

AGREEMENT BETWEEN THE REPUBLIC OF KOREA, ON THE ONE HAND, AND THE BELGO-LUXEMBURG ECONOMIC UNION, ON THE OTHER HAND, ON THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

Signed at Brussels December 20, 1974

Entered into force September 3, 1976

The Government of the Republic of Korea, on the one hand, and the Government of the Kingdom of Belgium, acting in his own name and on behalf of the Grand-Duchy of Luxembourg, under the Convention establishing the Belgo-Luxembourg Economic Union, on the other hand,

Desiring to reinforce economic co-operation between the Contracting Parties and to intensify co-operation between private enterprises,

Intending to create favourable conditions for investments by nationals or legal persons of either State in the territory of the other State,

Recognizing the need to protect investments by nationals or legal persons of either State and to stimulate the flow of capital with a view to the economic prosperity of the Contracting Parties,

Have agreed as follows:

Article 1

(1) All existing and future investments, goods, rights and interests belonging directly or indirectly to nationals or legal persons of one of the Contracting Parties shall enjoy fair and equitable treatment in the territory of the other Contracting Party.

(2) Such investments, goods, rights and interests shall also enjoy continuous protection and security, excluding all unjustified or discriminatory measures which would "de jure" or "de facto" hinder their management, maintenance, utilization, enjoyment, or liquidation.

(3) The protection guaranteed by paragraphs 1 and 2 of this Article shall at least be equal to that enjoyed by the nationals or legal persons of any third State and may in no case be less favourable than that recognized by international law.

Article 2

(1) Each Contracting Party shall admit in its territory investments by nationals or legal persons of the other Contracting Party in accordance with its legislation and shall encourage such investments.

(2) In particular, each Contracting Party shall authorize the conclusion and execution of licencing contracts and of contracts relating to commercial, administrative or technical assistance, in so far those activities are connected with investments as mentioned in paragraph 1.

Article 3

(1) The term "investments" shall comprise every direct or indirect contribution of capital and any other kind of assets, invested or reinvested in enterprises in the field of agriculture, industry, mining, forestry, communications and tourism.

The following shall more particularly, though not exclusively, be considered as investments within the meaning of the present Agreement:

- a) Movable and immovable property as well as any other right "in rem" such as mortgages, pledges, usufructs and similar rights ;
- b) Shares and other kinds of interest in companies;
- c) Debts and rights to any performance having economic value;
- d) Copyrights, marks, patents, technical processes, trade-names, trade-marks and goodwill;
- e) Concessions under public law.

(2) a) The term "nationals" are physical persons who, according to the law of each Contracting Party, are considered as citizens of that country;

b) The term "companies" are :

- 1) with respect to the Republic of Korea, juridical persons or any companies or associates whether or not with limited liability and whether or not for pecuniary profit, incorporated and existing under the laws and regulations of the Republic of Korea or in which nationals of the Republic of Korea have directly or indirectly a substantial interest;
- 2) with respect to the Kingdom of Belgium and the Grand Duchy of Luxemburg, any juridical person as well as any commercial company, having its seat in the territory of the Kingdom of Belgium or the Grand Duchy of Luxemburg and lawfully constituted in accordance with the legislation of Belgium or Luxemburg.

Article 4

(1) Each Contracting Party recognizes, as regards the investments or goods, rights, and interests, connected with such investment, situated in its territory which belong to nationals or legal persons of the other Contracting Party, the principle of the freedom of transfer, in favor of such nationals or legal persons or their beneficiaries, of:

- a) net profits, interests, dividends, royalties, depreciations of capital assets and any current income, accruing from investment activities to nationals or legal persons of the other Contracting Party ;
- b) the proceeds of the total or partial liquidation of any investment, including possible increases in or additions to these investments, made by nationals or legal persons of the other Contracting Party;
- c) appropriate portion of the earning of nationals or legal persons of a Contracting Party who are authorized to work in the territory of the other Contracting party;
- d) funds in repayments of loans which the Contracting Parties have recognized as investments, made by nationals or legal persons of the other Contracting Party, to the country of these nationals or legal persons and in the currency thereof.

(2) Each Contracting Party shall issue the authorizations required to ensure that the transfer referred to in the preceding paragraph of this Article can be effected without undue delay and any fees or charges other than the usual bank charges.

