AGREEMENT BETWEEN THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF THE REPUBLIC OF KOREA FOR THE LIBERALISATION, PROMOTION AND PROTECTION OF INVESTMENT

The Government of Japan and the Government of the Republic of Korea,

Desiring to further promote investment in order to strengthen the economic relationship between the two countries;

Intending to further create favourable conditions for greater investment by investors of one country in the territory of the other country;

Recognising the growing importance of the progressive liberalisation of investment for stimulating private initiative and for promoting prosperity in both countries;

Recognising that these objectives can be achieved without relaxing health, safety and environmental measures of general application;

Recognising the importance of the cooperative relationship between labour and management in promoting investment between both countries;

Bearing in mind their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization signed on the 15th day of April, 1994 and other multilateral instruments of cooperation;

Wishing that this Agreement will contribute to the strengthening of international cooperation with respect to the development of international rules on foreign investment; and

Believing that this Agreement marks the beginning of new economic partnership between the two countries in the twenty-first century;

Have agreed as follows:

Article 1

For the purposes of this Agreement,

(1) The term “investor” means with respect to a Contracting Party:

(a) a natural person having the nationality of that Contracting Party in accordance with its applicable laws and regulations; or

(b) a legal person or any other entity constituted or organised under the applicable laws and regulations of that Contracting Party, whether or not for profit, and whether private or government-owned or-controlled, and includes a company, corporation, trust, partnership, sole proprietorship, joint venture, association or organisation.

(2) The term “investment” means every kind of asset owned or controlled, directly or indirectly, by an investor, including:

(a) an enterprise (being a legal person or any other entity constituted or organised under the applicable laws and regulations of a Contracting Party, whether or not for profit, and whether private or government-owned or-controlled, and includes a company, corporation, trust, partnership, sole proprietorship, branch, joint venture, association or organisation);

(b) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;

(c) bonds, debentures, loans and other forms of debt, including rights derived therefrom;

(d) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;

(e) claims to money and to any performance under contract having a financial value;

(f) intellectual property rights, including trademarks, industrial designs, layout-designs of integrated circuits, copyrights, patents, trade names, indications of source or appellations of origin, and undisclosed information;

(g) concession rights including those for the exploration and exploitation of natural resources; and

(h) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges.

Investments include the amounts yielded by an investment, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.

(3) The term “UNCITRAL Arbitration Rules” means the arbitration rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976.

(4) The term “ICSID Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature in Washington, on March 18, 1965.

(5) The term “Centre” means the International Centre for Settlement of Investment Disputes established by the ICSID Convention.

(6) The term “territory” means with respect to a Contracting Party the territory under its sovereignty.

(7) The term “Contracting Party” means Japan or the Republic of Korea, as the context requires.

Article 2

1. Each Contracting Party shall in its territory accord to investors of the other Contracting Party and to their investments treatment no less favourable than the treatment it accords in like circumstances to its own investors and their investments (hereinafter referred to as “national treatment”) with respect to the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment, and sale or other disposal of investments (hereinafter referred to as “investment and business activities”).

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party and to their investments treatment no less favourable than the treatment it accords in like circumstances to investors of any third country and to their investments (hereinafter referred to as "most-favoured-nation treatment") with respect to investment and business activities.

Article 3

Each Contracting Party shall in its territory accord to investors of the other Contracting Party treatment no less favourable than the treatment which it accords in like circumstances to its own investors or investors of any third country with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defense of such investors' rights.

Article 4

1. Notwithstanding the provisions of Article 2, paragraph 3 of Article 8, or Article 9, each Contracting Party may adopt or maintain any measure not conforming with the obligations imposed by Article 2, paragraph 3 of Article 8, or Article 9 (hereinafter referred to as an "exceptional measure") in the sectors or with respect to the matters specified in Annex I to this Agreement.

2. Each Contracting Party shall, on the date on which this Agreement comes into force, notify the other Contracting Party of all existing exceptional measures in the sectors or with respect to the matters specified in Annex I. Such notification shall include information on the following elements of each measure: (a) sector and sub-sector or matter; (b) obligation or article in respect of which the measure is taken; (c) legal source or authority of the measure; (d) succinct description of the measure; and (e) motivation or purpose of the measure.

