AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF ARGENTINA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

Signed at Seoul May 17, 1994
Entered into force September 24, 1996

The Government of the Republic of Korea and the Government of the Republic of Argentina (hereinafter referred to as the "Contracting Parties"),

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

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

Recognizing that the encouragement and protection of investments on the basis of the present Agreement stimulates business initiative in this field,

Have agreed as follows:

Article 1
Definitions

For the purpose of this Agreement:

(1) The term "investment" shall mean, in conformity with the laws and regulations of the Contracting Party in whose territory the investment is made, every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party. It includes in particular, though not exclusively:

(a)movable and immovable property as well as any other property rights such as mortgages, liens, pledges, usufruct and similar rights;
(b)shares, stocks, debentures of companies or other rights or interests in such companies and government- issued securities;
(c)claims to money or to any performance having an economic value associated with an investment; loans only being included when they are directly related to a specific investment;
(d)intellectual property rights, including copyrights, trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill;
(e)business concessions with economic value conferred by law or under contract, including concessions to search for, extract, cultivate or exploit natural resources.
Any alteration of the form in which assets are invested shall not affect their classification as investment.

(2) The term "investor" shall mean with respect to either Contracting Party:

(a)natural persons having the nationality of that Contracting Party in accordance with its laws, and
(b)any legal person, including companies, organizations and associations, constituted or incorporated in accordance with the laws of a Contracting Party and having its seat in the territory of that Contracting Party.

(3) The term "returns" shall mean amounts yielded by an investment, and in particular, though not exclusively, includes profits, interests, capital gains, shares, dividends, royalties or fees.

(4) The term "territory" shall mean the territory of the Republic of Korea or the territory of the Republic of Argentina respectively, as well as those maritime areas, including the sea-bed and sub-soil adjacent to the outer limit of the territorial sea of either of the above territories, over which the Contracting Party concerned may, in accordance with international law, exercise sovereign rights for the purpose of

exploration and exploitation of the natural resources for such areas.

Article 2
Promotion and Protection of Investments

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and shall admit such investments in accordance with its legislation.

(2) Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment, and shall enjoy full protection and security in the territory of the other Contracting Party.

Article 3
National and Most-Favoured-Nation Treatment

(1) Each Contracting Party shall in its territory accord investments and returns of investors of the other Contracting Party treatment which is fair and equitable and not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State.

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

(3) The provisions of paragraphs (1) and (2) shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

(a) any customs union, free trade area, a common market, monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Parties is or may become a party; or
(b) any international agreement or arrangement relating wholly or mainly to taxation.

Article 4
Compensation for Damage or Loss

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot or resulting from arbitrary action by the authorities in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable without delay.

Article 5
Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose. The expropriation shall be carried out under due process of law, on a non-discriminatory basis, and shall be accompanied by the provision for the payments of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, and shall include interest from the date of expropriation, and shall be made without delay, be effectively realizable and be freely transferable.

(2) The investor affected shall have the right to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the

valuation of his or its investment in accordance with the principles set out in paragraph (1) of this Article.

(3) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory and in which investors of the other Contracting Party own shares or debentures, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment of such investors of the other Contracting Party who are owners of those shares or debentures.

Article 6
Transfers

(1) Each Contracting Party shall guarantee without delay the transfer out of its territory in any freely convertible currency. Such transfer shall include in particular, though not exclusively:

(a) the net profits, dividends, royalties, technical assistance and technical service fees, interest and other current income, accruing from investment by an investor of the other Contracting Party;
(b) the proceeds accruing from the sale or the total or partial liquidation of any investment made by an investor of the other Contracting Party;
(c) funds in repayment of loans regularly contracted and documented and directly related to a specific investment;
(d) the earnings of nationals of the other Contracting Party who are allowed to work in connection with an investment in its territory; and
(e) additional funds necessary for the maintenance of the investment.

(2) For the purpose of this Agreement, exchange rates shall be the rates effective for the current transactions or those which are determined in accordance with the official rate of exchange in force at the date of transfer. Transfer shall be effective in accordance with the procedures established by the Contracting Party in whose territory the investment was made, which shall not impair the substance of the rights set forth in this Article.

Article 7
Subrogation

If a Contracting Party or its designated agency makes payment to its own investors under guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) the assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its designated agency; as well as
(b) that the former Contracting Party or its designated agency is entitled, by virtue of subrogation, to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

Article 8
Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) Any dispute which arises within the terms of this Agreement concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, as far as possible, be settled amicably between the parties to the dispute.