(3) This treatment may not be less favourable than that accorded to the nationals or legal persons of a third State who are in a similar situation.

Article 5

(1) The nationals or legal persons of one Contracting Party may not be deprived, either directly or indirectly, of the property or enjoyment of their investments, goods, rights and interests situated in the territory of the other Contracting Party, unless the following conditions are complied with:

- a) the measures are taken in the public interest and by a legal procedure in accordance with international law;
- b) they are neither discriminatory nor contrary to a specific engagement;
- c) they are accompanied by provisions for the payment of full compensation.

(2) The amount of such compensation shall represent the actual value of the affected goods on the date on which the measure was taken; it shall be paid to the persons entitled thereto and shall be freely transferred without delay.

(3) The nationals of either Contracting party, shall be accorded, in every case, in the territory of the other Contracting Party, a treatment no less favourable than that enjoyed by the nationals of any third State and in no case less favourable than that recognized by international law.

Article 6

(1) The transfers referred to in Articles 4 and 5 shall be effected at the rates of exchange applicable on the date of transfer pursuant to the exchange regulations in force for the various classes of transactions.

(2) These rates shall in no case be less favourable than those accorded to the nationals or legal persons of third countries, in particular under specific undertakings laid down in agreements or arrangements concluded in the matter of protection of investments.

(3) In any event, the rates which are applied shall be fair and equitable, taking into account the usual levies and charges which may be imposed on exchange operations.

Article 7

In the event of any matter being provided as well in this Agreement as in an international agreement or in the national regulations of one of the Contracting Parties no provision of this Agreement shall prevent a national or legal person of one of the Contracting Parties who possesses investments, goods, rights or interests, in the territory of the other Contracting Party, from availing itself of the most favourable provisions.

Article 8

Each Contracting Party hereby irrevocably and anticipatory gives its consent to submit to conciliation and arbitration any dispute relating to a measure contrary to this Agreement, pursuant to the "Convention on the Settlement of Investment Disputes between States and Nationals of other States" of 18 March 1965, at the initiative of a national or legal person of the other Contracting Party, who considers himself to have been affected by such a measure.

This consent implies renunciation of the requirement that the internal administrative or judicial resorts should be exhausted.

Article 9

In the event of a dispute arising between the Contracting Parties as regards the interpretation or implementation of this Agreement, and if such dispute cannot be satisfactorily settled through the diplomatic channels within a six months period, it shall be submitted upon the request of either Contracting Party to an arbitral tribunal composed of three members.

Each Party shall appoint one arbitrator. The two arbitrators thus appointed shall appoint a third arbitrator who is not a national of either Contracting Party.

If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party, the arbitrator shall be appointed, at the request of the latter Party, by the President or Vice President of the International Court of Justice.

If within two months following their appointment the two arbitrators are unable to reach agreement on the choice of the third arbitrator, the latter shall be appointed at the request of either Party, by the President or Vice President of the International Court of Justice.

The Tribunal shall take its decisions in conformity with the principles of law. Before rendering its decisions, it may, at any stage of the proceeding, propose to the Parties that the dispute should be settled amicably.

If the Parties reach agreement, the Tribunal shall decide *ex aequo et bono*.

Unless the Parties decide otherwise, the Tribunal shall determine its own procedure.

The decisions of the Tribunal, reached by a majority of arbitrators, shall be binding for the Parties.

Article 10

(1) The present Agreement shall enter into force on the day the two Contracting Parties notify each other by diplomatic notes that their constitutional requirements for entering into force of the Agreement have been fulfilled.

(2) The present Agreement shall remain for a period of fifteen years. Unless either of the Contracting Parties shall have given notice of terminating twelve months before the expiry of

the current period, the validity of the present Agreement shall be deemed to have been tacitly extended for a further term of fifteen years.

Article 11

In case of termination of the present Agreement the provisions thereof shall continue to be effective for a period of validity of contracts concluded between the Contracting Party and the investor of the other Contracting Party prior to the notification of termination of the present Agreement.

Article 12

The Contracting Parties will apply provisionally the present Agreement as from the date of its signature.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

Done at Brussels, on this 20th day of December, 1974, in two original copies, in the English language, both of which are authentic.

For the Republic of Korea /Sgd./ In-Sang Song

For the Belgo-Luxemburg Economic Union/ Sgd./ Michel Toussaint