

합의의사록

AGREED MINUTES

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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:

최 성 홍