3. In cases where a Contracting Party adopts any new exceptional measure in the sectors or with respect to the matters specified in Annex I after the entry into force of this Agreement, such Contracting Party shall, prior to the entry into force of the measure or, in exceptional circumstances, as soon thereafter as possible:

(a) notify the other Contracting Party of the elements of the measure as set out in paragraph 2 of this Article; and

(b) hold, upon request by that other Contracting Party, consultations in good faith with that other Contracting Party with a view to achieving mutual satisfaction.

Article 5

1. Notwithstanding the provisions of Article 2, paragraph 3 of Article 8, or Article 9, each Contracting Party may maintain any exceptional measure, which exists on the date on which this Agreement comes into force, in the sectors or with respect to the matters specified in Annex II to this Agreement.

2. Each Contracting Party shall, on the date on which this Agreement comes into force, notify the other Contracting Party of all existing exceptional measures in the sectors or with respect to the matters specified in Annex II. Such notification shall include information on the following elements of each measure: (a) sector and sub-sector or matter; (b) obligation or article in respect of which the measure is taken; (c) legal source or authority of the measure; (d) succinct description of the measure; and (e) motivation or purpose of the measure.

3. Each Contracting Party shall endeavour to progressively reduce or eliminate the measures notified pursuant to paragraph 2 of this Article.

4. Neither Contracting Party shall, after the entry into force of this Agreement, adopt any new exceptional measure in the sectors or with respect to the matters specified in Annex II.

5. The provisions of paragraph 4 of this Article shall not be construed so as to prevent a Contracting Party from amending or modifying any existing exceptional measure, provided that such amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with the provisions of Article 2, paragraph 3 of Article 8, or Article 9.

6. In cases where a Contracting Party makes such amendment or modification, the Contracting Party shall, prior to the entry into force of the measure or, in exceptional circumstances, as soon thereafter as possible:

(a) notify the other Contracting Party of the elements of the measure as set out in paragraph 2 of this Article; and

(b) provide, upon request by that other Contracting Party, particulars of the measure to that other Contracting Party.

7. Notwithstanding the provisions of paragraph 4 of this Article, each Contracting Party may, in exceptional financial, economic or industrial circumstances, adopt any exceptional measure in the sectors or with respect to the matters specified in Annex II, provided that such Contracting Party shall, prior to the entry into force of the measure:

(a) notify the other Contracting Party of the elements of the measure as set out in paragraph 2 of this Article;

(b) provide, upon request by that other Contracting Party, particulars of the measure to that other Contracting Party;

(c) allow that other Contracting Party reasonable time to make comments in writing;

(d) hold, upon request by that other Contracting Party, consultations in good faith with that other Contracting Party with a view to achieving mutual satisfaction; and

(e) take appropriate action based upon the written comments made pursuant to sub-paragraph (c) above or the results of the consultations held pursuant to sub-paragraph (d) above.

Article 6

1. Nothing in this Agreement shall be construed so as to derogate from the rights and obligations under international agreements in respect of protection of intellectual property rights to which the Contracting Parties are parties, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, and other international agreements concluded under the auspices of the World Intellectual Property Organization.

2. Nothing in this Agreement shall be construed so as to oblige either Contracting Party to extend to investors of the other Contracting Party and their investments treatment accorded to investors of any third country and their investments by virtue of international agreements in respect of protection of intellectual property rights, to which the former Contracting Party is a party.

Article 7

1. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative rulings and judicial decisions of general application as well as international agreements which pertain to or affect investment and business activities.

2. Each Contracting Party shall, upon request by the other Contracting Party, promptly respond to specific questions and provide that other Contracting Party with information on matters set out in paragraph 1 of this Article.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige either Contracting Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice privacy or legitimate commercial interests.

Article 8

1. Subject to its laws relating to entry, stay and authorisation to work, each Contracting Party shall grant temporary entry, stay and authorisation to work to investors of the other Contracting Party for the purpose of establishing, developing, administering or advising on the operation in the territory of the former Contracting Party of an investment to which they, or an enterprise of that other Contracting Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources, so long as they continue to meet the requirements of this Article.

2. Neither Contracting Party, in granting entry under paragraph 1 of this Article, shall apply a numerical restriction in the form of quotas or the requirement of an economic needs test, unless (a) it notifies the other Contracting Party of its intent to apply the restriction no later than sixty days before the intended date of the implementation of the restriction, and (b) it, upon request by the other Contracting Party, consults with that other Contracting Party before the implementation of the restriction.

3. Neither Contracting Party shall require that an enterprise of that Contracting Party that is an investment of an investor of the other Contracting Party appoint, as executives, managers or members of boards of directors, individuals of any particular nationality.

