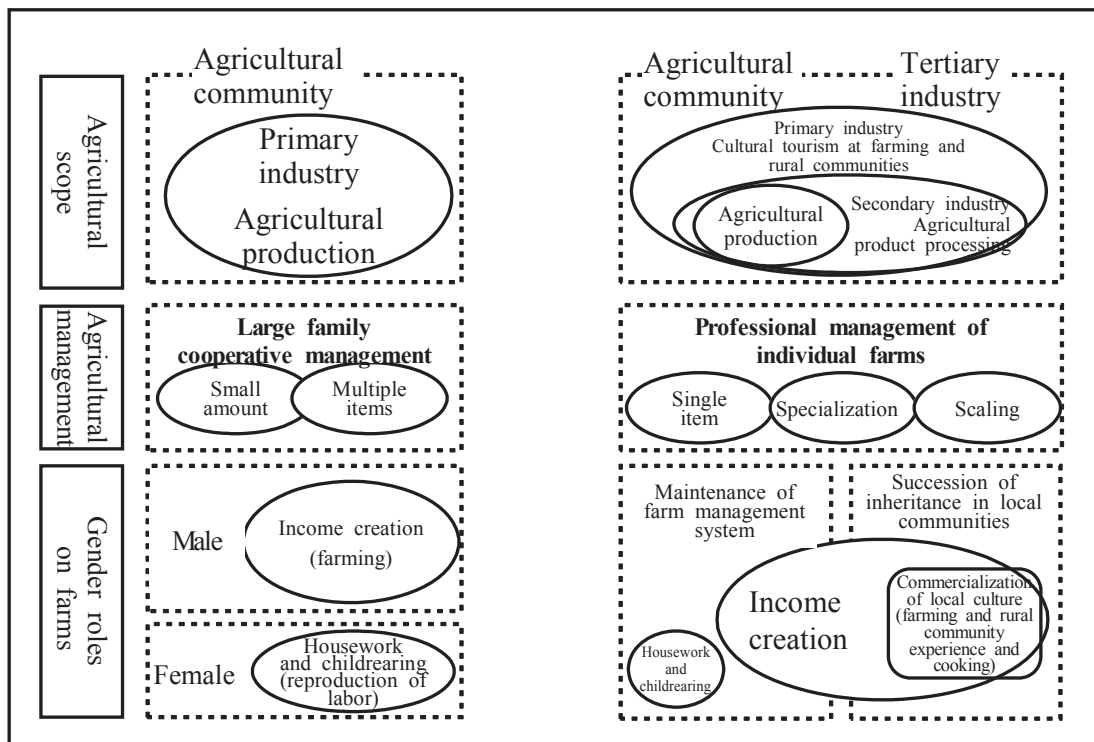
As modern agriculture pursues mass production in the form of single crop farming based on high agrichemical material input, it causes a variety of environmental problems. These problems include soil deterioration and soil loss due to tillage operation, damage to biodiversity due to economic single crop farming, water and environmental contamination due to high input of fertilizers and pesticides, global warming caused by stockbreeding and the use of fossil fuel, and underground water depletion and water shortage due to excessive irrigation. The environmental load of Korean agriculture is also very high. Too much chemical fertilizer is used to increase production, and the nourishment supply for crops is also extreme due to the presence of large quantities of livestock manure. With awareness of the negative aspects of modern agriculture and increasing interest in safety and health, eco-agriculture and organic agriculture are rapidly growing in many countries around the world, and South Korea has also seen a rapid increase in the farm numbers, cultivation area, and eco-agricultural products since the 2000s. The proportion of eco-agricultural products to total farm numbers, cultivation areas, and production exceeded 10%, posting a large growth rate in just 7 years. This trend is anticipated to accelerate further as long as credibility in the distribution process is backed up.<sup>23)</sup>

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23) See Lee, Ju-Ryang, et al.

There were also changes in the scope of agriculture. Until recently, the scope of agriculture was limited to the production of agricultural products (primary industry), and processing and sale of agricultural products (secondary industry). However, agriculture is extending its scope to experiential programs and tourism with regard to farming and rural culture (tertiary industry), and particularly with tertiary industry, the role of farming women, who have played only an assisting role in agricultural production previously, is expanding. The form of agricultural management is also shifting from traditional large family cooperative management to the professional management of individual farms.<sup>24)</sup>

<Figure 2 : Recent Agricultural and Rural Community Trends>



24) Korea Rural Economic Institute. 2011. 'An evaluation of the results of agricultural and fishing community industrialization and a study on future development strategies,' Ministry of Agriculture, Food, and Rural Affairs, p29.

## Chapter 3. Development of Korean Agricultural Laws

### Section 1. Pre-farmland Reform Period

When considering Korean farmland laws from the perspective of legal history, some of the landmark laws that brought changes to the system of ownership and farmland transactions in the pre-farmland reform period include the Gyeongguk daejeon (complete code of law) coded in 1460 (6th year of King Sejo's reign), the Japanese Civil Law enforced during the Japanese colonial period, the Farmland Reform Act enacted in 1949, and the Civil Code which was enacted in 1958.

#### 1. The Joseon Dynasty period (1392-1897)

Joseon Dynasty permitted the transaction, inheritance, and lease of farmland except in some very exceptional cases. Farmlands were permitted to be freely disposed since 1424 (6th year of King Sejong's reign). Thus, farmland ownership in Joseon can be regarded as free ownership because farmland ownership was inherited or freely disposed of legally in that era. Differing from the opinion that the modern land ownership system was only established after 1918 when the land survey project was completed, the Joseon law indicates that the land ownership system already had some modern aspects much earlier than 1918.<sup>25)</sup>

Regarding lease of farmland, there was a farming system in the early period of Joseon Dynasty in which farmers were enslaved to the farm owner. At

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25) Song, Jae Il, "Changes in farmland related laws in relation to economic development in Korea and its evaluation", Workshop Booklet, Korea Legislation Research Institute, 2013, p18.

the same time, tenant farming, which is a contractual relationship rather than a subordinate relationship, was also legal. However, in a tenancy contract, tenancy was a vulnerable right which was often influenced by the tenant's social status and position.

The laws of this period, which may be seen as modern in terms of farmland ownership and lease, failed to protect farmers who were socially and economically weak and vulnerable and were thus exploited as slaves tied to a farm or tenants under an unfair contract.

## 2. The Korean Empire period (1987-1910)

The farmland laws in the Korean Empire period (Oct. 12th, 1897 - Aug. 29th, 1910) showed transitional characteristics as they succeeded the laws of Joseon and attempted to move toward modern laws. These farmland laws, however, were rarely implemented properly. In particular, farmland laws established after the loss of sovereignty in the Ulsa Agreement of 1905 were utilized to facilitate Japanese farming immigrants purchase of farmland.<sup>26)</sup> Economically, this was a period in which the Japanese were expanding their economic and agricultural activities in Korea before colonizing Korea.

In September 9th, 1901 (5th year of Gwangmu), Jigyeamun (the land office) was installed to improve the land and taxation systems and prevent transactions in stolen land. In Gangwon Province and part of South Chungcheong Province, a jigye (official land document) of the Korean Empire was issued. The jigye was issued by a landowner under the approval of authority when trading, transferring or pawning land. Without jigye, land was confiscated compulsively, as in the yangan case (Joseon land register).

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26) Park, Byung-Ho. 1999. Korean Laws, Sejong Taewang Kinyeom Saephoe, p189-191.

This was a transitional system between the iban (a kind of document issued by the authorities) system and the modern land registration system, but it was soon abolished without being properly implemented. The jigye system, however, was meaningful in that it was a modern system established to prove and protect ownership.<sup>27)</sup>

Proof of ownership comprises two types : proof pursuant to the Proof of Land and Houses Rule and proof pursuant to the Proof of Land and House Ownership Rule. This proof system was implemented in 1908 (3rd year of Yunghee). As these proof systems were complex and strange, Japanese immigrants took advantage of them in buying up farmland.<sup>28)</sup> Engaged with the jigye system established in 1901 (5th year of Gwangmu), a verified pawn was only executed through auction according to the Execution of Land and House Pawn Rule except in cases with a special forfeit agreement. This auction procedure was also complicated and thus farmers easily lost their land and Japanese immigrants easily took it away.<sup>29)</sup>

While the laws of this period attempted to modernize those of Joseon Dynasty, they lacked practicality and worked disadvantageously against Korea farmers. Instead, the complex systems and laws worked in favor of the Japanese farming immigrants.<sup>30)</sup>

### 3. Japanese colonial period (1910-1945)

Concerning farmland laws in the period of Japanese colonial rule, Japanese Civil Law was primarily applied, as well as some unique common laws of

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27) See Park, Byung-Ho. 1999, p190;

28) See Park, Byung-Ho. 1999, p191.

29) See Park, Byung-Ho. 1999, p205.

30) Song, Jae Il, 2013, pp25-26.

Joseon and tenant farming laws. Except for certain cases where Joseon common law<sup>31)</sup> was applied according to Joseon civil law, such as traditional special tenant farming (Article 12)<sup>32)</sup>, almost all cases were subject to Japanese civil law. The scope of such common law, however, was gradually reduced by amendments to the Joseon civil law, and in the late Japanese colonial period, Japanese civil law was applied to almost all cases as the fundamental law of legal relations. At that time, the farmland ownership system in Japan was also a landlord-tenant system and there were always tenant disputes. However, the situation in Joseon was even worse due to the ordeal of life under Japanese colonial rule.

