AGREEMENT ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE REPUBLIC OF KOREA AND THE KINGDOM OF SPAIN

Signed at Seoul January 17, 1994

Entered into force July 19, 1994

The Republic of Korea and the Kingdom of Spain, hereinafter referred to as "the Contracting Parties",

Desiring to intensify their economic cooperation for the mutual benefit of both countries,

Intending to create favourable conditions for investments made by investors of each Contracting Party in the territory of the other Contracting Party, and

Recognizing that the promotion and protection of investments under this Agreement will stimulate initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investor" means every physical or legal person as well as any other corporation including interest associations, which is recognised as a resident by the legislations and regulations in force of one Contracting Party, making investment in the territory of the other Contracting Party.

2. The term "investment" means any kind of assets, such as goods and rights of all sorts, acquired under the law of the host country of the investment and in particular, although not exclusively, the following:

— shares and other forms of participation in companies;

— rights arising from all types of contributions made for the purpose of creating economic value, including every loan granted for this purpose, whether capitalized or not;

— movable and immovable property and any other property rights such as mortgages, liens or pledges;

— any rights in the field of intellectual property, including patents and trademarks, as well as manufacturing licences and know-how;

— rights to engage in economic and commercial activities authorized by law or by virtue of a contract, particularly those rights to search for, cultivate, extract or exploit natural resources.

3. The term "returns" refers to income deriving from an investment in accordance with the definition contained above, and includes, in particular, profits, dividends and interests.

4. The term "territory" means the territory over which the Contracting Party has sovereignty or jurisdiction according to international law and its laws and regulations.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage, in so far as possible, the investments made in its territory by investors of the other Contracting Party and shall accept such investments pursuant to its law.

2. Each Contracting Party shall protect in its territory the investments made in accordance with its laws and regulations, by

investors of the other Contracting Party and shall not hamper, by means of unjustified or discriminatory measures, the management, maintenance, use, enjoyment, expansion, sale and, if it is the case, the liquidation of such investments.

3. Each Contracting Party shall endeavour to grant the necessary permits relating to these investments within the framework of its law.

Article 3. National and Most Favoured Nation Treatment

1. Each Contracting Party shall, in its territory, accord to the investments and returns therefrom of the investors of the other Contracting Party a fair and equitable treatment and not less favourable than that accorded to the investments and returns of its own investors or investors of any third State.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party as regards the management, use, enjoyment or disposal of their investments treatment which is fair and equitable and not less favourable than that which it accords to its own investors or to the investors of any third State.

3. However, this treatment shall not extend to the privileges that one Contracting Party may grant to investors of a third State by virtue of its membership in:

— a free-trade area,

— a custom union,

— a common market or

— a mutual economic assistance organization or by virtue of an agreement entered into force before the signature of this Agreement which contains provisions similar to those granted by that Contracting Party to the members of such organization.

4. The treatment given pursuant to this article shall not extend to tax deductions and exemptions or other similar privileges granted by either of the Contracting Parties to investors of a third State by virtue of an avoidance of double-taxation agreement or any other taxation agreement.

Article 4. Compensation for Losses

Investors of one Contracting Party whose investments or returns in the territory of the other Contracting Party suffer losses owing to war, other armed conflicts, a state of national emergency or other incidents considered as such by international law in the territory of the latter shall be accorded, as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Contracting Party grants to its own investors or to investors of any third State. Any payment made under this Article shall be prompt, adequate, effective and freely transferable.

Article 5. Nationalization and Expropriation

1. Investments or returns of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation in the territory of the other Contracting Party except for the public interest, and against prompt, adequate, and effective compensation, provided that such measures are taken on a non-discriminatory basis and in accordance with law.

2. Such compensation shall amount to the market value of the investment or returns expropriated immediately before the expropriation or impending expropriation became public knowledge, and shall be made without undue delay, be effectively realisable and be freely transferable.

3. Such compensations shall include the payment of interest according to the laws and regulations of the Contracting Party where the expropriation takes place.

Article 6. Transfers

1. With regard to the investments made in its territory, each Contracting Party shall grant to investors of the other Contracting Party the right to freely transfer the income deriving therefrom and other payments related thereto, including particularly but not exclusively, the following:

— investment returns, as defined in Article 1;

— the indemnities provided for under Articles 4 and 5;

— the proceeds of the sale or liquidation, in full or partial, of an investment;

— the salaries, wages and other compensation received by the citizens of one Contracting Party who have obtained in the territory of the other Contracting Party the corresponding work permits in relation to an investment.