Article 9

1. Neither Contracting Party shall impose or enforce, as a condition for investment and business activities in its territory of an investor of the other Contracting Party, any of the following requirements:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural or legal persons or any other entity in its territory;

(d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor;

(e) to restrict sales of goods or services in its territory that an investment of that investor produces or provides by relating such sales to the volume or value of its exports or foreign exchange earnings;

(f) to transfer technology, a production process or other proprietary knowledge to a natural or legal person or any other entity in its territory, except when the requirement (i) is imposed or enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or (ii) concerns the transfer of intellectual property and is undertaken in a manner not inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization;

(g) to locate the headquarters of that investor for a specific region or the world market in its territory;

(h) to achieve a given level or value of research and development in its territory;

(i) to hire a given level of its nationals; or

(j) to supply one or more of the goods that the investor produces or the services that the investor provides to a specific region or the world market, exclusively from the territory of the former Contracting Party.

2. The provisions of paragraph 1 of this Article do not preclude either Contracting Party from conditioning the receipt or continued receipt of an advantage, in connection with investment and business activities in its territory of an investor of the other Contracting Party, on compliance with any of the requirements set forth in paragraph 1 (f) through (j) of this Article.

3. Nothing in this Article shall be construed so as to derogate from the rights and obligations of the Contracting Parties under the Agreement on Trade-Related Investment Measures, Annex 1A of the Marrakesh Agreement Establishing the World Trade Organization.

Article 10

1. Each Contracting Party shall accord to investments in its territory of investors of the other Contracting Party fair and equitable treatment and full and constant protection and security.

2. Neither Contracting Party shall expropriate or nationalise investments in its territory of investors of the other Contracting Party or take any measure tantamount to expropriation or nationalisation (hereinafter referred to as “expropriation”) except: (a) for a public purpose; (b) in a non-discriminatory manner; (c) upon payment of prompt, adequate and effective compensation; and (d) in accordance with due process of law.

3. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier. The compensation shall be paid without delay and shall carry an appropriate interest, taking into account the length of time until the time of payment. It shall be effectively realisable and freely transferable and shall be freely convertible into the currency of the Contracting Party of the investors concerned, and into freely usable currencies as defined in the Articles of Agreement of the International Monetary Fund, at the market exchange rate prevailing on the date of expropriation.

4. Without prejudice to the provisions of Article 15, the investors affected shall have a right of access to the courts of justice or administrative tribunals or agencies of the Contracting Party making the expropriation for a prompt review of the investors’ case and the amount of compensation in accordance with the principles set out in this Article.

Article 11

An investor of a Contracting Party, which has suffered loss or damage relating to its investment and business activities in the territory of the other Contracting Party due to hostilities or a state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the territory of that other Contracting Party, shall be accorded by that other Contracting Party, as regards restitution, indemnification, compensation or any other settlement, treatment no less favourable than that which it accords to its own investors or to investors of any third country, whichever is more favourable to the investor.

Article 12

1. Each Contracting Party shall ensure that all payments relating to an investment in its territory of an investor of the other Contracting Party may be freely transferred into and out of its territory without delay. Such transfer shall include, in particular, though not exclusively:

(a) the initial capital and additional amounts to maintain or increase an investment;

(b) profits, interest, dividends, capital gains, royalties or fees;

(c) payments made under a contract including a loan agreement;

(d) proceeds of the total or partial sale or liquidation of investments;

(e) payments made in accordance with Articles 10 and 11;

(f) payments arising out of the settlement of a dispute under Article 15; and

(g) earnings and remuneration of personnel engaged from the other Contracting Party in connection with an investment.

2. Neither Contracting Party shall prevent transfers from being made without delay in freely convertible currencies at the market rate of exchange existing on the date of the transfer.

3. Notwithstanding paragraphs 1 and 2 above, a Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal or penal offenses; or

(d) ensuring compliance with orders or judgements in adjudicatory proceedings.

Article 13

If a Contracting Party or its designated agency makes a payment to any investor of that Contracting Party under an indemnity, guarantee or contract of insurance given in respect of an investment of such investor in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated agency of any right or claim of such investor on account of which such payment is made and shall recognise the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as its predecessor in title. As regards payment to be made to that former Contracting Party or its designated agency by virtue of such assignment of right or claim and the assignment of such payment, the provisions of paragraphs 2 to 4 of Article 10, and Article 12 shall apply mutatis mutandis.