Concerning laws related to farmland lease, there were the Tenant Adjustment Law (Dec. 10th, 1932) related to the resolution of tenant disputes, the Joseon Farmland Law (Apr. 10th, 1934) that governed owner-tenant relations, and the Rent Control Law (Dec. 16th, 1939) that defined the rental cap, but these laws were not well observed and were of little effect, as they were disadvantageous to tenants.<sup>33)</sup>

As well known, in 1912-1918, during the early stage of the Japanese colonial period, the Land Survey Project was conducted. While the ostensible purpose of the project was confirmation of land ownership and measurement of land, a huge amount of land was handed over to Japanese corporations via the Japanese Government General, and many of the Korean farmers'

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31) Myeongchi Law No.7 established on Mar. 18th, 1912.

32) Based on the provision, 'The types and effectiveness of real rights on real estate shall be determined by custom except the real rights specified in Article 1,' perpetual lease of land was recognized as a real right according to common law.

33) For information on legislation regarding tenant farming under Japanese colonial rule, see Korean Rural Economic Institute. Nov. 1989. A study on the history of farmland reform, p167-212.

rights, such as the right to tenancy, right to share crops, and right to cultivate were denied.

In sum, the laws of this period were abused as tools of exploitation from Korean farmers. The reason for such abuse may be found in the economic and political background of this period in which the Japanese Empire was taking agricultural and industrial surplus from colonies including Korea for its own expansion. While the agricultural productivity and cultivated farmland increased, a large portion of agricultural products were shipped to outside of Korea, resulting little contribution to the Korean economy.

#### 4. The U.S. military government period (1945-1948)

In the U.S. military government period (Sep. 7th, 1945 - Aug. 14th, 1948) after the Second World War, the Japanese wartime law was basically abolished, but some specific laws remained effective according to the Case of Law Existence (Military Government Law No. 21. Nov. 2nd, 1945). Farmland transaction laws in this period include the Case of Decision on Maximum Farm Rents (Military Government Law No. 9. Oct. 5th, 1945) and the Act on Vested Land Disposal (Korean Interim Government Law No. 173. Mar. 22nd, 1948). At that time in Korea, with its agriculture-centered economic structure, farmland was almost the only means of production. Farmland was owned by a small number of large landowners, and tenants, who accounted for most of the farming population, suffered harsh tenant farming conditions.<sup>34)</sup> Although the U.S. military government

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34) Right after liberation, the proportion of landed farmers was just 14.2%, while that of tenant farmers and petty landed farmers was 85.8%. Rent was usually 50% and in some cases up to 90%. Yoon, Cheol-Hong. 1995. 'The farmland reform and reorganization of land ownership order,' History of Ownership, Bubwonsa, p229.

was intended to protect landowners in the early stage, it became interested in rural people once its power was stabilized, and took the initiative to abolish the landlord system. Creating landed farmers was the only solution to stabilize society, enhance agricultural productivity, and solve the food crisis and ever-present starvation.

At first, the Case of Decision on Maximum Farm Rents, promulgated only a month after the beginning of the U.S. military government, reduced high farm rents (50% on average) to a third of the output (Article 2)<sup>35)</sup>, nullified new tenant contracts that exceeded the maximum rent (Article 5), nullified the unilateral termination of tenant contracts by landowners as to the term of validity of current tenant rights (Article 4), and allowed rental payment in cash in some cases although basically rents were to be paid in kind (Article 7). This case was meaningful in that it aimed to protect tenant farmers from semi-feudal high rents and non-economic compulsions of landowners, but it was not a fundamental solution to those problems, and to make matters worse, it was not well observed due to opposition by landowners.<sup>36)</sup>

The U.S. military government promulgated the Case of Acquisition of Japanese Property (Military Government Law No. 33) on December 6th, 1945, nullifying financial rights and interests of the Japanese people, and established the New Korea Company to manage all vested properties of the Oriental Development Company and the Japanese people. The U.S. military government attempted to distribute vested farmland and execute farmland reform, and on March 22nd, 1948, immediately before the establishment of

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35) For this reason, the Decision on Maximum Farm Rent is also called the '3/1 Rule'.

36) For information on the Decision on Maximum Farm Rent (a.k.a. 3/1 Rule), see Korea Rural Economic Institute. Nov. 1989, p176-180; and Yoon, Cheol-Hong. 1995, p230-231.



the Korean government, it promulgated the Act on Vested Farmland Disposal (Military Government Law No. 173) and carried out the disposal and distribution of vested farmland. The government granted preemption to tenant farmers of the relevant farmland of 2 hectares per farm. The price was 300% of the average yearly crop, and the tenant farmer had to pay 20% in kind every year for a total of 15 years. The aggregate area of such farmland accounted for 11.6% of all farmland (16.7% of all tenant farmland), and farmland not disposed of at this time included : farmland under lawsuit or price adjustment, farmland owned by groups, wasteland, and lost land, as well as orchards, mulberry fields, vegetable fields and special purpose farmland that did not need to be disposed of. Although this initiative was only partial and not thorough, it is significant in that it became the prototype for later agricultural reform and was the first attempt to establish democratic land ownership.

## Section 2. Reformation period : Independence-1960s

In the period from Korea's independence to around 1960, which can be called the 'Reformation Period', attempts were made to abolish the landlord system, establish a landed farmer system and implement Farmland Reform.

The origin of the current Korean farmland system lies in the Farmland Reform carried out after the Second World War. At that time in Korea had an agriculture-centered economic structure, and farmland was almost the only means of production. Farmland was owned by a small number of large landowners, and the farming conditions for tenants, who accounted for most of the farming population, were very harsh. For this reason, the creation of

landed farmers was needed to stabilize society and resolve the food problem and its attendant starvation by increasing agricultural productivity. Accordingly, the government implemented a policy for creating landed farmers.

Laws related to this policy at that time include the first Constitution of the Republic of Korea (enacted in 1948) and the Farmland Reform Act (enacted in 1949).

## 1. The First Constitution of the Republic of Korea

### **Chapter VI Economy**

Article 86 Farmland shall be distributed to farmers and the distribution method, limits of possession and the contents and limits of ownership shall be determined by law.

The first Constitution of the Republic of Korea (Constitution No.1), established July 17th, 1948, is the basis of constitutionalism and democracy as the highest norm. In order to achieve democratization of society and the economy through resolution of the farmland problem, the Constitution implicitly defined the land to the tillers principle, and provided the constitutional grounds for farmland reform.<sup>37)</sup>

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37) For information on the normalization of land to the tillers principle as positive law, see Lee, Jong-Soo. 2008. 'The land to the tillers principle and its limits in the Constitution of the Republic of Korea,' Land Law, Iss. 24-2, p1-22; According to Kim, Su-Yong. Sep. 2009. 'Foundation and Constitution - history of the Republic of Korea from a discussion on the Constitution,' Kyungin Publishing, p201 and p320-321, influenced by Agnes Headlam-Morley's book *The new democratic constitutions of Europe*. which asserted farmland reform was required to defend against communism. Similarly Yu, Jin O advocated farmland reform, and an amendment submitted by legislator Jeon, Jin Han and 10 others passed by holding a majority (94 (pro) vs. 65 (con) out of 172).

## 2. Farmland Reform Act

### **Reason for Establishment**

The purpose of this act is to improve the lives of farmers and seek balanced development of the national economy by properly distributing farmland to farmers based on the spirit of the Constitution of the Republic of Korea.

- ① Farmland is limited to fields, paddies, orchards, actual cultivation land, and auxiliary facilities of irrigated farmland such as farm roads and waterways.
- ② For smooth enforcement of this act, a farmland committee shall be installed in central and local governments, respectively, and be responsible for matters including the assessment of purchased farmland.
- ③ A farm should be defined clearly to avoid any differing opinions in legal interpretation.
- ④ The price of farmland purchased by the government shall be determined by defining the common magnification, by comparing 150% of the normal yearly output of the principal product with the land lease price for the same year.
- ⑤ Landowners shall be given privilege when they convert farmland into industrial land.
- ⑥ Unallocated farmland and payment-completed farmland may be transacted freely.
- ⑦ In order to provide equal rights of cultivation to farmers, no single farm household may possess more than 3 jeongbo (≒ 3 ha).
- ⑧ The price of distributed farmland shall be paid in installments every year for a total of 5 years.
- ⑨ Based on the land to the tillers principle, tenant farming, leasing, and commissioned operation of farmland shall not be permitted.
- ⑩ The Korean Interim Government Law No. 173 abolishes such items.

### **Chapter I General Provisions**

Article 1 The purpose of this act is to improve the lives of farmers and seek balanced development of the national economy through independence of the

farm economy and enhanced agricultural productivity, by distributing farmland to farmers properly based on the spirit of the Constitution of the Republic of Korea.

## **Chapter II Acquisition and Compensation**

Article 5 The Government shall acquire farmland in the following manner.