2. The transfers shall be made in freely-convertible foreign currencies. Such transfers shall be made without undue delay, according to international financial practices.

3. The host Contracting Party of the investment shall allow the investor of the other Contracting Party to have access to the official foreign-exchange market in a non-discriminatory manner.

4. Protection of those transfers under this Agreement will only be granted when they take place in accordance with tax regulations in the host Contracting Party of the investment.

Article 7. More Favorable Terms

More favourable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agrement.

Article 8. Subrogation

In case one Contracting Party or its designated agency has granted any guarantee against non-commercial risks in respect of an investment by its investor in the territory of the other Contracting Party and has made payment to such investor under the guarantee, the other Contracting Party shall recognize, in accordance with its laws and regulations, the transfer of the rights of such investor to the former Contracting Party or its designated agency. The subrogation shall not exceed the original rights of such investor.

Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute between one of the Contracting Parties and an investor of the other Contracting Party shall as far as possible be settled by disputing parties in an amicable way.

2. If any dispute cannot be settled within six months from the date either party requested settlement in writing, it shall upon request of either the investor or the Contracting Party, be submitted to:

— the ad hoc court of arbitration established under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law;

— the International Center for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", 1965, in case both Contracting Parties become signatories to this Convention.

3. The arbitration shall be based on:

— the provisions of this Agreement;

— the national law of the Contracting Party in whose territory the investment was made, including the rules relative to conflicts of law;

— the rules and the universally accepted principles of international law.

4. The arbitration decisions shall be final and binding on the disputing parties. Each Contracting Party shall undertake to execute the decisions in accordance with its national law.

Article 10. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties relative to the interpretation or application of this Agreement shall as far as possible be settled through diplomatic channels.

2. If a dispute between the Contracting Parties cannot be settled in this way within six months from the start of the

negotiations, it shall be submitted, at the request of either of the two Contracting Parties, to a court of arbitration.

3. The court of arbitration shall be set up in the following way: each Contracting Party shall appoint an arbitrator and these two arbitrators shall elect a citizen from a third country as president. The arbitrators shall be appointed within two months and the president within four months from the date on which either of the two Contracting Parties informs the other Contracting Party of its intention to submit the dispute to a court of arbitration.

4. If one of the two Contracting Parties does not appoint its arbitrator before the established deadline, the other Contracting Party may request the President of the International Court of Justice to make such appointment. In the event that the two arbitrators do not reach an agreement on the appointment of the third arbitrator before the established deadline, either of the Contracting Parties may turn call on the President of the International Court of Justice to make the appropriate appointment.

5. The court of arbitration shall issue its decision on the basis of respect for the law, of the rules contained in this Agreement or in other agreements in force between the Contracting Parties, and as well as of the universally recognized principles of international law.

6. Unless the Contracting Parties decide otherwise, the court shall lay down its own procedure.

7. The court shall take its decision by majority vote and that decision shall be final and binding on both Contracting Parties.

8. Each Contracting Party shall bear the expenses of the arbitrator appointed by it and those connected with representing it in the arbitration proceedings. The other expenses, including those of the president, shall be borne in equal parts by the two Contracting Parties.

Article 11. Application

This Agreement shall be applied to all investments made before or after its entry into force by investors of one Contracting Party under the relevant legal provisions of the other Contracting Party in the territory of the latter.

Article 12. Entry Into Force, Extension and Termination

1. This Agreement shall enter into force on the date on which the two Governments shall have notified each other that the respective constitutional formalities required for the entry into force of international agreements have been completed. It shall remain in force for an initial period of ten years and, by tacit renewal, for consecutive five-year periods.

Either Contracting Party may terminate this Agreement by prior notification in writing, six months before the date of its expiration.

2. With respect to investments made or acquired prior to the date of termination of this Agreement and to which this Agreement otherwise applies, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

3. This Agreement may be revised by mutual consent. Any revision or termination of this Agreement shall be effected without prejudice to any rights or obligations accruing or incurred under this Agreement prior to the effective date of such revision or termination.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Seoul this 17th day of January, 1994 in the Korean, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall be taken into consideration as a reference.

FOR THE REPUBLIC OF KOREA

Han Sung-joo

FOR THE KINGDOM OF SPAIN

Javier Solana Madariaga