Article 14

1. The Contracting Parties shall consult promptly, upon request by either Contracting Party, to resolve any dispute in connection with this Agreement, or to discuss any matter relating to the interpretation or application of this Agreement or to the realisation of the objectives of this Agreement.

2. Any dispute between the Contracting Parties as to the interpretation or application of this Agreement, not satisfactorily resolved by such consultation, shall be submitted, upon request in writing by either Contracting Party, to an arbitral tribunal for a binding decision rendered on the basis of the applicable rules of international law. Except where otherwise provided in this Article, or in the absence of an agreement by the Contracting Parties to the contrary, the UNCITRAL Arbitration Rules shall apply mutatis mutandis, except to the extent these rules are (a) modified by the Contracting Parties or (b) modified by the arbitrators appointed pursuant to paragraph 3 of this Article unless either Contracting Party objects to the proposed modification.

3. Within two months from the date of receipt of such request as provided in paragraph 2 above, each Contracting Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as chairperson, who shall be a national of a third country. The UNCITRAL Arbitration Rules applicable to appointing members of three-member panels shall apply mutatis mutandis to other matters relating to the appointment of the arbitral tribunal provided that the appointing authority referenced in those rules shall be the Secretary-General of the Centre.

4. Unless otherwise agreed by the Contracting Parties, all submissions of documents shall be made and all hearings shall be completed within a period of six months from the date of selection of the third arbitrator, and the arbitral tribunal shall render its decisions within two months from the date of the final submissions of documents or the date of the closing of the hearings, whichever is later. Such decisions shall be final and binding.

5. Expenses incurred by the chairperson and other arbitrators, and other costs of the proceedings, shall be borne equally by the Contracting Parties. However, the arbitral tribunal may, at its discretion, decide that a higher proportion of the costs be paid by one of the Contracting Parties.

Article 15

1. For the purposes of this Article, an investment dispute is a dispute between a Contracting Party and an investor of the other Contracting Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any right conferred by this Agreement with respect to an investment of an investor of that other Contracting Party.

2. In the event of an investment dispute, the investment dispute shall, if possible, be settled by consultation or negotiation. If it is not so settled, the investor may submit the investment dispute for resolution under one of the following alternatives:

(a) in accordance with any applicable, previously agreed dispute-settlement procedures; or

(b) in accordance with the terms of paragraph 3 of this Article.

3. If the investment dispute cannot be settled within three months from the date on which the investor requested the consultation or negotiation in writing and if the investor concerned has not submitted the investment dispute for resolution under paragraph 2 (a) of this Article or judicial or administrative settlement, the investor concerned may submit the investment dispute for settlement by binding arbitration:

(a) to the Centre, if both Contracting Parties are parties to the ICSID Convention;

(b) in accordance with the UNCITRAL Arbitration Rules; or

(c) if agreed by both parties to the dispute, to any other arbitration institution or in accordance with any other arbitration rules.

Unless otherwise agreed by both parties to the investment dispute, once the investor concerned submits the investment dispute for resolution under paragraphs 2 and 3 of this Article, the investor concerned may not submit the investment dispute for settlement by any of the other alternatives set out in paragraphs 2 and 3 of this Article.

Each Contracting Party hereby gives its consent to the submission of an investment dispute to international arbitration as set out in sub-paragraphs (a) and (b) of this paragraph.

4. An investor submitting an investment dispute pursuant to paragraph 3 of this Article shall give to the Contracting Party in dispute a written notice of intent to do so at least ninety days before the claim is submitted. The notice of intent shall specify:

(a) the name and address of the investors concerned;

(b) the specific measures at issue of such Contracting Party in dispute and a brief summary of the factual and legal basis of the investment dispute sufficient to present the problem clearly, including the provisions of this Agreement alleged to have been breached;

(c) the relief sought including, as necessary, the approximate amount of damages claimed; and

(d) the dispute-settlement procedures set forth in paragraph 3 (a) to (c) of this Article which the investor concerned will seek.

5. Notwithstanding the provisions of paragraph 3 of this Article, an investor may not make a claim pursuant to paragraph 3 of this Article if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge that the investor had incurred loss or damage.

6. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award in accordance with its relevant laws and regulations.

7. The provisions of the second sentence of paragraph 2, and paragraph 3 of this Article shall not apply to a measure of a Contracting Party that falls within the scope of Article 17 or 18. Upon request by the other Contracting Party, the competent authorities of the Contracting Parties shall consult as to the application of the provisions of this paragraph.