1. The following types of farmland shall be vested in the Government.
  - (A) Farmland forfeited or nationalized by legal agreement.
  - (B) Farmland of uncertain ownership
2. The following types of farmland shall be purchased by the Government at proper compensation.
  - (A) Farmland owned by persons other than farmers.
  - (B) Farmland owned by persons other than self-cultivating farmers. However, the provincial governor may defer the disposal of farmland owned by persons who temporarily left farming due to disease, public duty, or schooling for a certain period upon local committee agreement.
  - (C) Farmland that exceeds the limits specified herein.
  - (D) Farmland other than rhizocarp cultivation farmland, which is owned by a person who runs 3 or more jeongbo (≒ hectare) of rhizocarp cultivation farmland, such as orchards, seedling fields, and mulberry fields.

Article 10 The Government may help a landowner who has sold farmland according to this law preferentially participate in projects advantageous to the national economic development depending on their wishes and capabilities.

## **Chapter III Distribution and Repayment**

Article 11 Farmland acquired by the Government pursuant to this act and state-owned farmland defined by separate law shall be distributed to self-cultivating farms in the following order.

1. The farm family that currently cultivates the farmland
2. A farm family that cultivates small farmland for its cultivation capability.
3. The bereaved family of a patriot who died in line of duty, with farming experience

4. An employed farm family with farming capability
5. A farm family returned from a foreign country

On June 21st, 1949, the National Assembly established and promulgated the Farmland Reform Act (Act No. 31), comprising 6 chapters and 29 articles based on the first Constitution of the Republic of Korea.<sup>38)</sup> After that, the government submitted an amendment, as it was unable to resolve a budgetary measure issue, and on March 10th, 1950, the amendment (Act No. 108) finally passed the National Assembly. The enforcement decree of the act and the enforcement regulations of the act were then established and promulgated on March 25th and April 28th, 1950, respectively. Farmland reform was thus carried out according to the amendment to the Farmland Reform Act.<sup>39)</sup> The cap on the area of farmland was 3 hectares per farm, and the price was 150% of the normal year output, which was to be repaid in installments of 30% each year for a total of 5 years.

### Section 3. Modernization Period : 1960s - 1970s

#### 1. Development and preservation of farmland

In this period, dubbed the modernization period which lasted from around 1960 to the 1970s, reclamation of uncultivated private land and farmland preservation policy were implemented for food security and food self-sufficiency.

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38) At that time, landlords who worried about full-scale farmland reform forced tenants to buy farmland and deprived them of their tenant rights, and accordingly on Feb. 12th, 1949, the President announced the prohibition of forced sales of farmland and the deprivation of tenant rights.

39) For information on the establishment, amendment, and implementation of the Farmland Reform Act, see the Korea Rural Economic Institute. Nov. 1989, p434- 595.

In the period from liberation to the 1950s there were no particular land issues other than farmland reform, as the nation was committed to the Korean War and subsequent restoration, and thus the laws used in the Japanese colonial period were applied with only a few modifications, without establishing land policies and laws. In the period from around 1960 to the 1970s, however, named the modernization period, reclamation of uncultivated private land and farmland preservation policy were implemented for food security and food self-sufficiency and the laws were amended in order to complement the inadequacy of farmland reform.

With implementation of the 5-Year Economic Development Plan in 1962, land demand began to shift from farmland to factory sites, commercial land, and public land, and accordingly many land development laws were established to facilitate securing residential and industrial land.<sup>40)</sup> At that time, the economic development plan was carried out in connection with the food production increase plan begun in 1953, and accordingly the Public Waters Reclamation Act (1962), the Reclamation Promotion Act (1962), the Farmland Creation Act (1967), the Act on Preservation and Use of Farmland (1972), and the Act on the Promotion of Expansion and Development of Farmland (1975) were established in order to expand farmland.

The major agricultural policies and laws established and amended in this period include the Civil Code (enacted in 1958), the Farmland Reform Act (amended in 1960), the Constitution (amended in 1962), and the Act on the Preservation and Use of Farmland (enacted in 1972).

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40) For example, the Urban Planning Act (1962), the Act on Comprehensive Plans for Construction in the National Territory (1963), the Act on Development of an Export Industrial Complex (1964) and the Land Compartmentalization and Rearrangement Projects Act (1966).

### (1) Civil Law

The Civil Act (Act No. 471) was established on February 22nd, 1958, and enforced from January 1st, 1960. The Joseon Dynasty ownership factors were not transferred properly to this civil law, but the concept of ownership in Western or Japanese civil law was forcefully transplanted. As to farmland transactions, no provisions succeeded the traditional laws and there was no difference from the period when Japanese civil law applied, except for the provision on farmland inheritance (Article 996).<sup>41)</sup> However, the 1960s period after enforcement of the Civil Act was a period of laissez-faire that fulfilled the principle of freedom of contract,<sup>42)</sup> and the principle of registration of changes in the real rights of real estate (Article 186) led to changes in the effectiveness of farmland transaction contracts, without farmland transaction proof.

Also noticeable with regard to relations between the Civil Act and the Farmland Reform Act is that the civil act attempted to keep pace with the Farmland Reform Act despite the general priority between special and general laws and old and new laws. One example is the provision that stipulates “farmland shall not be the target of leasehold rights,” (Article 303 Clause 2). This provision is the reason farmland is still the only type of land that cannot be the target of leasehold rights.

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41) The provision on succession of graves, etc. originally stipulated that ‘the ownership of protected forest within 1 jeongbo (≒hectare) and farmland used to finance grave management within approximately 1983m<sup>2</sup>, genealogical records, and ritual utensils shall be passed on to the heir.’ With the amendment to the Civil Act (Act No.4199) on Jan. 13th, 1990, this provision was amended to ‘the ownership of protected forest within 1 jeongbo (≒hectare) and farmland used to finance grave management within approximately 1983m<sup>2</sup>, genealogical records, and ritual utensils shall be passed on to the person who presides over the ancestral rites.’ Song, Jae Il, 2013.

42) Song, Jae Il, 2013 (See Lee, Eun-Young. 2005. ‘Changes in the Korean Civil Act,’ Korean Cultural Study, p213)

## (2) The amended Farmland Reform Act

The amended Farmland Reform Act (Act No. 561), implemented on October 13th, 1960, supplemented the inadequacy of farmland reform. The amendment added farmer's huts, compost sheds, threshing floors, pumping stations and workshops to the list of auxiliary facilities necessary for farmland management (Article 2), and also stipulated that these facilities and non-self-cultivating orchards, seedling fields, mulberry fields and other perennial plant fields would be assessed separately based on market value (Article 7). In addition, the payment method for allocated farmland was changed from payment in kind or money, to solely payment in money (Article 13).

It also introduced exceptions to restrictions on transactions, etc., before completion of payment for allocated farmland, allowing such transactions for special purposes, such as schools, government, educational institutes, or scholarships and research (Article 16), as well as the procedural provision that once payment was completed, the head of the city, borough, or town shall register ownership transfer for the farmland in the name of the person allocated the farmland within 30 days of payment completion (Article 16). Before the amendment, suits were available for claims for return of allocated farmland if the person allocated the farmland was in arrears with payment. The amendment was changed and permitted disposal according to the example of disposition of national taxes in arrears (Article 18).

## (3) The amended Constitution

The Constitution of the Third Republic of Korea (Constitution No. 6), established in 1962, deemed that the goal of farmland reform related to high



rent, and that a landlord-tenant system was attained to a certain degree, and thus deleted farmland distribution provisions such as Article 86 of the first constitution, and stipulated in Article 113 that “the tenant farming system of farmland is prohibited under the conditions prescribed in the Act.” But there is criticism that the land to the tillers principle was mitigated or regressed, as the law enabled the existence of the tenant farming system.<sup>43)</sup> In addition, concerning the use of farmland, the amendment also inserted the provision that “The State may impose necessary restrictions and obligations for efficient use of farmland and mountain land under the conditions prescribed by the Act. (Article 114).”

#### (4) Act on Preservation and Use of Farmland

On December 18th, 1972, the Act on Preservation and Use of Farmland (Act No. 2373) was enacted to prevent the uncontrolled conversion of superior farmland, as the supreme goal of agriculture at that time was self-sufficiency in rice, which is a staple grain. This act, amended in 1975, aimed primarily at securing the farmland needed for self-sufficiency in staple grains through strict control by the authorities, by introducing the concept of absolute farmland (Article 2 Clause 5)<sup>44)</sup> and relative farmland (Article 2 Clause 6)<sup>45)</sup> as well as the ‘farmland conversion permit system’. As to farmland transactions, this act included the regulation on cultivation by proxy (Article 10), regulation on ‘farmland ledgers’ for farmland management (Article 17), and penal regulations on the conversion of farmland (Article 20), and

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43) Korea Legislation Research Institute. Apr. 2013. Workshop material “Analysis and evaluation of the agricultural legislation change process,” Korea Legislation Research Institute.

44) ‘Absolute farmland’ refers to farmland designated by the Ministry of Agriculture, Forestry, and Fisheries, which includes farmland created by public investment, farmland with improved agricultural infrastructure, and grouped farmland.

45) ‘Relative farmland’ refers to farmland other than absolute farmland.

enabled orders for restoration to the original state upon changes in the category of land after it took effect (Jan. 1st, 1973) (Article 7). The amendment of 1975 designated superior farmland as absolute farmland to strictly restrict its use for other purposes (Article 2), and prohibited the cultivation of perennial plants in rice paddies or fields with a 15% or less gradient (Article 12).

In the meantime, the Act on Promotion Farmland Expansion and Development of (1975) was established to implement a large-scale reclamation project on the southwest coast to respond to the food crisis triggered by the oil crisis of that time.

## 2. Modernization of agricultural communities

In the period between 1960 and 1970, many laws were established to modernize rural areas and improve production of agricultural products and farmland efficiency. During this period, the Korean economy saw the early stage of industrialization, and implemented policy on the improvement of agricultural productivity, focusing on support for the economic activities of the urban population through the production of agricultural products rather than the accumulation of agricultural surplus.

In particular, it is noted that many development and promotion laws were established during this period. Laws aimed at promoting the modernization of agricultural communities and a variety of land development laws were established to lay the foundation for industrialization and develop the land and oceans. During this process, modernization of agriculture and agricultural communities was also attempted, through various promotion laws led by the government.

Laws related to this include the Promotion of Electrification in Agricultural and Fishing Villages Act (enacted in 1965), the Promotion of Modernization

of Agricultural Villages Act (enacted in 1970), the Agricultural Mechanization Promotion Act (enacted in 1978), and the amended Constitution.

(1) Promotion of Electrification in Agricultural and Fishing Villages Act

Korea has suffered power shortage since 1945 due to its limited power facilities. In 1960s-1970s when industrialization was taking place, electrification of rural areas was far behind the urban areas where electricity was steadily provided for operation of manufacturing facilities. The Promotion of Electrification in Agricultural and Fishing Villages Act was enacted in 1965 in order to promote electrification of unelectrified rural areas and thereby increase agricultural and fishing productivity and improve the life quality of rural population.

Through this Act, the government decided to fund a loan totalling KRW 300 million from the government and the Industrial Bank, and launched the Agricultural and Fishing Villages Electrification Project. Originally, the loan was to be paid off in 20 years (Article 11); however, because the payment period was short and caused burden on rural families, the Act was amended in 1967 to extend the payment period to 30 years. The payment was to be made via monthly electricity bills (Article 12).

The electrification project which was launched based on this Act increased rural productivity and contributed not only to agricultural and fishing villages' economy but also to their education, culture, health and sanitary.

(2) Promotion of Modernization of Agricultural Villages Act

Promotion of Modernization of Agricultural Villages Act was enacted in 1970 with the purpose of promoting improvement, cultivation, preservation, and

categorization of farmland, as well as improvement of agricultural productivity and modernization of farm houses.

This Act launched three projects, namely, Farmland Improvement Project, Agriculture Mechanization Project, and Farmhouse Improvement Project; this Act functioned as the framework law for improvement of farming villages.

Article 1 (Purpose) This Act seeks to increase the productivity of agriculture through the improvement, development, and preservation and collectivization of farmland and agriculture mechanization and to improve farmhouses, thereby promote the modernization of the agricultural community.

Article 2 (Definitions) The terms used in this Act shall be defined as follows :

1. "Farmland improvement project" means the following projects enforced by this Act :
  - A. Installation, maintenance, change or abolishment, and amalgamation of the facilities required for the conservation or use of irrigation, drainage, farm-to-market, and other farmland (hereinafter referred to as "farmland improvement facilities")
  - B. Land readjustment
  - C. Conversion into paddy field or opening of new dry field
  - D. Filling or reclamation for agricultural purpose
  - E. Disaster recovery of farmland or facilities required for the preservation or use of farmland
  - F. The exchange and subdivision and amalgamation of the rights to farmland, rights to the land required for the use of farmland, and rights to use the agricultural facilities and water
  - G. Other projects required for the improvement or conservation of farmland
2. "Agriculture mechanization project" refers to the production or introduction of the machine and instruments used in agriculture to supply them to farms or provide their service to farmers to increase the production of agricultural products.

4. “Farmhouse improvement project” means the construction or improvement of farmhouses suitable for agricultural community modernization.

Article 4 (Principle of Farmland Improvement Project) The farmland improvement project shall be implemented to contribute to the comprehensive development and conservation of farmland resources to make them appropriate for the increase in agricultural productivity and development of agricultural economy.

The above mentioned projects were carried out mostly by the Agricultural Development Corporation.

### (3) Amended Constitution

The Constitution as amended in 1972 inserted an article which requires the State to establish and implement a plan to develop and support the farm and fishing communities. Although the amendment of the Constitution comes after than the Promotion of Electrification in Agricultural and Fishing Villages Act (enacted in 1965), or the Promotion of Modernization of Agricultural Villages Act in chronological order, other laws, such as the Agricultural Mechanization Promotion Act, were enacted after the amendment of the Constitution.

## Section 4. Restructuring and Opening Period : Late 1970s - 1990s

### 1. Income increase

Self-sufficiency in staple grains, the primary goal of agricultural policy in the 1960-70s period, was attained in 1977, and at this time, there were huge

changes in domestic and international economic and agricultural conditions. Beginning in the late 1970s, income disparities between urban and rural areas began to widen, and with the accelerated exodus from rural areas, labor shortages occurred and wages increased rapidly in rural areas. In addition, the improving economy spurred by a Middle Eastern construction boom, along with trade surpluses, led to an increase in income, and changes thus appeared in the national diet : demand for grain decreased while demand for meat, fruit, and vegetables increased.

Accordingly, it was necessary to reduce the income disparities between urban and rural areas through a restructuring of the agricultural sector, and move from grain farming based on land productivity, to horticulture and livestock, based on labor productivity. Improvements in the agricultural structure and a political switch regarding farmland mobilization were required. The government also strove to narrow the gap by developing income sources to increase incomes in agricultural and fishing villages, and providing support for debt alleviation. The laws established and amended for this purpose include the Constitution (amended in 1980), the Promotion of Income Source Development for Agricultural and Fishing Villages Act (enacted in 1983), the Farmland Lend-Lease Management Act (enacted in 1986) and the Special Measures for the Relief of Agricultural and Fishing Household Debt Act (enacted in 1989).

#### (1) Amendment to the Constitution

The Constitution of the Fifth Republic of Korea (Constitution No. 9), established on October 27th, 1980, prepared the constitutional grounds to legalize the already prevalent illegal leasing of farmland by stipulating in Article 122 that “Tenant farming shall be prohibited under the conditions prescribed

by Act. However, the leasing and consigned management of farmland to enhance agricultural productivity and reasonably utilize farmland, shall be recognized under the conditions prescribed by the Act.”<sup>46)</sup> However, follow-up legislation did not appear in time.

### **Chapter 9 Economy**

Article 122 Tenant farming shall be prohibited in accordance with the law. However, the leasing and consigned management of farmland to enhance agricultural productivity and reasonably utilize farmland, shall be recognized under the conditions prescribed by the Act.

Article 123 The State may, under the conditions prescribed by the Act, impose restrictions or obligations necessary for the efficient and balanced utilization, development, and preservation of the land of the nation including farmland and mountain land.

Article 124 ① The State shall establish plans required to develop farm and fishing communities based on the spirit of self-help among farmers and fishermen, and pursue balanced development of local communities.

② The State shall protect and foster the business activities of medium and small enterprises.

③ The State shall foster organizations founded on the spirit of self-help among farmers, fishermen, and businessmen engaged in small and medium industry and shall guarantee political neutrality.

## **(2) Farmland Lend-Lease Management Act**

Enactment of the Farmland Act to improve agricultural and fishing village structure, which was necessary as a follow-up of the Farmland Reform Act

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46) Although the Farmland Reform Act prohibited tenant farming and lend-lease of farmland, the judgment that leasing was unavoidable and desirable for expanding the scale of cultivation seems to have worked as one of the factors that led to the legislation.

of 1949, failed many times. For this reason, in order to address the issue of lend-lease of farmland liberalization separately, the Farmland Lend-Lease Management Act (Act No. 3888) was established on December 31st, 1986. However, the enforcement decree of the act (Presidential Decree No. 13077) was not established until August 27th, 1990, and the enforcement regulations (Ministerial Ordinance No. 1055) were established and enforced on December 4th, 1990.<sup>47)</sup>

This was the first act that systematically regulated the leasing of farmland to protect lessees, and it was also the legislation that improved on the weakness of the Farmland Reform Act (the acquisition of farmland by non-farmers) by reinforcing farmland transaction regulations. Specifically, the act introduced the provision that a person who intends to receive farmland transaction proof pursuant to the Farmland Reform Act shall receive confirmation from at least 2 members of the competent farmland management committee and request issuance of the proof from the head of the city, borough, or town (Article 19). This provision became the legal grounds for the establishment and operation of farmland management committees. In addition, the enforcement decree and enforcement regulations of the act prescribed additional requirements such as the provision on the operating distance between the abode and farmland for the issuance of farmland transaction proof, and the provision on the obligation of all family members to reside in the location of the farmland for at least 6 months (Enforcement Decree Article 23, and Enforcement Regulations Article 9 and 10).<sup>48)</sup>

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47) Although the Farmland Reform Act prohibited tenant farming and lend-lease of farmland, the judgment that leasing was unavoidable and desirable for expanding the scale of cultivation seems to have worked as one of the factors that led to the legislation.

48) The provision on operating distance was increased from 4km to 8km and to 20km through amendments to the Enforcement Decree of the Farmland Lend-Lease Management Act, and the provision on residing on the farmland location for at least 6 months was



### (3) Special Measures for the Relief of Agricultural and Fishing Household Debt Act

Due to the urban-rural disparity, the household debt per agricultural family continued to rise. In order to unburden the agricultural families, the Special Measures for the Relief of Agricultural and Fishing Household Debt Act was enacted in 1989.