(2) If the dispute cannot thus be settled within six(6) months following the date on which the dispute has been raised by either party, it may be submitted, upon request of any of them, to the competent tribunal of the Contracting Party in whose territory the investment was made, on the basis of treatment no less favourable than that accorded to investments of its own investors or investors of any third State, whichever is more favourable to the investor.

(3) The aforementioned dispute may be submitted to international arbitration in

the following circumstances:

(a) if one of the parties so requests, where, after a period of eighteen(18) months has elapsed from the moment when the dispute was submitted to the competent tribunal of the Contracting Party in whose territory the investment was made, the said tribunal has not given its final decision, or where the final decision has been made but the parties are still in dispute;
(b) where the Contracting Party and the investor of the other Contracting Party have so agreed.

(4) Where the dispute is referred to international arbitration the investor and the Contracting Party concerned in the dispute may agree to refer the dispute either to:

(a) the International Centre for the Settlement of Investment Disputes (ICSID) having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington on 18 March 1965 (provided that both Contracting Parties are Parties to the said Convention) and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Findings Proceedings.
(b) an international arbitrator or ad-hoc arbitral tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
(c) if, after a period of three(3) months from written notifi- cation of the submission of the dispute to the arbitration, there is no agreement to one of the above alternative procedures, the parties to the dispute shall be bound to submit it to the International Center for the Settlement of Investment Disputes (ICSID).

(5) The arbitral tribunal shall decide, in accordance with the provisions of this Agreement and the laws of the Contracting Party involved in the dispute, including its rules on conflict of law, the terms of any specific agreement concluded in relation to such an investment and the relevant principles of international law. The arbitral decisions shall be final and binding for the parties in the dispute.

Article 9
Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning inter- pretation or application of this Agreement shall, as far as possible, be settled through consultation or negotiation.

(2) If the dispute cannot thus be settled within three(3) months, it shall, upon the request of either Contracting Party, be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.

(3) The Arbitral Tribunal shall be constituted for each individual case in the following way: Within two(2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three(3) months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, a request may be made to the President of the International Court of Justice to make the appointments. If he happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointments.
If the Vice-President also happens to be a national of either Contracting Party or is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the appointments.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties.

(6) Each Contracting Party shall bear the cost of its own arbitrator and its

representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal shall determine its own procedure.

Article 10
Application of Other Rules and Special Commitments

(1) Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, or by general principles of international law, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are the more favourable to his case.

(2) If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions or contracts, is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

Article 11
Application of the Agreement

This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which was settled before its entry into force.

Article 12
Entry into Force, Duration and Termination

(1) This Agreement shall enter into force on the date when the Contracting Parties notify each other that all legal requirements for its entry into force have been fulfilled.

(2) This Agreement shall remain in force for a period of ten(10) years, and shall continue in force thereafter unless, one year before the expiry of the initial or any subsequent periods, either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

(3) In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten(10) years from the date of termination.

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

Done in duplicate, at Seoul on the 17th day of May 1994, in the Korean, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA
Hong Soon-young

FOR THE GOVERNMENT OF
THE REPUBLIC OF ARGENTINA
D.F. Cavallo

PROTOCOL

On signing the Agreement between the Governments of the Republic of Korea and the Republic of Argentina on the Promotion and Protection of Investments, the undersigned have agreed on the following provisions, which constitute integral part of the said Agreement:

A - Ad Article 1,(2)(a)

The provisions of this Agreement shall not apply to investments made by natural persons who are nationals of one Contracting Party in the territory of the other Contracting Party, if such persons have, at the time of the investment, been domiciled for more than two years in the territory of the latter Contracting Party, unless it is proved that the investment was admitted into its territory from abroad.

B - Ad Article 3

The provisions of Paragraphs (1) and (2) of Article 3 of the Agreement shall neither be construed so as to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from the bilateral agreements providing for concessional financing concluded by the Republic of Argentina with the Republic of Italy on 10 December 1987 and with the Kingdom of Spain on 3 June 1988.

Done in duplicate, at Seoul, on the 17th day of May 1994, in the Korean, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA:
Hong Soon-young

FOR THE GOVERNMENT OF
THE REPUBLIC OF ARGENTINA:
D.F. Cavallo