8. Nothing in this Article shall be construed so as to prevent an investor from seeking judicial or administrative settlement in the territory of the Contracting Party in dispute.

Article 16

1. Notwithstanding any other provisions in this Agreement other than the provisions of Article 11, each Contracting Party may:

(a) take any measure which it considers necessary for the protection of its essential security interests;

(i) taken in time of war, or armed conflict, or other emergency in that Contracting Party or in international relations; or

(ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons;

(b) take any measure in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security;

(c) take any measure necessary to protect human, animal or plant life or health; or

(d) take any measure necessary for the maintenance of public order. The public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

2. In cases where a Contracting Party takes any measure, pursuant to paragraph 1 above, that does not conform with the obligations of the provisions of this Agreement other than the provisions of Article 11, that Contracting Party shall not use such measure as a means of avoiding its obligations.

3. In cases where a Contracting Party takes any measure, pursuant to paragraph 1 above, that does not conform with the obligations of the provisions of this Agreement other than the provisions of Article 11, that Contracting Party shall, prior to the entry into force of the measure or as soon thereafter as possible, notify the other Contracting Party of the following elements of the measure: (a) sector and sub-sector or matter; (b) obligation or article in respect of which the measure is taken; (c) legal source or authority of the measure; (d) succinct description of the measure; and (e) motivation or purpose of the measure.

4. Notwithstanding the provisions of paragraph 1 of Article 2 of this Agreement, each Contracting Party may prescribe formalities in connection with investment and business activities of investors of the other Contracting Party in its territory, provided that such formalities do not impair the substance of the rights under this Agreement.

Article 17

1. A Contracting Party may adopt or maintain measures not conforming with its obligations under paragraph 1 of Article 2 relating to cross-border capital transactions and Article 12 of this Agreement:

(a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

2. Measures referred to in paragraph 1 of this Article:

(a) shall be consistent with the Articles of Agreement of the International Monetary Fund so long as the Contracting Party taking the measures is a party to the said Articles of Agreement;

(b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1 of this Article;

(c) shall be temporary and shall be eliminated as soon as conditions permit; and

(d) shall be promptly notified to the other Contracting Party.

3. Nothing in this Agreement shall be regarded as altering the rights enjoyed and obligations undertaken by a Contracting Party as a party to the Articles of Agreement of the International Monetary Fund.

Article 18

1. Notwithstanding any other provisions of this Agreement, a Contracting Party may adopt or maintain prudential measures with respect to financial services, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise providing financial services, to ensure the integrity and stability of its financial system.

2. In cases where a Contracting Party takes any measure, pursuant to paragraph 1 above, that does not conform with the obligations of the provisions of this Agreement, that Contracting Party shall not use such measure as a means of avoiding its obligations.

Article 19

1. Nothing in this Agreement shall apply to taxation measures except as expressly provided in paragraphs 2, 3 and 4 of this Article.

2. Articles 1, 3, 7, 10, 22 and 23 shall apply to taxation measures.

3. Articles 14 and 15 shall apply to disputes under paragraph 2 of this Article.

4. Article 20 shall apply to taxation measures regarding the matters set out in paragraph 2 of this Article.

Article 20

1. The Contracting Parties shall establish a Joint Committee (hereinafter referred to as the “Committee”) with a view to accomplishing the objectives of this Agreement. The functions of the Committee shall be:

(a) to discuss and review the implementation and operation of this Agreement;

(b) to review the measures maintained, amended, modified or adopted pursuant to Article 5 of this Agreement for the purpose of contributing to the reduction or elimination of such measures;

(c) to discuss the measures adopted or maintained pursuant to Article 4 of this Agreement for the purpose of encouraging favourable conditions for investors of both Contracting Parties; and

(d) to discuss other investment-related matters concerning this Agreement.

2. The Committee may, as necessary, make appropriate recommendations by consensus to the Contracting Parties for the more effective functioning, or the attainment of the objectives, of this Agreement.

3. The Committee shall be composed of representatives of the Contracting Parties. The Committee shall determine its own rules of procedure to carry out its functions.

4. The Committee may establish sub-committees and delegate specific tasks to such sub-committees. The Committee, upon mutual consent of the Contracting Parties, may hold joint meetings with the private sectors.