This law fixed the interest rate for the loans which small scale agricultural families made from the Agricultural Cooperative, and any losses suffered by the Cooperative was to be borne by the government.

## 2. Structural improvements and the preparation for opening

In the 1990s, there were attempts to improve the structure of agriculture and agricultural communities and reinforce their competitiveness by improving the farmland ownership structure and the agricultural product distribution structure, expanding infrastructure and carrying out agricultural development projects. Behind these efforts was the upcoming free import of agricultural products agreed upon by the Uruguay Round negotiations commenced in 1986. To prepare for this opening, a Comprehensive Plan for the Development of Agricultural and Fishing Villages was established in 1987, which focused primarily on improving the agricultural structure, and with the end of the BOP provisions of GATT in 1989, it became urgent to improve the agricultural structure in such a way as to secure global competitiveness through mechanized farming.

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abolished when the enforcement regulations of the act were amended in 1994.

The laws regarding structural improvement that are enacted and amended in this period include the Amendment to the Constitution (amended in 1987), the Farmland Reform Act Enforcement Regulations (amended in 1988), the Special Measures for Development of Agricultural and Fishing Villages Act (enacted in 1990), and the Direct Payment Scheme for Producers of Agricultural Products Enforcement Regulations (enacted in 1997).

#### (1) Amendment to the Constitution

Amended on October 29th, 1987, the current Constitution (Constitution No. 10) is the result of democratization accomplished by citizens with improved awareness in the wake of economic development. With respect to farmland, it stipulated the land to the tillers principle in the Constitution for the first time (Article 121). It also moved the previous clause provision to Clause 2, adding a phrase ('due to unavoidable circumstances'): "The leasing of agricultural land and the consignment management of agricultural land to increase agricultural productivity and to ensure the rational utilization of agricultural land or due to unavoidable circumstances, shall be recognized under the conditions prescribed by the Act." It also added a new provision that the State shall endeavor to stabilize the prices of agricultural and fisheries products by maintaining an equilibrium between supply and demand of such products (Article 123 Number 4).

#### **Chapter 9 Economy**

Article 121 ① The State shall endeavor to achieve the land-to-the-tillers principle with respect to agricultural land. Tenant farming shall be prohibited.

② The leasing of agricultural land and the consignment management of agricultural land to increase agricultural productivity and ensure the rational utilization

of agricultural land or due to unavoidable circumstances, shall be recognized under the conditions prescribed by the Act.

Article 122 The State may impose, under the conditions prescribed by the Act, restrictions or obligations necessary for the efficient and balanced utilization, development, and preservation of the land of the nation that is the basis for the productive activities and daily lives of all citizens.

Article 123 ① The State shall establish and implement a plan to comprehensively develop and support farm and fishing communities in order to protect and foster agriculture and fisheries.

② The State shall have the duty to foster regional economies to ensure the balanced development of all regions.

③ The State shall protect and foster small and medium enterprises.

④ In order to protect the interests of farmers and fishermen, the State shall endeavor to stabilize the prices of agricultural and fisheries products by maintaining an equilibrium between supply and demand of such products and improving their marketing and distribution systems.

⑤ The State shall foster organizations founded on the spirit of self-help among farmers, fishermen, and businessmen engaged in small and medium industry and shall guarantee their independent activities and development.

## (2) The Enforcement Regulations of the Farmland Reform Act

Intense real-estate speculation around the presidential election in 1987 and the Olympics in 1988 led to a dramatic increase in land prices.<sup>49)</sup> With respect to farmland transactions, the operation of the farmland transaction proof system was reinforced. More specifically, the Enforcement Regulations of the Farmland Reform Act (Ministerial Ordinance No. 1006), amended on

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49) The national mean land price rose 22% from a year earlier at the end of 1988, 32% at the end of 1989, and 21% at the end of 1990. Korean Rural Economic Institute. 1995. White Paper on Farmland Legislation, p88.

November 3rd, 1988, stipulated that a person who resided in the seat of farmland with their whole family transferred to the location for at least 6 months prior to the issuance of the proof would be entitled to receive the farmland transaction proof (Article 51)<sup>50</sup>, reinforcing the proof system.

### (3) The Special Measures for Development of Agricultural and Fishing Villages Act

Established on April 7th, 1990, the Special Measures for Development of Agricultural and Fishing Villages Act (Act No. 4228) was aimed primarily at improving the agricultural structure in preparation for conversion into an open economy, designating agricultural promotion areas and allowing the possession of farmland by agricultural association corporations and agricultural corporations. Due to the limitations of the superior farmland preservation method according to the existing Act on Preservation and Use of Farmland, the Japanese model of agricultural promotion area designation was introduced in order to implement planned development of agricultural and fishing villages by preventing sprawling development caused by uncontrolled conversion of farmland (Article 40).<sup>51</sup> In addition, the act introduced the farmland conversion report program with respect to increases in the income of farms and installation of amenities, and changed the permission system for decorative tree planting to a declaration system (Article 47). This act brought some groundbreaking changes with respect to farmland transactions. First, it per-

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50) Applies when a non-farmer who plans to become a farmer acquires farmland.

51) Whereas the existing farmland preservation method was the preservation of farmland by lot based on whether it was absolute or relative farmland, the agricultural promotion area scheme divides areas into preservation areas and conversion areas and manages farmland by zone. However, designation of agricultural promotion areas was only completed in December 1992 due to objections by farmers, and the designated areas amounted to just 1.8 million hectares, 48.2% of the all farmland area.

mitted a group of 5 or more farmers engaged in farming in the city or county for 3 or more years to jointly establish an agricultural association corporation, and allowed agricultural association corporations to own farmland (Article 6). In addition, in order to facilitate farm management for farm families in need due to an inadequate agricultural labor force and enhance their agricultural productivity, the act established grounds for trusted farming corporations (present agricultural corporations) in the form of corporations according to the Commercial Act, which are permitted to carry out all or part of the agricultural management or agricultural work by proxy (Article 7). According to the Farmland Reform Act, only farming families may possess farmland. However, this act enabled corporations that meet certain requirements to acquire farmland.

The amendment to the Special Measures for Development of Agricultural and Fishing Villages Act (Act No. 4552), amended on June 11th, 1993, increased the cap on possession of farmland specified in the Farmland Reform Act (3 hectares) to a large extent within the agricultural promotion area. Specifically, a person who intends to engage in self-cultivation or self-management (hereinafter referred to as 'self-cultivating farms, etc.')

may own farmland of up to 100,000m<sup>2</sup> (10ha) per family within an agricultural promotion area. (However, the cap (3ha) remains effective for farmland outside an agricultural promotion area.) Furthermore, self-cultivating farms, etc., may own an additional 10ha of farmland, totaling up to 20 hectares, within an agricultural promotion area by receiving confirmation from the farmland management committee and receiving farmland transaction proof from the head of the city, county, or borough (Article 43-2).<sup>52)</sup> On the other

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52) This was the first post-disposal obligation and was succeeded by the provision under Article 10 of the current Farmland Act.

hand, concerning farmland acquired by non-farming families due to exodus from rural areas or inheritance, the act introduced a post-disposal obligation : within 60 days from when a family became a non-farming family, they were obligated to report the change of status to the authority and dispose of part of the farmland exceeding 3ha within 3 years (Article 43-3). The act also enabled the Rural Development Corporations to purchase such farmland through negotiation if the family failed dispose of it. The act also prescribes that the inheritance, donation, or transfer of farmland within an agricultural promotion area in a lump shall be supported, in order to prevent subdivision of farmland (Article 43-4).

### 3. Enactment of the Farmland Act

The amended Farmland Reform Act of 1950 which carried out farmland reform according to the first Constitution of the Republic of Korea formed the basic law regarding farmland in Korea until it was replaced by the Farmland Act that took effect in 1996.<sup>53)</sup> With only one partial amendment (1960), the Farmland Reform Act of 1950, however, failed to properly regulate changes in the industrial environment and maintained its declaratory nature. During the period between 1958 and 1979, six attempts<sup>54)</sup> to amend the

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53) Both the Supreme Court and government considered the Farmland Reform Act as a law in force only for a limited period of time, but in reality, most of the clauses existed as ‘dead-letter’ provisions, and only the provisions related to issuance of farmland transaction proof (Article 19, etc.) maintained their ‘odd’ effectiveness in the form of regulating farmland transactions based on precedent.

54) The first farmland bill (1958-1959) was deferred due to the possibility of causing chaos ahead of the Presidential election (1960) and in particular, the provision on auction of illegally possessed farmland became controversial. The second farmland bill (1961) had content similar to the first one, and was suspended until power was transferred from the military administration to the civil administration. The third farmland bill (1968-1971) was discarded with expiration of the National Assembly term. The fourth farmland bill (1972)

Farmland Reform Act or establish the Farmland Act were made with the main content including the prohibition on possession of farmland by non-farmers and disposal of such farmland, increase in the farmland ownership cap, and recognition of corporate farming, but all bills failed in legislation due to the sharp conflicts of interest and opinions.

With the WTO launched with the complete settlement of UR negotiations on December 15th, 1993, it became impossible to postpone agricultural restructuring any further to strengthen the global competitiveness of agriculture. Accordingly, social consensus about the establishment of the Farmland Act was formed, which primarily aimed at expansion of the scale of agricultural management by promoting the exchange, dividing, combining, and leasing of farmland with deregulation of farmland transactions.<sup>55)</sup>

So a seventh farmland bill was prepared, and after negotiations, the Farmland Act (Act No. 4817) was established and promulgated on December 22nd, 1994, and took effect from January 1st, 1996 encompassing 6 chapters and 65 articles. According to Article 2 of the supplementary provisions of the act, the existing farmland laws, such as the Farmland Reform Act, the Special Measures for the Consolidation of the Farmland Reform Project Act, the Soil Fertility Enhancement Act, the Preservation and Use of Farmland Act, the Farmland Lend-Lease Management Act, and the Agricultural Land Security Act, were repealed in 1996, when the act took effect.

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showed no progress. Instead, the Preservation and Use of Farmland Act was established. Establishment of the fifth farmland bill (1974) was suspended pending an order from the President. The sixth farmland bill (1979) was deferred to 1981 due to the chaotic domestic situation. From then, until the inauguration of the Kim, Young-Sam government in 1993, there was no discussion of the bill. For information on farmland bills, see Korean Rural Economic Institute. 1995. White Paper on Farmland Legislation, p40-99.

55) Establishment of the Farmland Act was a campaign pledge of the ruling party in the presidential election of 1992.





At that time, the first back-to-the-land trend appeared, as many unemployed urban citizens moved to rural areas. Despite an increase in the back-to-the-land population and exports of agricultural products, government policy was primarily focused on cities or commerce and industry, while support for agriculture or policies on improvements of the settlement environment in agricultural and fishing villages was relatively slow to progress and no proper back-to-the-land policy ever emerged. For this reason, when the IMF period came to an end, a large number of the families that moved to rural areas returned to urban areas.

South Korea met the new millennium under these circumstances, and entered an economic recovery period around the Korea-Japan World Cup of 2002, after the IMF crisis. In addition, until the Korea-Chile FTA was signed in 2004, the Kim, Dae-Jung government implemented neo-liberal agricultural policy, including the attraction of foreign capital, labor flexibility and the fostering of venture intellectuals and venture agro companies, endeavoring to attract urban capital to rural areas.

Then, after a series of financial crises caused by the subprime mortgage collapse in the U.S. financial market in 2007, the world confronted a global economic crisis, and developed countries such as Japan, the U.K., and France, as well as the U.S. also suffered from a worsened economic situation, with ripple effects around the world. In South Korea, there were many changes in agricultural communities with the retirement of the baby boomers, an increase in youth unemployment, an increase in eco-friendly and organic agriculture with the 'wellbeing' health trend, and most of all, a second back-to-the-land movement.

With such a socio-economic background, Korean agriculture reached a turning point around 2000, with two significant elements. First, there were

changes in the agricultural policy derived from a change in awareness of agriculture as an industry. The government established a policy for the sustainable development of agriculture and agricultural communities through the systematic development of forward and backward industries related to agriculture. Laws related to this include the Agriculture, Rural Communities, and Food Industry Framework Act (enacted in 2000).

Second, as the agricultural population which suffered aging and reduced numbers began to gradually increase thanks to the back-to-the-land trend, the government introduced policies to help these urban to rural returnees settle down in rural areas, including improvement of welfare for farmers, support for future agricultural and fishing managers, support for agricultural and fishing start-ups, and support for housing purchases. Related laws include the Improvement of the Quality of Life of Farmers, Foresters and Fishers and Promotion of the Development of Agricultural, Mountain, and Fishery Areas Special Act (enacted in 2004).

### 1. Framework Act on Agriculture, Rural Communities, and Food Industry

With the inauguration of the Lee, Myung-Bak government in 2008, the government launched the Ministry of Food, Agriculture, Forestry, and Fisheries through the reorganization of its administrative organization and the Agriculture, Rural Communities, and Food Industry Framework Act is the result of its efforts to expand the scope of agriculture and fisheries to food. This act also introduced matters on the public function of agriculture and agricultural communities, such as environmental protection, and enabled the establishment of policies regarding the recognition of the social and economic status of women farmers. In addition, in preparation for the

reunification of North and South Korea, the act aimed at investigation and research on North Korean agriculture and complementary development between North and South Korea, and enabled the establishment of support policies to reinforce global cooperation.

The Agriculture, Rural Community and Food Industry Framework Act is a parent law comprising 4 chapters and 63 articles, which declares the spirit of the legislation of individual agricultural laws. It consists of : the general provisions; the basic direction of policy on agriculture, rural communities, and food industry; the establishment and implementation of policy on agriculture, rural communities, and food industry (stable supply of safe agricultural and fishery products and food of good quality, training of agricultural and fishing labor force, use and preservation of farmland and fishery resources and fishing grounds, advancement of agricultural and fishery production structure, improvement of public functions of agriculture and fisheries and rural communities, development of agricultural and fishing communities and enhancement of quality of life, policies and international cooperation regarding agriculture, rural communities and food industry in preparation for the reunification of North and South Korea); and supplementary rules.

Combining the characteristics of both the declaration-centered Agriculture Framework Act (established in 1967) and the execution-centered Special Measures Act of the Farmland Reform Act (established in 1990. In particular, the provisions on the improvement of the structure of rural communities), this act stipulates strategy for the development of agriculture and rural communities, the government's responsibilities for this and matters necessary for agricultural development, such as training and farmland conversion charge. Individual policies are prescribed in related laws. This act is evaluated to

have established new grounds for 21st century agricultural policy by introducing the direct payment system; fostering agricultural ventures and eco-friendly agriculture; developing agriculture in preparation for reunification; reinforcing comprehensive competitiveness in production, distribution, quality and stability; strengthening cooperation between farmers, consumers, and government; and linking with the food industry for complex industrialization in rural communities.

## 2. Improvement of Quality of Life of Farmers, Foresters and Fishers and Promotion of the Development of Agricultural, Mountain, and Fishery Areas Special Act

The purpose of this act is to improve the welfare of farmers, foresters and fishers, enhance the educational environment of rural communities, and establish comprehensive and systematic support system for local development in order to address anticipated increases in difficulty resulting from the spread of FTAs and the progress of WTO negotiations on agricultural products with a widening income gap and standard of living between urban and rural areas.

In particular, service items and the target value of the service criteria for agricultural and fishing villages attached to the enforcement decree amendment of this act of 2011 specify a target value for each item throughout the sectors including housing, transportation, education, healthcare, welfare, emergency services, culture, and IT. This service criteria needed to comprehensively enhance the welfare and quality of life of farmers, is included in the rural community development plan, established and implemented every 5 years.

## Chapter 4. Analysis and Evaluation of the Korean Agricultural Policy and Law

### Section 1. Evaluation of the Laws in the Reform Period

In the Reform Period from 1945 until around 1960, Korea was being reformed not only in its agricultural industry but throughout almost all areas. When a lot of things were reset due to political changes, such as the Independence and establishment of a new government, and the Korean War, Korea's economic growth inevitably began from agriculture in which most of its population was engaged.

The first Constitution provided for the distribution of farmland to the farmers based on the land to the tillers principle. Based on this principle, the Farmland Reform was carried out; the Reform established independent farm owners and set limits to farmland trade. In other words, farmland sales required farmland sales registration, and all tenancy and leasehold of farmland was forbidden. While there has been change to the legal terms, this basic principle is still being succeeded in Korea's modern agricultural laws.

The Farmland Reform Act was not without problem. In order to fix the problems in the Farmland Reform Act, the government attempted to establish the Farmland Act in 1958 but such efforts foundered many times, and the government would establish, implement and abolish stopgap regulations whenever policies related to farmland were required. For this reason, there is criticism that 'The Farmland Reform Act' is very irresponsible legislation in terms of legal stability and effectiveness, and became ineffective incapable of resolving any continuing farmland problems at all.

Despite these problems, however, the Farmland Reform Act achieved many results. From a socio-economic perspective, it is noted that unlike the communistic Farmland Reform executed in North Korea, the act cleaned out the landlord-tenant relations through confiscation with compensation and paid distribution, and that the act created a large number of landed farmers by focusing on creation of such based on the land to the tillers principle. As a result, the semi-feudal non-cultivating landlord system formed during the Japanese colonial period was dissolved and farmer land ownership was established.

In the meantime, from a legal perspective, Farmland Reform achieved the following results.<sup>56)</sup> First, it enabled farmer liberation practically as well as legally. Despite some flaws, such as a heavy burden of repayment and omission of tenant farmlands due to landowners reluctance to cooperate, the Farmland Reform liberated tenants from the high feudal rents that they paid their landlord and non-economic compulsion.

Second, Farmland Reform enabled the establishment of practical modern land ownership. Whereas the land survey and use of Japanese civil law under the Japanese colonial rule reconfirmed modern land ownership in terms of formality, Farmland Reform enabled the establishment of practical modern farmland ownership characterized by ‘farmland owned by farmers’. This led to the natural application of civil law to rural communities.

Third, it was the first application of limits on farmland ownership in Korea. Although the Constitution stipulates the guarantee and limits of property rights, the Farmland Reform Act introduced restrictions such as a farmland ownership cap and prohibition of tenant farming. This means it put limits

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56) Song Jae Il, 2013, at 41.

on the absolute principle of ownership or the principle of freedom of contract in terms of public interest and social aspects.

## Section 2. Evaluation of the Laws in the Modernization Period

### 1. Evaluation of the laws on farmland improvement and preservation

In this period, the reality was not governed by the spirit of the Constitution and it was also impossible to perfectly regulate the activities of all economic subjects.<sup>57)</sup> For this reason, there was still 160,000 jeongbo (≒hectares) of tenant farmland after farmland reform, threatening the landed farmer system, and this led to leasing of farmland prohibited by the Farmland Reform Act.<sup>58)</sup>

Moreover, with the industrialization of the 1960s, there was a huge change in the economic reality surrounding the possession and use of farmland, compared to the time of farmland reform. Many farmers left farms without disposing of their farmland, and there was also an increase in the number of non-farmers who legally acquired farmland through inheritance or donation. As a result, there was a gradually widening gap between the land to the tillers principle and the possession and use of farmland.

In addition, as the agricultural policy of this period aimed at self-sufficiency in staple grains through an expansion of food production, it focused primarily on farmland preservation to prevent the conversion of superior farmland, and the production and supply of chemical fertilizers or pesticides from industrialization brought about a green revolution. On the other hand, the

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57) Id. at 19.

58) Korea Legislation Research Institute. Apr. 2013, p19.

problem of farmland possession by non-farmers through an exodus from farming areas and inheritance, illegal leasing of such farmland, and the subdivision of farmland intensified as well.

In sum, although the enactment and amendment of the Civil Code, the Farmland Reform Act, amended Constitution, and the Act on the Preservation and Use of Farmland contributed to preservation of farmland and increase of agricultural productivity in short-term, industry-centered development plans and illegal farmland sales, lease, and use caused decline of agricultural industry in long-term.

## 2. Evaluation of the laws on modernization of farming communities

This was a period where industrialization of urban areas and modernization of rural areas took place and the urban-rural disparity began. In order to solve the disparity problem, laws such as the Promotion of Electrification in Agricultural and Fishing Villages Act, the Promotion of Modernization of Agricultural Villages Act, the Agricultural Mechanization Promotion Act, and the amended Constitution were enacted and amended for promotion of modernization of rural areas. Projects launched based on these laws electrified, modernized, and improved rural areas, houses, and farmlands. However, the overall social and economic status of agriculture and farming families did not improve. As a result, while farmhouse income increased due to increased agricultural productivity, household debt in rural areas also increased, resulting in net unimproved economy of farming families.

In the beginning stage of the implementation of the Promotion of Modernization of Agricultural Villages Act, there was confusion regarding the role of local governments and the Ministry of Agriculture and Forestry, and as



a result, these laws had to be amended several times. After the amendments, the Act delegated many authorities to the Agricultural Development Corporation which resulted in a more focused and professional management of the projects.

### Section 3. Evaluation of the Laws in the Restructuring and Opening Period

1977 was the year in which Korea achieved USD 10 billion export target, as well as self-sufficiency of rice. From this point on, Korea's agricultural industry was restructured and moved away from rice-centered structure to flower and dairy-centered agriculture. At the same time, a reasonable use of farmland was required in order to secure large-scale farmlands. This was a period where the Constitution was amended and the Farmland Lend-Lease Management Act was enacted, but fundamental improvement of agricultural legislation was failed to be achieved due to the temporary nature of the Farmland Reform Act.

During this period, in the Western part of the world including the US, the problem of over-production of agricultural production became an issue, and food-importing countries such as Korea was in need of agricultural restructuring. However, with the presidential election and democratization in 1987, hosting of the Olympics in 1988, and other national changes and events pushed agricultural issues out of the spot-light. In the 1990s, in order to overcome the problems such as aging of agricultural population and the small-scale of farms, various special measures acts were enacted. However, these were temporary in nature and did not provide a fundamental solution. As such, with the lingering problems in the agricultural industry, Korea hit a low level of self food sufficiency that posed a serious threat to its food security.

At this period, the Enforcement Decree of the Farmland Reform Act was amended to reinforce the farmland sales registration system and impose a stronger limit on farmland sales. When the Enforcement Decree was enacted, the government enacted and amended other laws related to the use and management of land in order to control speculative investment in land. However, along with the economic slump in 1990, the government's strong real-estate speculation control policy led to a drop in real-estate prices, and farmland transactions were reduced earlier than other transactions, consequently lowering the prices of farmland.

The sharp drop in the farmland prices, which had continued to rise to a large extent, caused farmers to experience losses in their assets, which triggered great complaints from farmers who had already suffered from worsening agricultural conditions.<sup>59)</sup> For this reason, farmers who planned to leave their town and quit farming demanded the abolition of the farmland transaction proof system, which prohibited non-farmers from acquiring farmland, and amendment of the farmland system based on the land to the tillers principle so that they could transact farmland freely.

In other words, the land to the tillers principle and the limits on farmland transaction which was adopted for the farmers worked unfavorably to the farmers under the economic situation of this period.

The Special Measures for Development of Agricultural and Fishing Villages Act enacted in this period brought a ground-breaking change, namely, permission of ownership of farmland by agricultural association cor-

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59) Song, Jae Il, 2013 (According to Korean Rural Economic Institute statistics, the consumer price in 1987 rose 3.2% over a year earlier, but the price of rice paddies rose 19.2% and the price of fields rose 37.1%. In 1989, the consumer price rose 6.5%, while the price of rice paddies rose 44.1% and the price of fields rose 55.9%. In contrast, in 1992, the price of rice paddies rose 0% and that of fields rose just 1.2%, and in 1993, the former dropped 4.5%, and the latter dropped 3.3%. This drastic collapse in prices frustrated farmers.)

porations. Also, it provides for the first time the basis for the government's comprehensive plan for agricultural development, and this Act acted as the idealistic parent law of individual agriculture-related laws until the Framework Act on Agriculture, Rural Communities, and Food Industry was enacted.<sup>60)</sup>

The Farmland Act was enacted when, in the beginning of the Opening Period, restructuring of agricultural industry could no longer be postponed. At this period, the WTO regulations appeared as a new aspect in production and trade of agricultural products. The Farmland Act restructured the farmland system by combining the old laws and adopting a new farmland system that supports and equips farmers for the new reality.

The Farmland Act underwent a numerous amendment by easing many regulations as the rural structure and population composition of the agricultural industry went through changes in recent years. Such amendments were criticized for going against the original purpose of the law and for causing confusion; however, the amendment made in 2012 reinforced regulation on lease of farmland and is evaluated to be in line with the Act's original purpose.

## Section 4. Evaluation of the Laws in the Transitional Period

### 1. The Agriculture, Rural Communities, and Food Industry Framework Act

The Agriculture, Rural Communities, and Food Industry Framework Act is a declarative, ideological framework law, as it has the nature of being a parent law for individual agricultural laws. Whereas the Agriculture Framework Act established in the 1960s dealt with the direction of agricultural

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60) Sha, Dong Chun, "Evaluation of the laws on agricultural community in Korea", Workshop Material, Korea Legislation Research Institute, 2013, 101.

development, the Agriculture and Rural Communities Framework Act, established in the 2000s, reflects the demand of the times that agricultural industry cannot be resolved simply through an agricultural economy, but should be considered in combination with the development of rural communities. The Agriculture, Rural Communities, and Food Industry Framework Act, established in the 2010s, included the food industry to pursue complex industrialization in combination with tertiary industry because it was not easy to develop rural communities and improve the farm incomes solely through agricultural and fishery products within the primary and secondary industries.

Belatedly, but pursuing the policy of agriculture as a comprehensive industry, this framework act also has limits because it was established and amended without in-depth research whenever the government changed. Furthermore, regulations on fostering exports of processed agricultural and fishery goods stipulated in Article 58 and 59 are very inadequate, and no more than export and import policy in preparation for sharp increases in the prices of domestic agricultural and fishery products.

Nevertheless, the act is evaluated to have laid the foundation for the advancement of agriculture as a future industry by raising the status of agriculture to a secondary industry rather than as a simple food production industry, by including food in agriculture, and encouraging R&D and the protection of agricultural intellectual property rights.

## 2. The Improvement of Quality of Life of Farmers, Foresters and Fishers and Promotion of the Development of Agricultural, Mountain, and Fishery Areas Special Act

The Improvement of Quality of Life of Farmers, Foresters and Fishers and Promotion of the Development of Agricultural, Mountain, and Fishery

Areas Special Act provides for a systemic establishment of a basic plan and implementation plan. Based on this provision, in April 2005, 15 government ministries and departments jointly established the First 5-Year Plan for Improvement of Quality of Life of Farmers, Foresters and Fishers and Promotion of the Development of Agricultural, Mountain, and Fishery Areas.

According to the provisions on inspection and evaluation in Articles 9 and 10 of this act and Article 6 of the enforcement decree of this act, this plan evaluates the results of the action plan for improvement of quality of life annually, reflected in the yearly plan in order to raise the efficiency of each individual project and improve the credibility of the plan. Opinions have been expressed, however, that it is necessary to establish an efficient and impartial evaluation system for the plan.

## Chapter 5. Implications and Conclusion

In South Korea, constitutionalism based on the first Constitution laid the foundation for economic and social democratization through the Farmland Reform Act. Although its early principles of fostering landed farmers and prohibiting illegal leasing of farmland were somewhat weakened in this process, agricultural policy and law have improved through trial and error while responding to a series of environmental changes such as industrialization, democratization, globalization, and economic crises.

