AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE SWISS CONFEDERATION CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Korea and the Government of the Swiss Confederation.

Desirous of strengthening the economic co-operation between both States,

Intending to create favourable conditions for capital investments in both States and to intensify the co-operation between private companies of both States in the field of technical science and of productivity,

Recognizing the need to protect investments by nationals and companies of both States and to stimulate the flow of capital with a view to the economic prosperity of both States,

Have agreed as follows:

Article 1.

Each Contracting Party shall in its territory promote as far as possible investments of nationals or companies of the other Party and admit such investments in accordance with its legislation and rules and regulations framed thereunder.

Article 2.

1. Each Contracting Party shall protect within its territory investments made in accordance with its legislation by nationals or companies of the other Contracting Party and shall not impair unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension and, should it so happen, liquidation of such investments. In particular each Contracting Party shall grant the necessary permits in connection with such investments and with the carrying out of contracts of licence and technical, commercial or administrative assistance, as well as with the activities of consultants and other qualified persons of foreign nationality.

2. Each Contracting Party shall in particular ensure fair and equitable treatment within its territory to investments of nationals or companies of the other Contracting Party: the treatment shall be at least equal to that granted by the Party to its own nationals or companies or to the treatment granted to nationals or companies of the most favoured nation if the latter is more favourable.

Article 3.

Each Party in the territory of which investments have been made by nationals or companies of the other Party shall grant to these nationals or companies the free transfer:

a. Of interests, dividends, benefits and other current returns;

b. Of amortization and contractual repayment,

c. Of amounts assigned to cover expenses relating to the management of the investment

d. Of additional contributions of capital necessary for the maintenance or development of the investment;

e. Of royalties and other payments deriving from rights of licence and commercial, administrative or technical assistance;

f. Of the proceeds of partial or total liquidation of capital, including possible increment values.

Article 4.

Neither of the Parties shall take measures of expropriation, nationalization or dispossession, either direct or indirect, against investments of nationals or companies of the other Party, except under due process of law and provided that provisions be made for effective and adequate compensation. The amount of compensation, which shah have been fixed at the time of expropriation, nationalization or dispossession, shall be settled in the currency of the country of origin of investment, and paid without undue delay to the person entitled thereto.

Article 5.

The present Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its legislation prior to the entry into force of this Agreement by nationals or companies of the other Contracting Party.

Article 6.

Provisions more favourable than those of this Agreement which have been agreed upon by either of the Parties with nationals or companies of the other Party shall not be affected by the present Agreement.

Article 7.

For the purpose of this Agreement:

a. "Nationals" are physical person who, according to the law of each Contracting Party, are considered as citizens of that State.

b. "Companies" are:

1) With respect to the Swiss Confederation, companies, institutions or foundations with regal personality, as well as partnership firms or limited partnerships and other associations without legal personality incorporated under Swiss law or in which Swiss nationals have directly or indirectly a controlling interest;

2) With respect to the Republic of Korea, juridical persons or companies or associations, whether or not with limited liability and whether or not for pecuniary profit, incorporated in the territory of the Republic of Korea and lawfully existing in accordance with us laws and regulations thereof or in which Korean nationals have directly or indirectly a controlling interest.

c. The term "investment" shall comprise every kind of asset and more particularly, though not exclusively:

1) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufructs, and similar rights;

2) Shares or other kinds of interest in companies;

3) Titles to money or to any performance having an economic value;

4) Copyrights, industrial property rights, technical processes, know how, trademarks, tradenames and goodwill;

5) Business concessions under public law, including concessions to search for, extract or exploit natural resources.

d. The term "returns" shall mean the amounts yielded by an investment as net profit or interest for a specific period

Article 8.

1. Disputes as to the interpretation or application of the provisions of this Agreement shall be settled by means of diplomatic negotiations.

2. If both Contracting Parties cannot reach an agreement, toe dispute shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator and these two arbitrators shall nominate a chairman who shall be a national of a third State.

3. If either Contracting Party has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting

Party by the President of the International Court of Justice.

4. If both arbitrators cannot come to an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If, in the cases specified under paragraphs 3 and 4 of this article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is pre vented or if he is a national of either Contracting Party, the appointment shall be made by the next senior Judge of the Court who is not a national of either Contracting Party.

6. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.

7. The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding for each Contracting Party,

8. Each Contracting Party shall bear the cost of its own member and of its counsel in the arbitral proceedings; The cost of the chairman and the other costs shall be borne in equal paris by both Contracting Parties. The arbitral tribunal may make a different regulations concerning costs.

Article 9.

1. This Agreement shall come into the force on the day when both Governments will have notified each other that they have complied with the constitutional requirements for the conclusion and entry into force of international agreements and shall remain binding for a period of five years. Unless written notice of termination six months before the expiration of this period is given it shall be considered as renewed for a period of two years and so forth.

2. In case of official notice as to the termination of the Agreement, the provisions of articles 1-8 shall continue to be effective for a further period of ten years for investments made before official notice was given.

Done at Seoul on April 7, 1971 in six originals, two in Korean, two in French and two in English, each text being equally authoritative, but in case of divergence the English text shall prevail.

For the Government of the Republic of Korea

Kyu Hah Choi

For the Government of the Swiss Confederation

E.A Stadelhofer

Protocol

On signing the Agreement concerning the Encouragement and Reciprocal Protection of Investments concluded between the Government of the Republic of Korea and the Government of tile Swiss Confederation, the undersigned plenipotentiaries have agreed to the following provisions which should be regarded as integral parts of the said Agreement:

1. In spite of Article 3, each Party may reserve the right to restrict, if required by the balance of payments situation, the transfer of proceeds resulting from sales of the invested property of nationals or companies of the other Party to twenty per cent of the total investments per annum. Such transfer may begin after two years from the date on which the enterprise concerned commences its business operation. However, such restriction may not apply to the transfer of liquidation proceeds in case prior permission has been obtained.

2. Notwithstanding Article 7 (b), each Party may reserver the right to deny the benefit of the present Agreement to any company which is controlled by nationals or companies of a third country.

Both Parties shall come to an understanding in each case with regard to whether the interest held by nationals of either Party is a controlling interest permitting to exercise decisive influence on the company. Should such a understanding not be reached, the case shall be settled under Article 8.

Done at Seoul, on April 7, 1971 in six originals, two in Korean, two French, and two in English, each text being equally authoritative, but case of divergence the English text shall prevail.

For the Government of the Republic of Korea

Kyu Hah Choi

For the Government of the Swiss Confederation

E. A. Stadelhofer