5. Unless otherwise decided by the Contracting Parties, the Committee shall meet once a year, and otherwise at the request of either Contracting Party.

Article 21

Both Contracting Parties recognise that it is inappropriate to encourage investment by investors of the other Contracting Party by relaxing environmental measures. To this effect each Contracting Party should not waive or otherwise derogate from such environmental measures as an encouragement for the establishment, acquisition or expansion in its territory of investments by investors of the other Contracting Party.

Article 22

1. In fulfilling the obligations under this Agreement, each Contracting Party shall take such reasonable measures as may be available to it to ensure the observance of this Agreement by local governments in its territory.

2. Each Contracting Party reserves the right to deny to an investor of the other Contracting Party that is a legal person or any other entity referred to in sub-paragraph (b) of paragraph (1) of Article 1 and its investments the benefits of this Agreement, if investors of any third country own or control that investor of that other Contracting Party, and

(a) the denying Contracting Party does not maintain normal economic relations with the third country; or

(b) that investor of that other Contacting Party has no substantial business operations in the territory of that other Contracting Party under whose laws it is constituted or organised.

3. The provisions of paragraph 2 of Article 2 of this Agreement shall not be construed so as to oblige a Contracting Party to extend to investors of the other Contracting Party and their investments any preferential treatment resulting from its membership of a free trade area, a customs union, an international agreement for economic integration or a similar international agreement.

Article 23

1. This Agreement shall enter into force on the thirtieth day after the date of exchange of diplomatic notes informing each other that their respective legal procedures necessary for the entry into force of this Agreement have been completed. It shall remain in force for a period of ten years after its entry into force and shall continue in force unless terminated as provided in paragraph 2 of this Article. This Agreement shall also apply to all investments of investors of either Contracting Party acquired in the territory of the other Contracting Party in accordance with the applicable laws and regulations of that other Contracting Party prior to the entry into force of this Agreement.

2. A Contracting Party may, by giving one year’s advance notice in writing to the other Contracting Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

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

4. This Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled, prior to its entry into force.

5. The Annexes to this Agreement shall form an integral part of this Agreement.

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

DONE in duplicate at Seoul, on this twenty-second day of March, 2002, in the Japanese, Korean and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF JAPAN:

寺 田 輝 介

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA:

ANNEX I

EXCEPTIONAL SECTORS OR MATTERS TO ARTICLE 2, PARAGRAPH 3 OF ARTICLE 8, AND ARTICLE 9

THE REPUBLIC OF KOREA	JAPAN
1. Defense industry 2. Broadcasting industry 3. Network operating industry 4. Fisheries 5. Tobacco industry 6. Electricity industry 7. Gas industry 8. Capital transactions with non-residents (won-denominated loans, won-denominated securities with short-term maturities, foreign currency denominated financial credits, guarantees or collaterals, financially unsound corporation's borrowing from non-residents, and derivatives transaction) 9. Foreign acquisition of land 10. Nuclear energy industry 11. Motion pictures industry (Screen quota) 12. Newspaper publishing industry (restrictions on being a publisher or an editor) 13. News agency activities industry (restrictions on being a publisher or an editor) 14. Magazines and periodicals publishing industry (restrictions on being a publisher or an editor)	1. Fisheries within the territorial sea and internal waters 2. Explosives manufacturing industry 3. Nuclear energy industry 4. Aircraft industry 5. Arms industry 6. Space industry 7. Broadcasting industry 8. Financial Services (deposit insurance) 9. Electricity utility industry 10. Gas utility industry 11. The maintenance, designation or elimination (including privatisation) of a public monopoly 12. The maintenance, establishment or disposal (including privatisation) of a state enterprise 13. Subsidies Most-favoured-nation treatment shall be accorded in the sectors or matters specified in 2 to 13.

15. The maintenance, designation, or elimination (including privatisation) of a public monopoly other than those covered by Annex II 16. The maintenance, establishment or disposal (including privatisation) of a state enterprise other than those covered by Annex II 17. Subsidies Most-favoured-nation treatment shall be accorded in the sectors or matters specified in 1 to 17 other than 4 and 9.	