In 2009, nevertheless, South Korea joined the OECD Development Assistance Committee (DAC) and became a donor of official development assistance, and as of 2011, it has been implementing a variety of international cooperative projects in the agriculture and rural community sector with a budget of 20.9 billion won.

Most of the international cooperative projects in the agriculture and rural community sector are concentrated on rural community development in the project unit, and need to be more systematic and better suit the local environment.

Furthermore, as many of the recipient countries do not have advanced land policy and law as of yet, cooperative projects may be difficult to establish and run in the long term without considering the country's legal circumstances.

Accordingly, South Korea carried out farmland reform immediately after independence and clarified the land to the tillers principle in its constitution, laying the foundation for modern agricultural legislation. Although many temporary stopgap laws were established due to a lack of studies on systematic agricultural legislation, recently changes in awareness of the importance of

systemizing agriculture and agricultural policy and law have emerged. From this perspective, this chapter will attempt to draw lessons to share with target countries of development cooperation. Also, in this research, only a few selected laws were studied and evaluated; however, in the future, it would be necessary to objectively review and evaluate the large volume of laws on agriculture, farmland, agricultural community.

## Section 1. Possession of Farmland

From the time of establishing its Constitution, South Korea clarified the land to the tillers principle in its Constitution and attempted to break down the tenant farming system. Eliminating tenant farming has had the effect of recognizing the rights of farmers and improving the productivity of landed farmers. In addition, tenant farmers before farmland reform were an economically vulnerable majority of the society, and given the fairness, such legislation is not only reasonable but also indispensable.

In order to fulfill the land to the tillers principle, South Korea limited qualification for the acquisition of farmland and implemented a farmland disposal order system, with method and intensity of limits on farmland acquisition needing to change depending on the conditions of the period. For example, before establishment of the Farmland Act, the government strictly limited qualification for farmland acquisition through methods such as operating distance requirement, residence requirements and farmland possession caps. Through amendments to the Farmland Lend-Lease Management Act Enforcement Decree, the operating distance was gradually increased from 4km to 8km, and then 20km, but the operating distance and residence requirements were then abolished with the establishment of the Farmland Act. Instead, the

government led those who acquired farmland to use it faithfully according to the originally planned farming purpose, and also introduced the farmland disposal order system to dispose of allocated farmland if the person who acquired it did not carry out farming on the land. In other words, the act made it easier to acquire farmland but imposed forced disposal unless it was used faithfully. As the concept of operating distance was practically meaningless due to the progress of transport, infrastructure, and changes in dwelling form, such change was reasonable and unavoidable.<sup>61)</sup>

With the settlement of Uruguay Round negotiations, it became unavoidable to undergo the restructuring of Korean agriculture. Accordingly, the government promoted expansion of business scale and expanded the qualification for possession of farmland to farmers and agricultural corporations. Like farmers, agricultural corporations were also responsible for farming. It is thought that if agricultural products were the main export item or domestic demand for a certain crop such as rice was absolute, it would be necessary to allow agricultural corporations to possess farmland so that they could conduct mass cultivation and improve competitiveness.

## Section 2. Farmland Conservation

Farmland has been contracted or preserved depending on conditions. Preservation of farmland in South Korea was implemented not by market autonomy, but through institutional measures. This was because the food self-sufficiency rate was low due to a small area of farmland per capita.

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61) However, there is the opinion that in order to prevent the possession of farmland for speculative purposes, qualification for farmland acquisition should be limited to the proper degree. Kim, Byeong-Taek. 2002. "Korean agricultural policy - development and strategy," Hanul Academy. P398-408.



With current threats to food security, there is an urgent problem to secure farmland and a high food self-sufficiency rate.

If demand for industrial land and development increases due to industrialization, farmland is relatively reduced. In South Korea, with the reorganization of industrial structure focused on the heavy chemical industry, the total farmland area began to be reduced in the 1970s<sup>62)</sup>, when urbanization accelerated, and factors such as farmland conversion, unused farmland, and loss of farmland also contributed to the reduction in farmland area.<sup>63)</sup> Farmland was also frequently used for illegal inheritance or speculation.

With regard to these problems, it is understood that after farmland reform in 1950 according to the Farmland Reform Act, the Farmland Act to systematically govern farmland transactions was not established immediately, and this caused a gap between the law and reality, resulting in frequent violations of the law. In addition, it is also pointed out that the criteria for judgment in applying the law were not reasonable because there was no legal clarity regarding the concept of farmland or farmers (and farming families).<sup>64)</sup>

In addition, it is necessary for the government to take the lead, express its will, and conduct systematic management with regard to the preservation of farmland. In South Korea, farmland was divided into those in an agricultural promotion area and others, and as farmland outside agricultural promotion areas were designated semi-agricultural land pursuant to the

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62) The Utilization and Management of the National Territory Act was established in 1972, and when it was amended in 1993, regulations on farmland conversion were to a large extent relieved.

63) Whereas in urbanized Gyeonggi and Chungcheong provinces, a reduction in farmland area was primarily attributed to farmland conversion, in Gangwon, North Gyeongsang, and South Gyeongsang provinces which include many less favored areas, a reduction in farmland area was usually caused by the occurrence of unused land. Kim, Byeong-Taek. 2002. p396.

64) Korea Legislation Research Institute. Apr. 2013. Workshop material "An analysis and evaluation of the agricultural legislation change process," Korea Legislation Research Institute.

Utilization and Management of the National Territory Act, it became easier to convert farmland to other land,<sup>65)</sup> leading to sprawling development.<sup>66)</sup> In addition, after transfer of farmland conversion permit rights to local governments, these governments converted and developed farmland without proper plans, just to secure financial revenue. These cases provide a lesson in that the central government should intervene in the development of national land and the preservation of farmland in a strict and planned manner.

### Section 3. Food Policy

In relation to agriculture as a source of food, the period in which agricultural laws played a notable role in Korea was in the Modernization Period, when the rice self-sufficiency was one of the main policy goals, and the Transitional Period, when the food crisis began.

The staple grain of South Korea is rice, which accounts for over 85% of all grain production. It is thus no exaggeration to say that food policy is rice policy in South Korea.<sup>67)</sup> Korean food policy has been primarily focused on the cultivation and distribution of rice and support for rice-cultivating farms.

Food policy in South Korea, which suffered extreme poverty and starvation until the 1960s, was aimed at securement of absolute quantities of food and fair distribution, with procurement of food through foreign aid, and almost compulsory implementation of purchasing quotas and strong market control. In the 1970s, however, the government endeavored to attain self-sufficiency

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65) In areas designated semi-agricultural land pursuant to the Utilization and Management of the National Territory Act, facilities other than pollution discharging ones may be installed. Kim, Byeong-Taek. 2002. P409.

66) Kim, Byeong-Taek. 2002. P409.

67) Yim, Sang-Gyu. 2009. "Green hope, the future of agriculture," Mael Business Newspaper, p96.

in staple grains and attained this goal. In the process, pesticides and fertilizers were supplied and tongil rice, a high-yield variety, was widely cultivated. In the 1980s, agricultural machines were supplied to complement the reduced agricultural labor force. In the 1990s, the food policy reform, rice industry plan, and direct payment system for rice farming were implemented. With an increase in rice cultivation area in the late 1990s, there were concerns about an excess supply of rice. In the 2000s, therefore, the government stabilized rice prices by encouraging cultivation of crops other than rice and conducted a rice production adjustment program.<sup>68)</sup>

In 2004, there was a re-negotiation of rice tariffs, which were delayed in the Uruguay Round, and after that, the Grain Management Act, the basis for food policy reform, was amended and the Act on Rice Income, Etc. Compensation was established.

After food policy reform, however, the income of rice-cultivating farms has not yet been stabilized, and the direct payment system has exposed many holes and problems in terms of level of support and targets of support.

Moreover, combined with problems such as climate change and the food security crisis, an increase in global grain prices is emerging as a worldwide issue. To address this, there is the urgent task to utilize marginal and unused land, expand the grain reservation system, develop overseas farming<sup>69)</sup>, and prepare indicators for information on global food supply and demand.<sup>70)</sup>

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68) Id., p101.

69) With regard to the development of overseas farming, extra care should be taken as to its method. Developing overseas farming for food security in the form of purchasing farmland in developing countries with a large area of undeveloped or cultivable land and supplying food to the home country by using the low cost local labor is being criticized in international society.

70) Yim, Sang-Gyu. 2009, p114-115.

In addition, with the food safety issues and new technologies such as GMO, food consumers are threatened with distrust on food safety and confusion with numerous food certifications. The situation calls for a clear and unified standard for food certification and stringent control of imported food. In order to respond to such needs, the current Agriculture, Rural Communities, and Food Industry Framework Act provides for investment in overseas agriculture, as well as for control over import of agricultural, fisheries, and food products. However, because these provisions are general and short, a follow-up legislation to specifically address these issues must be enacted.

Although agriculture becomes pushed out of a the group of major industries in a nation over the course of economic development, it is still necessary to establish policies suitable to the times according to long-term and systematic development plans, considering the characteristics of agriculture and rural communities, for the continuous development of agriculture directly related to food security. It is necessary to enhance the efficiency of agriculture and support new types of agriculture and a return to farming.

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