Agreement

between

the Swiss Confederation

and

the Democratic People's Republic of Korea

on the Promotion and Reciprocal Protection

of Investments

Preamble

The Swiss Federal Council and the Government of the Democratic People's Republic of Korea,

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

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

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States,

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

(1) The term "investor" refers with regard to either Contracting Party to:

(a) natural persons who, according to the law of that Contracting Party, are considered to be its nationals;

(b) legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of the same Contracting Party;

(c) legal entities not established under the law of that Contracting Party but effectively controlled by natural persons as defined in (a) above or by legal entities as defined in (b) above.

(2) The term "investments" shall include every kind of asset in particular:

(a) movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges and usufructs;

(b) shares, parts or any other kind of participation in companies;

(c) claims to money or to any performance having an economic value;

(d) copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;

(e) concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.

(3) The term "returns" means the amounts yielded by an investment and includes in particular, profits, interest, capital gains, dividends, royalties and fees.

(4) The term "territory" includes the maritime areas adjacent to the coast of the State concerned, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

Article 2

Scope of application

The present Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to or after the entry into force of the Agreement.

Article 3

Admission, protection

(1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations. When a Contracting Party shall have admitted an investment on its territory, it shall endeavour to grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.

(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. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, or disposal of such investments.

Article 4

Treatment of investments

(1) Each Contracting Party shall in its territory accord investments of investors of the other Contracting Party treatment not less favourable than that which it accords to investments of investors of any third State. As for joint ventures in which investors of both Contracting Parties participate, they shall enjoy no less favourable conditions than joint ventures with participation of investors of any third State.

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

(3) Each Contracting Party shall refrain from taking any discriminatory measures with respect to investments of investors of the other Contracting Party as well as with respect to joint ventures in which investors of both Contracting Parties participate. Such measures include in particular undue restrictions or impediments concerning the access to means of production or the purchase, transport, marketing and sale of goods and services.

(4) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union or a common market or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article 5

Free transfer

(1) Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the unrestricted transfer, in a freely convertible currency, of the amounts relating to these investments, in particular of:

(a) returns;

(b) repayments of loans;

(c) amounts assigned to cover expenses relating to the management of the investment;

(d) royalties and other payments deriving from rights enumerated in Article 1, paragraph (2), letters (c), (d) and (e) of this Agreement;

(e) additional contributions of capital necessary for the maintenance or development of the investment;

(f) the proceeds of the partial or total sale or liquidation of the investment, including possible increment values;

(g) unspent earnings and other remuneration of personnel engaged from abroad in connection with the investment;

(h) payments arising out of the settlement of a dispute.

(2) Transfers shall be made without delay at the market rate of exchange existing on the date of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is more favorable to the investor.

Article 6

Other business conditions

(1) Goods shall be traded between the parties to individual transactions at market-related prices. In particular state agencies and state enterprises shall make any purchases of imports or sales of exports solely in accordance with commercial considerations including price, quality and quantity; they will, in accordance with customary business practice, accord to enterprises of the other Contracting Party adequate opportunity to compete for participation in such transactions.

(2) Neither Contracting Party will require parties to individual transactions to engage in barter or countertrade transactions, nor will they encourage them to do so.

Article 7

Dispossession, compensation

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, on a non discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. Such compensation shall amount to the fair market value of the expropriated investment immediately before the expropriatory action took place or became public knowledge, whichever is earlier. Valuation criteria shall include the going concern value, asset value and other criteria, as appropriate, to determine fair market value.. The amount of compensation, plus the interest that has accrued at a commercially reasonable rate until the date of payment, shall be settled in a freely convertible currency and paid without delay to the person entitled thereto without regard to its domicile or seat.

(2) The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place in the territory of the other Contracting Party shall benefit, on the part of this latter, from a treatment in accordance with Article 4 of this Agreement as regards restitution, indemnification, compensation or other settlement.

Article 8

Principle of subrogation

Where one Contracting Party has granted any financial guarantee against non-commercial risks in regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party.

Article 9

Disputes between a Contracting Party and an investor of the other Contracting Party

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party and without prejudice to Article 10 of this Agreement (Disputes between the Contracting Parties), consultations will take place between the parties concerned.

(2) If these consultations do not result in a solution within six months from the date of request for consultations, the investor may submit the dispute, at his choice, for settlement to:

(a) the competent court of the Contracting Party in the territory of which the investment has been made;

(b) the International Center for Settlement of Investment Disputes (ICSID) instituted by the Convention on the settlement of investment disputes between States and nationals of other States, opened for signature at Washington, on 18 March 1965, when both Contracting Parties have become parties to the Convention;

(c) the Additional Facility Rules for the Administration of Proceedings by the Secretariat of the ICSID;

(d) an *ad hoc* tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) Each Contracting Party hereby consents to the submission of an investment dispute to international arbitration.

(4) The Contracting Party which is a party to the dispute shall, at no time whatsoever during the settlement procedure or the execution of the sentence, raise as an objection the fact that the investor has received, by virtue of an insurance contract, a compensation covering the whole or part of the incurred damage.

(5) A company which has been incorporated or constituted according to the laws in force in the territory of one Contracting Party and which, prior to the origin of the dispute, was under the control of nationals or companies of the other Contracting Party, is considered, in the sense of the Convention of Washington and according to its Article 25 (2) (b), as a company of the latter.

(6) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the award rendered by an arbitral tribunal.

Article 10

Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon 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 one of the Contracting Parties 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 reach 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 is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or is a national of either Contracting Party, the appointment shall be made by the most 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 decisions of the tribunal are final and binding for each Contracting Party.

Article 11

Other commitments

(1) If provisions in the legislation of either Contracting Party or rules of international law entitle investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such provisions shall to the extent that they are more favourable prevail over this Agreement.

(2) Each Contracting Party shall observe any obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 12

Final provisions

(1) This Agreement shall enter into force on the day when both Governments have notified each other that they have complied with the legal requirements for the entry into force of international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of two years, and so forth.

(2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

Done in duplicate, at Pyongyang, on 14. 12. 1998, each in French, Korean and English, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

N. Imboden

For the Swiss Federal Council

For the Government of the Democratic People's Republic of Korea

김봉익