ANNEX II

EXCEPTIONAL SECTORS OR MATTERS TO ARTICLE 2, PARAGRAPH 3 OF ARTICLE 8, AND ARTICLE 9

THE REPUBLIC OF KOREA	JAPAN
1. Rice and barley production industry	1. Primary industry related to agriculture, forestry and fisheries (except those covered by Annex I)
2. Beef cattle-farming industry	2. Oil industry
3. Meat wholesale industry	3. Mining industry
4. Telecommunications industry (other than network operating industry)	4. Biological preparations manufacturing industry
5. Water transport industry	5. Leather and leather products manufacturing industry
6. Air transport industry	6. Water supply and waterworks industry
7. Outdoor advertising industry	7. Railway transport industry
8. Financial Services (liaison offices of foreign banks, branches of foreign credit information companies, Korea Development Bank and Export-Import Bank of Korea)	8. Omnibus industry
9. Registration of aircraft in the national register and matters arising from such registration	9. Freight forwarding business industry
10. Matters related to or arising from the nationality of ship, and the acquisition of ship or of any interest in ship	10. Water transport industry
	11. Air transport industry
	12. Telecommunications industry
	13. Security industry
	14. Heat supply industry
	15. Registration of aircraft in the national register and matters arising from such registration
	16. Matters related to or arising from the nationality of ship, and the acquisition of ship or of any interest in ship

AGREED MINUTES

The undersigned wish to record the following understanding which was reached during the negotiations for the Agreement between the Governments of Japan and the Republic of Korea for the Liberalisation, Promotion and Protection of Investment (hereinafter referred to as “the Agreement”) signed today:

1. Both Contracting Parties confirm their understanding in respect of Article 2 of the Agreement that each Contracting Party is obliged to accord to investors of the other Contracting Party and to their investments the better of the treatment required by paragraphs 1 and 2 of Article 2, whichever is the more favourable to such investors or such investments.

2. Both Contracting Parties confirm their understanding that the Ministerial Ordinance to Provide for Criteria pursuant to Paragraph 1 (2) of Article 7 of the Immigration Control and Refugee Recognition Act (Ministry of Justice Ordinance No. 16 of May 24, 1990) of Japan is consistent with the obligation under the provisions of paragraph 1 (i) of Article 9 of the Agreement.

3. Both Contracting Parties confirm their understanding that if a compensation carries an interest at a commercial rate, that compensation is deemed as carrying an appropriate interest within the meaning of paragraph 3 of Article 10.

4. Both Contracting Parties confirm their understanding that the following requirements are not inconsistent with the obligations under paragraph 1 of Article 9:

(a) Requirement to employ a given level of persons with disabilities;

(b) Requirement to purchase raw blood material through the National Red Cross;

(c) Requirement to employ a given level of persons who are national meritorious persons;

(d) Requirement to recycle domestically-collected waste materials; and

(e) Requirement for a general constructor to subcontract its construction work.

5. Both Contracting Parties confirm their understanding that the Agreement does not apply to government procurement.

6. Both Contracting Parties confirm their understanding in respect of Article 10 of the Agreement that, when considering the issues of whether a taxation measure effects an expropriation, the following elements should be borne in mind:

(a) The imposition of taxes does not generally constitute expropriation. The introduction of a new taxation measure, taxation by more than one jurisdiction in respect to an investment, or a claim of excessive burden imposed by a taxation measure are not in themselves indicative of an expropriation.

(b) A taxation measure will not be considered to constitute expropriation where it is generally within the bounds of internationally recognised tax policies and practices. Taxation measures aimed at preventing the avoidance or evasion of taxes should not generally be considered to be expropriatory.

(c) While expropriation may be constituted even by measures applying generally (e.g., to all taxpayers), such a general application is in practice less likely to suggest an expropriation than more specific measures aimed at particular nationalities or individual taxpayers. A taxation measure would not be expropriatory if it was in force and was transparent when the investment was undertaken.

7. Both Contracting Parties confirm their understanding in respect of Annex I of the Agreement that:

(a) the term “public monopoly” means any person or entity designated by a Contracting Party as the sole supplier or buyer of a good or service in a relevant market in the territory of that Contracting Party; and

(b) the term “state enterprise” means an enterprise owned or controlled through equity interest by a Contracting Party.

8. Both Contracting Parties confirm their understanding that, when a new sector, which does not exist at the time of the entry into force of the Agreement, emerges in a Contracting Party after the entry into force of the Agreement and that Contracting Party, therefore, wishes to amend the Annexes to the Agreement, the Contracting Parties shall, upon request by that Contracting Party, enter immediately into consultations with a view to amending the Annexes.

Seoul, March 22, 2002

FOR THE GOVERNMENT OF JAPAN:

寺 田 輝 介

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA: