Treaty Series

Treaties and international agreements registered or filed and recorded with the Secretariat of the United Nations

VOLUME 2397 **2006** **I. Nos. 43275--43294**

Recueil des Traités

Traités et accords internationaux enregistrés ou classés et inscrits au répertoire au Secrétariat de l'Organisation des Nations Unies

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United Nations • Nations Unies
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NOTE BY THE SECRETARIAT

Under Article 102 of the Charter of the United Nations every treaty and every international agreement entered into by any Member of the United Nations after the coming into force of the Charter shall, as soon as possible, be registered with the Secretariat and published by it. Furthermore, no party to a treaty or international agreement subject to registration which has not been registered may invoke that treaty or agreement before any organ of the United Nations. The General Assembly, by resolution 97 (I), established regulations to give effect to Article 102 of the Charter (see text of the regulations, vol. 859, p.,VIII).

The terms "treaty" and "international agreement" have not been defined either in the Charter or in the regulations, and the Secretariat follows the principle that it acts in accordance with the position of the Member State submitting an instrument for registration that so far as that party is concerned the instrument is a treaty or an international agreement within the meaning of Article 102. Registration of an instrument submitted by a Member State, therefore, does not imply a judgement by the Secretariat on the nature of the instrument, the status of a party or any similar question. It is the understanding of the Secretariat that its action does not confer on the instrument the status of a treaty or an international agreement if it does not already have that status and does not confer on a party a status which it would not otherwise have.

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Unless otherwise indicated, the translations of the original texts of treaties, etc., published in this Series have been made by the Secretariat of the United Nations.

NOTE DU SECRÉTARIAT

Aux termes de l'Article 102 de la Charte des Nations Unies, tout traité ou accord international conclu par un Membre des Nations Unies après l'entrée en vigueur de la Charte sera, le plus tôt possible, enregistré au Secrétariat et publié par lui. De plus, aucune partie à un traité ou accord international qui aurait dû être enregistré mais ne l'a pas été ne pourra invoquer ledit traité ou accord devant un organe des Nations Unies. Par sa résolution 97 (I), l'Assemblée générale a adopté un règlement destiné à mettre en application l'Article 102 de la Charte (voir texte du règlement, vol. 859, p. lX).

Le terme « traité » et l'expression « accord international » n'ont été définis ni dans la Charte ni dans le règlement, et le Secrétariat a pris comme principe de s'en tenir à la position adoptée à cet égard par l'Etat Membre qui a présenté l'instrument à l'enregistrement, à savoir que pour autant qu'il s'agit de cet Etat comme partie contractante l'instrument constitue un traité ou un accord international au sens de l'Article 102. Il s'ensuit que l'enregistrement d'un instrument présenté par un Etat Membre n'implique, de la part du Secrétariat, aucun jugement sur la nature de l'instrument, le statut d'une partie ou toute autre question similaire. Le Secrétariat considère donc que les actes qu'il pourrait être amené à accomplir ne confèrent pas à un instrument la qualité de « traité » ou d'« accord international » si cet instrument n'a pas déjà cette qualité, et qu'ils ne confèrent pas à une partie un statut que, par ailleurs, elle ne posséderait pas.

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Sauf indication contraire, les traductions des textes originaux des traités, etc., publiés dans ce Recueil ont été établies par le Secrétariat de l'Organisation des Nations Unies.

I

Treaties and international agreements

registered in

November 2006

Nos. 43275 to 43294

Traités et accords internationaux

enregistrés en

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N^{os} 43275 à 43294

No. 43275

Republic of Korea
and
Mongolia

Arrangement on technical cooperation between the Government of the Republic of Korea and the Government of Mongolia. Seoul, 8 November 1999

Entry into force: *8 November 1999 by signature, in accordance with article 8*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

République de Corée
et
Mongolie

Arrangement de coopération technique entre le Gouvernement de la République de Corée et le Gouvernement de la Mongolie. Séoul, 8 novembre 1999

Entrée en vigueur : *8 novembre 1999 par signature, conformément à l'article 8*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

[ENGLISH TEXT — TEXTE ANGLAIS]

ARRANGEMENT ON TECHNICAL COOPERATION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF MONGOLIA

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

Pursuant to Article 2 of the Agreement on Economic, Scientific and Technical Cooperation between the Government of the Republic of Korea and the Government of Mongolia signed on March 28, 1991,

Desiring to further strengthen the friendly relations existing between the two countries through the promotion of technical cooperation,

Have agreed on the following:

Article 1

1. The Parties shall, in accordance with the laws and regulations of their respective countries, promote the effective implementation of technical cooperation (hereinafter referred to as "cooperation") between the two countries.

2. The cooperation under this Arrangement shall include the following:

(a) to promote project-type cooperation;

(b) to provide special funds and equipment;

(c) to make development study;

(d) to dispatch Korean experts, Korea overseas volunteers, and medical teams (hereinafter referred to as "development personnel");

(e) to invite Mongolian trainees to the Republic of Korea; and,

(f) to provide any other form of cooperation agreed upon by the Parties.

Article 2

The implementing Agencies shall be:

(a) as regards the Government of the Republic of Korea, the Korea International Cooperation Agency (hereinafter referred to as "KOICA"); and,

(b) as regards the Government of Mongolia, the Ministry of External Relations.

Article 3

1. The equipment, machinery and materials provided by the Government of the Republic of Korea to implement cooperation mentioned in Article 1 of this Arrangement shall be used exclusively for purposes for which they were provided.

2. The Government of Mongolia shall take the following measures with respect to the equipment, machinery and materials mentioned in paragraph 1 of this Article:

(a) to exempt customs duties, taxes and other charges of a similar nature;

(b) to bear expenses for transportation and insurance from the port of disembarkation.

Article 4

1. The Government of Mongolia shall take the following measures in support of development personnel dispatched by the Government of the Republic of Korea to Mongolia:

(a) to provide adequate office accommodation and other facilities required for the development personnel to perform their duties;

(b) to provide local staff, including interpreters, necessary for the performance of the duties of the development personnel;

(c) to issue identification cards to the development personnel to facilitate the performance of their duty in Mongolia;

(d) to bear expenses for official domestic and international travels of development personnel during their duty in Mongolia;

(e) to provide adequate housing and medical care for the benefit of the development personnel.

2. The Government of Mongolia shall exempt the development personnel from:

(a) taxes and other fiscal charges on any emoluments or allowances received from the Government of the Republic of Korea;

(b) customs duties, taxes and other charges of a similar nature on the materials, equipment, etc. brought into Mongolia for the purpose of performing their duties; and,

(c) visa and immigration-related fees.

Article 5

1. The Government of the Republic of Korea will establish a KOICA overseas office in Mongolia, when it deems such an office is necessary to carry out the cooperation mentioned in Article 1 of this Arrangement.

2. The Government of Mongolia shall provide assistance in establishing the KOICA office in Mongolia.

Article 6

Any dispute arising from the implementation of this Arrangement shall be settled without delay through consultation between the two Parties.

Article 7

The provisions of this Arrangement shall also apply to any cooperation program launched before and continuing to be in progress after the entry into force of this Arrangement.

Article 8

1. This Arrangement shall enter into force on the date of signature.

2. This Arrangement shall remain in force for a period of five (5) years. Thereafter, it shall remain in force indefinitely, unless one Party notifies its intention to terminate this Arrangement to the other Party by one year's prior notification in writing.

In Witness Whereof, the undersigned, duly authorized by their respective Governments, have signed this Arrangement.

Done in duplicate at Seoul this 8th day of November 1999, in the English language.

For the Government of the Republic of Korea:

SUN JOUN-YUNG

For the Government of Mongolia:

LODOIDAMBYN GALBADRAKH

[TRANSLATION -- TRADUCTION]

ARRANGEMENT DE COOPÉRATION TECHNIQUE ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CORÉE ET LE GOUVERNEMENT DE MONGOLIE

Le Gouvernement de la République de Corée et le Gouvernement de Mongolie (ci-après dénommés "les Parties"),

En vertu de l'Article 2 de l'Accord de coopération économique, scientifique et technique entre le Gouvernement de la République de Corée et le Gouvernement de Mongolie signé le 28 mars 1991,

Désireux de renforcer davantage les relations amicales existant entre les deux pays à travers la promotion de la coopération technique,

Sont convenus de ce qui suit :

Article 1

1. Les Parties, conformément aux lois et règlements de leurs pays respectifs, s'attacheront à promouvoir une mise en oeuvre efficace de la coopération technique (ci-après dénommée "coopération").

2. La coopération dans le cadre du présent Arrangement inclura :

(a) la promotion d'une coopération basée sur des projets;

(b) l'octroi de fonds et d'équipements spéciaux;

(c) la réalisation d'une étude sur le développement;

(d) l'envoi d'experts, de volontaires et d'équipes médicales coréens (ci-après dénommés "personnel de développement");

(e) l'invitation de stagiaires mongols en République de Corée; et,

(f) la mise en oeuvre de toute autre forme de coopération convenue par les Parties.

Article 2

Les organismes d'exécution seront :

(a) pour le Gouvernement de la République de Corée, la Korea International Cooperation Agency (ci-après dénommée "KOICA"); et,

(b) pour le Gouvernement de Mongolie, le Ministère des Relations extérieures.

Article 3

1. L'équipement, les machines et les matériels fournis par le Gouvernement de la République de Corée pour la mise en oeuvre de la coopération visée à l'Article 1 du présent Arrangement devront être utilisés exclusivement dans les buts pour lesquels ils ont été fournis.

2. Le Gouvernement de Mongolie devra prendre les mesures suivantes concernant l'équipement, les machines et les matériels mentionnés au paragraphe 1 du présent Article :

(a) les exonérer de tous droits de douane, taxes et autres frais similaires;

(b) prendre en charge les frais de transport et d'assurance au départ du port de débarquement.

Article 4

1. Le Gouvernement de Mongolie prendra les mesures suivantes pour soutenir le personnel de développement envoyé par le Gouvernement de la République de Corée en Mongolie :

(a) il veillera à fournir les bureaux et les autres infrastructures nécessaires au personnel de développement pour l'exécution de ses tâches;

(b) il mettra à disposition le personnel local nécessaire, y compris des interprètes, pour que le personnel de développement puisse effectuer ses tâches;

(c) il émettra pour le personnel de développement des cartes d'identification qui faciliteront à ce dernier l'exécution de ses tâches en Mongolie;

(d) il prendra en charge les frais des voyages officiels, en Mongolie et à l'étranger, du personnel de développement pendant sa mission en Mongolie;

(e) il assurera un logement et des soins médicaux adéquats au personnel de développement.

2. Le Gouvernement de Mongolie exonérera le personnel de développement des frais suivants :

(a) taxes et autres charges fiscales pour les émoluments et indemnités reçus du Gouvernement de la République de Corée;

(b) droits de douane, taxes et autres charges de nature similaire sur les matériels, les équipements, etc., amenés en Mongolie pour l'exécution de ses tâches; et,

(c) frais de visa et autres frais d'immigration.

Article 5

1. S'il l'estime nécessaire pour la mise en oeuvre de la coopération visée à l'Article 1 du présent Arrangement, le Gouvernement de la République de Corée ouvrira un bureau KOICA en Mongolie.

2. Le Gouvernement de Mongolie fournira son assistance pour l'ouverture du bureau KOICA en Mongolie.

Article 6

Tout différend survenant dans le cadre de la mise en oeuvre du présent Arrangement sera réglé sans délai par une consultation entre les deux Parties.

Article 7

Les dispositions du présent Arrangement s'appliquent également à tout programme de coopération lancé avant l'entrée en vigueur du présent Arrangement et encore en cours après son entrée en vigueur.

Article 8

1. Le présent Arrangement entre en vigueur à la date de sa signature.

2. Le présent Arrangement demeurera en vigueur pendant une période de cinq (5) ans. Il restera ensuite en vigueur pour une durée indéterminée à moins que l'une des Parties ne notifie par écrit à l'autre son intention de le dénoncer, avec un an de préavis.

En foi de quoi, les soussignés, dûment autorisés par leurs gouvernements respectifs, ont signé le présent Arrangement.

Fait à Séoul ce 8 novembre 1999, en deux copies en langue anglaise.

Pour le Gouvernement de la République de Corée :

SUN JOUN-YUNG

Pour le Gouvernement de la République de Mongolie :

LODOIDAMBYN GALBADRAKH

No. 43276

Republic of Korea
and
Thailand

Treaty on extradition between the Republic of Korea and the Kingdom of Thailand (with related note). Seoul, 26 April 1999

Entry into force: *15 February 2001 by notification, in accordance with article 19*

Authentic texts: *English, Korean and Thai*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

République de Corée
et
Thaïlande

Traité d'extradition entre la République de Corée et le Royaume de Thaïlande (avec note connexe). Séoul, 26 avril 1999

Entrée en vigueur : *15 février 2001 par notification, conformément à l'article 19*

Textes authentiques : *anglais, coréen et thaï*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

[ENGLISH TEXT — TEXTE ANGLAIS]

TREATY ON EXTRADITION BETWEEN THE REPUBLIC OF KOREA AND THE KINGDOM OF THAILAND

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

Desiring to make more effective the co-operation of the two countries in the prevention and suppression of crime by concluding a treaty on the reciprocal extradition of offenders,

Have agreed as follows:

Article 1. Obligation to Extradite

Each Contracting Party agrees to extradite to the other, in accordance with the provisions of this Treaty, any persons who are wanted for prosecution, trial or for the imposition or execution of punishment in the territory of the Requesting Party for an extraditable offence.

Article 2. Extraditable Offences

1. For the purposes of this Treaty, extraditable offences are offences, however described, which are punishable under the laws of both Contracting Parties including the laws relating to taxation, customs duties, foreign exchange control or other revenue matter, by imprisonment or other deprivation of liberty for a maximum period of at least one year or by a more severe penalty.

2. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six (6) months in the sentence remains to be served.

3. For the purposes of this Article, in determining whether an offence is an offence against the laws of both Contracting Parties:

(a) it shall not matter whether the laws of the Contracting Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology;

(b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Contracting Parties, the constituent elements of the offence differ.

4. Where the offence has been committed outside the territory of the Requesting Party, extradition shall be granted where the law of the Requested Party provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the Requested Party does not so provide, the Requested Party may, in its discretion, grant extradition.

5. Extradition may be granted pursuant to the provisions of this Treaty in respect of an offence provided that:

(a) it was an offence in the Requesting Party at the time of the conduct constituting the offence; and

(b) the conduct alleged would, if it had taken place in the territory of the Requested Party at the time of the making of the request for extradition, have constituted an offence against the law in force in the territory of the Requested Party.

6. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both Parties, but some of which do not meet the other requirements of paragraphs 1 and 2, the Requested Party may grant extradition for such offences, provided that the person is to be extradited for at least one extraditable offence.

Article 3. Mandatory Refusal of Extradition

Extradition shall not be granted under this Treaty in any of the following circumstances:

1. when the Requested Party determines that the offence for which extradition is requested is a political offence. Reference to a political offence shall not include the following offences:

(a) the taking or attempted taking of the life or an attack on the person of a Head of State or Head of Government or a member of his or her family;

(b) an offence in respect of which the Contracting Parties have the obligation to establish jurisdiction or extradite by reason of a multilateral international agreement to which they are both parties; and

(c) an offence relating to genocide, terrorism or kidnapping.

2. when the person sought is being proceeded against or has been tried and discharged or punished in the territory of the Requested Party for the offence for which his extradition is requested;

3. when the prosecution or the punishment for the offence for which extradition is requested would be barred by reasons prescribed under the law of either Contracting Party including a law relating to the lapse of time; or

4. when the Requested Party has well-founded reasons to suppose that the request for extradition has been presented with a view to persecuting or punishing the person sought, by reason of race, religion, nationality or political opinion, or that person's position may be prejudiced for any of those reasons. The provision of this paragraph, however, shall not apply to the offences mentioned in subparagraphs (a), (b) and (c) of paragraph 1 of this Article.

Article 4. Discretionary Refusal of Extradition

Extradition may be refused under this Treaty in any of the following circumstances:

1. when the offence for which extradition is sought is regarded under the law of the Requested Party as having been committed in whole or in part within its territory;

2. when the person sought has been finally acquitted or convicted in a third State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable; and

3. when, in exceptional cases, the Requested Party while also taking into account the seriousness of the offence and the interests of the Requesting Party deems that, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.

Article 5. Postponed or Temporary Surrender

1. When the person sought is being proceeded against or is serving a sentence in the Requested Party for an offence other than that for which extradition is requested, the Requested Party may surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of the whole or any part of the sentence imposed. The Requested Party shall inform the Requesting Party of any postponement.

2. To the extent permitted by its law, where a person has been found extraditable, the Requested Party may temporarily surrender the person sought for the purposes of prosecution to the Requesting Party in accordance with conditions to be determined between the Contracting Parties. A person who is returned to the Requested Party following a temporary surrender may be finally surrendered to serve any sentence imposed, in accordance with the provisions of this Treaty.

Article 6. Extradition of Nationals

1. Neither of the Contracting Parties shall be bound to deliver up its own nationals under this Treaty but the executive authority of each Contracting Party shall have the power to deliver them up if, in its discretion, it considers that it is proper to do so.

2. Where a Contracting Party refuses extradition pursuant to paragraph 1 of this Article, it may submit the case to its competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been sought may be taken if that is considered appropriate. That Contracting Party shall inform the Requesting Party of any action taken and the outcome of any prosecution. Nationality shall be determined at the time of the commission of the offence for which extradition is requested.

Article 7. Channel of Communication

Requests for extradition and any subsequent correspondence shall be communicated through the diplomatic channel.

Article 8. Extradition Procedures and Required Documents

1. The request for extradition shall be made in writing. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 10.

2. The request for extradition shall be accompanied by:

(a) documents which describe the identity and, if possible, the nationality of the person sought;

(b) a statement of the laws describing the essential elements and the designation of the offence;

(c) a statement of the laws describing the punishment for the offence; and

(d) a statement of the laws relating to the time limit on the prosecution or the execution of punishment of the offence.

3. When the request for extradition relates to a person who has not yet been found guilty, it shall be accompanied by:

(a) a copy of the warrant of arrest issued by a judge or other competent officer of the Requesting Party;

(b) information establishing that the person sought is the person to whom the warrant of arrest refers; and

(c) a statement of the conduct alleged to constitute the offence such as would provide reasonable grounds to suspect that the person sought has committed the offence for which extradition is requested.

4. When the request for extradition relates to a person found guilty, it shall be accompanied by:

(a) a copy of the relevant judgement rendered by a court of the Requesting Party;

(b) information establishing that the person sought is the person found guilty; and

(c) a statement of the conduct constituting the offence for which the person was found guilty.

5. All the documents to be presented by the Requesting Party pursuant to the provisions of this Treaty shall be accompanied by a translation in the language of the Requested Party or another language acceptable to that Party.

Article 9. Additional Information

1. If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that additional information be furnished within such time as it specifies.

2. If the person whose extradition is sought is under arrest and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting Party from making a fresh request for the extradition of the person.

3. Where the person is released from custody in accordance with paragraph 2, the Requested Party shall notify the Requesting Party as soon as practicable.

Article 10. Authentication of Supporting Documents

1. A document that, in accordance with Article 8, accompanies a request for extradition shall be admitted in evidence, if authenticated, in any extradition proceedings in the territory of the Requested Party.

2. A document is authenticated for the purposes of this Treaty, if it purports to be signed or sealed or certified by a competent officer of the Requesting Party.

Article 11. Provisional Arrest

1. In case of urgency, either Contracting Party may request the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. The application may be transmitted by post or telegraph or by any other means affording a record in writing.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested through the diplomatic channel, a statement of the existence of the relevant documents mentioned in paragraph 3 or paragraph 4 of Article 8 authorizing the apprehension of the person, a statement of the punishment that can be imposed or has been imposed for the offence and, if requested by the Requested Party, a concise statement of the conduct alleged to constitute the offence.

3. The Requesting Party shall be notified without delay of the result of its application.

4. The person arrested shall be set at liberty if the Requesting Party fails to present the request for extradition, accompanied by the documents specified in Article 8, within sixty (60) days from the date of arrest, provided that this shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

Article 12. Simplified Extradition

When a person sought advises a court or other competent authorities of the Requested Party that the person consents in writing to extradition, the Requested Party shall take all necessary measures to expedite the extradition to the extent permitted under its laws.

Article 13. Conflicting Requests

1. Where requests are received from two or more States for the extradition of the same person either for the same offence or for different offences, the Requested Party shall determine to which of those States the person is to be extradited and shall notify those States of its decision.

2. In determining to which State a person is to be extradited, the Requested Party shall have regard to all the relevant circumstances and, in particular, to:

(a) if the requests relate to different offences, the relative seriousness of those offences;

(b) the time and place of commission of each offence;

(c) the respective dates of the requests;

(d) the nationality of the person sought; and

(e) the ordinary place of residence of the person.

Article 14. Surrender

1. The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting Party through the diplomatic channel. Reasons shall be given for any complete or partial refusal of a request for extradition.

2. The Requested Party shall agree on the time and place of the surrender of the person sought to the appropriate authorities of the Requesting Party in the territory of the Requested Party.

3. The Requesting Party shall remove the person from the territory of the Requested Party within such reasonable period as the Requested Party specifies and, if the person is not removed within that period, the Requested Party may set that person at liberty and may refuse extradition for the same offence.

4. If circumstances beyond its control prevent a Contracting Party from surrendering or removing the person to be extradited, it shall notify the other Contracting Party. The two Contracting Parties shall mutually decide upon a new date of surrender or removal, and the provisions of paragraph 3 of this Article shall apply.

Article 15. Surrender of Property

1. To the extent permitted under the laws of the Requested Party and subject to the rights of third parties, which shall be duly respected, all property found in the territory of the Requested Party that has been acquired as a result of the offence or may be required as evidence shall, if the Requesting Party so requests, be surrendered if extradition is granted.

2. Subject to paragraph 1 of this Article, the above-mentioned property shall, if the Requesting Party so requests, be surrendered to the Requesting Party even if the extradition cannot be carried out owing to the death or escape of the person sought.

3. Where the laws of the Requested Party or the rights of third parties so require, any property so surrendered shall be returned to the Requested Party free of charge if that Party so requests.

Article 16. Rule of Speciality

1. A person who has been extradited under this Treaty shall not be detained, prosecuted or tried for any offence committed before extradition other than that for which extradition has been granted, nor extradited to a third State for any offence, except in any of the following circumstances:

(a) when that person has left the territory of the Requesting Party after extradition and has voluntarily returned to it;

(b) when that person has not left the territory of the Requesting Party within forty-five (45) days after being free to do so; or

(c) when the Requested Party consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 8 and a record of any statement made by the extradited person in respect of the offence concerned. Consent may be given when the offence for which it is requested is extraditable in accordance with the provisions of this Treaty.

2. Paragraph 1 of this Article shall not apply to offences committed after the extradition.

3. When the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

Article 17. Transit

1. To the extent permitted by its laws, the right to transport through the territory of either Contracting Party a person surrendered to the other Contracting Party by a third State shall be granted on request in writing made through the diplomatic channel.

2. The request may be refused if reasons of public order are opposed to the transit.

3. Permission for the transit of a person surrendered shall include authorization for accompanying officials to hold that person in custody or request and obtain assistance from authorities in the Party of transit in maintaining custody.

4. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Contracting Party in whose territory the person is being held may direct that the person be released if transportation is not continued within a reasonable time.

5. Authorization for transit shall not be required when air transport is to be used and no landing is scheduled in the territory of the Party of transit. If an unscheduled landing occurs in the territory of that Party it may require the other Party to furnish a request for transit as provided in paragraph 1 of this Article. The Party of transit shall detain the person to be transported until the transportation is continued provided that the request is received within ninety-six (96) hours of the unscheduled landing.

Article 18. Expenses

1. The Requested Party shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall otherwise represent the interests of the Requesting Party.

2. The Requested Party shall bear the expenses incurred in its territory in the arrest of the person whose extradition is sought, and in the maintenance in custody of the person until surrender to a person nominated by the Requesting Party.

3. The Requesting Party shall bear the expenses incurred in removing the person extradited from the territory of the Requested Party.

Article 19. Entry into Force and Termination

1. This Treaty shall enter into force thirty (30) days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been fulfilled.

2. This Treaty shall also apply to any offence specified in Article 2 committed before this Treaty enters into force.

3. Either Contracting Party may terminate this Treaty at any time by giving six (6) months' written notice to the other Contracting Party.

In Witness Whereof, the Undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

Done in duplicate at Seoul this 26th day of April 1999, in the Korean, Thai and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of Korea:

HONG SOON-YOUNG
Minister of Foreign Affairs

For the Kingdom of Thailand:

SUPACHAI PANITCHPAKDI
Deputy Prime Minister and
Minister of Commerce

RELATED NOTE

ROYAL THAI EMBASSY
SEOUL

No. 251/2542

The Royal Thai Embassy presents its compliments to the Ministry of Foreign Affairs and Trade of the Republic of Korea and, with reference to Article 3.1 (c) of the Extradition Treaty between the Kingdom of Thailand and the Republic of Korea, has the honour to propose the following as an interpretation to Article 3.1 (c):

"With reference to Article 3.1 (c) of the Extradition Treaty between the Kingdom of Thailand and the Republic of Korea, the determination as to what constitutes "an offence relating to genocide or terrorism" rests with the Requested Party"

If the aforementioned proposal is acceptable to the Republic of Korea, the Embassy has further the honour to propose that this Note and the Ministry of Foreign Affairs and Trade of the Republic of Korea's Note in reply to that effect shall constitute mutual understanding between the two countries regarding the interpretation of Article 3.1 (c) of the Extradition Treaty between the Kingdom of Thailand and the Republic of Korea.

The Royal Thai Embassy avails itself of this opportunity to renew to the Ministry of Foreign Affairs and Trade of the Republic of Korea the assurances of its highest consideration.

Royal Thai Embassy
26 April B.E. 254 (1999)

The Ministry of Foreign Affairs and Trade,
Seoul

[KOREAN TEXT — TEXTE CORÉEN]

대한민국과 타일랜드왕국간의 범죄인인도조약

대한민국과 타일랜드왕국(이하 "체약당사국" 이라 한다)은,

범죄인의 상호인도에 관한 조약을 체결함으로써 범죄의 예방 및 억제에 관한 양 간의 협력을 보다 효과적으로 할 것을 희망하여,

다음과 같이 합의하였다.

제 1 조

인도의무

각 체약당사국은 이 조약의 규정에 따라 인도대상범죄에 대한 청구국 영역안에서 소추, 재판 또는 형의 선고나 집행을 위하여 수배된 자를 타방 체약당사국에 인도하기로 합의한다.

제 2 조

인도대상범죄

1. 이 조약의 적용상 인도대상범죄는 표현 여하에 불구하고 조세, 관세, 외국환관리 또는 기타 재정과 관련된 법률을 포함한 쌍방 체약당사국의 법률에 의하여 장기 1년 이상의 징역이나 기타 자유형 또는 그 이상의 중형으로 처벌할 수 있는 범죄를 말한다

2. 인도대상범죄로 인하여 청구국의 법원에서 자유형을 받은 자에 대한 인도청구가 있는 때에는 잔여형기가 적어도 6개월이상인 경우에 한하여 인도가 허용된다.

3. 이 조의 적용상 인도대상범죄가 양 체약당사국의 법률에 위반되는 범죄인지의 여부를 결정함에 있어서는,

가. 체약당사국의 법률이 그 범죄를 구성하는 행위를 같은 범죄유형에 포함시키거나 그 범죄를 같은 죄명으로 규정하는지 여부는 문제되지 아니한다.

나. 인도청구된 자에 대한 혐의 사실은 총체적으로 고려되어야 하며, 체약당사국 법률에 의하여 당해 범죄의 구성요건이 상이한지 여부는 문제되지 아니한다.

4. 범죄가 청구국의 영역밖에서 행하여진 경우, 피청구국의 법률상 자국 영역밖에서 유사한 상황하에서 행하여진 당해 범죄의 처벌을 규정하는 경우에는 범죄인인도가 허용된다. 피청구국의 법률상 그와 같은 규정이 없는 경우에는 피청구국은 재량에 의하여 범죄인인도를 할 수 있다.

5. 다음 각호의 요건을 충족하는 범죄에 대하여는 이 조약의 규정에 의하여 범죄인인도를 할 수 있다.

가. 당해 범죄가 범행시 청구국에서 범죄에 해당하는 경우

나. 혐의사실이 인도청구 당시 피청구국의 영역안에서 행하여졌다면 당해행위가 피청구국의 영역안에서 시행중인 법률에 위반되는 범죄를 구성하였을 경우

6. 인도청구가 양 체약당사국의 법률에 의하여 처벌가능한 수개의 범죄와 관계되지만 그중 일부가 제1항과 제2항의 요건을 충족하지 못하는 경우, 1개의 인도대상범죄만으로도 범죄인을 인도할 수 있다면 피청구국은 그 범죄 모두에 대하여 범죄인 인도를 허가할 수 있다.

제 3 조

절대적 인도 거절

다음 각 호의 경우에는 이 조약에 의한 인도를 할 수 없다.

1. 피청구국이 인도청구된 범죄가 정치적 범죄라고 판단하는 경우. 다만 다음 각호는 정치적 범죄에 포함되지 아니한다.

가. 국가원수, 정부수반 또는 그 가족의 생명을 침해하는 행위, 그 미수행위 또는 그들의 신체에 대한 공격행위

나. 양 체약당사국이 가입한 다자간 조약에 의하여 관할권을 행사하여야 할 의무가 있거나 범죄인을 인도하여야 할 의무를 부담하고 있는 범죄

다. 집단살해, 테러 또는 납치에 관한 범죄

2. 인도청구된 자가 인도청구된 범죄로 피청구국의 영역안에서 재판중이거나 재판결과 이미 석방 또는 처벌된 경우

3. 시효에 관한 법률을 포함한 일방 체약당사국의 법률에 규정된 사유로 인도청구된 범죄에 대한 소추 또는 처벌이 금지된 경우

4. 인도 청구가 인종·종교·국적·정치적 신념을 이유로 수배된 범죄인을 소추 또는 처벌할 목적으로 행하여졌거나 그와 같은 사유로 당해 범죄인이 신분상 불이익을 받을 수 있다고 피청구국이 믿을 만한 상당한 사유가 있는 경우. 단, 이 항의 규정은 제1항 가, 나, 다의 각호에 기재된 범죄에는 적용되지 아니한다.

제 4 조

임의적 인도 거절

다음 각 호의 경우에는 이 조약에 의한 인도를 거절할 수 있다.

1. 피청구국의 법률상, 인도청구된 범죄의 전부 또는 일부가 자국 영역안에서 행하여진 것으로 간주되는 경우
2. 인도청구된 자가 인도청구된 범죄와 동일한 범죄로 제3국에서 무죄 또는 유죄의 판결이 확정되고, 유죄인 때에는 판결이 완전히 집행되었거나 더 이상 집행할 수 없는 경우

3. 피청구국이 범죄의 중대성과 청구국의 이익을 고려한 후, 인도 청구된 자의 개인적 정황으로 인하여 인도가 비인도적이라고 간주하는 예외적인 경우

제 5 조

인도의 연기와 임시인도

1. 피청구국은 자국내에서 인도청구된 범죄와는 다른 범죄로 소송이 진행중이거나 이미 선고된 형이 집행중인 경우 인도청구된 자를 인도하거나, 또는 소송절차가 완료되거나 형의 전부 또는 일부의 집행이 종료될 때까지 인도를 연기할 수 있다. 피청구국은 청구국에 연기사실을 통보하여야 한다.

2. 범죄인의 인도가 가능한 경우, 피청구국은 법이 허용하는 범위내에서 체약당사국간에 합의된 조건에 따라 당해 범죄인을 임시로 인도할 수 있다. 임시인도후에 피청구국으로 귀환된 자는 이 조약의 규정에 따라 선고된 형의 집행을 위하여 종국적으로 청구국에 인도될 수 있다.

제 6 조

자국민의 인도

1. 체약당사국은 이 조약에 의하여 자국민을 인도할 의무를 부담하지 아니한다. 다만, 각 체약당사국의 행정기관은 인도함이 적절하다고 인정하는 경우 재량으로 자국민을 인도할 권한을 가진다.

2. 일방 체약당사국이 제1항의 규정에 의하여 자국민의 인도를 거절하는 경우, 적절하다고 인정되면 인도청구된 범죄의 전부 또는 일부에 관하여 소추 절차가 행하여지도록 관할기관에 사건을 이첩할 수 있다. 이 경우, 그 당사국은 청구국에 조치내용과 소추결과를 통보하여야 한다. 국적은 인도청구된 범죄의 행위시를 기준으로 결정한다.

제 7 조

접촉경로

인도청구 및 그 후속교신은 외교경로를 통하여 이루어져야 한다.

제 8 조

인도절차 및 필요서류

1. 인도청구는 서면으로 행한다. 인도청구와 관련하여 제출된 모든 근거서류는 제11조의 규정에 따라 인증되어야 한다.

2. 인도청구서에는 다음의 서류가 첨부되어야 한다.
   가. 인도청구된 자의 신원 및 가능한 경우 그의 국적을 기재한 서류
   나. 당해 범죄의 본질적 구성요건 및 죄명을 기재한 법률문서
   다. 당해 범죄에 대한 처벌을 기재한 법률문서
   라. 당해 범죄에 대한 공소시효 또는 형의 시효에 관한 법률문서

3. 인도청구가 아직 유죄의 판결을 받지 않은 자에 관한 것인 경우에는 다음의 서류가 첨부되어야 한다.
   가. 청구국의 법관, 기타 소관공무원이 발부한 구속영장 사본
   나. 인도청구된 자가 구속영장에 기재된 자임을 증명하는 자료
   다. 인도청구된 자가 인도 청구된 죄를 범하였다고 의심할 만한 합리적 근거를 제공하는 범죄구성 혐의사실 기재서

4. 인도청구가 유죄판결을 받은 자에 관한 것인 경우에는 다음의 서류가 첨부되어야 한다.

가. 청구국의 법원이 선고한 관련판결의 사본

나. 인도청구된 자가 당해 유죄판결을 받은 자임을 증명하는 자료

다. 유죄판결을 받은 자의 범죄구성 사실 기재서

5. 이 조약의 규정에 의하여 청구국이 제출하는 모든 서류에는 피청구국의 언어 또는 피청구국에서 수용가능한 다른 언어로 된 번역문이 첨부되어야 한다.

제 9 조

추가 자료

1. 피청구국이 인도청구를 위하여 제출된 자료가 이 조약에 의하여 범죄인을 인도하기에 불충분하다고 인정하는 경우, 피청구국은 소정 기간안에 추가자료를 제출하도록 요구할 수 있다.

2. 인도청구된 범죄인이 구속되어 있고 제출된 추가자료가 이 조약에 따라 범죄인을 인도하기에 불충분하거나 소정기간안에 접수되지 아니한 경우 당해 범죄인을 구금에서 석방할 수 있다. 청구국은 범죄인이 석방된 후에라도 당해 범죄인에 대한 새로운 인도청구를 할 수 있다.

3. 피청구국은 제2항의 규정에 의하여 범죄인이 석방되는 경우, 가능한 한 신속히 청구국에 이를 통지하여야 한다.

제 10 조

근거서류의 인증

1. 제8조의 규정에 의하여 인도청구서에 첨부된 서류는 인증된 경우에는 피청구국 영역안에서 모든 인도절차에 있어 증거로 인정된다.

2. 이 조약의 적용상 청구국의 권한있는 공무원에 의하여 서명되거나 날인 또는 확인된 서류는 인증된 것으로 본다.

제 11 조

긴급인도 구속

1. 일방 체약당사국은 긴급한 경우 외교경로를 통하여 인도청구서를 송부하기 전에 범죄인에 대한 긴급인도구속을 청구할 수 있다. 긴급인도청구서는 우편, 전신 또는 기타 서면상 근거를 남길 수 있는 수단에 의하여 전달될 수 있다.

2. 긴급인도청구서는 대상자의 인상착의, 외교경로를 통하여 인도 청구될 것이라는 기재, 구속권한을 부여하는 제8조 제3항 또는 제4항 소정의 관련서류의 존재에 대한 기재, 범죄에 대하여 부과될 수 있거나 또는 부과된 형벌에 대한 기재 및 피청구국이 요구하는 경우 범죄를 구성하는 혐의사실에 대한 간결한 기재를 포함하여야 한다.

3. 청구국은 긴급인도구속 청구에 대한 결과를 지체없이 통지받아야 한다.

4. 청구국이 긴급인도 구속일로부터 60일이내에 제8조 소정의 서류를 첨부하여 인도청구를 하지 아니하는 경우, 구속된 자는 석방된다. 다만, 인도청구서가 추후에 접수된 경우, 당해 범죄인의 석방은 인도청구된 자를 인도하기 위한 절차의 개시를 방해하지 아니한다.

제 12 조

약 식 인 도

인도청구된 자가 피청구국의 법원 또는 다른 관계당국에 인도에 동의함을 서면으로 통보하는 경우, 피청구국은 자국 법률상 허용된 한도내에서 범죄인의 인도를 신속히 하기 위하여 필요한 모든 조치를 취해야 한다.

제 13 조
인도청구의 경합

1. 피청구국은 동일 또는 상이한 범죄에 관하여 동일 범죄인에 대한 인도청구가 둘 이상의 국가로부터 접수된 때에는 어느 국가에 범죄인을 인도할 것인가를 결정하여 이들 국가에 그 결정을 통고하여야 한다.

2. 범죄인을 어느 국가에 인도할 것인가를 결정함에 있어서 피청구국은 모든 관련 사항, 특히 다음사항을 고려하여야 한다.

가. 상이한 범죄에 관한 인도청구인 경우, 범죄의 상대적 중요성

나. 각 범죄의 발생일시 및 장소

다. 각각의 인도청구일자

라. 청구된 자의 국적

마. 청구된 자의 거주지

제 14 조
인 도

1. 피청구국은 인도청구에 대한 결정 즉시 그 사실을 외교경로를 통하여 청구국에 통고하여야 한다. 인도청구의 전부 또는 일부 거절에 대하여는 그 이유가 제시되어야 한다.

2. 피청구국은 자국의 영역안에서 청구국의 해당기관에 대상자를 인도할 시간과 장소에 대하여 합의하여야 한다.

3. 청구국은 피청구국이 지정한 합리적인 기간내에 피청구국의 영역으로 부터 범죄인을 호송하여야 한다. 청구국이 당해 범죄인을 그 기간내에 호송하지 아니한 경우, 피청구국은 그를 석방할 수 있고 동일한 범죄에 대한 인도를 거절할 수 있다.

4. 일방 체약당사국이 불가항력으로 인하여 범죄인을 인도 또는 호송하지 못한 경우, 타방당사국에 이를 통지하여야 한다. 양 체약당사국은 새로운 인도 또는 호송의 일자를 공동으로 결정하며 이 경우 제3항의 규정이 적용된다.

제 15 조

물건의 인도

1. 피청구국의 법률에 의하여 허용되고 제3자의 권리를 정당하게 존중할 것을 조건으로, 피청구국 영역안에서 발견된 것으로서 범죄행위의 결과로 취득되었거나 증거로 요구될 수 있는 모든 물건은 범죄인인도가 허용되는 경우 청구국이 청구하면 인도되어야 한다.

2. 제1항에 규정된 물건은 인도청구된 자의 사망 또는 도주로 인하여 죄인 인도가 행하여질 수 없는 경우에도 청구국의 청구가 있는 때에는 인도되어야 한다.

3. 피청구국의 법률이 규정하고 있거나 또는 제3자의 권리로 인하여 요구되는 경우에는, 인도된 물건은 피청구국의 요청에 따라 무상으로 피청구국에게 반환되어야 한다.

제 16 조

특정성의 원칙

1. 이 조약에 따라 인도된 자는 다음의 경우를 제외하고는 인도가 허용된 범죄 이외에 인도이전에 행해진 다른 범죄를 이유로 구금, 기소 또는 심리되지 아니하며 어떠한 범죄로 인하여 제3국에 인도되지 아니한다.

가. 범죄인이 인도된 후 그 청구국의 영역을 떠났다가 자발적으로 청구국에 재입국한 경우

나. 범죄인이 자유로이 청구국을 떠날 수 있게된 후 45일이내에 청구국의 영역을 떠나지 아니한 경우

다. 피청구국이 동의하는 경우. 동의요청서는 제8조에 규정된 서류 및 인도된 자가 관계범죄에 관하여 행한 진술서의 기록을 첨부하여 제출되어야 한다. 동의는 요청된 범죄가 이 조약의 규정에 따라 인도 가능한 경우에 부여될 수 있다.

2. 제1항의 규정은 인도후에 행한 범죄에는 적용되지 아니한다.

3. 재판과정에서 기소된 범죄에 대한 공소장이 변경된 경우, 변경된 공소장의 범죄가 그 구성요건상 범죄인인도가 허용되는 범죄인 경우에 한하여 인도된 범죄인에 대한 재판을 진행하거나 형을 선고하여야 한다.

제 17 조
통　과

1. 제3국에 의하여 타방 체약당사국으로 인도된 자를 어느 일방 체약당사국의 영역을 통과하여 호송할 수 있는 권리는 자국법이 허용하는 범위내에서 외교경로를 통한 서면 요청에 의하여 법이 허용하는 범위내에서 부여된다.

2. 통과요청은 통과가 공공질서에 반하는 경우에는 거부될 수 있다.

3. 인도된 자의 통과에 대한 허가는 호송관이 그 자를 구금하거나 구금상태를 유지함에 있어서 통과국 당국에 지원을 요청하여 획득하는 권한의 부여를 포함한다.

4. 제3항의 규정에 의하여 범죄인이 구금중에 있는 경우, 자국 영역에서 구금하고 있는 체약당사국은 상당한 기간내에 호송이 계속되지 아니하면 석방을 명할 수 있다.

5. 항공운송이 이용되고 통과당사국의 영역내에 착륙이 예정되지 아니한 경우에는 통과허가가 요구되지 아니한다. 통과당사국의 영역안에서 예정되지 아니한 착륙이 발생하는 경우에 그 국가는 타방당사국에 제1항에 규정된 통과 요청서의 제출을 요구할 수 있다. 통과당사국은 예정되지 아니한 착륙으로부터 96시간 이내에 요청이 접수된 경우, 호송이 계속될 때까지 범죄인을 구금한다.

제 18 조
비 용

1. 피청구국은 인도청구와 관련된 절차에 필요한 모든 조치를 취하고 그 비용을 부담하며 기타 청구국의 이익을 대표한다.

2. 피청구국은 청구국에 의하여 지정된 사람에게 인도할 때까지 인도청구된 자의 체포와 구금의 계속으로 인하여 자국의 영역안에서 발생한 비용을 부담한다.

3. 청구국은 인도된 범죄인을 피청구국 영역으로부터 이송하는데 필요한 비용을 부담한다.

제 19 조
발효 및 종료

1. 이 조약은 체약당사국이 조약의 효력발생을 위한 각국의 요건이 충족되었음을 서면으로 상호 통고한 날로부터 30일 후에 발효한다.

2. 이 조약은 이 조약 발효전에 행하여진 제2조에 규정된 모든 범죄에 대하여도 적용된다.

3. 각 체약당사국은 언제든지 다른 체약당사국에 대하여 6개월전에 서면으로 통고함으로써 이 조약을 종료시킬 수 있다.

이상의 증거로, 아래 서명자는 자국정부로부터 정당한 권한의 위임을 받아 이 조약에 서명하였다.

1999년 4월 26 일 서울에서 동등히 정본인 한국어, 태국어 및 영어로 2부씩 작성되었다. 해석상 차이가 있을 때에는 영문본이 우선한다.

대한민국을 위하여

외교통상부장관

홍 순 영

타일랜드왕국을 위하여

부총리 겸 상무장관

수파차이 파니팍디

[THAI TEXT — TEXTE THAÏ]

สนธิสัญญาว่าด้วยการส่งผู้ร้ายข้ามแดน
ระหว่าง
สาธารณรัฐเกาหลีกับราชอาณาจักรไทย

สาธารณรัฐเกาหลีและราชอาณาจักรไทย(ต่อไปนี้เรียกว่า "ภาคีคู่สัญญา")

ปรารถนาที่จะเพิ่มความร่วมมือของประเทศทั้งสองให้มีประสิทธิภาพยิ่งขึ้น ในการป้องกันและการปราบปรามอาชญากรรมโดยการจัดทำสนธิสัญญาว่าด้วยการส่งผู้กระทำผิดข้ามแดนให้แก่กันและกันในลักษณะถ้อยทีถ้อยปฏิบัติ

ได้ตกลงกันดังต่อไปนี้

ข้อ 1
ข้อผูกพันในการส่งผู้ร้ายข้ามแดน

ภาคีคู่สัญญาแต่ละฝ่ายตกลงจะส่งผู้ร้ายข้ามแดนให้อีกฝ่ายหนึ่ง ตามบทบัญญัติแห่งสนธิสัญญานี้ ซึ่งบุคคลที่ถูกต้องการตัวเพื่อการฟ้องคดี การพิจารณาคดี หรือเพื่อการกำหนดโทษหรือดำเนินการลงโทษในดินแดนของภาคีที่ร้องขอสำหรับความผิดที่ส่งผู้ร้ายข้ามแดนได้

ข้อ 2
ความผิดที่ส่งผู้ร้ายข้ามแดนได้

1. เพื่อความมุ่งประสงค์แห่งสนธิสัญญานี้ ความผิดที่ส่งผู้ร้ายข้ามแดนได้ คือ ความผิดซึ่งไม่ว่าจะระบุลักษณะความผิดไว้อย่างไรก็ตาม สามารถลงโทษได้ตามกฎหมายของภาคีคู่สัญญาทั้งสองฝ่าย รวมทั้งกฎหมายที่เกี่ยวกับภาษีอากร ภาษีศุลกากร การควบคุมการปริวรรตเงินตราต่างประเทศหรือรายได้อื่น ๆ โดยการจำคุกหรือโดยการทำให้ปราศจากเสรีภาพเป็นระยะเวลาอย่างน้อยหนึ่งปี หรือโทษที่รุนแรงกว่า

2. ในกรณีคำร้องขอให้ส่งผู้ร้ายข้ามแดนเกี่ยวเนื่องกับบุคคลที่ต้องคำพิพากษาอันเป็นการทำให้ปราศจากเสรีภาพโดยศาลของภาคีที่ร้องขอสำหรับความผิดใดที่ส่งผู้ร้ายข้ามแดนได้นั้น การส่งผู้ร้ายข้ามแดนจะได้รับการอนุมัติหากระยะเวลาต้องโทษตามคำพิพากษายังเหลืออยู่อีกไม่น้อยกว่าหก (6) เดือน

3. เพื่อวัตถุประสงค์ของข้อนี้ในการวินิจฉัยว่า ความผิดใดเป็นความผิดตามกฎหมายของภาคีคู่สัญญาทั้งสองฝ่ายหรือไม่ นั้น

(ก) ไม่จำต้องคำนึงว่ากฎหมายของภาคีคู่สัญญาได้กำหนดว่าการกระทำที่ประกอบขึ้นเป็นความผิดนั้นไว้ในประเภทความผิดเดียวกัน หรือจะเรียกชื่อความผิดเป็นอย่างเดียวกันหรือไม่

(ข) ให้พิจารณาการกระทำทั้งหมดที่ถูกกล่าวหาของบุคคลซึ่งถูกขอให้ส่งตัวข้ามแดนโดยไม่จำต้องคำนึงว่า ตามกฎหมายของภาคีคู่สัญญาทั้งสองฝ่าย มีองค์ประกอบของความผิดแตกต่างกันหรือไม่

4. ในกรณีที่ความผิดกระทำขึ้นนอกดินแดนของภาคีที่ร้องขอ จะให้มีการส่งผู้ร้ายข้ามแดนก็ต่อเมื่อกฎหมายของภาคีที่ได้รับการร้องขอกำหนดการลงโทษไว้สำหรับความผิด ซึ่งกระทำนอกดินแดนในพฤติการณ์ที่คล้ายคลึงกัน ในกรณีที่กฎหมายของภาคีที่ได้รับการร้องขอมิได้บัญญัติไว้เช่นนั้นภาคีที่ได้รับการร้องขออาจใช้ดุลพินิจให้มีการส่งผู้ร้ายข้ามแดนได้

5. การส่งผู้ร้ายข้ามแดนอาจได้รับการอนุมัติตามบทบัญญัติแห่งสนธิสัญญานี้ในความผิดฐานใดฐานหนึ่งถ้าหากว่า

(ก) เป็นความผิดในภาคีที่ร้องขอในเวลาที่การกระทำนั้นประกอบขึ้นเป็นความผิด และ

(ข) การกระทำที่ถูกกล่าวหานั้น หากได้เกิดขึ้นในดินแดนของภาคีที่ได้รับการร้องขอในเวลาที่ทำคำร้องขอให้ส่งผู้ร้ายข้ามแดน จะประกอบขึ้นเป็นความผิดตามกฎหมายที่ใช้บังคับในดินแดนของภาคีที่ได้รับการร้องขอ

6. หากคำร้องขอให้ส่งผู้ร้ายข้ามแดนเกี่ยวเนื่องกับความผิดหลายความผิด ซึ่งแต่ละความผิดนั้นลงโทษได้ตามกฎหมายของภาคีทั้งสอง แต่มีบางความผิดไม่เป็นไปตามข้อกำหนดอื่น ๆ ของวรรค 1 และวรรค 2 ภาคีที่ได้รับการร้องขออาจอนุมัติให้มีการส่งผู้ร้ายข้ามแดนสำหรับความผิดเช่นว่านั้นได้ หากว่าบุคคลนั้นจะต้องถูกส่งตัวข้ามแดนในความผิดที่ส่งผู้ร้ายข้ามแดนได้อย่างน้อยหนึ่งฐานความผิด

ข้อ 3
การปฏิเสธไม่ส่งผู้ร้ายข้ามแดน

การส่งผู้ร้ายข้ามแดนจะไม่ได้รับการอนุมัติภายใต้สนธิสัญญานี้ในสถานการณ์อย่างใดอย่างหนึ่ง ดังต่อไปนี้

1. เมื่อภาคีที่ได้รับการร้องขอตัดสินว่า ความผิดที่ร้องขอให้ส่งผู้ร้ายข้ามแดนนั้นเป็นความผิดทางการเมือง ความผิดทางการเมืองในที่นี้จะไม่รวมถึงความผิด ดังต่อไปนี้

(ก) การปลงชีวิตหรือการพยายามปลงชีวิตหรือการประทุษร้ายต่อร่างกายของประมุขแห่งรัฐ หรือหัวหน้ารัฐบาล หรือสมาชิกในครอบครัวของบุคคลดังกล่าว

(ข) ความผิดซึ่งภาคีคู่สัญญามีพันธกรณีจะต้องดำเนินการให้มีเขตอำนาจศาลเกี่ยวกับความผิดนั้น หรือจะต้องให้มีการส่งผู้ร้ายข้ามแดน ตามความตกลงพหุภาคีระหว่างประเทศ ซึ่งภาคีคู่สัญญาทั้งสองฝ่ายเป็นภาคีอยู่ด้วย และ

(ค) ความผิดเกี่ยวกับการฆ่าล้างเผ่าพันธุ์ การก่อการร้าย หรือการลักพาตัว

2. เมื่อบุคคลที่ถูกต้องการตัวกำลังถูกดำเนินคดี หรือได้มีการพิจารณาคดีและได้รับการปล่อยตัวไป หรือได้ถูกลงโทษแล้วในดินแดนของภาคีที่ได้รับการร้องขอ ในความผิดซึ่งได้มีการร้องขอให้ส่งตัวบุคคลนั้นข้ามแดน

3. เมื่อการฟ้องคดี หรือการลงโทษ สำหรับความผิดที่ร้องขอให้ส่งผู้ร้ายข้ามแดนต้องห้ามโดยเหตุที่บัญญัติไว้ตามกฎหมายของภาคีคู่สัญญาแต่ละฝ่าย รวมทั้งกฎหมายที่เกี่ยวกับอายุความ หรือ

4. เมื่อภาคีที่ได้รับการร้องขอมีเหตุผลหนักแน่นที่จะสันนิษฐานว่า คำร้องขอให้ส่งผู้ร้ายข้ามแดนมุ่งประสงค์จะดำเนินคดี หรือลงโทษบุคคลที่ต้องการตัว โดยมีเหตุผลจากเชื้อชาติ ศาสนา สัญชาติ หรือความเห็นทางการเมือง หรือว่าอาจมีอคติต่อสถานภาพของบุคคลนั้นโดยเหตุผลดังกล่าวแล้ว บทบัญญัติของวรรคนี้ไม่ใช้บังคับกับความผิดที่ระบุไว้ในอนุวรรค (ก) (ข) และ (ค) ของวรรค 1 แห่งข้อนี้

ข้อ 4
การใช้ดุลพินิจปฏิเสธการส่งผู้ร้ายข้ามแดน

การส่งผู้ร้ายข้ามแดนอาจได้รับการปฏิเสธภายใต้สนธิสัญญานี้ ในสถานการณ์อย่างหนึ่งอย่างใด ดังต่อไปนี้

1. เมื่อความผิดที่ร้องขอให้ส่งผู้ร้ายข้ามแดนนั้น ตามกฎหมายของภาคีที่ได้รับการร้องขอถือว่าได้กระทำขึ้นทั้งหมดหรือแต่เพียงบางส่วนในดินแดนของตน

2. เมื่อในที่สุด บุคคลที่ถูกขอให้ส่งตัวได้รับการปล่อยตัว หรือถูกพิพากษาว่ากระทำผิดในรัฐที่สามสำหรับความผิดเดียวกันกับความผิดที่ขอให้ส่งผู้ร้ายข้ามแดน และหากถูกพิพากษาว่ากระทำผิด ได้มีการลงโทษแล้วทั้งหมด หรือไม่อาจลงโทษได้อีก และ

3. ในกรณีพิเศษ ภาคีที่ได้รับการร้องขอแม้จะได้พิจารณาถึงความรุนแรงของความผิดและผลประโยชน์ของภาคีที่ร้องขอแล้ว ยังเห็นว่า เนื่องจากสภาวการณ์ส่วนบุคคลของบุคคลที่ถูกขอให้ส่งผู้ร้ายข้ามแดนจะไม่สอดคล้องกับข้อพิจารณาด้านมนุษยธรรม

ข้อ 5
การเลื่อนการส่งมอบตัว หรือการส่งมอบตัวชั่วคราว

1. เมื่อบุคคลที่ถูกขอให้ส่งตัวกำลังถูกดำเนินคดี หรือกำลังรับโทษตามคำพิพากษาอยู่ในรัฐภาคีที่ได้รับการร้องขอในความผิดนอกเหนือจากความผิดซึ่งขอให้มีการส่งผู้ร้ายข้ามแดน ภาคีที่ได้รับการร้องขออาจส่งมอบตัวบุคคลดังกล่าว หรือเลื่อนการส่งมอบตัวออกไปจนกระทั่งการดำเนินคดีเสร็จสิ้น

ลงหรือจนกระทั่งได้มีการรับโทษตามคำพิพากษาทั้งหมดหรือบางส่วนแล้ว ภาคีที่ได้รับการร้องขอจะแจ้งให้ภาคีที่ร้องขอทราบการเลื่อนการส่งมอบตัวใด ๆ

2. ภายในขอบเขตที่อนุญาตโดยกฎหมายของภาคีที่ได้รับการร้องขอ หากเป็นกรณีที่บุคคลอยู่ในข่ายที่จะถูกส่งตัวข้ามแดนได้ ภาคีที่ได้รับการร้องขออาจส่งมอบตัวบุคคลที่ถูกขอให้ส่งตัวเป็นการชั่วคราวเพื่อวัตถุประสงค์ในการฟ้องคดีให้แก่ภาคีที่ร้องขอตามเงื่อนไขที่จะตกลงกันระหว่างภาคีคู่สัญญา ทั้งนี้ บุคคลที่ถูกส่งตัวกลับคืนไปยังภาคีที่ได้รับการร้องขอ ภายหลังจากได้มีการส่งมอบตัวชั่วคราวแล้ว อาจถูกส่งมอบตัวให้แก่ภาคีที่ร้องขอในที่สุดเพื่อรับโทษตามคำพิพากษาโดยสอดคล้องกับบทบัญญัติของสนธิสัญญานี้

ข้อ 6

การส่งคนชาติข้ามแดน

1. ภาคีคู่สัญญาแต่ละฝ่ายไม่ถูกผูกพันที่จะส่งคนชาติของตนตามสนธิสัญญานี้ แต่เจ้าหน้าที่ฝ่ายบริหารของภาคีคู่สัญญาแต่ละฝ่ายมีอำนาจส่งตัวคนชาติของตนได้ หากตามดุลพินิจเห็นว่าเป็นการสมควรที่จะกระทำเช่นนั้น

2. หากภาคีคู่สัญญาปฏิเสธการส่งผู้ร้ายข้ามแดนตามวรรค 1 ของข้อนี้ หากพิจารณาเป็นการสมควร ภาคีฝ่ายนั้นอาจส่งเรื่องให้เจ้าหน้าที่ผู้มีอำนาจของตนเพื่อดำเนินการฟ้องร้องบุคคลนั้นในความผิดทั้งมวลหรือความผิดฐานใดฐานหนึ่งซึ่งมีการขอให้ส่งตัวข้ามแดน ภาคีคู่สัญญานั้นจะแจ้งให้ภาคีที่ร้องขอทราบการดำเนินการและผลการฟ้องคดีใด ๆ การวินิจฉัยเรื่องสัญชาติให้ถือในขณะที่ความผิดซึ่งขอให้ส่งผู้ร้ายข้ามแดนนั้นได้กระทำขึ้น

ข้อ 7

ช่องทางการติดต่อ

คำร้องขอให้ส่งผู้ร้ายข้ามแดนและการติดต่อทางเอกสารใด ๆ ในภายหลัง ให้ส่งโดยวิถีทางการทูต

ข้อ 8

กระบวนการส่งผู้ร้ายข้ามแดนและเอกสารที่ต้องการ

1. คำร้องขอให้ส่งผู้ร้ายข้ามแดนต้องกระทำเป็นลายลักษณ์อักษร เอกสารทั้งหมดที่ยื่นประกอบคำร้องขอจะต้องมีการรับรองความถูกต้องแท้จริงตามข้อ 10

2. คำร้องขอให้ส่งผู้ร้ายข้ามแดนจะต้องแนบ

(ก) เอกสารซึ่งระบุรูปพรรณสัณฐาน และหากเป็นไปได้ ให้ระบุสัญชาติของบุคคลที่ถูกขอให้ส่งตัว

(ข) บทบัญญัติของกฎหมายซึ่งระบุองค์ประกอบสำคัญและที่กำหนดฐานความผิด

(ค) บทบัญญัติของกฎหมายที่กำหนดโทษสำหรับความผิด และ

(ง) บทบัญญัติของกฎหมายที่กำหนดอายุความในการฟ้องคดี หรือในการดำเนินการลงโทษสำหรับความผิดนั้น

3. เมื่อคำร้องขอให้ส่งผู้ร้ายข้ามแดนเกี่ยวกับบุคคลที่ยังไม่ถูกพิพากษาว่ากระทำความผิด คำร้องขอดังกล่าวจะต้องแนบ

(ก) สำเนาหมายจับซึ่งออกโดยผู้พิพากษา หรือเจ้าหน้าที่ผู้มีอำนาจอื่นของภาคีที่ร้องขอ

(ข) ข้อสนเทศที่แสดงว่าบุคคลที่ถูกขอให้ส่งตัวคือบุคคลที่หมายจับระบุไว้ และ

(ค) คำแถลงระบุการกระทำที่ถูกกล่าวหาว่าเป็นความผิดซึ่งมีมูลที่น่าเชื่อถืออันควรสงสัยว่าบุคคลที่ถูกขอให้ส่งตัวได้กระทำความผิดที่ขอให้ส่งผู้ร้ายข้ามแดน

4. เมื่อคำร้องขอให้ส่งผู้ร้ายข้ามแดนเกี่ยวกับบุคคลที่ถูกพิพากษาว่าได้กระทำความผิด คำร้องขอจะต้องแนบ

(ก) สำเนาคำพิพากษาที่เกี่ยวข้องของศาลของภาคีที่ร้องขอ

(ข) ข้อสนเทศที่แสดงว่าบุคคลที่ถูกขอให้ส่งตัวคือบุคคลที่ถูกพิพากษาว่าได้กระทำความผิด และ

(ค) คำแถลงระบุการกระทำอันเป็นความผิดซึ่งบุคคลนั้นถูกพิพากษาว่าได้กระทำความผิด

5. เอกสารทั้งหมดซึ่งภาคีที่ร้องขอจะยื่นตามบทบัญญัติแห่งสนธิสัญญานี้ จะต้องแนบคำแปลเป็นภาษาของภาคีที่ได้รับการร้องขอหรือภาษาอื่นใดที่ภาคีนั้นยอมรับ

ข้อ 9
ข้อสนเทศเพิ่มเติม

1. หากภาคีที่ได้รับคำร้องขอพิจารณาว่า ข้อสนเทศประกอบคำร้องขอให้ส่งผู้ร้ายข้ามแดนยังไม่เพียงพอตามสนธิสัญญานี้ในอันที่จะพิจารณาอนุมัติการส่งผู้ร้ายข้ามแดนได้ ภาคีนั้นอาจขอให้จัดหาข้อสนเทศเพิ่มเติมให้ภายในระยะเวลาที่ภาคีนั้นกำหนด

2. หากบุคคลที่ถูกขอให้ส่งตัวข้ามแดนถูกจับกุม และข้อสนเทศเพิ่มเติมที่จัดหาให้ยังไม่เพียงพอตามสนธิสัญญานี้ หรือไม่ได้รับภายในระยะเวลาที่กำหนด บุคคลนั้นอาจได้รับการปล่อยตัว

จากการควบคุม การปล่อยตัวเช่นว่านั้น ไม่เป็นการตัดสิทธิภาคีที่ร้องขอในอันที่จะทำคำร้องขอใหม่ให้ส่งตัวบุคคลนั้นข้ามแดน

3. ในกรณีที่ปล่อยตัวบุคคลจากการควบคุมตามวรรค 2 ภาคีที่ได้รับการร้องขอจะแจ้งให้ภาคีที่ร้องขอทราบในทันทีเท่าที่จะสามารถกระทำได้

ข้อ 10

การรับรองความถูกต้องแท้จริงของเอกสารประกอบคำร้องขอ

1. เอกสารที่แนบไปกับคำร้องขอให้ส่งผู้ร้ายข้ามแดนตามข้อ 8 หากมีการรับรองความถูกต้องแท้จริงแล้ว ให้รับฟังเป็นพยานหลักฐานในกระบวนการส่งผู้ร้ายข้ามแดนได้ในดินแดนของภาคีที่ได้รับการร้องขอ

2. เอกสารที่ถือว่าได้มีการรับรองความถูกต้องแท้จริงตามวัตถุประสงค์แห่งสนธิสัญญานี้จะต้องได้รับการลงนามหรือประทับตราหรือรับรองโดยเจ้าหน้าที่ผู้มีอำนาจของภาคีที่ร้องขอ

ข้อ 11

การจับกุมชั่วคราว

1. ในกรณีเร่งด่วน ภาคีคู่สัญญาแต่ละฝ่ายอาจร้องขอให้จับกุมบุคคลที่ถูกขอให้ส่งตัวไว้ชั่วคราวระหว่างรอการยื่นคำร้องขอให้ส่งผู้ร้ายข้ามแดนโดยวิถีทางการทูต คำร้องขอนั้นอาจส่งทางไปรษณีย์หรือโทรเลข หรือโดยวิธีการอื่นใดซึ่งมีหลักฐานเป็นลายลักษณ์อักษร

2. คำร้องขอจะต้องประกอบด้วย รูปพรรณของบุคคลที่ต้องการตัว คำแถลงระบุว่าจะร้องขอให้ส่งผู้ร้ายข้ามแดนโดยวิถีทางการทูต คำแถลงระบุว่ามีเอกสารที่เกี่ยวข้องดังที่กล่าวไว้ในวรรค 3 หรือวรรค 4 ของข้อ 8 ซึ่งให้อำนาจจับกุมตัวบุคคลนั้น คำแถลงระบุโทษที่สามารถลงได้หรือโทษที่ได้ลงไปแล้วสำหรับความผิดนั้น และหากได้รับการร้องขอจากภาคีที่ได้รับการร้องขอ จะต้องมีคำแถลงโดยย่อระบุการกระทำที่ถูกกล่าวหาว่าเป็นความผิดด้วย

3. ภาคีที่ร้องขอจะได้รับแจ้งผลของการร้องขอโดยไม่ชักช้า

4. บุคคลที่ถูกจับกุมจะถูกปล่อยตัวเป็นอิสระ หากภาคีที่ร้องขอไม่สามารถยื่นคำร้องขอให้ส่งผู้ร้ายข้ามแดนพร้อมเอกสารแนบดังที่ระบุไว้ในข้อ 8 ภายในหกสิบ (60) วัน นับแต่วันทำการจับกุม อย่างไรก็ตาม การปล่อยตัวจะไม่เป็นอุปสรรคต่อการเริ่มกระบวนการเพื่อส่งบุคคลที่ถูกขอนั้นข้ามแดน ถ้าได้รับคำร้องขอให้ส่งผู้ร้ายข้ามแดนอีกในภายหลัง

ข้อ 12

การส่งผู้ร้ายข้ามแดนแบบย่อ

เมื่อบุคคลที่ถูกขอให้ส่งตัวแจ้งต่อศาลหรือเจ้าหน้าที่ผู้มีอำนาจอื่น ๆ ของภาคีที่ได้รับการร้องขอว่า ตนยินยอมเป็นลายลักษณ์อักษรให้ส่งตัวข้ามแดน ภาคีที่ได้รับการร้องขอจะดำเนินมาตรการที่จำเป็นทั้งปวงที่จะเร่งรัดการส่งตัวข้ามแดนภายในขอบเขตที่ได้รับอนุญาตตามกฎหมาย

ข้อ 13

คำร้องขอที่ขัดแย้งกัน

1. ในกรณีที่ได้รับคำร้องขอจากรัฐสองรัฐหรือมากกว่านั้น ให้ส่งตัวบุคคลเดียวกันข้ามแดนไม่ว่าในความผิดเดียวกันหรือความผิดที่ต่างกัน ภาคีที่ได้รับการร้องขอจะต้องวินิจฉัยว่าจะส่งตัวบุคคลนั้นให้แก่รัฐใดและจะต้องแจ้งคำวินิจฉัยต่อรัฐเหล่านั้น

2. ในการวินิจฉัยว่าจะส่งตัวบุคคลข้ามแดนให้แก่รัฐใด ภาคีที่ได้รับการร้องขอจะต้องพิจารณาสถานการณ์ทั้งปวงที่เกี่ยวข้องโดยเฉพาะอย่างยิ่ง

(ก) หากคำร้องขอเกี่ยวเนื่องกับความผิดที่ต่างกัน ควรพิจารณาเปรียบเทียบความร้ายแรงของความผิดเหล่านั้น

(ข) เวลาและสถานที่ของการกระทำความผิดแต่ละความผิด

(ค) ลำดับวันที่ของคำร้องขอ

(ง) สัญชาติของบุคคลที่ถูกขอให้ส่งตัว และ

(จ) ถิ่นที่อยู่เป็นปกติของบุคคลนั้น

ข้อ 14

การส่งมอบตัว

1. ภาคีที่ได้รับการร้องขอจะแจ้งคำวินิจฉัยเกี่ยวกับคำร้องขอให้ส่งผู้ร้ายข้ามแดนในทันทีให้ภาคีที่ร้องขอทราบโดยวิถีทางการทูต การปฏิเสธคำร้องขอให้ส่งผู้ร้ายข้ามแดนทั้งหมดหรือแต่เพียงบางส่วน จะต้องแสดงเหตุผล

2. ภาคีที่ได้รับการร้องขอจะตกลงกันในเรื่องเวลาและสถานที่ที่จะส่งมอบตัวบุคคลที่ถูกขอให้ส่งตัวให้แก่เจ้าหน้าที่ที่เหมาะสมของภาคีที่ร้องขอในดินแดนของภาคีที่ได้รับการร้องขอ

3. ภาคีที่ร้องขอจะนำตัวบุคคลนั้นออกจากดินแดนของภาคีที่ได้รับการร้องขอภายในระยะเวลาอันสมควรตามที่ภาคีที่ได้รับการร้องขอกำหนด และหากบุคคลนั้นยังไม่ถูกนำตัวไปภายในระยะเวลาดังกล่าว ภาคีที่ได้รับการร้องขออาจปล่อยตัวบุคคลนั้นเป็นอิสระและอาจปฏิเสธการส่งตัวข้ามแดนสำหรับความผิดเดียวกันนั้นได้

4. หากมีสถานการณ์นอกเหนือการควบคุมทำให้ภาคีคู่สัญญาไม่อาจส่งมอบตัวหรือนำตัวบุคคลที่จะถูกส่งข้ามแดนไปได้ ภาคีนั้นจะต้องแจ้งให้ภาคีอีกฝ่ายหนึ่งทราบ ภาคีคู่สัญญาทั้งสองฝ่ายจะวินิจฉัยร่วมกันเกี่ยวกับวันส่งมอบตัวหรือวันนำตัวไปครั้งใหม่ และให้นำบทบัญญัติวรรค 3 ของข้อนี้มาใช้บังคับ

ข้อ 15

การส่งมอบทรัพย์สิน

1. ภายในขอบเขตที่ได้รับอนุญาตตามกฎหมายของภาคีที่ได้รับการร้องขอ และขึ้นอยู่กับสิทธิของบุคคลที่สามซึ่งจะต้องได้รับการเคารพ เมื่อได้รับคำร้องขอจากภาคีที่ร้องขอ ภาคีที่ได้รับการร้องขอจะต้องส่งมอบทรัพย์สินทั้งปวงที่ได้พบในดินแดนของตน ซึ่งได้มาจากผลของการกระทำความผิด หรืออาจต้องใช้เป็นพยานหลักฐาน หากอนุมัติให้มีการส่งผู้ร้ายข้ามแดนได้

2. ภายใต้บังคับวรรค 1 ของข้อนี้ ทรัพย์สินที่ระบุไว้ข้างต้นจะต้องส่งมอบให้ภาคีที่ร้องขอหากได้รับการร้องขอ ถึงแม้ว่าการส่งผู้ร้ายข้ามแดนจะไม่สามารถดำเนินการได้เนื่องจากการตายหรือการหลบหนีของบุคคลที่ถูกขอให้ส่งตัว

3. ในกรณีที่กฎหมายของภาคีที่ได้รับการร้องขอกำหนดหรือเป็นสิทธิของบุคคลที่สาม ทรัพย์สินใด ๆ ที่ได้ส่งมอบไปแล้วนั้น จะต้องถูกส่งคืนให้ภาคีที่ได้รับการร้องขอโดยไม่เสียค่าใช้จ่ายใด ๆ เมื่อภาคีนั้นร้องขอ

ข้อ 16

หลักเกณฑ์ว่าด้วยการพิจารณาความผิดเฉพาะเรื่อง

1. บุคคลที่ถูกส่งตัวข้ามแดนภายใต้สนธิสัญญานี้จะไม่ถูกควบคุม ถูกฟ้องคดี หรือถูกพิจารณาคดี สำหรับความผิดซึ่งได้กระทำก่อนการส่งตัวข้ามแดนนอกเหนือไปจากความผิดที่ได้รับอนุมัติให้ส่งผู้ร้ายข้ามแดนและจะไม่ถูกส่งตัวข้ามแดนไปยังรัฐที่สามสำหรับความผิดอื่นใด ยกเว้นในกรณีดังต่อไปนี้

(ก) เมื่อบุคคลนั้นได้ออกนอกดินแดนของภาคีที่ร้องขอ ภายหลังการส่งผู้ร้ายข้ามแดน และได้เดินทางกลับเข้าไปใหม่โดยสมัครใจ

(ข) เมื่อบุคคลนั้นมิได้เดินทางออกจากดินแดนของภาคีที่ร้องขอ ภายในระยะเวลาสี่สิบห้า(45)วัน หลังจากที่สามารถจะกระทำเช่นนั้น หรือ

(ค) เมื่อภาคีที่ได้รับการร้องขอให้ความยินยอม คำร้องขอสำหรับความยินยอมนี้จะต้องยื่นพร้อมแนบเอกสารที่ระบุไว้ในข้อ 8 และบันทึกถ้อยคำของบุคคลที่ถูกส่งตัวข้ามแดนในส่วนที่เกี่ยวกับความผิดที่อ้างถึง การให้ความยินยอมอาจกระทำได้เมื่อความผิดที่ร้องขอเป็นความผิดที่สามารถส่งผู้ร้ายข้ามแดนได้ตามบทบัญญัติของสนธิสัญญานี้

2. วรรค 1 ของข้อนี้จะไม่ใช้บังคับกับความผิดที่กระทำภายหลังการส่งตัวข้ามแดน

3. หากลักษณะความผิดที่ถูกกล่าวหาเปลี่ยนแปลงไปในระหว่างดำเนินกระบวนการพิจารณา บุคคลที่ถูกส่งตัวข้ามแดนจะถูกดำเนินคดีหรือถูกพิพากษาได้เฉพาะเมื่อความผิดตามลักษณะความผิดใหม่แสดงองค์ประกอบที่เป็นความผิดซึ่งอาจอนุญาตให้ส่งผู้ร้ายข้ามแดนได้

ข้อ 17
การผ่านแดน

1. ภายในขอบเขตที่ได้รับอนุญาตตามกฎหมาย สิทธิในการส่งตัวบุคคลโดยรัฐที่สามผ่านดินแดนของคู่ภาคีฝ่ายใดฝ่ายหนึ่งเพื่อที่จะส่งมอบให้คู่ภาคีอีกฝ่ายหนึ่งจะได้รับอนุญาตเมื่อได้รับคำร้องขอเป็นลายลักษณ์อักษรโดยวิถีทางการทูต

2. คำร้องขออาจได้รับการปฏิเสธหากมีการคัดค้านการผ่านแดนด้วยเหตุผลในเรื่องความสงบเรียบร้อยของประชาชน

3. การอนุญาตให้ส่งตัวผ่านแดนบุคคลที่จะถูกส่งมอบตัว ให้รวมถึงการให้อำนาจเจ้าหน้าที่ที่ติดตามให้สามารถควบคุมตัวบุคคลนั้น หรือร้องขอและได้รับความช่วยเหลือจากเจ้าหน้าที่ของภาคีที่มีการผ่านแดนในการควบคุมตัวบุคคลดังกล่าวไว้

4. ในกรณีที่มีการควบคุมตัวบุคคลตามวรรค 3 ของข้อนี้ ภาคีคู่สัญญาซึ่งมีบุคคลที่ถูกควบคุมตัวอยู่ในดินแดนของตน อาจสั่งให้ปล่อยตัวบุคคลนั้น หากการส่งตัวไม่ได้ดำเนินต่อเนื่องไปภายในระยะเวลาที่สมควร

5. ในกรณีการส่งตัวโดยใช้การขนส่งทางอากาศและไม่มีกำหนดการลงจอดในดินแดนของภาคีฝ่ายที่มีการผ่านแดนก็ไม่จำเป็นต้องขออนุญาตในการส่งบุคคลผ่านแดน หากมีการลงจอดโดยไม่ได้กำหนดไว้ล่วงหน้าในดินแดนของภาคีดังกล่าว ภาคีฝ่ายนั้นอาจกำหนดให้ภาคีอีกฝ่ายหนึ่งยื่นคำร้องขอผ่านแดนตามที่กำหนดไว้ในวรรค 1 ของข้อนี้ ภาคีที่มีการผ่านแดนจะควบคุมตัวบุคคลที่ถูกส่งตัวนั้นไว้จนกระทั่งมีการเดินทางต่อไป หากว่าได้รับคำร้องขอเช่นว่าภายในเก้าสิบหก (96) ชั่วโมงของการลงจอดที่ไม่ได้กำหนดไว้ล่วงหน้า

ข้อ 18
ค่าใช้จ่าย

1. ภาคีที่ได้รับการร้องขอจะดำเนินการที่จำเป็นทั้งปวงและรับผิดชอบค่าใช้จ่ายในการดำเนินกระบวนการที่เกิดขึ้นจากการยื่นคำร้องขอให้ส่งผู้ร้ายข้ามแดนและจะเป็นตัวแทนรักษาผลประโยชน์ของภาคีที่ร้องขอ

2. ภาคีที่ได้รับการร้องขอจะต้องรับผิดชอบค่าใช้จ่ายที่เกิดขึ้นในดินแดนของตน ในการจับกุมตัวบุคคลซึ่งถูกขอให้ส่งตัวข้ามแดนและในระหว่างการควบคุมตัว จนกระทั่งได้มีการส่งมอบตัวให้แก่บุคคลซึ่งภาคีที่ร้องขอได้แจ้งชื่อมาให้ทราบ

3. ภาคีที่ร้องขอจะต้องรับผิดชอบค่าใช้จ่ายที่เกิดขึ้นจากการนำตัวบุคคลที่ถูกส่งตัวข้ามแดนจากดินแดนของภาคีที่ได้รับการร้องขอ

ข้อ 19

การมีผลบังคับใช้และการบอกเลิก

1. สนธิสัญญานี้จะมีผลบังคับใช้สามสิบ (30) วัน หลังจากวันที่ภาคีคู่สัญญาทั้งสองฝ่ายได้แจ้งให้อีกฝ่ายหนึ่งทราบเป็นลายลักษณ์อักษรว่า ข้อกำหนดเพื่อให้สนธิสัญญานี้มีผลบังคับใช้ได้รับการปฏิบัติอย่างครบถ้วนแล้ว

2. สนธิสัญญานี้ให้ใช้บังคับกับความผิดที่ระบุไว้ในข้อ 2 ซึ่งได้กระทำก่อนการมีผลบังคับใช้ของสนธิสัญญานี้ด้วย

3. ภาคีคู่สัญญาฝ่ายใดฝ่ายหนึ่งอาจบอกเลิกสนธิสัญญานี้ในเวลาใดก็ได้ โดยแจ้งเป็นลายลักษณ์อักษรล่วงหน้าเป็นเวลาหก (6) เดือนแก่ภาคีคู่สัญญาอีกฝ่ายหนึ่ง

เพื่อเป็นพยานแก่การนี้ ผู้ลงนามข้างท้ายนี้ ซึ่งได้รับมอบอำนาจจากรัฐบาลของแต่ละฝ่ายได้ลงนามสนธิสัญญานี้

ทำคู่กันเป็นสองฉบับ ที่ กรุงโซล เมื่อวันที่ เมษายน 2542 เป็นภาษาเกาหลี ไทย และอังกฤษ ทุกภาษาถูกต้องเท่าเทียมกัน ในกรณีที่มีความแตกต่างในการตีความให้ใช้ภาษาอังกฤษเป็นเกณฑ์

สำหรับสาธารณรัฐเกาหลี

(นายฮง ซุน ยอง)
รัฐมนตรีว่าการกระทรวง
การต่างประเทศและการค้า

สำหรับราชอาณาจักรไทย

(นายศุภชัย พานิชภักดิ์)
รองนายกรัฐมนตรีและรัฐมนตรี
ว่าการกระทรวงพาณิชย์

[TRANSLATION -- TRADUCTION]

TRAITÉ D'EXTRADITION ENTRE LA RÉPUBLIQUE DE CORÉE ET LE ROYAUME DE THAÏLANDE

La République de Corée et le Royaume de Thaïlande (ci-après dénommées “les Parties contractantes”),

Désireuses de rendre plus efficace la coopération qui existe entre les deux pays en matière de prévention et de suppression de la criminalité au moyen d'un Traité d'extradition réciproque des criminels,

Sont convenus de ce qui suit :

Article premier. Obligation d'extrader

Chacune des Parties contractantes s'engage à livrer à l'autre Partie, conformément aux dispositions du présent Traité, tout individu recherché aux fins de poursuites ou de l'imposition ou de l'exécution d'une peine dans le territoire de la Partie requérante pour une infraction donnant lieu à extradition.

Article 2. Infractions donnant lieu à extradition

1. Aux fins du présent Traité, donne lieu à extradition une infraction qui, quelle que soit la terminologie employée, est passible, en vertu de la législation des deux Parties contractantes, y compris celle relative aux impôts, aux droits de douane, à la réglementation des changes ou à d'autres questions relatives aux recettes fiscales, d'une peine de privation de liberté d'une durée maximale d'au moins une année ou d'une peine plus sévère.

2. Lorsque la demande d'extradition concerne un individu condamné à une peine privative de liberté par un tribunal de la Partie requérante pour toute infraction donnant lieu à extradition, l'extradition n'est accordée que s'il reste à purger au moins six (6) mois de la peine.

3. Aux fins du présent Article, lorsqu'il s'agit d'établir si la législation des deux Parties contractantes incrimine le fait reproché :

(a) Il n'importe pas que la législation respective des Parties contractantes place ou non le fait incriminé dans la même catégorie d'infractions ou qualifie ou non l'infraction selon une terminologie différente;

(b) Il est tenu compte de l'ensemble des faits qui sont reprochés à l'individu dont l'extradition est demandée et il n'importe pas que, selon la législation respective des Parties contractantes, les éléments constitutifs de l'infraction diffèrent.

4. Lorsque l'infraction a été commise hors du territoire de la Partie requérante, l'extradition est accordée lorsque la législation de la Partie requise prévoit une peine pour une infraction commise hors de son territoire dans des circonstances similaires. Lorsque la législation de la Partie requise ne le prévoit pas, ladite Partie peut, à son gré, accorder l'extradition.

5. L'extradition peut être accordée en vertu des dispositions du présent Traité au regard d'une infraction, pourvu que :

(a) Il se soit agi d'une infraction dans la Partie requérante au moment où sont survenus les faits constitutifs de l'infraction; et que

(b) Les faits allégués aient, s'ils étaient survenus sur le territoire de la Partie requise au moment de la demande d'extradition, constitué une infraction à la loi en vigueur sur le territoire de la Partie requise.

6. Si la demande d'extradition porte sur plusieurs infractions, dont chacune est punissable au regard de la loi de chaque Partie, mais que certaines ne répondent pas aux exigences des paragraphes 1 et 2, la Partie requise peut accorder l'extradition pour ces dernières infractions, pourvu que l'extradition de l'individu réclamé soit accordée pour au moins une infraction donnant lieu à extradition.

Article 3. Cas de refus obligatoire d'extradition

L'extradition n'est pas accordée en vertu du présent Traité dans les cas suivants :

1. Lorsque la Partie requise détermine que l'infraction pour laquelle l'extradition est demandée constitue une infraction à caractère politique. Une infraction à caractère politique ne comprend pas les infractions suivantes :

(a) L'assassinat ou la tentative d'assassinat d'un chef d'État ou de gouvernement ou d'un membre de sa famille ou une agression contre ces personnes;

(b) Une infraction pour laquelle les Parties contractantes se sont engagées à établir une juridiction ou à extrader aux termes d'un accord international multilatéral auquel elles sont toutes deux parties; et

(c) Une infraction relative au génocide, au terrorisme ou à un rapt;

2. Lorsque l'individu recherché fait l'objet de poursuites ou a été jugé et relaxé ou a subi une peine sur le territoire de la Partie requise pour l'infraction au titre de laquelle son extradition est demandée;

3. Lorsque la poursuite ou la punition au titre de l'infraction pour laquelle l'extradition est demandée seraient prohibées pour des raisons fondées sur la législation de l'une ou l'autre des Parties contractantes, y compris la législation relative à la prescription; ou

4. Lorsque la Partie requise a de sérieuses raisons de croire que la demande d'extradition a été présentée aux fins de persécuter ou de punir l'individu recherché en raison de sa race, de sa religion, de sa nationalité ou de ses opinions politiques ou que la situation de l'individu risque de subir un préjudice pour l'un quelconque de ces motifs. Les dispositions du présent paragraphe ne s'appliquent toutefois pas aux infractions mentionnées dans les alinéas (a), (b) et (c) du premier paragraphe du présent Article.

Article 4. Refus facultatif d'extrader

L'extradition peut être refusée en vertu du présent Traité dans les circonstances suivantes :

1. Lorsque l'infraction pour laquelle l'extradition est demandée est considérée par la législation de la Partie requise comme ayant été entièrement ou partiellement commise sur son territoire.

2. Lorsque l'individu dont l'extradition est demandée a été définitivement acquitté ou condamné dans un État tiers au titre de la même infraction pour laquelle l'extradition est demandée et s'il a été condamné, lorsque la sanction a été intégralement appliquée ou n'est plus applicable.

3. Lorsque dans des cas exceptionnels, la Partie requise, tout en tenant compte de la nature de l'infraction et des intérêts de la Partie requérante estime qu'étant donné les circonstances personnelles de l'individu recherché, une telle action serait incompatible avec des considérations humanitaires.

Article 5. Extradition différée ou temporaire

1. La Partie requise peut, après avoir statué sur la demande d'extradition, différer la remise d'un individu recherché aux fins d'intenter des poursuites à son encontre ou, s'il a déjà été condamné, aux fins d'appliquer une sanction pour une infraction autre que celle pour laquelle l'extradition est demandée. Dans ce cas, la Partie requise informe la Partie requérante en conséquence.

2. Dans la mesure où l'y autorise sa législation, la Partie requise peut, lorsqu'un individu a été jugé passible d'extradition, remettre temporairement l'individu recherché aux fins de poursuites à la Partie requérante, conformément aux conditions à déterminer entre les Parties contractantes. Un individu qui est renvoyé à la Partie requise à l'issue d'une remise temporaire peut être définitivement extradé pour purger toute peine imposée conformément aux dispositions du présent Traité.

Article 6. Extradition de ressortissants

1. Aux termes du présent Traité, aucune des deux Parties contractantes ne peut être contrainte de livrer ses propres ressortissants; toutefois, l'autorité exécutive de chacune desdites Parties peut les livrer si elle estime qu'un tel geste est approprié.

2. Lorsqu'une des Parties contractantes refuse l'extradition en vertu du paragraphe 1 du présent Article, elle peut soumettre le cas à ses autorités compétentes afin que des poursuites pour toutes ou une quelconque des infractions pour lesquelles l'extradition est demandée puissent être engagées contre l'individu si cela est jugé nécessaire. La Partie contractante en question informera la Partie requérante de toute action prise et du résultat de n'importe quelle poursuite judiciaire. La qualité de ressortissant est déterminée au moment où a été commise l'infraction pour laquelle l'extradition est demandée.

Article 7. Mode de communication

Les demandes d'extradition et toute correspondance ultérieure sont effectuées par la voie diplomatique.

Article 8. Procédures d'extradition et documents requis

1. La demande d'extradition est présentée par écrit. Tous les documents soumis à l'appui d'une demande d'extradition sont authentifiés conformément aux dispositions de l'Article 10.

2. La demande d'extradition est accompagnée des pièces suivantes :

(a) Les documents indiquant le signalement et, si possible, la nationalité de l'individu recherché et le lieu où il se trouve;

(b) Une déclaration relative à la législation décrivant les éléments essentiels de l'infraction et sa définition;

(c) Une déclaration relative à la législation décrivant la peine imposée pour l'infraction; et

(d) Un exposé de la législation relative à la prescription frappant les poursuites ou l'exécution de la peine.

3. Lorsque la demande concerne un individu qui n'a pas encore été reconnu coupable, elle est accompagnée des pièces suivantes :

(a) Une copie du mandat d'arrêt émis par un juge ou un autre agent compétent de la Partie requérante;

(b) Des renseignements établissant que l'individu recherché est bien celui auquel le mandat d'arrêt est destiné; et

(c) Un exposé des faits censés constituer l'infraction et qui fournissent des raisons sérieuses de croire que l'individu recherché a effectivement commis l'infraction pour laquelle l'extradition est demandée.

4. Lorsque la demande d'extradition concerne un individu qui a déjà été reconnu coupable, elle est accompagnée des pièces suivantes :

(a) Une copie du jugement constatant la culpabilité rendu par un tribunal de la Partie requérante;

(b) Des renseignements établissant que l'individu recherché est bien celui qui a été reconnu coupable;

(c) Un exposé du comportement constituant l'infraction pour laquelle l'individu a été reconnu coupable.

5. Tous les documents communiqués par la Partie requérante conformément aux dispositions du présent Traité sont accompagnés d'une traduction dans la langue de la Partie requise ou dans toute langue acceptable à ladite Partie.

Article 9. Complément d'information

1. Si la Partie requise estime que les informations communiquées à l'appui de la demande d'extradition sont insuffisantes pour faire droit à la demande conformément au présent Traité, elle peut demander qu'un complément d'information lui soit fourni dans le délai qu'elle fixera.

2. Si l'individu dont l'extradition est recherchée se trouve en détention et que le complément d'information s'avère insuffisant conformément au présent Traité ou qu'il n'a pas été reçu dans les délais prescrits, l'individu peut être remis en liberté. Ladite remise en liberté ne s'oppose pas à ce que la Partie requérante introduise une nouvelle demande d'extradition de l'individu.

3. Lorsque l'individu est remis en liberté aux termes du paragraphe 2, la Partie requise en informe la Partie requérante dès que possible.

Article 10. Authentification des pièces produites

1. Toute pièce produite conformément à l'Article 8 à l'appui d'une demande d'extradition est admise comme preuve dans toute procédure d'extradition dans le territoire de la Partie requise, si elle est dûment authentifiée.

2. Aux termes du présent Traité, une pièce est authentifiée lorsqu'elle se présente comme ayant été signée, scellée ou attestée par un agent compétent de la Partie requérante.

Article 11. Arrestation provisoire

1. En cas d'urgence, l'une ou l'autre des Parties contractantes peut demander l'arrestation provisoire d'un individu recherché en attendant que soit présentée la demande d'extradition par la voie diplomatique. La demande peut être transmise par la voie postale ou télégraphique ou par tout autre moyen laissant une trace écrite.

2. La demande d'arrestation provisoire comporte un signalement de l'individu recherché, une déclaration affirmant que l'extradition est demandée par la voie diplomatique, une déclaration indiquant l'existence de l'un des documents visés au paragraphe 3 ou 4 de l'Article 8 autorisant l'arrestation de l'individu, une déclaration indiquant la peine qui a été ou qui peut être prononcée et, si la Partie requise en fait la demande, un bref exposé des actes ou omissions retenus qui constituent l'infraction.

3. La Partie requérante est informée sans délai des suites données à sa demande.

4. L'individu détenu peut être remis en liberté si la Partie requérante néglige de présenter la demande d'extradition accompagnée des documents visés à l'Article 8 dans un délai de soixante (60) jours à compter de la date de l'arrestation, étant entendu que la remise en liberté ne s'oppose pas à l'introduction d'une procédure d'extradition de l'individu recherché si une demande à cet effet est reçue ultérieurement.

Article 12. Extradition simplifiée

Lorsqu'un individu recherché fait part à un tribunal ou à une autre autorité compétente de la Partie requise qu'il consent par écrit à l'extradition, la Partie requise prend, dans la mesure où l'y autorise sa propre législation, toutes les mesures nécessaires pour accélérer l'extradition.

Article 13. Concours de demandes

1. En cas de demandes émanant de deux ou de plusieurs États en vue de l'extradition du même individu, soit pour la même infraction soit pour des infractions différentes, la Partie requise décide auquel de ces États l'individu doit être livré et elle notifie lesdits États de sa décision.

2. Pour décider auquel des États l'extradition sera accordée, la Partie requise tient compte de toutes les circonstances pertinentes et notamment :

(a) Dans le cas de demandes portant sur diverses infractions, du degré de gravité desdites infractions;

(b) De l'époque ou du lieu où chacune des infractions a été commise;

(c) Des dates respectives des différentes demandes;

(d) De la nationalité de l'intéressé;

(e) Du lieu de résidence habituelle de l'intéressé.

Article 14. Remise de l'extradé

1. Dès qu'une décision a été prise sur la demande d'extradition, la Partie requise fait connaître ladite décision à la Partie requérante par la voie diplomatique. Tout refus total ou qualifié d'extrader est motivé.

2. La Partie requise conviendra du lieu et de l'endroit de la remise de l'individu recherché aux autorités compétentes de la Partie requérante sur le territoire de la Partie requise.

3. La Partie requérante retire l'intéressé du territoire de la Partie requise dans un délai raisonnable fixé par la Partie requise et, si l'intéressé n'est pas reconduit dans ledit délai, la Partie requise peut alors remettre celui-ci en liberté et refuser l'extradition au titre de la même infraction.

4. En cas de force majeure empêchant la remise ou le retrait de l'individu à extrader, la Partie contractante concernée en informe l'autre Partie. Les deux Parties contractantes conviennent alors d'une nouvelle date de remise et les dispositions du paragraphe 3 du présent Article s'appliquent.

Article 15. Remise d'objets

1. Dans la mesure admise par la législation de la Partie requise et sous réserve des droits de tiers qui seront dûment respectés, tous objets trouvés dans le territoire de la Partie requise qui auraient été acquis du fait de l'infraction ou qui peuvent servir de pièces à conviction sont remis à la Partie requérante, sur sa demande, lorsque l'extradition est accordée.

2. Sous réserve du paragraphe 1 du présent Article, si la Partie requérante en fait la demande, les objets visés ci-avant lui sont remis même si l'extradition ne peut avoir lieu en raison du décès ou de l'évasion de l'individu recherché.

3. Lorsque la législation de la Partie requise ou les droits de tiers l'exigent, tous les objets ainsi remis sont restitués sans frais à la Partie requise qui en fait la demande.

Article 16. Règle de la spécialité

1. Un individu extradé en vertu du présent Traité ne peut être détenu ou poursuivi ou jugé au titre de toute infraction commise avant l'extradition autre que celle pour laquelle l'extradition a été accordée, ni extradé vers un État tiers à quelque titre que ce soit, sauf dans les circonstances suivantes :

(a) Lorsque ledit individu a quitté le territoire de la Partie requérante après l'extradition pour ensuite y revenir volontairement;

(b) Lorsque ledit individu n'a pas quitté le territoire de la Partie requérante dans un délai de quarante-cinq (45) jours après avoir été libre de le faire; ou

(c) Lorsque la Partie requise y consent, une demande visant à obtenir ce consentement doit être soumise avec, à l'appui, les pièces visées à l'Article 8, ainsi qu'un compte rendu de toute déclaration faite par l'individu extradé concernant l'infraction dont il s'agit. Ledit consentement peut être accordé lorsque l'infraction qui en est l'objet donne lieu à extradition conformément aux dispositions du présent Traité.

2. Le paragraphe 1 du présent Article ne s'applique pas aux infractions commises après l'extradition.

3. Lorsque la description de l'infraction est modifiée au cours de la procédure, l'individu extradé ne sera poursuivi ou condamné que si les éléments de l'infraction, telle qu'elle est définie dans la nouvelle description, constituent une infraction permettant une extradition.

Article 17. Transit

1. Dans la mesure où l'y autorise sa législation, l'autorisation de transit à travers le territoire de l'une ou l'autre des Parties contractantes d'un individu livré par l'autre Partie contractante à un État tiers est accordée à la suite d'une demande transmise par la voie diplomatique.

2. Ladite demande peut être refusée pour des raisons d'ordre public.

3. L'autorisation de transit d'un individu livré comprend soit son accompagnement par des personnes autorisées qui le tiendront sous bonne garde, soit une aide à cet effet de la part des autorités de l'État par lequel s'effectue le transit.

4. Lorsqu'un individu est maintenu sous garde en application du paragraphe 3 du présent Article, la Partie contractante sur le territoire de laquelle l'intéressé est gardé peut ordonner sa mise en liberté si son transport ne se poursuit pas dans des délais raisonnables.

5. L'autorisation de transit n'est pas requise lorsqu'il s'agit d'un transport aérien et qu'aucune escale n'est effectuée sur le territoire de la Partie de transit. En cas d'atterrissage non prévu sur le territoire de ladite Partie, l'autre Partie peut être amenée à soumettre une demande de transit conformément aux dispositions du paragraphe 1 du présent Article. La Partie de transit détient l'individu en transit jusqu'à la reprise du transport sous réserve que la demande soit reçue dans un délai de quatre-vingt-seize (96) heures à compter de l'atterrissage non prévu.

Article 18. Frais

1. La Partie requise prend toutes les dispositions nécessaires et assume les frais afférents aux procédures résultant de la demande d'extradition; elle représente les intérêts de la Partie requérante à tous égards.

2. La Partie requise assume les frais encourus sur son territoire dans le cadre de l'arrestation de l'individu recherché ainsi que de la détention de celui-ci jusqu'à sa remise à une personne désignée par la Partie requérante.

3. La Partie requérante assume les frais de transport de l'individu recherché encourus à partir du territoire de la Partie requise.

Article 19. Entrée en vigueur et dénonciation

1. Le présent Traité entrera en vigueur dans un délai de trente (30) jours suivant la date à laquelle les Parties contractantes se seront notifiées par écrit de l'accomplissement de leurs formalités respectives nécessaires à son entrée en vigueur.

2. Le présent Traité s'appliquera également à toute infraction visée à l'Article 2 commise avant son entrée en vigueur.

3. L'une ou l'autre des Parties contractantes peut dénoncer le présent Traité à tout moment moyennant un préavis écrit de six (6) mois adressé à l'autre Partie.

En foi de quoi, les soussignés, à ce dûment autorisés par leurs gouvernements respectifs, ont signé le présent Traité.

Fait en double exemplaire à Séoul le 26 avril 1999 en langues coréenne, thaï et anglaise, tous les textes faisant également foi. En cas de divergence d'interprétation, le texte anglais prévaudra.

Pour la République de Corée :

HONG SOON-YOUNG
Ministre des Affaires Étrangères et du Commerce

Pour le Royaume de Thaïlande :

SUPACHAI PANITCHPAKDI
Vice-premier Ministre et Ministre du Commerce

NOTE CONNEXE

AMBASSADE ROYALE DE THAÏLANDE
SÉOUL

No 251/2542

L'Ambassade royale de Thaïlande présente ses compliments au Ministère des Affaires étrangères et du Commerce de la République de Corée et, se référant à l'Article 3.1 (c) du Traité d'extradition entre le Royaume de Thaïlande et la République de Corée, a l'honneur de proposer l'interprétation de l'Article 3.1 (c) comme suit :

“Par référence à l'Article 3.1 (c) du Traité d'extradition entre le Royaume de Thaïlande et la République de Corée, la définition de ce qui constitue “une infraction relative au génocide ou au terrorisme” appartient à la Partie requise.”

Si la proposition susmentionnée rencontre l'agrément de la République de Corée, l'Ambassade a l'honneur de proposer que la présente note et la note en réponse du Ministère des Affaires étrangères et du Commerce de la République de Corée constituent un accord entre les deux Parties sur l'interprétation de l'Article 3.1 (c) du Traité d'extradition entre le Royaume de Thaïlande et la République de Corée.

L'Ambassade royale de Thaïlande saisit cette occasion pour renouveler au Ministère des Affaires étrangères et du Commerce de la République de Corée les assurances de sa très haute considération.

Ambassade royale de Thaïlande
26 avril B.E. 254 (1999)

Le Ministère des Affaires étrangères et du Commerce,
Séoul

No. 43277

Republic of Korea
and
United States of America

Agreement relating to scientific and technical cooperation between the Government of the Republic of Korea and the Government of the United States of America (with annexes). Washington, 2 July 1999

Entry into force: *2 July 1999 by signature and with retroactive effect from 29 April 1999, in accordance with article XI*

Authentic texts: *English and Korean*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

République de Corée
et
États-Unis d'Amérique

Accord de coopération scientifique et technique entre le Gouvernement de la République de Corée et le Gouvernement des États-Unis d'Amérique (avec annexes). Washington, 2 juillet 1999

Entrée en vigueur : *2 juillet 1999 par signature et avec effet rétroactif à compter du 29 avril 1999, conformément à l'article XI*

Textes authentiques : *anglais et coréen*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

[ENGLISH TEXT — TEXTE ANGLAIS]

AGREEMENT RELATING TO SCIENTIFIC AND TECHNICAL COOPERATION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

The Government of the Republic of Korea and the Government of the United States of America, hereinafter referred to as the "Parties,"

Recognizing that scientific and technical cooperation will advance the state of science and technology and strengthen the bonds of friendship between the two countries,

Have agreed as follows:

Article I

1. The two Parties shall promote cooperation between the two countries in science and technology for peaceful purposes.

2. The principal object of this cooperation is to provide additional opportunities to exchange ideas, information, skills and techniques and to collaborate on problems of mutual interest.

3. Pursuant to the aims of this Agreement, the two Parties shall encourage and facilitate, where appropriate, the development of joint contacts and cooperation between governmental agencies, universities, research centers, and other institutions and firms of the two countries.

Article II

The cooperation contemplated in this Agreement may include exchanges of scientific and technical information, exchanges of scientists and technical experts, the convening of joint seminars and meetings, and conduct of joint research projects in the fields of basic and applied science, and other forms of scientific and technical cooperation as may be mutually agreed.

Article III

With regard to the cooperative activities under this Agreement, the Parties or their designees, as appropriate, may allow the participation of researchers and organizations from all sectors of the research establishment, including universities, national laboratories, and the private sectors. Implementing arrangements for the cooperative activities under this Agreement may be concluded between the Parties or their appropriate agencies to determine the specific terms of cooperation, in accordance with this Agreement.

Article IV

Scientists, technical experts, governmental agencies and institutions of third countries or international organizations may be, in appropriate cases, invited by the two Parties to participate, at their own expense unless otherwise agreed, in projects and programs being carried out under this Agreement.

Article V

Unless otherwise provided for in an implementing arrangement, each Party or participating agency, organization or enterprise shall bear the cost of its participation and that of its personnel engaged in cooperative activities under this Agreement.

Article VI

Cooperative activities shall be undertaken in accordance with applicable laws in both countries and subject to the availability of funds.

Article VII

1. The two Parties shall establish a joint committee for coordinating and facilitating cooperative activities under this Agreement, composed of representatives designated by the Parties. The Committee shall conduct a joint review of activities under this Agreement every two years. These reviews shall take place alternately in the Republic of Korea and in the United States of America.

2. In the intervals between the sessions of the Committee, representatives of the two Parties shall meet, if necessary, to discuss and further the implementation of this Agreement and to exchange information on the progress of programs, projects and activities of common interest.

Article VIII

Each Party shall use its best efforts to facilitate entry to and exit from its territory of personnel and equipment of the other country, engaged or used in projects and programs under this Agreement.

Article IX

1. Scientific and technical information of a non-proprietary nature derived from the cooperative activities conducted under this Agreement shall be made available, unless it is agreed otherwise under specific circumstances, to the world scientific community through customary channels and in accordance with the normal procedures of the participating agencies.

2. The treatment of intellectual property created or furnished in the course of the cooperative activities under this Agreement shall be as set forth in Annex I, which forms an integral part of this Agreement.

3. Reciprocal security obligations related to the cooperative activities under this Agreement shall be observed in accordance with the provisions of Annex II, which forms an integral part of this Agreement.

Article X

Nothing in this Agreement shall be construed to prejudice other arrangements for scientific and technical cooperation between the Parties.

Article XI

1. This Agreement shall enter into force upon an exchange of diplomatic notes confirming that all requirements for its entry into force have been fulfilled and shall be effective from April 29, 1999.

2. This Agreement shall remain in force for five years and may be amended or extended by mutual agreement of the Parties.

3. The termination of this Agreement shall not affect the validity or duration of any arrangements made under it.

Done at Washington, this second day of July 1999, in duplicate, in the Korean and English languages, both texts being equally authentic.

For the Government of the Republic of Korea:

CHOI HYUCK

For the Government of the United States of America:

MELINDA KIMBLE

ANNEX I. INTELLECTUAL PROPERTY

Pursuant to Article IX of this Agreement:

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant implementing arrangements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under the Agreement and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated as provided in this Annex.

I. SCOPE

A. This Annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed by the Parties or their designees.

B. For purposes of this Agreement, “intellectual property” shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967.

C. This Annex addresses the allocation of rights, interests, and royalties between the Parties. Each Party shall ensure that the other Party can obtain the rights to intellectual property allocated in accordance with the Annex, by obtaining those rights from its own participants through contracts or other legal means, if necessary. This Annex does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by that Party's laws and practices.

D. Disputes concerning intellectual property arising under this Agreement should be resolved through discussions between the concerned participating institutions or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties and their designees agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.

E. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

II. ALLOCATION OF RIGHTS

A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce and publicly distribute scientific and technical journal articles, reports and books directly arising from cooperation under this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.

B. Rights to all forms of intellectual property, other than those rights described in section II.A above, shall be allocated as follows:

B.1. Visiting researchers shall receive intellectual property rights under the policy of the host institution. Each Party shall accord to the visiting researchers no less favourable treatment than that it accords to its own nationals with regard to the grant of intellectual property right. In addition, each visiting researcher named as an inventor shall be entitled to treatment as a national of the host country with regard to awards, bonuses, benefits, or any other rewards, in accordance with the policy of the host institution and national law.

B.2. Joint Research

(a) Intellectual property created in the course of joint research will be owned by the inventing Party or Parties. Jointly created intellectual property will be jointly owned. If research is not designated "joint research" in advance, ownership of the intellectual property will be determined in accordance with paragraph II.B.I above.

(b) Unless otherwise agreed by the Parties at any time, including in implementing arrangements, each Party has all rights to exploit intellectual property created in the course of joint research in its own territory, without regard to ownership of the intellectual property. Implementing arrangements may define the worldwide rights of each Party, which may include ownership, joint ownership, and exploitation rights.

(c) All rights outside the territories of both Parties will be determined by considering the relative contributions of the Parties and their participants to the joint research, the degree of commitment to the patenting and licensing of any resulting invention, and such other factors deemed appropriate.

(d) In addition, each person named as an inventor shall be entitled to share in a portion of any royalties earned by either Party or its participating institutions from the licensing of the intellectual property, in accordance with the national laws of the respective countries.

C. Notwithstanding paragraphs II.B.2.(a) and (b), in the event that either Party believes that a particular joint research project under this Agreement has led or will lead to the creation or furnishing of a type of intellectual property not protected by the laws of one of the Parties, the Parties shall immediately hold discussions to determine the allocation of the rights to said intellectual property. If no agreement can be reached within a three-month period from the date of the request for discussions, cooperation on the project in question may be terminated at the request of either Party. Alternatively, the Parties may, at their discretion, establish a joint working group to discuss such allocation. Persons named as inventors shall nonetheless be entitled to royalties as provided in paragraph II.B.2.(d).

D. The inventing Party shall disclose the invention promptly to the other Party together with any documentation and information necessary to enable the other Party to establish any rights to which it may be entitled. The inventing Party may ask the other Party in writing to delay publication or public disclosure of such documentation or information for the purpose of protecting its rights related to the invention. Unless otherwise specifically agreed in writing, such restriction shall not exceed a period of six months from the date of such communication. Communication shall be made through the competent government agencies or as otherwise designated in the relevant implementing arrangements.

III. BUSINESS -- CONFIDENTIAL INFORMATION

In the event that information identified in a timely fashion as business-confidential is furnished or created under the Agreement, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practice. Information may be identified as "business-confidential", if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.

ANNEX II. SECURITY OBLIGATIONS

I. PROTECTION OF INFORMATION

Both Parties agree that no information or equipment requiring protection in the interests of national defense or foreign relations of either Party and classified in accordance with the applicable national laws and regulations shall be provided under this Agreement. In the event that information or equipment which is known or believed to require such protection is identified in the course of cooperative activities undertaken pursuant to this Agreement, it shall be brought immediately to the attention of the appropriate officials and the Parties shall consult concerning the need for and level of appropriate protection to be accorded such information or equipment.

II. TECHNOLOGY TRANSFER

The transfer of export-controlled information or equipment between the two countries shall be in accordance with the relevant laws and regulations of each Party to prevent the unauthorized transfer or retransfer of such information or equipment provided or produced under this Agreement. If either Party deems necessary, detailed provisions for the prevention of unauthorized transfer or retransfer of such information or equipment shall be incorporated into the contracts or implementing arrangements.

[KOREAN TEXT — TEXTE CORÉEN]

대한민국 정부와 미합중국 정부간의 과학 및 기술협력에 관한 협정

대한민국 정부와 미합중국 정부(이하 "당사자"라 한다)는,

과학 및 기술협력이 과학과 기술의 수준을 향상시키고 양국간의 우호관계를 강화함을 인식하며,

다음과 같이 합의하였다.

제 1 조

1. 양 당사자는 평화적 목적을 위하여 과학 및 기술분야에 있어서 양국간의 협력을 증진한다.

2. 이 협력의 주된 목적은 아이디어·정보·기능 및 기술을 교환하고 상호 이익이 되는 문제에 관하여 합작하기 위한 추가적인 기회를 제공하는 데 있다.

3. 이 협정의 목적에 따라 양 당사자는, 적절한 경우, 양국의 정부기관·대학교·연구소 및 다른 기관과 회사간의 공동 접촉 및 협력의 발전을 장려하고 촉진한다.

제 2 조

이 협정에서 상정하는 협력에는 과학 및 기술정보의 교환, 과학자 및 기술전문가의 교류, 공동세미나 및 회합의 개최, 기초 및 응용과학분야에서의 공동연구사업의 수행 그리고 상호 합의될 수 있는 기타 형태의 과학 및 기술협력을 포함할 수 있다.

제 3 조

이 협정에 의한 협력활동과 관련하여, 당사자 또는 그 피지정인은 적절한 방법으로 대학교 · 국립연구소, 그리고 민간부문을 포함한 모든 부문의 연구기관의 연구원 및 기구의 참가를 허용할 수 있다. 이 협정에 의한 협력활동을 위한 시행약정은 구체적인 협력의 조건을 결정하기 위하여 이 협정에 따라 당사자 또는 그들의 적절한 기관간에 체결될 수 있다.

제 4 조

제3국의 과학자 · 기술전문가 · 정부기관 및 기관 또는 국제기구는, 적절한 경우, 이 협정에 의하여 수행되는 사업 및 계획에, 달리 합의되지 아니하는 한 그들 자신의 비용부담으로, 이에 참여하는 양 당사자에 의하여 초청될 수 있다.

제 5 조

시행약정에 달리 규정되지 아니하는 한, 이 협정에 의한 협력활동에 종사하는 각 당사자 또는 참가 기관 · 기구 또는 기업은 그 자신과 직원의 참가비용을 부담한다.

제 6 조

협력활동은 양국에서 적용가능한 법률에 따라 그리고 자금의 가용성을 조건으로 하여 행하여진다.

제 7 조

1. 양 당사자는 이 협정에 의한 협력활동을 조정 · 촉진하기 위하여, 당사자가 지명하는 대표로 구성되는 공동위원회를 설치한다. 위원회는 2년마다 이 협정에 의한 활동에 대한 공동검토를 수행한다. 이러한 검토는 대한민국과 미합중국에서 교대로 이루어진다.

2. 위원회의 회기사이에, 양 당사자의 대표는 이 협정의 이행을 토의하고 촉진하기 위하여 그리고 공동이익이 되는 계획·사업 및 활동의 진행에 관한 정보를 교환하기 위하여 필요한 경우 회합한다.

제 8 조

각 당사자는 이 협정에 의한 사업 및 계획에 종사하거나 사용되는 타방국의 요원 및 장비의 자국 영역으로의 입국과 자국 영역으로부터의 출국을 용이하게 하기 위하여 최선의 노력을 다한다.

제 9 조

1. 이 협정에 의하여 수행된 협력활동으로부터 파생되는 비재산적 성격의 과학 및 기술정보는, 특정한 상황하에서 달리 합의되지 아니하는 한, 관례적인 경로를 통하여 그리고 참가기관의 통상적인 절차에 따라 세계과학계에 제공된다.

2. 이 협정에 의한 협력활동의 과정에서 창작되거나 제공된 지적재산의 취급은 이 협정의 불가분의 일부를 구성하는 부속서 I에서 정하는 바에 의한다.

3. 이 협정에 의한 협력활동과 관련된 상호적인 보안의무는 이 협정의 불가분의 일부를 구성하는 부속서 II의 규정에 따라 준수된다.

제 10 조

이 협정의 어떠한 규정도 당사자간의 과학 및 기술협력에 관한 다른 약정을 해하는 것으로 해석되지 아니한다.

제 11 조

1. 이 협정은 발효를 위한 모든 요건이 충족되었음을 확인하는 외교공한을 교환하는 날에 발효하며 1999년 4월 29일부터 유효하다.

2. 이 협정은 5년간 유효하며 당사자간의 상호 합의에 의하여 수정되거나 연장될 수 있다.

3. 이 협정의 종료는 이 협정에 의하여 이루어진 어떠한 약정의 효력 또는 기간에도 영향을 미치지 아니한다.

1999년 7월 2 일 워싱턴에서 동등하게 정본인 한국어 및 영어로 2부씩 작성하였다.

대한민국 정부를 위하여	미합중국 정부를 위하여
최 혁	Melinda L. Kimble

부속서 I
지적재산권

이 협정 제9조에 따라,

당사자는 이 협정 및 관련 시행약정에 의하여 창작 또는 제공된 지적재산에 대한 합당하고 효과적인 보호를 보장한다. 당사자는 이 협정에 의하여 발생된 모든 발명 및 저작권이 있는 저작물을 시기적절한 방식으로 상호 통보하며, 그러한 지적재산에 대한 보호를 시기적절한 방식으로 추구할 것에 합의한다. 그러한 지적재산에 대한 권리는 이 부속서가 규정하는 바와 같이 배분된다.

1. 범위

가. 이 부속서는 당사자 또는 그 피지정인이 달리 특별히 합의한 경우를 제외하고는 이 협정에 따라 수행된 모든 협력활동에 대하여 적용가능하다.

나. 이 협정의 목적상, “지적재산권”은 1967년 7월 14일 스톡홀름에서 채택된 세계지적소유권기구설립협약 제2조에서 규정된 의미를 가진다.

다. 이 부속서는 당사자간의 권리·이익 및 기술료의 배분을 규율한다. 각 당사자는 필요한 경우 계약 또는 다른 법적 수단을 통하여 그 참가자로부터 그러한 지적재산에 대한 권리를 취득함으로써, 타방당사자가 부속서에 따라 배분되는 지적재산에 대한 권리를 취득할 수 있도록 보장한다. 이 부속서는 당사자의 법률 및 관행에 의하여 결정되는 당사자와 그 국민간의 배분을 달리 변경하거나 해하지 아니한다.

라. 이 협정에 따라 발생하는 지적재산과 관련된 분쟁은 관계 참가기관 또는 필요한 경우 당사자 또는 그 피지정인간의 토의를 통하여 해결한다. 분쟁은 당사자의 상호 합의에 의하여 국제법상 적용가능한 규칙에 따른 구속력있는 중재를 위하여 중재재판소에 회부된다. 당사자와 그 피지정인이 달리 서면으로 합의하지 아니하는 한, 국제연합국제무역법위원회의 중재규칙이 적용된다.

마. 이 협정의 종료 또는 만료는 이 부속서에 의한 권리 또는 의무에 영향을 미치지 아니한다.

2. 권리의 배분

가. 각 당사자는, 이 협정에 의한 협력으로부터 직접 생기는 과학 및 기술 잡지의 기사, 보고서 및 서적을 모든 국가에서 번역·복제하고 공연히 배포하기 위한 비배타적이고 취소할 수 없으며 기술료가 무상인 허가권을 가진다. 이 규정에 의하여 준비된 모든 공연히 배포된 저작권이 있는 저작물의 사본에는, 저작자가 명시적으로 성명이 표시되는 것을 거부한 경우를 제외하고는, 저작물의 저작자의 성명을 표시하여야 한다.

나. 상기 제2항가목에서 서술된 권리들을 제외한 다른 모든 형태의 지적재산에 대한 권리는 다음과 같이 배분된다

(1) 방문연구자는 초청기관의 정책에 따라 지적재산권을 받는다. 각 당사자는 지적재산권의 부여에 관하여 당사자가 자국민에게 부여하는 것보다 불리하지 아니한 대우를 방문연구자에게 부여한다. 아울러, 발명자로 지명된 각 방문연구자는 포상·상여금·혜택 또는 다른 모든 보상에 관하여 초청기관의 정책 및 국내법에 따라 초청국의 국민과 같은 대우를 받을 권리를 가진다.

(2) 공동연구

(가) 공동연구과정에서 창작된 지적재산은 발명당사자 또는 당사자들이 소유한다. 공동으로 창작된 지적재산은 공동으로 소유한다. 연구가 사전에 "공동연구"로 지정되지 아니한 경우, 지적재산의 소유권은 상기 제2항나목(1)에 따라 결정된다.

(나) 당사자가 시행약정에서의 합의를 포함하여 언제라도 달리 합의하지 아니하는 한, 각 당사자는 지적재산의 소유권에 관계없이 자신의 영역에서 공동연구과정에서 창작된 지적재산을 이용하는 모든 권리를 가진다. 시행약정은 각 당사자의 세계적인 권리를 규정할 수 있으며, 이에는 소유·공동소유 및 이용권을 포함할 수 있다.

(다) 양 당사자의 영역밖에서의 모든 권리는 당사자 및 그 참가자의 공동연구에 대한 상대적 기여도, 모든 결과적인 발명의 특허 및 허가에 대한 헌신의 정도 및 적절하다고 여겨지는 그러한 다른 요소를 고려하여 결정된다.

(라) 아울러, 발명자로 지명된 각 개인은 각국의 국내법에 따라 어느 일방당사자 또는 그 참가기관이 지적재산의 실시로부터 얻게 되는 기술료의 일정한 몫을 받을 권리를 가진다.

다. 제2항나목(2)(가) 및 (나)에도 불구하고, 어느 일방당사자가 이 협정에 의한 특정 공동연구사업이 당사자의 일방의 법률에 의하여 보호되지 아니하는 유형의 지적재산을 창작 또는 제공하였거나 할 것으로 믿는 경우, 당사자는 즉시 전기 지적재산에 대한 권리의 배분을 결정하기 위한 토의를 개최한다. 만약 토의를 요청한 날부터 3월의 기간 이내에 합의에 도달하지 못하게 되면, 문제가 되는 사업에 대한 협력은 어느 일방당사자의 요청으로 종료될 수 있다. 대안으로, 당사자는 그들의 재량에 따라 그러한 배분을 토의하기 위한 공동실무작업반을 설치할 수 있다. 그럼에도 불구하고, 발명자로 지명된 자는 제2항나목(2)(라)에서 규정된 기술료에 대한 권리를 가진다.

라. 발명당사자는, 타방당사자가 가질 수 있는 모든 권리를 설정할 수 있도록 하는 데 필요한 모든 문서 및 정보와 함께, 발명을 신속히 타방당사자에게 공개한다. 발명당사자는 발명에 관련된 자신의 권리를 보호할 목적으로 그러한 문서 또는 정보의 출간 또는 일반공개를 미루도록 타방당사자에게 서면으로 요청할 수 있다. 달리 서면으로 구체적으로 합의되지 아니하는 한, 그러한 제한은 그러한 의사전달일부터 6월의 기간을 초과하지 아니한다. 의사전달은 권한있는 정부기관을 통하거나 또는 관련 시행약정에서 달리 지정된 대로 행하여진다.

3. 영업비밀 정보

영업비밀로서 시기적절한 방식으로 확인된 정보가 협정에 의하여 제공되거나 창작되는 경우, 각 당사자와 그 참가자들은 적용가능한 법률·규정 및 행정관행에 따라 그와 같이 정보를 보호하여야 한다. 정보를 가진 자가 그로부터 경제적인 이익을 얻을 수 있거나 그 정보를 가지지 아니한 자에 대하여 경쟁적 우위를 획득할 수 있는 경우, 정보가 일반적으로 알려져 있지 아니하거나 다른 출처로부터는 공개적으로 얻을 수 없는 경우, 그리고 정보소유자가 시기적절한 방법으로 정보에 대하여 비밀로 유지할 의무를 부과함이 없이는 사전에 정보를 제공하지 아니한 경우 그 정보는 "영업비밀"로서 확인될 수 있다.

부속서 II
보안의무

1. 정보의 보호

양 당사자는 어느 일방당사자의 국방 또는 대외관계의 이해상 보호가 필요하고 적용가능한 국내 법령에 따라 비밀로 분류된 어떠한 정보 또는 장비도 이 협정에 의하여 제공하지 아니한다는 것에 합의한다. 이 협정에 따라 수행되는 협력활동의 과정에서 그러한 보호를 필요로 하는 것으로 알려지거나 믿어지는 정보 또는 장비가 확인되는 경우, 즉시 관련 공무원에게 주의를 환기하여야 하며, 당사자는 그러한 정보 또는 장비에 부여될 적절한 보호의 필요 및 수준에 관하여 협의한다.

2. 기술이전

양국간 수출통제를 받는 정보 또는 장비의 이전은, 이 협정에 따라 제공되거나 생산된 그러한 정보 또는 장비의 승인되지 아니한 이전 또는 재이전을 방지하기 위하여, 각 당사자의 관련 법령에 따른다. 어느 일방당사자가 필요하다고 판단하는 경우, 그러한 정보나 장비의 승인되지 아니한 이전 또는 재이전을 방지하기 위한 상세한 규정이 계약 또는 시행약정에 포함되어야 한다.

[TRANSLATION -- TRADUCTION]

ACCORD DE COOPÉRATION SCIENTIFIQUE ET TECHNIQUE ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CORÉE ET LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE

Le Gouvernement de la République de Corée et le Gouvernement des États-Unis d'Amérique, ci-après dénommés “les Parties”;

Conscients du fait que la coopération scientifique et technique permettra des progrès dans le domaine de la science et de la technologie et renforcera les liens d'amitié entre les deux pays,

Sont convenus de ce qui suit :

Article I

1. Les deux Parties favoriseront la coopération entre les deux pays en matière de science et technologie à des fins pacifiques.

2. L'objet principal de cette coopération consiste à offrir davantage d'opportunités d'échange d'idées, d'informations, de compétences et de techniques, ainsi que de collaboration au sujet de problèmes d'intérêt mutuel.

3. En vertu des objectifs du présent Accord, les deux Parties encourageront et favoriseront, le cas échéant, le développement de contacts et d'une coopération conjoints entre agences du gouvernement, universités, centres de recherche et d'autres institutions et entreprises des deux pays.

Article II

La coopération envisagée dans le présent Accord peut inclure des échanges d'informations scientifiques et techniques, des échanges de scientifiques et d'experts techniques, l'organisation de séminaires et réunions conjoints, la mise en oeuvre de projets de recherche communs dans les domaines de la science fondamentale et appliquée, ainsi que d'autres formes de coopération scientifique et technique décidées d'un commun accord.

Article III

En ce qui concerne les activités conjointes dans le cadre du présent Accord, les Parties ou leurs délégués, suivant le cas, peuvent autoriser la participation de chercheurs et d'organisations de tous les secteurs du monde de la recherche, y compris les universités, les laboratoires nationaux et les secteurs privés. Les Parties ou leurs agences respectives pourront établir d'un commun accord des dispositions de mise en oeuvre des activités conjointes dans le cadre du présent Accord afin de déterminer les termes spécifiques de coopération, conformément au présent Accord.

Article IV

Des scientifiques, experts techniques, organismes et institutions du gouvernement de pays tiers ou d'organisations internationales pourront, le cas échéant, être invités par les deux Parties à participer, à leurs propres frais, sauf disposition contraire, à des projets et programmes se déroulant dans le cadre du présent Accord.

Article V

Sauf dispositions contraires d'un accord de mise en œuvre, chaque Partie ou institution, organisation ou entreprise participante prendra en charge le coût de sa participation et celui de son personnel engagé dans des activités de coopération au titre du présent Accord.

Article VI

Les activités de coopération seront entreprises conformément à la législation applicable des deux pays et sous réserve de la disponibilité de fonds.

Article VII

1. Les deux parties mettent en place un comité mixte, composé de représentants désignés par les Parties, pour coordonner et faciliter les activités de coopération au titre du présent Accord. Le comité procède, tous les deux ans, à un examen conjoint des activités au titre du présent Accord. Ces examens ont lieu alternativement en République de Corée et aux États-Unis d'Amérique.

2. Entre les sessions du comité, les représentants des deux Parties se rencontrent, au besoin, pour examiner et poursuivre la mise en œuvre du présent Accord, et échanger des informations sur la progression des programmes, projets et activités d'intérêt commun.

Article VIII

Chaque Partie fera tout ce qui est en son pouvoir pour rendre l'entrée dans son territoire et la sortie de celui-ci plus facile aux personnes et à l'équipement de l'autre pays, personnes engagées ou équipement utilisé dans des projets et programmes définis dans le cadre du présent Accord.

Article IX

1. Les informations scientifiques et techniques de nature non exclusive dérivées des activités conjointes menées dans le cadre du présent Accord devront, à moins qu'il n'en soit convenu autrement dans des circonstances spécifiques, être mises à la disposition de la communauté scientifique internationale par les voies habituelles et selon les procédures normales des organismes participants.

2. Le traitement de la propriété intellectuelle créée ou fournie lors des activités conjointes menées dans le cadre du présent Accord sera conforme aux dispositions de l'Annexe I, qui constitue une partie intégrante du présent Accord.

3. Des obligations réciproques de sécurité relatives aux activités conjointes exercées dans le cadre du présent Accord devront être respectées, conformément aux dispositions de l'Annexe II, qui fait partie intégrante du présent Accord.

Article X

Aucune disposition du présent Accord ne sera interprétée au préjudice d'autres arrangements de coopération scientifique et technique entre les Parties.

Article XI

1. Le présent Accord entrera en vigueur après l'échange de notes diplomatiques confirmant que toutes les prescriptions pour son entrée en vigueur ont été remplies et prendra effet à partir du 29 avril 1999.

2. Le présent Accord demeurera en vigueur pendant cinq ans et pourra être amendé ou prorogé avec le consentement mutuel des Parties.

3. La dénonciation du présent Accord n'affectera pas la validité ou la durée d'autres arrangements stipulés dans son cadre.

Fait à Washington, le 2 juillet 1999 en deux copies originales en langues coréenne et anglaise, les deux textes faisant également foi.

Pour le Gouvernement de la République de Corée :

CHOI HYUCK

Pour le Gouvernement des États-Unis d'Amérique :

MELINDA KIMBLE

ANNEXE I. PROPRIÉTÉ INTELLECTUELLE

Conformément à l'article IV du présent Accord :

Les Parties assureront une protection adéquate et effective des droits de propriété intellectuelle créés en vertu du présent Accord et exercés en vertu des accords d'exécution dudit Accord. Les Parties sont convenues de s'adresser mutuellement, en temps utile, des notifications concernant les inventions ou les ouvrages protégés auxquels s'applique l'Accord et de demander en temps utile la protection de la propriété intellectuelle desdites inventions ou desdits ouvrages. La répartition des droits relatifs à la propriété intellectuelle de ceux-ci s'effectuera conformément à la présente Annexe.

I. CHAMP D'APPLICATION

A. La présente Annexe s'applique à toutes les activités menées en coopération, conformément au présent Accord, à moins que les Parties ou leurs représentants ne conviennent spécifiquement qu'il en soit autrement.

B. Aux fins du présent Accord, l'expression “propriété intellectuelle” a le sens qui lui est donné à l'article 2 de la Convention instituant l'Organisation mondiale de la propriété intellectuelle signée à Stockholm le 14 juillet 1967.

C. La présente Annexe concerne la répartition des droits, intérêts et redevances entre les Parties. Chacune des parties fera en sorte que l'autre Partie puisse se prévaloir des droits de propriété intellectuelle répartis conformément à cette Annexe, en obtenant de ses propres participants qu'ils accordent ces droits au titre de contrats ou par d'autres voies légales, si nécessaire. La présente Annexe n'entraîne aucune autre modification et ne préjuge en aucune façon de la répartition des droits entre une Partie et ses ressortissants, qui sera déterminée par la législation et les pratique de cette Partie.

D. Les différends relatifs à la propriété intellectuelle qui s'élèveraient à propos du présent Accord devraient être réglés au moyen d'échanges de vues entre les institutions participantes intéressées ou, si nécessaire, entre les Parties ou leurs représentants. Par accord mutuel entre les Parties, tout différend sera soumis à un tribunal arbitral, qui prononcera une sentence obligatoire, conformément aux règles du droit international pertinentes. À moins que les Parties et leurs représentants n'en disposent autrement par écrit, le règlement d'arbitrage de la CNUDCI s'appliquera.

E. L'abrogation ou l'expiration du présent Accord n'affectera pas les droits et obligations visés dans la présente Annexe.

II. RÉPARTITION DES DROITS

A. Chaque Partie aura une licence non exclusive, irrévocable et exempte de redevances dans tous les pays pour traduire, reproduire, publier et distribuer des exemplaires d'articles de presse et d'ouvrages scientifiques et techniques qui résultent de la coopération exercée conformément au présent Accord. Tous les exemplaires d'un ouvrage bénéficiant d'un droit d'auteur publié en application des dispositions de la présente section devront mentionner le nom de l'auteur, à moins que celui-ci ne s'y oppose expressément.

B. Les droits relatifs à toutes les formes de propriété intellectuelle autres que ceux qui sont décrits à la section II.A. ci-dessus seront répartis comme suit :

B.1. Aux chercheurs invités, des droits de propriété intellectuelle seront octroyés conformément aux règlements de l'institution qui les accueille. Chaque Partie accordera aux chercheurs invités un traitement qui ne sera pas moins favorable qu'à ses propres ressortissants en matière d'attribution du droit de propriété intellectuelle. En outre, tout chercheur invité en sa qualité d'auteur d'une invention aura droit au même traitement que les ressortissants du pays d'accueil en ce qui concerne les prix, bonus, bénéfices et toute autre récompense, conformément aux règlements de l'institution qui les accueille.

B.2. Recherches conjointes

(a) La propriété intellectuelle découlant de recherches conjointes reviendra à la Partie ou aux Parties à l'origine de l'invention. La propriété intellectuelle créée conjointement sera de propriété commune. Si la recherche n'a pas préalablement été définie comme “recherche conjointe”, les droits de propriété intellectuelle seront répartis comme indiqué au paragraphe II.B.1 ci-dessus.

(b) Sauf si les Parties en conviennent autrement à tout moment, y compris dans les accords d'exécution, chaque Partie a le droit d'exploiter la propriété intellectuelle découlant de la recherche conjointe sur son propre territoire, qu'elle soit ou non titulaire des droits de propriété. Des accords d'exécution peuvent définir les droits internationaux de chaque Partie, en ce compris la propriété, la propriété conjointe et les droits d'exploitation.

(c) Tous les droits au-delà des frontières des territoires des deux Parties seront déterminés sur la base d'une estimation des contributions spécifiques des Parties et des participants respectifs à la recherche conjointe, du degré de participation à la demande de brevet et de licence de toute invention en découlant et de tout autre facteur jugé pertinent.

(d) En outre, chaque personne invitée en qualité d'auteur d'une invention pourra partager toute redevance perçue par l'une des Parties ou ses institutions participantes au titre de la une licence de propriété intellectuelle, conformément aux lois nationales de chaque Pays.

C. Nonobstant les paragraphes II.B.2.(a) et (b), si l'une des Parties estime qu'un projet de recherche conjointe dans le cadre du présent Accord a débouché ou débouchera sur la création ou la production d'un type de propriété intellectuelle non protégé par les lois de l'une des deux Parties, celles-ci devront immédiatement entamer des discussions afin de déterminer la répartition des droits de ladite propriété intellectuelle. Si aucun accord n'est atteint dans les trois mois qui suivent la date de la demande de discussion, chacune des Parties peut demander l'arrêt de la coopération sur le projet concerné. Les Parties peuvent également, à leur discrétion, créer un groupe de travail mixte chargé de discuter de la répartition. Les personnes considérées comme les auteurs de l'invention pourront néanmoins percevoir des redevances comme prévu au paragraphe II.B.2.(d).

D. La Partie auteur de l'invention communiquera rapidement son invention à l'autre Partie, avec toute la documentation et les informations nécessaires pour permettre à celle-ci de déterminer ses droits éventuels. La Partie auteur de l'invention peut demander par écrit à l'autre Partie de retarder la publication ou la divulgation au public de la documentation et des informations susmentionnées dans le but de protéger ses droits relatifs à l'invention.

Sauf disposition écrite contraire, cette limitation ne pourra pas dépasser une période de six mois à partir de la date de communication de l'invention. Cette communication sera faite par les organismes gouvernementaux compétents ou de la façon spécifiée dans les accords d'exécution pertinents.

III. INFORMATIONS COMMERCIALES DE CARACTÈRE CONFIDENTIEL

Lorsque des informations opportunément identifiées comme des informations commerciales de caractère confidentiel sont communiquées ou conçues au titre du présent Accord, elles seront protégées par chaque Partie et par ses participants, conformément aux lois, règlements et procédures administratives applicables par cette Partie. Elles pourront être identifiées comme des informations commerciales si leurs détenteurs peuvent en tirer des avantages pécuniaires ou bénéficier d'une meilleure position concurrentielle que les non-détenteurs de ces informations, si lesdites informations sont en général ignorées du public ou si celui-ci ne peut se les procurer d'autres sources et si leur détenteur ne les a pas déjà communiquées à la condition qu'elles restent confidentielles.

ANNEXE II. OBLIGATIONS EN MATIÈRE DE SÉCURITÉ

I. PROTECTION DE L'INFORMATION

Les deux Parties conviennent qu'aucune information ou équipement qui doit être protégé dans l'intérêt de la défense nationale ou des relations extérieures de l'une ou l'autre Partie et qui est classé en vertu des lois et règlements internationaux applicables ne sera fourni en vertu du présent accord. Au cas où l'information ou l'équipement dont on sait ou dont on croit qu'il doit être protégé serait identifié au cours d'activités de coopération entreprises en application du présent Accord, le fait sera porté immédiatement à l'attention de fonctionnaires compétents et les Parties se consulteront au sujet de la nécessité de protéger cette information ou cet équipement et au sujet du degré approprié de protection.

II. TRANSFERT DE TECHNOLOGIE

Le transfert d'informations ou d'équipements soumis à des restrictions en matière d'exportation entre les deux pays sera effectué conformément aux lois et règlements pertinents de chacune des parties pour empêcher le transfert ou le retransfert non autorisé d'informations ou d'équipements fournis ou obtenus en vertu du présent accord. Si l'une des parties le juge nécessaire, des dispositions précises visant à empêcher le transfert ou le retransfert non autorisé d'informations ou d'équipements seront incorporés aux contrats ou aux arrangements d'exécution.

No. 43278

Republic of Korea
and
United States of America

Extradition Treaty between the Government of the Republic of Korea and the Government of the United States of America. Washington, 9 June 1998

Entry into force: *20 December 1999 by the exchange of instruments of ratification, in accordance with article 21*

Authentic texts: *English and Korean*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

République de Corée
et
États-Unis d'Amérique

Traité d'extradition entre le Gouvernement de la République de Corée et le Gouvernement des États-Unis d'Amérique. Washington, 9 juin 1998

Entrée en vigueur : *20 décembre 1999 par échange des instruments de ratification, conformément à l'article 21*

Textes authentiques : *anglais et coréen*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

[ENGLISH TEXT — TEXTE ANGLAIS]

EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

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The Government of the Republic of Korea and the Government of the United States of America,

Desiring to provide for more effective cooperation between the two states in the prevention and suppression of crime, and to facilitate relations between the two States in the area of extradition by concluding a treaty for the extradition of offenders,

Have agreed as follows:

Article 1. Obligation to Extradite

The Contracting States agree to extradite to each other, pursuant to the provisions of this Treaty, any person who is wanted in the Requesting State for prosecution, trial, or imposition or execution of punishment for an extraditable offense.

Article 2. Extraditable Offenses

1. An offense shall be an extraditable offense if, at the time of the request, it is punishable under the laws in both Contracting States by deprivation of liberty for a period of more than one year, or by a more severe penalty.

2. An offense shall also be an extraditable offense if it consists of an attempt or a conspiracy to commit, or participation in the commission of, an offense described in paragraph 1, provided that the requirements of paragraph 1 are fulfilled.

3. For the purposes of this Article, the totality of the conduct alleged against the person whose extradition is sought shall be taken into account, and an offense shall be an extraditable offense:

(a) whether or not the laws in the Contracting States place the offense within the same category of offenses or describe the offense by the same terminology;

(b) whether or not the constituent elements of the offense differ under the laws in the Contracting States, provided that the offenses under the laws of both States are substantially analogous; and

(c) whether or not the offense is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court.

4. If the offense was committed outside of the territory of the Requesting State, extradition shall be granted in accordance with this Treaty if the laws of the Requested State provide for punishment of an offense committed outside of its territory in similar circumstances or if the offense has been committed by a national of the Requesting State. If the laws in the Requested State do not so provide, the executive authority of the Requested State may, in its discretion, grant extradition, provided that the requirements of this Treaty are met. Extradition may be refused when the offense for which extradition is sought is regarded under the law of the Requested State as having been committed in whole or in part in its territory and a prosecution in respect of that offense is pending in the Requested State.

5. If extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request even if the latter offense is punishable by deprivation of liberty for a period of one year or less, provided that all other requirements for extradition are met.

6. When extradition of a person is sought for an offense against a law relating to taxation, customs duties, foreign exchange control, or other revenue matter, extradition may not be refused on the ground that the law of the Requested State does not contain a tax, duty, customs, or exchange regulation of the same kind as the law of the Requesting State.

7. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting State for any extraditable offense, extradition may be denied if a period of less than four months remains to be served.

Article 3. Nationality

1. Neither Contracting State shall be bound to extradite its own nationals, but the Requested State shall have the power to extradite such person if, in its discretion, it be deemed proper to do so.

2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested State shall, at the request of the Requesting State, submit the case to its authorities for prosecution.

3. Nationality shall be determined at the time of the commission of the offense for which extradition is requested.

Article 4. Political and Military Offenses

1. Extradition shall not be granted if the Requested State determines that the offense for which extradition is requested is a political offense.

2. For the purposes of this Treaty, the following offenses shall not be considered to be political offenses:

(a) a murder or other willful violent crime against the person of a Head of State of one of the Contracting States, or of a member of the Head of State's family;

(b) an offense for which both Contracting States have the obligation to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution pursuant to a multilateral international agreement, including but not limited to such agreements relating to genocide, terrorism, or kidnapping; and

(c) a conspiracy or attempt to commit, or participation in, any of the foregoing offenses.

3. Surrender shall not be granted if the executive authority of the Requested State determines:

(a) that the request for surrender, though purporting to be made on account of an offense for which surrender may be granted, was in fact made for the primary purpose of prosecuting or punishing the person sought on account of his race, religion, nationality or political opinion; or

(b) that extradition has been requested for political purposes.

4. The executive authority of the Requested State may refuse extradition for offenses under military law which are not offenses under ordinary criminal law.

Article 5. Prior Prosecution

Extradition shall not be granted when the person sought has been convicted or acquitted in the Requested State for the offense for which extradition is requested.

Article 6. Lapse of Time

Extradition may be denied under this Treaty when the prosecution or the execution of punishment of the offense for which extradition is requested would have been barred because of the statute of limitations of the Requested State had the same offense been committed in the Requested State. The period during which a person for whom extradition is sought fled from justice does not count towards the running of the statute of limitations. Acts or circumstances that would suspend the expiration of the statute of limitations of either State shall be given effect by the Requested State, and in this regard the Requesting State shall provide a written statement of the relevant provisions of its statute of limitations, which shall be conclusive.

Article 7. Capital Punishment

1. When the offense for which extradition is sought is punishable by death under the laws in the Requesting State and is not punishable by death under the laws in the Requested State, the Requested State may refuse extradition unless:

(a) the offense constitutes murder under the laws in the Requested State; or

(b) the Requesting State provides such assurances as the Requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out.

2. In instances in which a Requesting State provides an assurance in accordance with paragraph 1, the death penalty, if imposed by the courts of the Requesting State, shall not be carried out.

Article 8. Extradition Procedures and Required Documents

1. All requests for extradition shall be submitted in writing through the diplomatic channel.

2. All requests shall be supported by:

(a) documents, statements, or other types of information which describe the identity, including nationality, and probable location of the person sought;

(b) information describing the facts of the offense and the procedural history of the case;

(c) the text of the law describing the essential elements of the offense for which extradition is requested;

(d) the text of the law prescribing punishment for the offense;

(e) the documents, statements, or other types of information specified in paragraph 3 or paragraph 4 of this Article, as applicable; and

(f) a statement of the relevant provisions of its statute of limitations on the prosecution or the execution of punishment of the offense.

3. A request for extradition of a person who is sought for prosecution shall also be supported by:

(a) a copy of the warrant or order of arrest issued by a judge or other competent authority;

(b) a copy of the charging document, if any; and

(c) such information as would provide reasonable grounds to believe that the person sought has committed the offense for which extradition is requested.

4. A request for extradition relating to a person who has been found guilty of the offense for which extradition is sought shall also be supported by:

(a) a copy of the judgment of conviction or, if such copy is not available, a statement by a judicial authority that the person has been found guilty;

(b) information establishing that the person sought is the person to whom the finding of guilt refers;

(c) a copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out; and

(d) in the case of a person who has been found guilty in absentia, the documents required by paragraph 3.

5. If the Requested State considers that the information furnished in support of the request is not sufficient to fulfill the requirements of this Treaty, that State may request that additional information be furnished within such reasonable time as it specifies.

6. All documents submitted by the Requesting State shall be translated into the language of the Requested State.

Article 9. Admissibility of Documents

The documents which accompany an extradition request shall be received and admitted as evidence in the extradition proceedings if:

(a) they are certified by the principal diplomatic or consular officer of the Requested State resident in the Requesting State; or

(b) they are certified or authenticated in any other manner accepted by the law of the Requested State.

Article 10. Provisional Arrest

1. In case of urgency, a Contracting State may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the Ministry of Justice in the Republic of Korea and the Department of Justice in the United States.

2. The application for provisional arrest shall be in writing and contain:

(a) a description of the person sought, including information concerning the person's nationality;

(b) the location of the person sought, if known;

(c) a brief statement of the facts of the case, including, if possible, the time and location of the offense;

(d) a description of the laws violated;

(e) a statement of the existence of a warrant of arrest or a finding of guilt or judgment of conviction against the person sought; and

(f) a statement that a request for extradition for the person sought will follow.

3. The Requesting State shall be notified without delay of the disposition of its application and the reasons for any denial.

4. A person who is provisionally arrested may be discharged from custody upon the expiration of two months from the date of provisional arrest pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 8.

5. The fact that the person sought has been discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent rearrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.

Article 11. Decision and Surrender

1. The Requested State shall promptly notify the Requesting State, in writing through the diplomatic channel, of its decision on the request for extradition.

2. If the request is denied in whole or in part, the Requested State shall provide an explanation of the reasons for the denial. In cases in which decisions are made by judicial authorities, the Requested State shall, upon request, provide copies of pertinent judicial decisions.

3. If the request for extradition is granted, the authorities of the Contracting States shall agree on the time and place for the surrender of the person sought.

4. If the person sought is not removed from the territory of the Requested State within the time prescribed by the law of that State, that person may be discharged from custody, and the Requested State may subsequently refuse extradition for the same offense.

Article 12. Temporary and Deferred Surrender

1. If the extradition request is granted in the case of a person who is being proceeded against or is serving a sentence in the Requested State for an offense other than that for which extradition is requested, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement of the Contracting States.

2. The Requested State may postpone the extradition proceedings against a person who is serving a sentence in that State for an offense other than that for which extradition is requested or who is being prosecuted in that State. The postponement may continue until the prosecution of the person sought has been concluded or until such person has served any sentence imposed.

Article 13. Requests for Extradition Made by Several States

If the Requested State receives requests from the other Contracting State and from any other State or States for the extradition of the same person, either for the same offense or for different offenses, the executive authority of the Requested State shall determine to which State it will surrender the person. In making its decision, the Requested State shall consider all relevant factors, including but not limited to:

(a) whether the requests were made pursuant to treaty;

(b) the time and place where each offense was committed;

(c) the respective interests of the Requesting States;

(d) the gravity of the offenses;

(e) the nationality of the victim;

(f) the possibility of further extradition between the Requesting States; and

(g) the respective dates of the requests.

Article 14. Seizure and Surrender of Property

1. To the extent permitted under its law, the Requested State may seize and surrender to the Requesting State all articles, documents, and evidence connected with the offense in respect of which extradition is granted. The items mentioned in this Article may be surrendered even when the extradition cannot be effected due to the death, disappearance, or escape of the person sought.

2. The Requested State may condition the surrender of the property upon satisfactory assurances from the Requesting State that the property will be returned free of charge to the Requested State as soon as practicable. The Requested State may also defer the surrender of such property if it is needed as evidence in the Requested State.

3. The rights of third parties in such property shall be duly respected.

Article 15. Rule of Speciality

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting State except for:

(a) the offense for which extradition has been granted or a differently denominated offense based on the same facts on which extradition was granted, provided such offense is extraditable, or is a lesser included offense;

(b) an offense committed after the extradition of the person; or

(c) an offense for which the executive authority of the Requested State consents to the person's detention, trial, or punishment for an offense;

For the purpose of this subparagraph:

(i) the Requested State may require the submission of the documents called for in Article 8;

(ii) a legal record of statements made by the extradited person with respect to the offense, if any, shall be submitted to the Requested State; and

(iii) the person extradited may be detained by the Requesting State for such period of time as the Requested State may authorize, while the request is being processed.

2. A person extradited under this Treaty may not be extradited to a third State for an offense committed prior to his surrender unless the surrendering State consents.

3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of that person to a third State, if:

(a) that person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or

(b) that person does not leave the territory of the Requesting State within 25 days of the day on which that person is free to leave.

Article 16. Simplified Extradition

If the person sought consents to surrender to the Requesting State, the Requested State may surrender the person as expeditiously as possible without further proceedings, to the extent permitted under its law. In such cases, Article 15 of this Treaty shall not apply.

Article 17. Transit

1. Either Contracting State may authorize transportation through its territory of a person surrendered to the other State by a third State. A request for transit shall be transmitted through the diplomatic channel or directly between the Ministry of Justice in the Republic of Korea and the Department of Justice in the United States. It shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit may be detained in custody during the period of transit.

2. Authorization to transit shall not be required when air transport is used and no landing is scheduled in the territory of the State of transit. If an unscheduled landing occurs

in the territory of that party, it may require the other party to furnish a request for transit as provided in paragraph 1 of this Article. The State of transit shall detain the person to be transported until the transportation is continued provided that the request is received within ninety-six (96) hours of the unscheduled landing.

3. Permission for the transit of a person surrendered shall include authorization for accompanying officials to obtain assistance from authorities in the State of transit in maintaining custody.

4. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Contracting State in whose territory the person is being held may direct that the person be released if transportation is not continued within a reasonable time.

Article 18. Representation and Expenses

1. The Requested State shall advise, assist, appear in court on behalf of the Requesting State, and represent the interests of the Requesting State, in any proceedings arising out of a request for extradition.

2. The Requesting State shall bear the expenses related to the translation of documents and the transportation of the person surrendered from the Requested State to the Requesting State. The Requested State shall pay all other expenses incurred in that State by reason of the extradition proceedings.

3. Neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination, or surrender of persons sought under this Treaty.

Article 19. Consultation

1. The Contracting States shall consult, at the request of either, concerning the interpretation and the application of this Treaty.

2. The Republic of Korea Ministry of Justice and the United States Department of Justice may consult with each other directly in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

Article 20. Application

This Treaty shall apply to offenses committed before as well as after the date it enters into force.

Article 21. Ratification, Entry into Force and Termination

1. This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible.

2. This Treaty shall enter into force upon the exchange of the instruments of ratification.

3. Either Contracting State may terminate this Treaty at any time by giving written notice to the other Contracting State, and the termination shall be effective six months after the date of such notice.

In Witness Whereof, the undersigned, being duly authorized by their respective Governments have signed this Treaty.

Done at Washington, in duplicate, this 9th day of June, 1998 in the Korean and English languages, both texts being equally authentic.

For the Government of the Republic of Korea:

PARK SANG-CHUN

For the Government of the United States of America:

MADELEINE ALBRIGHT

[KOREAN TEXT — TEXTE CORÉEN]

대한민국 정부와 미합중국 정부간의 범죄인인도조약

대한민국 정부와 미합중국 정부는,

범죄인인도조약을 체결함으로써 범죄의 예방과 억제에 있어 양국간에 보다 효율적인 협력을 제공하고,

범죄인인도 분야에서 양국간의 관계를 증진하기를 희망하여,

다음과 같이 합의하였다.

제 1 조
인도의무

체약당사국은 청구국에서 인도대상범죄에 대한 기소, 재판 또는 형의 부과나 집행을 위하여 수배된 자를 이 조약의 규정에 따라 상호 인도하기로 합의한다.

제 2 조
인도대상범죄

1. 인도대상범죄는 인도청구시에 양 체약당사국의 법률에 의하여 1년 이상의 자유형 또는 그 이상의 중형으로 처벌할 수 있는 범죄로 한다.

2. 제1항에 규정된 범죄의 미수범, 음모범 또는 공범도 제1항의 요건이 충족되는 한 인도대상범죄로 한다.

3. 이 조의 목적상 인도가 청구된 자에 대한 혐의행위는 총체적으로 고려되어야 하며, 다음에는 관계없이 인도대상범죄가 된다.

가. 체약당사국의 법률이 그 범죄를 같은 범죄유형으로 분류하거나 같은 죄명으로 규정하는지 여부

나. 양 체약당사국의 법률상 본질적으로 유사한 범죄인 경우 양국의 법률상 그 범죄 구성요건이 상이한지 여부, 그리고

다. 미합중국 연방법이 당해범죄에 대하여 단지 미합중국 연방법원의 재판권을 성립시킬 목적으로 요구되는 것에 불과한 주간 교통수단의 제시 또는 다른 주간 통상이나 외국과의 통상에 영향을 미치는 우편이나 다른 시설의 이용 등을 요건으로 하고 있는지 여부

4. 당해범죄가 청구국의 영토 밖에서 발생한 때에는, 피청구국의 법률상 자국 영토 밖에서 그와 유사한 상황하에서 발생한 범죄에 대하여 처벌을 규정하고 있거나 또는 그 범죄가 청구국의 국민에 의하여 행하여진 경우라면, 이 조약에 따라 범죄인 인도가 허용되어야 한다. 피청구국의 법률상 그와 같은 규정이 없는 경우에는 피청구국의 행정당국은 이 조약상의 요건이 충족되는 한 재량에 의하여 범죄인인도를 허용할 수 있다. 인도청구의 대상이 된 범죄의 일부 또는 전부가 피청구국의 법에 의하여 피청구국의 영토내에서 발생한 것으로 판단되고 피청구국에서 그 범죄에 대한 기소가 계속중인 경우에는 범죄인인도를 거절할 수 있다.

5. 특정의 인도범죄에 대하여 인도가 이루어진 경우에는 청구서에 명기된 다른 범죄가 1년 이하의 자유형으로 처벌되는 것이라 하더라도 인도에 관한 다른 요건이 충족되면 그 범죄에 대하여도 범죄인인도가 이루어져야 한다.

6. 조세, 관세, 외국환관리 또는 다른 재정에 관한 법률을 위반한 범죄에 대하여 범죄인인도가 청구되는 경우 피청구국의 법률이 청구국의 법률과 동일한 종류의 조세, 관세 또는 외국환규정을 두고 있지 아니하다는 이유로 인도가 거절되어서는 아니된다.

7. 범죄인인도 요청이 청구국의 법원에서 인도가능한 범죄로 자유형을 받은 자에 관련된 경우 잔여형기가 4월 이하이면 이를 거절할 수 있다.

제 3 조

국 적

1. 어느 체약당사국도 자국민을 인도할 의무는 없으나 피청구국은 재량에 따라 인도하는 것이 적합하다고 판단되는 경우 자국민을 인도할 권한을 가진다.

2. 단지 국적만을 이유로 인도청구된 자의 인도를 거절하는 때에는, 피청구국은 청구국의 요청에 따라 자국의 기소당국에 사건을 회부하여야 한다.

3. 국적은 인도청구된 범죄의 행위시를 기준으로 판단한다.

제 4 조

정치적 범죄 및 군사적 범죄

1. 피청구국이 인도청구범죄를 정치적 범죄라고 판단하는 경우 인도는 허용되지 아니한다.

2. 이 조약의 목적상 다음과 같은 범죄는 정치적 범죄로 간주되지 아니한다.

가. 체약당사국중 일방의 국가원수 또는 그의 가족에 대한 살인 또는 기타 고의적 폭력범죄

나. 양 체약당사국이 집단살해, 테러 또는 납치에 관한 협정 등을 포함한 다자간 국제협정에 따라 당해 범죄인을 인도하거나 기소여부의 결정을 위하여 관할당국에 사건을 회부할 의무가 있는 범죄, 그리고

다. 위에 기재한 범죄에 대한 음모범, 미수범 또는 공범

3. 피청구국의 행정당국이 다음과 같이 결정하는 경우 인도는 허용되지 아니한다.

가. 인도가 허용될 수 있는 범죄를 사유로 인도청구를 한 경우라도 청구된 자의 인종, 종교, 국적 또는 정치적 의견을 이유로 당해인을 기소 또는 처벌할 것을 주요목적으로 사실상 인도가 청구된 경우, 또는

나. 정치적 목적을 위하여 범죄인인도가 청구된 경우

4. 피청구국의 행정당국은 일반 형사법상의 범죄가 아닌 군법상의 범죄에 대하여는 인도를 거절할 수 있다.

제 5 조

이전의 기소

인도청구된 자가 인도청구된 범죄에 관하여 피청구국에서 이미 유죄 또는 무죄 선고를 받은 경우 인도는 허용되지 아니한다.

제 6 조

시 효

인도청구된 범죄와 동일한 범죄가 피청구국에서 발생하였다면 피청구국의 공소시효의 규정에 의하여 인도청구된 범죄에 대한 기소 또는 처벌이 금지된다고 인정되는 때에는 이 조약에 의거하여 인도를 거절할 수 있다. 인도청구된 자가 법집행을 면하기 위하여 도피한 기간동안에는 공소시효가 진행되지 아니한다. 일방당사국에서 공소시효의 만료를 정지시키는 행위 또는 사유는 피청구국에 의하여 효력이 부여되어야 한다. 이 점과 관련하여 청구국은 공소시효 관련규정에 대한 설명을 서면으로 제공하여야 하며, 이에 대하여는 다툴 수 없다.

제 7 조
사 형

1. 인도청구된 범죄가 청구국 법률상 사형에 처해질 수 있으나 피청구국 법률상 사형에 처할 수 없는 경우 피청구국은 다음의 경우를 제외하고는 인도를 거절할 수 있다.

가. 당해범죄가 피청구국의 법률상 살인죄를 구성하는 경우, 또는

나. 사형이 선고되지 아니하거나 또는 사형선고가 있는 경우에도 이를 집행하지 아니한다는 청구국의 보증이 있고 피청구국이 이를 충분하다고 인정하는 경우

2. 청구국이 제1항에 의한 보증을 하는 경우, 청구국 법원에 의하여 선고된 사형은 집행되어서는 아니된다.

제 8 조
인도절차 및 필요서류

1. 모든 인도청구는 외교경로를 통하여 서면으로 이루어져야 한다.

2. 인도청구에는 다음이 첨부되어야 한다.

가. 청구된 자의 국적을 포함한 신원과 추정 소재지를 기재한 서류, 설명 또는 다른 형태의 정보

나. 범죄사실 및 그 사건에 대하여 진행된 절차의 과정을 기재한 정보

다. 인도청구된 범죄의 구성요건이 기재된 법령

라. 인도청구된 범죄에 대한 형벌이 기재된 법령

마. 상당한 경우 이 조 제3항 또는 제4항에 규정된 서류, 진술 또는 다른 형태의 정보, 그리고

바. 당해범죄에 대한 기소 또는 형의 집행에 관한 시효규정에 대한 관련 규정의 설명

3. 인도청구가 기소를 위한 것인 경우에는 다음이 첨부되어야 한다.

가. 법관 또는 다른 권한있는 당국이 발부한 구속 또는 체포영장의 사본

나. 기소관련 서류가 있는 경우 그 사본, 그리고

다. 인도청구된 자가 청구된 범죄를 행하였다고 믿을 만한 상당한 근거를 제공하는 정보

4. 청구된 범죄에 관하여 유죄판결을 받은 자에 대한 청구가 있는 경우에는 다음이 첨부되어야 한다.

가. 판결문 사본 또는 사본을 발급받을 수 없는 경우 그 자가 유죄판결을 받은 자라는 사법당국의 설명

나. 청구된 자가 유죄판결을 받은 자와 동일하다는 것을 입증하는 자료

다. 청구된 자가 형의 선고를 받은 경우 선고형량을 기재한 서류의 사본 및 그 선고가 어느 정도 집행되었는지를 기재한 설명, 그리고

라. 당해인이 유죄의 궐석재판을 받은 경우 제3항에 의하여 요구되는 서류

5. 피청구국은 청구를 위하여 제출된 정보가 이 조약의 요건을 충족하기에 불충분하다고 판단되는 경우 피청구국이 상당한 기간을 특정하여 추가자료를 제출할 것을 요구할 수 있다.

6. 청구국이 제출하는 모든 서류는 피청구국의 언어로 번역되어야 한다.

제 9 조

서류의 적격성

범죄인인도청구에 첨부되는 서류는 다음의 경우에 인도절차에서 증거로 접수되고 인정되어야 한다.

가. 동 서류가 청구국에 주재하고 있는 피청구국의 주요 외교관이나 영사관원에 의하여 확인된 경우, 또는

나. 동 서류가 피청구국의 법에 의하여 인정되는 기타 방식으로 확인 또는 인증된 경우

제 10 조

긴급인도구속

1. 긴급한 경우 체약당사국은 인도청구서를 송부하기 전에 범죄인에 대한 긴급인도구속을 청구할 수 있다. 긴급인도구속 청구서는 대한민국 법무부와 미합중국 법무부간에 외교경로를 통하여 또는 직접 송부될 수 있다.

2. 긴급인도구속에 대한 청구는 서면으로 이루어져야 하며 다음 사항이 포함되어야 한다.

가. 청구된 자의 국적에 관한 정보를 포함한 동인에 대한 설명

나. 청구된 자의 소재지를 알고 있는 경우 그 소재지

다. 가능한 경우 범행의 시간과 장소를 포함한 사건의 사실에 대한 간략한 설명

라. 위반한 법령에 대한 설명

마. 청구된 자에 대한 구속영장이나 유죄판결이 있는지에 대한 설명, 그리고

바. 당해인에 대한 범죄인인도청구가 추후 이루어질 것이라는 설명

3. 청구국에 대하여 긴급인도구속청구의 처리내용과 청구 거절의 경우에는 그 이유를 지체없이 통지하여야 한다.

4. 이 조약에 의하여 긴급인도구속된 자에 대하여 피청구국의 행정당국이 긴급인도 구속일부터 2월이 경과할 때까지 정식인도청구서 및 제8조에 의하여 요구되는 첨부서류를 받지 못하면 석방할 수 있다.

5. 청구된 자가 이 조 제4항에 따라 석방되었다는 사실은 정식 인도청구서 및 첨부서류가 추후에 접수된 경우에 그 사람에 대한 재구속과 인도를 방해하지 아니한다.

제 11 조

결정 및 인도

1. 피청구국은 범죄인인도 청구에 대한 결정을 외교경로를 통하여 청구국에 신속히 서면으로 통지하여야 한다.

2. 인도청구의 전부 또는 일부가 거절되었을 경우 피청구국은 거절사유에 대한 설명을 제공하여야 한다. 사법당국에 의하여 결정이 이루어지는 경우 피청구국은 요청이 있을 경우 관련 사법결정의 사본을 제공하여야 한다.

3. 범죄인인도가 허용되는 경우 체약당사국들의 각 주무당국은 청구된 자의 인도일시와 장소에 대하여 합의하여야 한다.

4. 청구된 자가 피청구국의 법에 규정된 기간내에 피청구국의 영토밖으로 이송되지 아니하는 경우 당해인을 석방할 수 있고 피청구국은 동일한 범죄에 대한 추후 인도청구를 거부할 수 있다.

제 12 조

일시인도 및 인도연기

1. 인도청구된 범죄 이외의 다른 범죄로 피청구국에서 재판중이거나 형을 복역하고 있는 자에 대한 인도청구가 허용되는 경우 피청구국은 기소를 위하여

당해인을 청구국으로 일시 인도할 수 있다. 이와 같이 인도되는 자는 체약당사국의 상호합의에 의하여 결정되는 조건에 따라 청구국에서 계속 구금되어야 하며 재판절차가 종결된 후 피청구국으로 송환되어야 한다.

2. 피청구국은 인도청구된 범죄 이외의 범죄로 자국에서 형을 복역하고 있거나 기소된 자에 대한 인도절차를 연기할 수 있다. 청구된 자에 대한 기소가 완결될 때까지 또는 당해인이 선고된 형의 복역을 마칠 때까지 인도를 연기할 수 있다.

제 13 조

다수국에 의한 범죄인인도청구

피청구국이 타방체약국과 여타의 다른 국가 또는 국가들로부터 동일인에 대하여 동일한 범죄 또는 동일하지 아니한 범죄와 관련하여 인도청구를 받은 경우, 피청구국의 행정당국은 당해인을 인도할 국가를 결정하여야 한다. 동 결정을 함에 있어 피청구국은 다음의 사항을 포함한 모든 관련요소를 고려하여야 한다.

가. 인도청구가 조약에 의거한 것인지 여부

나. 각 범죄가 발생한 일시와 장소

다. 각 청구국의 이해관계

라. 범죄의 중함

마. 피해자의 국적

바. 청구국들간의 추후 인도 가능성, 그리고

사. 각 인도청구 일자

제 14 조

물건의 압수 및 인도

1. 피청구국은 자국법률이 허용하는 범위내에서 인도가 허용된 범죄와 관련된 모든 물건, 서류 및 증거를 압수하여 청구국에 인도할 수 있다. 피청구국은 인도

청구된 자의 사망, 실종 또는 도피로 인하여 인도가 이루어질 수 없는 경우라 하더라도 이 조에 언급된 것들을 인도할 수 있다.

2. 피청구국은 물건을 인도함에 있어 청구국이 실무적으로 가능한 한 신속히 이를 무상 반환할 것을 충분히 보증할 것을 조건으로 할 수 있다. 피청구국은 그 물건이 자국내에서 증거로 필요한 경우 그 인도를 연기할 수 있다.

3. 그와 같은 물건에 대한 제3자의 권리는 적절히 존중되어야 한다.

제 15 조

특정성의 원칙

1. 이 조약에 따라 인도되는 자는 다음 범죄 이외의 범죄로 청구국에서 구금되거나 재판받거나 처벌될 수 없다.

가. 인도가 허용된 범죄, 또는 다른 죄명으로 규정되어 있으나 인도의 근거가 된 범죄사실과 같은 사실에 기초한 범죄로서 인도범죄이거나 인도가 허용된 범죄의 일부를 이루는 범죄

나. 당해인의 인도 이후에 발생한 범죄, 그리고

다. 피청구국의 행정당국이 당해인의 구금, 재판 또는 처벌에 동의하는 범죄. 본호의 목적상

(1) 피청구국은 제8조에 의하여 요구되는 서류의 제출을 요구할 수 있다.

(2) 인도되는 자가 범죄와 관련하여 진술한 법적 기록이 있는 경우 그 기록은 피청구국에 제출되어야 한다. 그리고,

(3) 인도되는 자는 청구가 처리되는 중에 피청구국이 허가하는 기간 동안 청구국에 의하여 구금될 수 있다.

2. 이 조약에 따라 인도되는 자는 인도하는 국가가 동의하지 아니하는 한 그 인도 이전에 범한 범죄로 인하여 제3국으로 인도될 수 없다.

3. 이 조의 제1항 및 제2항은 다음의 경우에 있어 인도된 자의 구금, 재판 및 처벌이나 제3국으로의 인도를 방해하지 아니한다.

가. 당해인이 인도된 후 청구국의 영토를 떠났다가 자발적으로 청구국에 재입국한 경우, 또는

나. 당해인이 자유로이 청구국을 떠날 수 있게 된 날부터 25일 이내에 청구국의 영토를 떠나지 아니한 경우

제 16 조
약식인도

인도청구된 자가 청구국으로의 인도에 대하여 동의하는 경우 피청구국은 자국 법률상 허용되는 범위내에서 추가적 절차없이 가능한 한 신속하게 당해인을 인도할 수 있다. 그러한 경우에 이 조약 제15조는 적용되지 아니한다.

제 17 조
통 과

1. 어느 체약당사국도 제3국에 의하여 타방 체약당사국으로 인도되는 자가 자국의 영역을 통과하여 호송되는 것을 허가할 수 있다. 통과의 요청은 대한민국 법무부와 미합중국 법무부간에 외교경로를 통하여 또는 직접 이루어져야 한다. 통과요청서에는 호송되는 자에 대한 설명과 사건사실에 대한 간략한 진술이 포함되어야 한다. 호송되는 자는 통과기간동안 구금될 수 있다.

2. 항공수송이 이용되고 통과당사국의 영역내에 착륙이 예정되지 아니하는 경우에는 통과허가를 받지 않아도 된다. 그 통과당사국의 영토안에서 예정되지 아니한 착륙이 이루어지는 경우 그 국가는 타방당사국에 대하여 이 조 제1항에 규정된 통과요청서의 제출을 요구할 수 있다. 통과당사국은 예정되지 아니한 착륙으로부터 96시간내에 요청서가 접수되는 것을 조건으로 호송재개때까지 호송될 자를 구금하여야 한다.

3. 인도되는 자에 대한 통과허가에는 호송관이 통과국 관련기관으로부터 그 구금상태를 유지함에 있어서 필요한 지원을 얻기 위한 허가가 포함되어야 한다.

4. 이 조 제3항의 규정에 의하여 구금된 자가 자국 영역내에 있는 체약당사국은 상당한 기간내에 호송이 재개되지 아니하는 때에는 그의 석방을 지시할 수 있다.

제 18 조

대표 및 비용

1. 피청구국은 인도청구로부터 발생하는 모든 절차에 있어 청구국을 대표하여 조언과 조력을 제공하고 법원에 출석하며 청구국의 이익을 대변하여야 한다.

2. 청구국은 서류의 번역과 피청구국으로부터 청구국으로 인도되는 자의 호송관련 비용을 부담하여야 한다. 피청구국은 인도절차로 인하여 자국내에서 발생하는 모든 다른 비용을 부담하여야 한다.

3. 체결당사국은 이 조약에 따라 청구되는 자의 체포, 구금, 심문 또는 인도와 관련하여 타방당사국에게 어떠한 금전적 청구도 할 수 없다.

제 19 조
협　　의

1. 어느 일방당사국의 요청에 따라 체약당사국은 이 조약의 해석과 적용에 관하여 협의하여야 한다.

2. 대한민국 법무부와 미합중국 법무부는 개별사건의 처리와 관련하여 또한 이 조약을 이행하기 위한 절차의 유지 및 개선을 촉진하기 위하여 직접 협의할 수 있다.

제 20 조
적　　용

이 조약은 발효후 발생한 범죄뿐만 아니라 발효 이전에 발생한 범죄에도 적용된다.

제 21 조
비준, 발효 및 종료

1. 이 조약은 비준되어야 한다. 비준서는 가능한 한 신속히 교환되어야 한다.

2. 이 조약은 비준서의 교환으로 발효한다.

3. 어느 체약당사국도 타방 체약당사국에 대한 서면 통고로써 언제든지 이 조약을 종료할 수 있으며 그 통고일부터 6월후에 종료한다.

이상의 증거로, 하기 서명자는 그들 각자의 정부로부터 정당히 권한을 위임받아 이 조약에 서명하였다.

1998년 6월 9 일 워싱턴 에서 동등히 정본인 한국어와 영어로 각 2부를 작성하였다.

대한민국 정부를 위하여

미합중국 정부를 위하여

[TRANSLATION -- TRADUCTION]

TRAITÉ D'EXTRADITION ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CORÉE ET LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE

TABLE DES MATIÈRES

Le Gouvernement de la République de Corée et le Gouvernement des États-Unis d'Amérique,

Désireux de rendre la coopération entre les deux pays plus efficace en matière de répression de la criminalité et désireux de faciliter les relations entre les deux États en concluant un traité pour l'extradition réciproque des auteurs de délits,

Sont convenus de ce qui suit :

Article premier. Obligation d'extrader

Chacune des Parties contractantes s'engage à extrader vers l'autre, conformément aux dispositions du présent Traité, les personnes que les autorités de l'État requérant ont accusées ou jugées coupables de délits donnant lieu à extradition.

Article 2. Délits donnant lieu à extradition

1. Un délit ne donne lieu à extradition que s'il est passible, en vertu de la législation des deux Parties contractantes, d'une peine d'emprisonnement d'une durée supérieure à un an ou d'une peine plus lourde.

2. Donnent également lieu à extradition les faits constitutifs d'une tentative ou de complicité d'infractions ou d'une participation à une association de malfaiteurs, telles que prévues au paragraphe 1er, à condition que les exigences du paragraphe 1er soient remplies.

3. Aux fins du présent article, l'ensemble des faits reprochés à la personne dont l'extradition est demandée doit être pris en compte et un délit donne lieu à extradition :

a) Que les législations respectives des Parties contractantes classent ou non le délit dans une même catégorie ou le qualifient de la même terminologie;

b) Que les éléments constitutifs du délit diffèrent selon la législation respective des Parties contractantes, à condition que les délits soient substantiellement analogues dans les législations des deux États; et

c) Que le délit soit ou non l'un de ceux pour lesquels la législation fédérale des États-Unis exige la preuve d'un transport entre États ou l'utilisation du courrier ou l'emploi de tout autre moyen d'échange commercial entre États, ces éléments ne servant qu'à établir la juridiction d'un tribunal fédéral des États-Unis.

4. Si le délit a été commis hors du territoire de l'État requérant, l'extradition est accordée conformément aux dispositions du présent Traité si la législation de l'État requis prévoit la sanction d'un délit commis hors de son territoire dans des circonstances similaires ou si le délit a été commis par un ressortissant de l'État requis. Si la législation de l'État requis ne le prévoit pas, le pouvoir exécutif de l'État requis peut, à sa discrétion, accorder l'extradition pour autant que les exigences du présent Traité soient respectées. L'extradition peut être refusée lorsque le délit à l'origine de la demande d'extradition est considéré, en vertu de la législation de l'État requis, comme ayant été commis entièrement ou partiellement dans son territoire et que des poursuites relatives à ce délit sont en cours dans l'État requis.

5. Si l'extradition a été accordée au titre d'un délit donnant lieu à extradition, elle peut l'être aussi pour tout autre délit précisé dans la demande, même si ce dernier est passible d'une peine d'emprisonnement de moins d'un an, à condition que toutes les autres conditions requises pour l'extradition soient remplies.

6. Lorsque l'extradition d'une personne est demandée pour un délit envers la législation relative à la fiscalité, aux droits de douane, au contrôle des changes ou d'autres questions concernant les recettes fiscales, l'extradition ne peut être refusée simplement en raison du fait que la législation de l'État requis ne prévoit pas les mêmes impôts, droits, réglementation douanière ou contrôle des changes que la législation de l'État requérant.

7. Si la demande d'extradition se réfère à une personne condamnée à une peine d'emprisonnement par un tribunal de l'État requérant pour un délit donnant lieu à extradition, l'extradition peut être refusée si la personne doit encore purger moins de quatre mois.

Article 3. Nationalité

1. Aucune des Parties contractantes n'est tenue d'accorder l'extradition de l'un de ses ressortissants, mais l'État requis a la faculté de le faire, discrétionnairement, s'il le juge approprié.

2. Si l'extradition est refusée uniquement sur la base de la nationalité de la personne réclamée, l'État requis soumet, à la demande de l'État requérant, l'affaire à ses autorités compétentes pour l'exercice de l'action pénale.

3. La nationalité est déterminée au moment de la commission du délit au titre duquel l'extradition est demandée.

Article 4. Délits politiques et militaires

1. L'extradition n'est pas accordée si l'État requis détermine que le délit au titre duquel elle est demandée est un délit politique.

2. Aux fins du présent Traité, les délits suivants ne sont pas considérés comme des délits politiques:

a) L'assassinat ou le meurtre prémédité d'un chef d'État de l'une des Parties contractantes ou d'un membre de la famille de ce chef d'État;

b) Un délit pour lequel les deux Parties contractantes ont l'obligation d'extrader la personne recherchée ou de soumettre le cas à leurs autorités compétentes pour poursuites en justice, en vertu d'un accord multilatéral international, y compris mais pas exclusivement d'un accord portant sur les cas de génocide, de terrorisme ou de rapt; et

c) Un complot ou une tentative de commission d'un des délits susmentionnés, ou la complicité ou l'assistance apportées à l'auteur de tels délits ou tentatives de délit.

3. L'extradition n'est pas accordée si l'autorité exécutive de l'État requis détermine :

a) Que la demande d'extradition, bien que prétendument motivée par une infraction pouvant donner lieu à l'extradition, est en réalité faite dans le but de poursuivre ou de punir un individu en raison de sa race, de sa religion, de sa nationalité ou de ses opinions politiques; ou

b) Que l'extradition a été demandée pour des motifs politiques.

4. Le pouvoir exécutif de l'État requis peut refuser l'extradition pour des délits considérés comme tels par le code militaire et non pas par le droit pénal ordinaire.

Article 5. Poursuite antérieure

L'extradition n'est pas accordée lorsque la personne recherchée a été déclarée coupable ou acquittée par l'État requis au titre du délit pour lequel l'extradition est demandée.

Article 6. Prescription

L'extradition peut être refusée en vertu du présent Traité lorsque les poursuites ou l'exécution de la condamnation du délit au titre duquel l'extradition est demandée sont impossibles en raison de la prescription imposée par l'État requis si le même délit a été commis dans l'État requis. La période durant laquelle une personne recherchée pour extradition s'est souscrite à la justice ne compte pas dans le calcul de la prescription. Il appartient à l'État requis d'invoquer les actes ou les circonstances qui suspendraient l'expiration de la prescription de l'un ou l'autre État et à cet égard, l'État requérant est tenu de transmettre un exposé écrit de ses dispositions pertinentes en matière de prescription, qui seront définitives.

Article 7. Peine capitale

1. Lorsque le délit pour lequel l'extradition est demandée est passible de la peine de mort en vertu de la législation de l'État requérant et que le la législation de l'État requis ne prévoit pas la même peine pour ce délit, l'État requis peut refuser l'extradition sauf si :

a) Le délit constitue un meurtre en vertu de la législation de l'État requis; ou

b) L'État requérant donne l'assurance jugée suffisante par l'État requis que si la peine de mort est imposée, elle ne sera pas appliquée.

2. Dans le cas où l'État requérant donne l'assurance visée au paragraphe 1, la peine de mort, si elle est prononcée par les juridictions de l'État requérant, ne sera pas exécutée.

Article 8. Procédures d'extradition et pièces exigées

1. Toutes les demandes d'extradition sont présentées par écrit et transmises par la voie diplomatique.

2. Toute demande d'extradition est accompagnée :

a) Des documents, déclarations ou autres informations indiquant l'identité de la personne recherchée, notamment sa nationalité et le lieu probable où elle se trouve;

b) Un bref exposé des faits et des procédures engagées;

c) Le texte de loi décrivant les éléments essentiels et la désignation du délit pour lequel l'extradition est demandée;

d) Le texte de loi décrivant la peine prévue pour ce délit;

e) Les documents, déclarations et autres informations précisés aux paragraphes 3 ou 4 du présent article, selon le cas; et

f) Une déclaration des dispositions pertinentes relatives à la prescription des poursuites judiciaires ou de l'exécution de la peine.

3. La demande d'extradition d'une personne recherchée pour des poursuites est également accompagnée :

a) D'une copie du mandat d'arrêt délivré par un juge ou une autre autorité compétente;

b) D'une copie de l'acte d'accusation, le cas échéant; et

c) Des informations qui laisseraient raisonnablement croire que la personne recherchée a commis le délit au titre duquel l'extradition est demandée.

4. La demande d'extradition d'une personne inculpée du délit pour lequel l'extradition est demandée est également accompagnée :

a) D'une copie du jugement ou, à défaut, d'une déclaration faite par une autorité judiciaire selon laquelle cette personne a été jugée coupable;

b) Des informations établissant que la personne recherchée est la personne mentionnée dans l'acte d'accusation;

c) Une copie de la peine imposée si la personne recherchée a été condamnée et une attestation indiquant dans quelle mesure la peine a été exécutée; et

d) Les documents visés au paragraphe 3 dans le cas d'une personne qui a été condamnée par contumace.

5. Si l'État requis estime que les informations communiquées à l'appui de la demande d'extradition sont insuffisantes pour faire droit à la demande conformément au présent Traité, il peut demander qu'un complément d'information lui soit fourni dans un délai raisonnable qu'il fixera.

6. Tous les documents soumis par l'État requérant sont traduits dans la langue de l'État requis.

Article 9. Recevabilité des pièces

Les pièces produites à l'appui d'une demande d'extradition sont acceptées et admises comme preuves dans la procédure d'extradition si :

a) Elles sont certifiées par l'autorité diplomatique principale ou par un responsable consulaire de l'État requis sur le territoire de l'État requérant; ou

b) Elles sont certifiées ou authentifiées d'une autre manière acceptée par la législation de l'État requis.

Article 10. Arrestation provisoire

1. En cas d'urgence, une Partie contractante peut demander l'arrestation provisoire de la personne recherchée en attendant la présentation de la demande d'extradition. La demande d'arrestation provisoire peut être transmise soit par la voie diplomatique, soit directe-

ment entre le Ministère de la Justice de la République de Corée et le Département de la Justice des États-Unis.

2. Toute demande d'arrestation provisoire doit être soumise par écrit et comporter :

a) Le signalement de la personne recherchée, notamment des informations sur sa nationalité;

b) S'il est connu, une indication du lieu où elle se trouve;

c) Un bref exposé des faits relatifs à l'affaire avec, si possible, le moment et le lieu du délit;

d) Une description des lois violées;

e) Une déclaration attestant l'existence d'un mandat d'arrêt lancée contre la personne recherchée ou une déclaration reconnaissant sa culpabilité; et

f) Une déclaration certifiant qu'une demande d'extradition de la personne recherchée sera envoyée.

3. L'État requérant est notifié sans délai de la suite donnée à sa demande et des raisons d'un refus éventuel.

4. Une personne ayant fait l'objet d'une arrestation provisoire peut être remise en liberté dans les soixante (60) jours suivant la date de son arrestation, conformément au présent Traité, si l'autorité exécutive de l'État requis n'a pas reçu la demande officielle d'extradition et les pièces justificatives visées à l'article 8.

5. La disposition qui précède ne fait pas obstacle à une nouvelle arrestation et à l'extradition de la personne recherchée si une demande d'extradition accompagnée de pièces justificatives est reçue par la suite.

Article 11. Notification de la décision et remise de la personne recherchée

1. L'État requis informe sans délai l'État requérant par la voie diplomatique de sa décision concernant la demande d'extradition.

2. L'État requis doit justifier tout rejet total ou partiel de la demande d'extradition. Il communique à l'État requérant une copie des décisions rendues par ses tribunaux.

3. Lorsqu'il a été donné suite à une demande d'extradition, les autorités compétentes des Parties contractantes s'entendent sur la date et le lieu de la remise de la personne recherchée.

4. Toutefois, si ladite personne n'a pas été reconduite du territoire de l'État requis dans les délais fixés, elle peut être remise en liberté et l'État requis pourra par la suite refuser l'extradition au titre du même délit.

Article 12. Remise temporaire et remise différée

1. Si une demande d'extradition est accordée dans le cas d'une personne qui fait l'objet de poursuites ou qui purge une peine sur le territoire de l'État requis pour une infraction autre que celle ayant motivé l'extradition, celui-ci peut remettre temporairement la personne recherchée à l'État requérant aux fins de poursuites judiciaires. La personne ainsi remise

reste en détention dans l'État requérant et sera extradée vers l'État requis à l'achèvement des poursuites judiciaires engagées contre elle, conformément à des dispositions qui sont convenues d'un commun accord entre les Parties contractantes.

2. L'État requis peut ajourner la procédure d'extradition d'une personne qui fait l'objet de poursuites ou qui purge une peine dans cet État jusqu'à la conclusion des poursuites engagées contre la personne recherchée ou jusqu'à l'accomplissement de la peine prononcée.

Article 13. Demandes d'extradition émanant de plusieurs états

Si l'État requis est saisi de demandes émanant de l'autre Partie contractante ou d'un ou plusieurs États pour l'extradition de la même personne, soit au titre du même délit soit au titre de délits différents, l'autorité exécutive de l'État requis décide de l'État vers lequel la personne recherchée sera extradée, en tenant compte de toutes les circonstances pertinentes, notamment mais non exclusivement :

a) Du fait que les demandes sont présentées ou non en vertu de traités;

b) Du moment et du lieu où le délit a été commis;

c) Des intérêts respectifs des États requérants;

d) De la gravité des délits;

e) De la nationalité de la victime;

f) De la possibilité d'extradition subséquente entre un État requérant et un autre; et

g) Des dates respectives des demandes d'extradition reçues des États requérants.

Article 14. Saisie et restitution de biens

1. Dans la mesure où le permet sa législation, l'État requis peut saisir et restituer à l'État requérant tous les biens, documents et preuves liés au délit pour lequel l'extradition est accordée. Les éléments mentionnés dans le présent article peuvent être restitués même lorsque l'extradition ne peut avoir lieu en raison du décès, de la disparition ou de la fuite de la personne recherchée.

2. L'État requis peut subordonner la remise desdits biens à des assurances suffisantes fournies par l'État requérant en ce qui concerne la restitution gratuite ultérieure desdits biens à l'État requis dans les meilleurs délais. L'État requis peut également reporter la remise des biens s'il s'avère qu'ils sont nécessaires pour servir de preuve dans ledit État.

3. Les droits des tiers quant à ces biens sont dûment respectés.

Article 15. Règle d'exception

1. Une personne extradée aux termes du présent Traité ne peut être détenue, jugée ou condamnée sur le territoire de l'État requérant sauf :

a) Lorsque le délit pour lequel l'extradition a été accordée ou que les mêmes faits pour lesquels l'extradition a été accordée constituent un délit entrant dans une classification différente mais donnant lieu à extradition ou qu'ils constituent un délit moins grave;

b) Lorsqu'un délit a été commis après l'extradition de la personne recherchée; ou

c) Dans le cas d'un délit pour lequel l'autorité exécutive de l'État requis donne son consentement à la détention de ladite personne, à son jugement ou à sa condamnation;

Aux fins du présent alinéa :

i) L'État requis peut demander que lui soient remis les documents visés à l'article 8;

ii) Un enregistrement légal des déclarations faites par la personne extradée quant au délit est remis, le cas échéant, à l'État requis; et

iii) La personne extradée peut être détenue par l'État requérant durant la période autorisée par l'État requis pendant que la demande est traitée.

2. Une personne extradée en vertu du présent Traité pour un délit commis avant sa remise ne peut pas être extradée vers un État tiers sans le consentement de l'État requis.

3. Les dispositions des paragraphes 1 et 2 du présent article ne s'opposent pas à la détention, au jugement ou à la condamnation d'une personne extradée, ni à l'extradition de ladite personne vers un État tiers si :

a) Ladite personne quitte le territoire de l'État requérant après son extradition et y retourne de son plein gré; ou

b) Ladite personne ne quitte pas le territoire de l'État requérant dans les 25 jours suivant la date à laquelle elle aurait pu le faire librement.

Article 16. Extradition simplifiée

Lorsque la personne recherchée consent à sa remise à l'État requérant, l'État requis prend, dans la mesure autorisée par sa propre législation, toutes les mesures nécessaires pour accélérer l'extradition. En pareil cas, l'article 15 du présent Traité ne s'applique pas.

Article 17. Transit

1. Chaque Partie contractante peut autoriser le transport sur son territoire d'une personne remise à l'autre État par un État tiers. Une demande de transit est transmise par la voie diplomatique ou directement entre le Ministère de la Justice de la République de Corée et le Département de la Justice des États-Unis. Elle comporte le signalement de la personne transportée et un bref exposé des faits relatifs au cas. Une personne en transit peut être détenue pendant la période du transit.

2. Aucune autorisation de transit n'est requise lorsqu'une Partie contractante transporte par voie aérienne une personne et qu'aucun atterrissage n'est prévu sur le territoire de l'État de transit. Dans le cas d'un atterrissage imprévu sur le territoire de l'État de transit, ce dernier peut demander que l'autre Partie contractante fasse la demande de transit visée au paragraphe 1 du présent article. L'État de transit détient la personne transportée jusqu'à ce que le transport se poursuive, à condition que la demande soit reçue dans les quatre-vingt-seize (96) heures suivant l'atterrissage imprévu.

3. L'autorisation de transit d'une personne remise doit comprendre l'autorisation permettant aux accompagnateurs officiels d'obtenir l'assistance des autorités de l'État de transit pour maintenir la personne en détention.

4. Dans le cas d'une personne en détention aux termes du paragraphe 3 du présent article, l'État contractant sur le territoire duquel la personne est détenue peut ordonner sa mise en liberté si la poursuite du trajet n'a pas lieu dans un délai raisonnable.

Article 18. Représentation et frais

1. L'État requis fournit à l'État requérant conseil et assistance et assure sa représentation, ou veille à ce que celui-ci soit représenté, lors de toutes procédures occasionnées par suite d'une demande d'extradition.

2. L'État requérant assume les dépenses liées à la traduction des documents et au transport de la personne remise par l'État requis à l'État requérant. L'État requis assume tous les autres frais résultant de la procédure d'extradition.

3. Aucun État ne réclame à l'autre État des dédommagements pécuniaires relatifs à l'arrestation, la détention, l'examen ou la remise des personnes recherchées en vertu du présent Traité.

Article 19. Consultations

1. Les Parties contractantes se consultent, à la demande de l'une ou de l'autre, concernant l'interprétation et l'application du présent Traité.

2. Le Ministère de la Justice de la République de Corée et le Département de la Justice des États-Unis d'Amérique peuvent se consulter directement pour des cas individuels et pour maintenir et améliorer les procédures de mise en oeuvre du présent Traité.

Article 20. Champ d'application

Le présent Traité s'applique aux délits commis avant ou après la date de son entrée en vigueur.

Article 21. Ratification, entrée en vigueur et dénonciation

1. Le présent Traité entrera en vigueur sous réserve de sa ratification. Les instruments de ratification seront échangés dans les meilleurs délais.

2. Le présent Traité entrera en vigueur au moment de l'échange des instruments de ratification.

3. L'une ou l'autre des Parties contractantes peut dénoncer à tout moment le présent Traité au moyen d'une notification écrite adressée à l'autre Partie contractante, et la dénonciation devient effective dans un délai de six mois à compter de la date de réception de la notification.

En foi de quoi, les soussignés, à ce dûment autorisés par leurs gouvernements respectifs, ont signé le présent Traité.

Fait en double exemplaire à Washington le 9 juin 1998, en coréen et en anglais, les deux textes faisant également foi.

Pour le Gouvernement de la République de Corée :

PARK SANG-CHUN

Pour le Gouvernement des États-Unis d'Amérique :

MADELEINE ALBRIGHT

No. 43279

Republic of Korea
and
Turkey

Agreement between the Government of the Republic of Korea and the Government of the Republic of Turkey for cooperation in the peaceful uses of nuclear energy. Ankara, 26 October 1998

Entry into force: *4 June 1999 by notification, in accordance with article XI*

Authentic texts: *English, Korean and Turkish*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

République de Corée
et
Turquie

Accord de coopération entre le Gouvernement de la République de Corée et le Gouvernement de la République turque concernant l'utilisation de l'énergie nucléaire à des fins pacifiques. Ankara, 26 octobre 1998

Entrée en vigueur : *4 juin 1999 par notification, conformément à l'article XI*

Textes authentiques : *anglais, coréen et turc*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

[ENGLISH TEXT — TEXTE ANGLAIS]

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY FOR COOPERATION IN THE PEACEFUL USES OF NUCLEAR ENERGY

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

On the basis of the friendly relations existing between the two countries,

Recognizing that both countries are Member States of the International Atomic Energy Agency (hereinafter referred to as "the Agency") and parties to the Treaty on the Non-proliferation of Nuclear Weapons,

Bearing in mind the common desire of both countries to expand and strengthen, on the basis of equality and mutual benefit, cooperation in the peaceful uses of nuclear energy, and

Noting that the utilization of nuclear energy for peaceful purposes is an important factor for the promotion of social and economic development of the two countries,

Have agreed as follows:

Article I

For the purpose of this Agreement:

(a) "Person" means any individual, corporation, partnership, firm, association, trust, public or private institution, group, governmental agency or corporation, but does not include the Parties to this Agreement;

(b) "Equipment" means items of machinery, plant or instrument or major components thereof, which are specially designed or manufactured for use in nuclear activities;

(c) "Material" means material for reactors, but does not include nuclear material;

(d) "Nuclear material" means (i) "source material", namely, uranium containing the mixture of isotopes occurring in nature; uranium depleted in the form of metal, alloy, chemical compound, or concentrate; any other substance containing one or more of the foregoing in such concentration as may be accepted in writing by the Parties; and (ii) "special fissionable material", namely, plutonium-239; uranium-233; uranium-235; uranium enriched in the isotopes 233 or 235; any substance containing one or more of the foregoing; and such other substance as may be accepted in writing by the Parties. The term "special fissionable material" shall not include "source material";

(e) "Facilities" means all buildings or structures, specially designed or built for use in nuclear activities;

(f) "Special fissionable material recovered or produced as a by-product" means special fissionable material derived by one or more processes from the use of any nuclear material, material, equipment or facilities supplied pursuant to this Agreement; and

(g) "Information" means (i) scientific or technical data that the supplying Party has designated as being relevant in terms of non-proliferation and important for the design, production, operation or maintenance of equipment and facilities or for the processing of nuclear material or material; (ii) and includes, but is not limited to, technical drawings, photographic negatives and prints, recordings, design data and technical and operating manuals, but excludes data available to the public; (iii) any other data which the supplying Party has specifically informed the receiving Party to regard as "information" for the purposes of this Agreement.

Article II

Subject to this Agreement, the areas of cooperation between the Parties may include:

(a) Basic and applied research and development with respect to the peaceful uses of nuclear energy;

(b) Research, design, construction, operation and maintenance of nuclear power plants and research reactors;

(c) Utilization of research reactors and particle accelerators;

(d) Exploration and ore processing of nuclear material and handling, transportation, manufacture and supply of nuclear fuel elements to be used in nuclear power plants and research reactors;

(e) Production and application of radioactive isotopes in industry, agriculture and medicine, and biotechnology;

(f) Nuclear safety, radiation protection, environment protection, radioactive waste management;

(g) Nuclear safeguards and physical protection; and

(h) Other cooperation areas as may be agreed upon by the Parties.

Article III

The cooperation under Article II of this Agreement may be undertaken in the following forms:

(a) Exchange and training of scientific and technical personnel;

(b) Exchange of scientific and technical information and data;

(c) Organization of scientific and technical meetings;

(d) Supply and exchange of nuclear material, material, equipment and facilities;

(e) Provision of relevant technological consultancy and services;

(f) Setting up of joint working groups to carry out specific studies and projects on scientific research and development in the fields of mutual interest;

(g) Technology transfer under special agreements between related institutions in nuclear power and research reactors, and nuclear fuel technology; and

(h) Other forms of cooperation as may be agreed upon by the Parties.

Article IV

The Parties shall facilitate, in conformity with their respective laws and regulations, the transfer of nuclear materials, technologies, equipment and services necessary for carrying out cooperative activities in the peaceful uses of nuclear energy under this Agreement.

Article V

With a view to facilitating cooperation under this Agreement, the Parties shall encourage, where appropriate, the conclusion of implementing arrangements between either Party, or authorized persons under its jurisdiction and authorized persons under the jurisdiction of the other Party specifying the terms and conditions of particular cooperative programs and projects, the procedures to be followed, financial agreements and other appropriate matters. Such implementing arrangements shall be concluded in accordance with the respective laws and regulations of the Parties.

Article VI

1. The cooperation pursuant to this Agreement shall be carried out only for peaceful purposes.

2. Nuclear material, material, equipment and facilities received pursuant to this Agreement and special fissionable material recovered or produced as a by-product shall not be used for the development or the manufacture of any nuclear explosive device, or for any military purpose.

3. The commitment contained in paragraph 2 of this Article shall be verified pursuant to the Safeguards Agreements between each Party and the Agency, in connection with the Treaty on the Non-Proliferation of Nuclear Weapons. However, if for any reason or at any time, the Agency is not administering such safeguards within the territory of a Party, that Party shall forthwith enter into an agreement with the other Party for the establishment of a safeguards system that conforms with the principles and procedures of the Agency's safeguards system and provides for the- application of safeguards to items referred in paragraph 2 of Article VI above subject to this Agreement.

Article VII

1. The Parties shall freely use information exchanged in connection with the items stated in paragraph 2 of Article VI of this Agreement, except in the cases when the Party or authorized persons providing such information has previously made known the restrictions and reservations concerning its use and dissemination.

2. Each Party shall require its authorized persons under its jurisdiction, which enters into an implementing arrangement under Article V above, to include in that implementing arrangement a provision ensuring that any information and intellectual property rights transferred under such implementing arrangement shall not be used by the receiving Party except for the purposes envisaged in that implementing arrangement without the consent of the supplying Party concerned.

3. For the purpose of this Agreement, intellectual property is understood to have the meaning given in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm on 14 July, 1967.

Article VIII

1. Nuclear material, material, equipment, facilities and information transferred pursuant to this Agreement and special fissionable material recovered or produced as a by-product shall not be transferred beyond the jurisdiction of the receiving Party without the prior written consent of the supplying Party.

2. Nuclear material subject to this Agreement shall be enriched to more than twenty (20) percent in the isotope U235 or reprocessed only with mutual agreement of the Parties prior to enrichment or reprocessing. Such agreement shall include the conditions under which the resultant uranium enriched above twenty (20) percent or Plutonium may be stored and used.

Article IX

1. The Parties shall apply appropriate measures of physical protection as recommended in the Agency's document INFCIRC/225/Rev.3 as well as any subsequent amendments thereto that are accepted by the Parties for nuclear material and facilities received pursuant to this Agreement and special fissionable material recovered or produced as a by-product within their respective jurisdictions.

2. The Parties shall consult with each other to take concrete measures for physical protection of material, equipment and facilities received pursuant to this Agreement including those concerning physical protection during international transportation.

Article X

In the event of non-compliance with the provisions of Article VI, VII, VIII or IX of this Agreement by either Party, the Parties shall, at the request of the other Party, forthwith consult each other and take appropriate measures which shall ensure compliance with the provisions of Article VI, VII, VIII or IX of this Agreement.

Article XI

1. This Agreement shall enter into force thirty days after diplomatic notes confirming the completion of internal legal procedures necessary in the respective countries for entry into force of this Agreement have been exchanged, and shall remain in force for a period of fifteen years. This Agreement shall automatically be extended for five-year periods thereafter unless either Party notifies the other Party in writing its intention to terminate this Agreement at least six months before the expiration date.

2. Notwithstanding the termination of this Agreement, provisions of Articles VI, VII, VIII, IX and X of this Agreement shall continue in effect as long as nuclear material, material, equipment and facilities received pursuant to this Agreement and special fission-

able material recovered or produced as a by-product remain under the jurisdiction of the Party concerned or until otherwise agreed between the Parties.

3. This Agreement may be amended by mutual consent. Such amendments shall enter into force on the date of mutual notifications of the completion of internal legal procedures necessary in the respective countries for its entry into force.

In witness whereof, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Ankara this 26th day of October 1998 in duplicate in the Korean, Turkish 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:

DUCK-SOO

For the Government of the Republic of Turkey:

MEHMET BATALI

[KOREAN TEXT — TEXTE CORÉEN]

대한민국 정부와 터어키공화국 정부간의 원자력의 평화적 이용에 관한 협력협정

대한민국 정부와 터어키공화국 정부(이하 "당사자"라 한다)는,

양국간 기존의 우호관계에 기초하여,

양국이 국제원자력기구(이하 "기구"라 한다)의 회원국이며 핵무기비확산조약의 당사국임을 인식하고,

양국이 호혜평등에 기초하여 원자력의 평화적 이용에 관한 협력을 확대·강화시킬 것을 공동으로 희망하고 있음을 유념하며,

평화적 목적을 위한 원자력의 이용이 양국의 사회·경제 개발의 증진을 위한 중요한 요소임을 주목하면서,

다음과 같이 합의하였다.

제 1 조

이 협정의 목적상,

(가) "주체"라 함은 개인·법인·조합·상사·협회·기업합동·공공 또는 민간기관·단체·정부기관 또는 정부기업체를 말하나, 이 협정의 당사자는 포함하지 아니한다.

(나) "장비"라 함은 원자력활동에 사용될 목적으로 특별히 설계되거나 제조된 기계·설비·도구 또는 주요부품을 말한다.

(다) "물질"이라 함은 원자로에 사용되는 물질을 말하나, 핵물질은 포함하지 아니한다.

(라) "핵물질"이라 함은

(1) "선원물질" 즉, 자연상태에서 발생된 동위원소의 혼합물을 포함하는 우라늄, 금속・합금・화합물 또는 농축물 형태의 감손우라늄, 양 당사자가 서면으로 동의하는 전술한 물질을 하나 또는 그 이상 함유하는 농축형태의 기타물질

(2) "특수분열성 물질" 즉, 플루토늄 239, 우라늄 233, 우라늄 235, 동위원소 233 또는 235가 농축된 우라늄, 전술한 물질을 하나 또는 그 이상 함유하는 여하한 물질 및 양 당사자가 서면으로 수락하는 기타 물질을 말한다. 이 경우 "특수분열성 물질"에는 "선원물질"이 포함되지 아니한다.

(마) "시설"이라 함은 원자력 활동에 사용될 목적으로 특별히 설계되거나 건설된 모든 건물 또는 구조물을 말한다.

(바) "부산물로서 회수 또는 생산되는 특수분열성 물질"이라 함은 이 협정에 따라 공급된 여하한 핵물질・물질・장비 또는 시설을 사용하여 한 단계 또는 그 이상의 처리에 의하여 추출되는 특수분열성 물질을 말한다.

(사) "정보"라 함은

(1) 비확산에 관련되고, 장비 및 시설의 설계・생산・운영 또는 유지및 핵물질 또는 물질의 처리를 위하여 공급 당사자가 중요한 것으로 지정한 과학 또는 기술 자료를 말하며,

(2) 기술도면・사진원판・인화사진・녹화물・설계자료 및 기술・운영편람을 포함하나 이에 국한하지 아니하고, 일반인이 이용할 있는 자료는 제외하며,

(3) 공급당사자가 수령당사자에게 이 협정의 목적상 "정보"로 간주 하도록 특별히 통보한 기타 자료를 포함한다.

제 2 조

이 협정에 따른 당사자간의 협력 분야는 다음의 분야를 포함한다.

(가) 원자력의 평화적 이용에 관한 기초 및 응용 연구・개발

(나) 원자력발전소와 연구용원자로의 연구 · 설계 · 건설 · 가동 및 유지

(다) 연구용원자로와 분자가속기의 이용

(라) 핵물질의 탐사 및 핵물질 광물의 처리, 원자력발전소 및 연구용 원자로에서 사용되는 핵연료 원소의 취급 · 운송 · 제조 및 공급

(마) 산업 · 농업 · 의료 및 생물공학분야에서의 방사성동위원소의 생산 및 응용

(바) 원자력안전 · 방사선방호 · 환경보호 및 방사성폐기물의 관리

(사) 핵안전조치 및 물리적 방호, 그리고

(아) 양 당사자가 합의하는 기타 협력분야

제 3 조

이 협정 제2조에 따른 협력은 다음의 방법으로 수행한다.

(가) 과학 · 기술 인력의 교류 및 훈련

(나) 과학 · 기술 정보 및 자료의 교환

(다) 과학 · 기술 회의 개최

(라) 핵물질 · 물질 · 장비 및 시설의 공급 · 교환

(마) 관련 기술자문 및 용역의 제공

(바) 상호 관심분야에서의 과학적 연구 · 개발에 관한 특정 연구 및 사업의 수행을 위한 공동작업반의 설치

(사) 관련 기관간 특별약정에 의한 원자력 · 연구용원자로 및 핵연료 기술 분야에서의 기술이전

(아) 양 당사자가 합의하는 기타 형태의 협력

제 4 조

당사자는 각기 자국의 법령에 따라 이 협정에 의한 원자력의 평화적 이용에 관한 협력활동을 수행하는데 필요한 핵물질 · 기술 · 장비 및 용역의 이전을 촉진한다.

제 5 조

이 협정에 따른 협력을 촉진하기 위하여 당사자는, 적절한 경우 당사자간에 또는 일방당사자의 관할권 안에서 인가받은 주체와 타방당사자의 관할권 안에서 인가받은 주체간에 특정협력계획과 사업의 조건, 이행절차, 재정적 합의사항 및 기타 적절한 사항을 규정하는 시행약정의 체결을 장려한다. 그와 같은 시행약정은 각 당사자의 법령에 따라 체결된다.

제 6 조

1. 이 협정에 따른 협력은 오로지 평화적 목적만을 위하여 수행된다.

2. 이 협정에 따라 수령된 핵물질·물질·장비 및 시설과 부산물로서 회수 또는 생산되는 특수분열성 물질은 핵폭발장치의 개발·제조 또는 군사적 목적을 위하여 사용되어서는 아니된다.

3. 이 조 제2항에 규정된 책무는 핵비확산조약과 관련하여 각 당사자와 기구간의 안전조치협정에 따라 검증된다. 그러나 기구가 어떠한 사유로 인하여 또는 어떠한 시기에 일방당사자의 영토 안에서 이러한 안전조치를 수행하지 못하게 되는 경우, 동 당사자는 기구의 안전조치체제에 관한 원칙과 절차에 부합하며 이 협정에 따라 상기 제6조 제2항에 언급된 품목에 대한 안전조치의 적용을 규정하는, 안전조치 체제의 수립을 위하여 즉시 타방당사자와 협정을 체결한다.

제 7 조

1. 당사자는 정보를 제공한 당사자 또는 인가받은 주체가 정보의 사용 및 배포와 관련된 제한 및 유보를 사전에 통보한 경우를 제외하고는 제6조 제2항에 규정된 품목과 관련하여 교환된 정보를 자유롭게 사용한다.

2. 각 당사자는 상기 제5조에 따라 시행약정을 체결하는 자국의 관할권안의 인가받은 주체에게 시행약정에 따라 이전되는 여하한 정보 및 지적재산권이 관련 공급당사자의 동의없이 수령당사자가 시행약정에 규정된 목적 외로 사용하지 아니하도록 보장하는 규정을 동 시행약정에 포함하게 하여야 한다.

3. 이 협정의 목적상 지적재산권은 1967년 7월 14일 스톡홀름에서 채택된 세계지적소유권기구설립협약의 제2조에 규정된 의미를 가지는 것으로 양해한다.

제 8 조

1. 이 협정에 따라 이전된 핵물질 · 물질 · 장비 · 시설 및 정보와 부산물로서 회수 또는 생산되는 특수분열성 물질은 공급당사자의 사전 서면동의 없이는 수령당사자의 관할권 밖으로 이전되지 아니한다.

2. 이 협정의 적용을 받는 핵물질은 농축 또는 재처리에 앞서 당사자간에 상호 합의가 있는 경우에 한하여 우라늄 동위원소 235를 20퍼센트 초과하여 농축하거나 또는 재처리한다. 이와 같은 합의에는 20퍼센트를 초과하여 농축된 우라늄 또는 플루토늄의 저장 및 사용조건이 포함되어야 한다.

제 9 조

1. 당사자는 이 협정에 따라 수령된 핵물질 및 시설과 당사자의 관할권안에서 부산물로서 회수 또는 생산된 특수분열성 물질에 대하여 기구 문서 INFCIRC/225/Rev.3에서 권고되어진 바 및 이와 더불어 당사자에 의하여 수락되는 후속 개정에 따라 적절한 물리적 방호조치를 적용한다.

2. 당사자는 국제 운송중의 물리적 방호에 관한 조치를 포함하여 이 협정에 따라 수령된 물질·장비 및 시설의 물리적 방호를 위한 구체적인 조치를 취하기 위하여 상호 협의한다.

제 10 조

일방당사자가 이 협정 제6조 내지 제9조의 규정을 준수하지 아니하는 경우 타방당사자의 요청에 의하여 양 당사자는 즉시 상호 협의하고, 이 협정 제6조 내지 제9조의 규정의 준수를 확보하기 위한 적절한 조치를 취한다.

제 11 조

1. 이 협정은 이 협정의 발효를 위하여 각국의 필요한 국내법적 절차가 완료되었음을 확인하는 외교각서를 교환한 날로부터 30일후에 발효되며 15년간 유효하다. 이 협정은 일방당사자가 타방당사자에게 이 협정의 종료일부터 최소 6월전에 이 협정의 종료의사를 서면으로 통보하지 아니하는 한 그 후 5년씩 자동적으로 연장된다.

2. 이 협정의 종료에도 불구하고, 이 협정 제6조 내지 제10조의 규정은 이 협정에 의하여 수령된 핵물질·물질·장비 및 시설과 부산물로서 회수 또는 생산되는 특수 분열성 물질이 관련 당사자의 관할권안에 있거나 당사자가 달리 합의하지 아니하는 한 계속 유효하다.

3. 이 협정은 당사자간의 상호 합의에 따라 개정될 수 있다. 이 협정에 대한 개정은 당사자가 발효를 위한 각국의 필요한 국내법적 절차가 완료되었음을 상호 통보한 날부터 발효한다.

이상의 증거로, 아래 서명자는 그들 각자의 정부로부터 정당하게 권한을 위임받아 이 협정에 서명하였다.

1998년 10월 26일 앙카라에서 동등히 정본인 한국어 · 터어키어 및 영어로 각 2부를 작성하였다. 해석상의 상위가 있을 경우 영어본이 우선한다.

대한민국 정부를 위하여

한덕수

터어키공화국 정부를 위하여

[TURKISH TEXT — TEXTE TURC]

NÜKLEER ENERJİNİN BARIŞÇIL AMAÇLARLA KULLANILMASI ALANINDA, KORE CUMHURİYETİ HÜKÜMETİ İLE TÜRKİYE CUMHURİYETİ HÜKÜMETİ ARASINDA İŞBİRLİĞİ ANLAŞMASI

Kore Cumhuriyeti Hükümeti ve Türkiye Cumhuriyeti, (bundan sonra **Taraflar** olarak anılacaktır) iki ülke arasında varolan dostane ilişkilere DAYANARAK,

Her iki ülkenin de, Uluslararası Atom Enerjisi Ajans'ına (bundan sonra **Ajans** olarak anılacaktır) üye ülkeler ve Nükleer Silahların Yayılmasını Önleme Antlaşma'sına taraf olduklarını DİKKATE ALARAK,

Nükleer enerjinin barışçıl amaçlı kullanımında işbirliğini, karşılıklı yarar ve eşitlik temelinde geliştirmek ve güçlendirmek için her iki ülkenin ortak isteğini akılda TUTARAK,

ve

Nükleer Enerjinin, barışçıl amaçlarla kullanılmasının ve geliştirilmesinin, her iki ülkenin ekonomik ve sosyal gelişmelerinin ilerletilmesinde önemli bir faktör olduğunu BİLEREK,

Aşağıdaki konularda anlaşmışlardır:

Madde I

Bu Anlaşmanın amaçları için;

(a) "Şahıs", herhangi bir birey, şirket, ortaklık, firma, birlik, tröst, kamu veya özel enstitü, grup, resmi kurum veya şirketi ifade eder: fakat bu anlaşmaya taraf olanları içermez;

(b) "Teçhizat", nükleer faaliyetlerde kullanılmak üzere özel olarak tasarımlanan veya imal edilen. makine, tesis, cihaz veya ana bileşenleri ifade eder;

(c) "Malzeme", reaktörler için gerekli olan malzemeyi ifade eder, fakat "nükleer madde"yi içermez;

(d) "Nükleer madde", i-"Kaynak madde", doğada bulunan izotop karışımlarını içeren uranyum: herhangi bir metal alaşım, kimyasal bileşim veya konsantre halindeki tüketilmiş uranyum: Taraflar arasında kabul edilebilecek, yukarıdakilerin bir veya daha fazlasını içeren maddeler ve **ii-" Özel bölünebilir madde",** Plutonyum-239, Uranyum-233, Uranyum-235; 233 veya 235 izotoplarınca zenginleştirilmiş Uranyum; Taraflar arasında kabul edilecek, yukarıdakilerin bir veya daha fazlasını içeren diğer maddeler demektir. Özel bölünebilir madde terimi kaynak madde terimini içermez;

(e) "Tesisler", nükleer faaliyetlerde kullanılmak üzere özel olarak tasarımlanan veya inşa edilen tüm bina ve yapıları ifade eder;
(f) "Yan ürün olarak geri kazanılan veya üretilen özel bölünebilir madde", bu anlaşmaya uygun olarak sağlanan herhangi bir nükleer maddenin, malzemenin, teçhizatların veya tesislerin kullanımıyla bir veya daha fazla işlemle elde edilen özel bölünebilir maddeyi ifade eder;

(g) "Bilgi", **(i)** Tedarikçi Tarafça nükleer silahsızlanma çerçevesinde ilişkilendirilmiş ve nükleer madde veya malzemenin işlenmesi için veya teçhizat ve tesisin tasarımı, imalatı, işletilmesi ve bakımı için önemli olan bilimsel veya teknik veri; **(ii)** halka açık olan veriler dışında kalan teknik çizimler, fotoğraf negatifleri, basılmış yazılar, kayıtlar, tasarım verisi, teknik ve işletme el kitapları dahil, fakat bunlarla sınırlı değil; **(iii)** Tedarikçi Tarafça alıcı Tarafa, bu Anlaşmanın amaçları kapsamında "bilgi" olarak kabul edildiği özellikle belirtilmiş diğer veriler; i ifade eder.

Madde II

Bu Anlaşmayla, taraflar arasındaki işbirliği alanları aşağıdakileri içerebilir:

(a) Nükleer enerjinin barışçıl amaçlı kullanımı konusunda temel ve uygulamalı araştırma ve geliştirme;

(b) Nükleer güç santrallarının ve araştırma reaktörlerinin araştırma, tasarım, inşa, işletme ve bakımı;

(c) Araştırma reaktörleri ve parçacık hızlandırıcılarının kullanımı;

(d) Nükleer maddenin araştırılması ile cevherin işlenmesi ve nükleer güç santralları ile araştırma reaktörlerinde kullanılmak üzere nükleer yakıt elemanının kontrol altında tutulması, taşınması, imalatı ve temini;

(e) Radyoaktif izotopların üretimi ve endüstri, tarım, tıp ve biyoteknolojide kullanımı,

(f) Nükleer güvenlik, radyasyondan korunma, çevre koruması, radyoaktif atık yönetimi;

(g) Nükleer güvenlik denetimi ve fiziksel korunma;

(h) Taraflar arasında anlaşmaya varılabilecek diğer işbirliği alanları.

Madde III

Bu Anlaşmanın II. maddesinde belirtilen işbirliği aşağıdaki şekilde yürütülebilir:

(a) Bilimsel ve teknik eleman değişimi ve eğitimi,

(b) Bilimsel ve teknik bilgi ve veri değişimi,

(c) Bilimsel ve teknik toplantıların düzenlenmesi,

(d) Nükleer madde, malzeme, teçhizat ve tesis sağlanması ve değişimi,

(e) İlgili konuda teknolojik danışmanlık ve hizmet temini,

(f) Karşılıklı ilgi duyulan alanlarda bilimsel araştırma ve geliştirmeye ilişkin projeler ve özel çalışmalar yürütmek üzere ortak çalışma grubu oluşturma,

(g) İlgili kuruluşlar arasında yapılacak özel anlaşmalar altında nükleer güç ve araştırma reaktörleri ile nükleer yakıt alanında teknoloji transferi, ve

(h) Taraflar arasında anlaşmaya varılabilecek diğer işbirliği konuları.

Madde IV

Taraflar, kendi yasa ve düzenlemeleriyle uyumlu bir şekilde, bu anlaşma altında nükleer enerjinin barışçıl amaçlı kullanımında işbirliği faaliyetlerinin yürütülmesi için gerekli olan nükleer madde, teknoloji, teçhizat ve hizmetin transferlerini kolaylaştıracaklardır.

Madde V

Bu Anlaşmadaki işbirliğini kolaylaştırmak amacıyla, Taraflar uygun olduğunda, belirli işbirliği program ve projelerinin konu ve koşullarını, izlenecek yöntemleri, mali anlaşmalar ve diğer ilgili hususları belirleyecek, Taraflar arası veya Taraflardan birisinin hukuki yetkisi altındaki yetkili şahıslar ile diğer Tarafın hukuki yetkisi altındaki yetkili şahıslar arasındaki uygulama anlaşmalarının yürütülmesini teşvik edeceklerdir. Bu tür uygulama anlaşmaları Tarafların yürürlükteki mevzuatı uyarınca yürütülecektir.

Madde VI

1. Bu Anlaşmayla oluşan işbirliği sadece barışçıl amaçlarla yürütülecektir.

2. Bu Anlaşmayla alınan nükleer madde, malzeme, teçhizat ve tesisler ve yan ürün olarak geri kazanılan veya üretilen özel bölünebilir madde herhangi bir nükleer patlayıcı aygıtın geliştirilmesi veya imalatı için veya herhangi bir askeri amaçla kullanılmayacaktır.

3. Bu maddenin 2. paragrafındaki taahhüt, Nükleer Silahların Yayılmasının Önlenmesi Antlaşmasıyla bağlantılı olarak herbir Tarafın Ajans ile arasındaki güvenlik denetimi anlaşmasına uygun olarak doğrulanacaktır. Bununla birlikte, eğer herhangi bir nedenle veya herhangi bir zamanda, Ajans, Taraf ülkenin sınırları içinde böyle bir güvenlik denetimi yürütmüyorsa, bu Taraf ülke acilen, diğer Taraf ülke ile, Ajans'ın güvenlik denetim sisteminin prensip ve yöntemine uyan ve güvenlik denetiminin, bu anlaşmanın VI.2 de belirtilen tüm konularına uygulanabilmesini sağlayan bir güvenlik denetimi sisteminin oluşturulmasını sağlamak için anlaşmaya varacaktır.

Madde VII

1. Taraflar, bilgiyi sağlayan Tarafın veya yetkili şahısların bu bilginin kullanımına bir kısıtlama ve çekince koyduğu durumlar dışında, bilginin kullanımı ve yayını konusunda karşılıklı anlaşarak, bu Anlaşmanın VI.2 maddesinde belirtilen konularla ilgili olarak aktarılan bilgileri serbestçe kullanacaktır.

2. Taraflardan her biri, yukarıdaki 4. madde çerçevesinde bir uygulama anlaşması yapacak olan kendi hukuki yetkisi dahilindeki yetkililerinden, bu uygulama anlaşmasına, böyle bir uygulama anlaşması çerçevesinde devredilen herhangi bir bilgi, fikri mülkiyet hakkı ve uzun vadeli itimadın, temin eden tarafın rızası olmadan bu uygulama anlaşmasında öngörülen amaçlar dışında devralan Tarafça kullanılmayacağına ilişkin bir hüküm koymalarını talep eder.

3. Bu Anlaşmada kastedilen fikri mülkiyet 14 Temmuz 1967'de Stockholm'de yapılan Dünya Fikri Mülkiyet Organizasyon'unu oluşturan Sözleşmenin 2. maddesinde belirtilen ifade olarak anlaşılır.

Madde VIII

1. Bu Anlaşmaya göre transfer edilen nükleer madde, malzeme, teçhizat, tesis ve bilgi ve yan ürün olarak geri kazanılan veya üretilen özel bölünebilir madde tedarikçi Tarafın yazılı izni olmaksızın alıcı Taraf ülkenin hukuki yetkisi dışına transfer edilmeyecektir.

2. Bu Anlaşmaya tabi nükleer madde, zenginleştirme ve yeniden işleme öncesi yanlız Tarafların karşılıklı olarak anlaşması durumunda uranyum 235 izotopu bakımından %20 zenlikten daha fazla zenginleştirilecek veya yeniden işlenecektir. Bu Anlaşma, %20' den daha zengin olan nihai uranyum ve plutonyumun depolanması ve kullanılması ile ilgili koşulları da kapsar.

Madde IX

1. Taraflar, bu Anlaşmaya göre alınan nükleer madde ve tesisler ve hukuki yetkisi dahilinde yan ürün olarak geri kazanılan veya üretilen özel bölünebilir madde için, Ajansın INFCIR/225/Rev.3 dökümanı ve bu döküman üzerinde daha sonra yapılan Taraflarca kabul edilen değişikliklerde tavsiye edilen fiziksel korunma için uygun önlemleri alacaklardır.

2. Taraflar bu Anlaşmaya göre alınan malzeme, teçhizat ve tesislerin fiziksel korunmasıyla birlikte bunların uluslararası taşınması sırasında fiziksel korunması için de somut önlemler almak üzere birbirlerine danışacaklardır.

Madde X

Herhangi bir Tarafın, bu Anlaşmanın VI., VII., VIII veya IX. maddelerinin koşullarıyla uyumsuzluğu durumunda, Taraflar, diğer Tarafın isteği üzerine, acil olarak birbirlerine danışacaklar ve bu Anlaşmanın VI., VII., VIII veya IX. maddelerinin yükümlülükleriyle uyumunu güvence altına alacak uygun önlemler alacaklardır.

Madde XI

1. Bu Anlaşma, Tarafların Anlaşmanın yürürlüğe girmesi için dahili yasal işlemlerin tamamlanmasını teyid eden diplomatik nota teatisinden 30 gün sonra yürürlüğe girecek ve 15 yıl süre ile yürürlükte kalacaktır. Bu Anlaşma Taraflardan birinin, diğer Tarafı Anlaşmanın sona erme tarihinden en az 6 ay önce yazılı olarak bu Anlaşmayı sona erdirme niyetinden haberdar etmedikçe otomatik olarak 5 yıllık sürelerle uzatılmış olacaktır.

2. Bu Anlaşmanın VI., VII., VIII., IX., ve X. maddelerindeki yükümlülükler, bu Anlaşmaya uygun olarak sağlanan nükleer madde, malzeme, teçhizat, tesisler ve yan ürün olarak geri kazanılan veya üretilen özel bölünebilir madde, ilgili ülkenin yargı yetkisi altında kaldığı veya Taraflarca aksine bir anlaşmaya varılmadığı sürece, bu Anlaşma sona erdikten sonra dahi yürürlükte kalacaktır.

3. Bu Anlaşma, karşılıklı onay ile değiştirilebilir. Bu değişiklikler, Taraflarca gerekli dahili yasal işlemlerin tamamlanıp yürürlüğe girmesinin karşılıklı olarak haberdar edildiği tarihte yürürlüğe girecektir.

BUNUN ŞAHİTİ OLARAK, aşağıda imzaları bulunanlar, Taraflarca usulüne uygun şekilde yetkilendirilmiş olarak, bu Anlaşmayı imzalamışlardır.

Ankara da, 1998 yılının Ekim ayının 26'ıncı gününde Korece, Türkçe ve İngilizce olarak,üç metin aynı ölçüde geçerli olmak üzere, ikişer kopya halinde düzenlenmişlerdir. Yorumundan doğan herhangi bir farklılık halinde İngilizce metin esas alınacaktır.

Kore Cumhuriyeti Hükümeti Adına	Türkiye Cumhuriyeti Hükümeti Adına

[TRANSLATION -- TRADUCTION]

ACCORD DE COOPÉRATION ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CORÉE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE TURQUE CONCERNANT L'UTILISATION DE L'ÉNERGIE NUCLÉAIRE À DES FINS PACIFIQUES

Le Gouvernement de la République de Corée et le Gouvernement de la République turque (ci-après dénommés "les Parties"),

Sur la base des liens d'amitié qui existent entre les deux pays,

Considérant que les deux pays sont des États membres de l'Agence internationale de l'énergie atomique, ci-après dénommée l' "Agence", et sont parties au Traité de non-prolifération des armes nucléaires,

Tenant compte du désir commun des deux pays d'élargir et de renforcer leur coopération, dans leur intérêt commun et dans un esprit d'égalité, en matière d'utilisation de l'énergie nucléaire à des fins pacifiques, et

Notant que l'utilisation de l'énergie nucléaire à des fins pacifiques est un facteur important dans l'accélération du développement social et économique des deux Pays,

Sont convenus de ce qui suit :

Article premier

Aux fins du présent Accord :

a) Le terme "personne" s'entend de toute personne, firme, corporation, association, société fiduciaire, institution publique ou privée, tout groupe, organisme ou entreprise publics et n'inclut pas les Parties au présent Accord;

b) Par "équipement" on entend les appareils, usines ou instruments ou leurs éléments principaux qui sont spécialement conçus ou fabriqués pour être utilisés dans des activités nucléaires;

c) Le terme "produits" désigne les produits destinés aux réacteurs à l'exclusion des matières nucléaires;

d) L'expression "matières nucléaires" désigne (i) la matière brute, c'est-à-dire l'uranium contenant le mélange d'isotopes qui se trouve dans la nature; l'uranium appauvri sous forme de métal, d'alliage, de composés chimiques ou de concentré; toute autre substance contenant une ou plusieurs des matières mentionnées ci-dessus à la concentration que les Parties auront acceptées par écrit; et (ii) "les produits fissiles spéciaux", c'est-à-dire le plutonium-239; l'uranium 233; l'uranium 235; l'uranium enrichi en isotopes 233 ou 235; toute substance contenant un ou plusieurs des produits mentionnés ci-dessus; et toute autre substance que les parties auront accepté par écrit. L'expression "produit fissile spécial" ne s'applique pas aux "matières brutes";

e) Le terme "installations" désigne toutes constructions ou bâtiments conçus ou construits spécialement en vue de leur utilisation à des fins nucléaires;

f) L'expression “produit fissile spécial récupéré ou obtenu comme sous-produit” s'entend de tout produit fissile spécial obtenu au moyen d'un ou plus d'un procédé utilisant toute matière nucléaire, produit, équipements ou installations fournis en vertu du présent Accord; et

g) Le terme “informations” désigne (i) les données scientifiques ou techniques que la Partie expéditrice considère comme appropriées en termes de non-prolifération et essentielles, s'agissant de la conception, de la production, de l'exploitation ou de l'entretien des équipements et installations ou du traitement des matières nucléaires ou des matières brutes; (ii) figurent parmi ces données, non limitativement, les schémas industriels, les négatifs et les tirages photographiques, les enregistrements audio et vidéo, les données relatives à la conception, la documentation technique et les manuels d'utilisation, à l'exclusion des données qui ont été rendues publiques; (iii) les autres données pour lesquelles la Partie expéditrice a informé la Partie destinataire qu'elles doivent être considérées comme des “informations” aux fins du présent Accord.

Article II

Sont assujettis au présent Accord les domaines de coopération suivants :

a) La recherche théorique et appliquée et le développement en matière d'utilisation de l'énergie nucléaire à des fins pacifiques;

b) La recherche, la conception, la construction, l'exploitation et l'entretien des centrales nucléaires et des réacteurs de recherche;

c) L'utilisation des réacteurs de recherche et des accélérateurs de particules;

d) L'exploration et le traitement du minerai de matières nucléaires et la manipulation, le transport, la fabrication et la fourniture d'éléments de combustible nucléaire devant être utilisé dans les centrales nucléaires et dans les réacteurs de recherche;

e) La production et l'application d'isotopes radioactifs dans l'industrie, l'agriculture, la médecine et les biotechnologies;

f) La sécurité nucléaire, la protection contre les radiations, la protection de l'environnement, la gestion des déchets radioactifs;

g) Les garanties nucléaires et la protection physique; et

h) Les autres domaines de coopération convenus d'un commun accord par les Parties.

Article III

La coopération aux termes de l'article II du présent Accord pourra prendre les formes suivantes :

a) L'échange et la formation de personnel scientifique et technique;

b) L'échange d'informations et de données scientifiques et techniques;

c) L'organisation de réunions scientifiques et techniques;

d) La fourniture et l'échange de matières nucléaires, matières, équipements, installations et technologies;

e) La prestation de services techniques et de services de consultants pertinents;

f) La création de groupes de travail conjoints afin de mener des travaux et des projets spécifiques de recherche et développement scientifiques dans des domaines d'intérêt commun;

g) Le transfert de technologie dans le cadre d'accords spéciaux entre institutions connexes dans les domaines de l'énergie nucléaire et des réacteurs de recherche et dans la technologie relative au combustible nucléaire;

h) D'autres formes de coopération dont seront convenues les Parties.

Article IV

Les parties faciliteront, conformément à leurs lois et règlements respectifs, le transfert de matières nucléaires, technologies, équipements et services dans la mise en oeuvre d'activités de coopération en matière d'utilisation de l'énergie nucléaire à des fins pacifiques dans le cadre du présent Accord.

Article V

Dans le but de faciliter la coopération prévue dans le présent Accord, les Parties encourageront, le cas échéant, la conclusion d'arrangements pratiques entre les Parties, ou entre des personnes habilitées relevant de leurs compétences respectives, qui spécifieront les conditions de la réalisation des programmes et projets de coopération, les procédures à suivre, les accords financiers et autres questions pertinentes. Ces arrangements seront conclus conformément aux lois et règlements respectifs des Parties.

Article VI

1. La coopération en vertu du présent Accord aura exclusivement des fins pacifiques.

2. Les matières nucléaires, matières brutes, équipement et installations en vertu du présent Accord et les matières fissiles spéciales récupérées ou obtenues en tant que sous-produits ne serviront pas à la mise au point ou à la fabrication de dispositifs nucléaires explosifs ni à aucune fin militaire.

3. L'engagement contenu au paragraphe 2 du présent Article sera vérifié conformément à l'accord de garanties entre chaque Partie et l'Agence, en relation avec le Traité sur la non-prolifération des armes nucléaires. Toutefois, si pour toute raison ou à tout moment l'Agence n'applique pas lesdites garanties dans le territoire d'une Partie, cette dernière conclura immédiatement un accord avec l'autre Partie en vue de la mise en place d'un système de garanties conforme aux principes et procédures du système de garanties de l'Agence, et prévoyant l'application de garanties aux éléments visés au paragraphe 2 de l'Article VI dans le présent Accord.

Article VII

1. Les Parties utiliseront librement toutes informations échangées en relation aux éléments cités au paragraphe 2 de l'article VI du présent Accord, sauf dans les cas où la Partie ou les personnes autorisées qui fournissent lesdits renseignements ont préalablement fait connaître les restrictions et limitations concernant leur utilisation et leur diffusion.

2. Chaque Partie fait obligation aux personnes habilitées relevant de sa compétence, ce qui entre dans le cadre d'un arrangement pratique à l'Article V du présent Accord, d'inclure dans cet arrangement pratique une disposition assurant que toute information et tous droits de propriété intellectuelle transférés dans le cadre d'un tel arrangement pratique ne seront pas utilisés par la Partie les recevant, sauf aux fins prévues dans l'arrangement pratique précité, sans autorisation de la Partie concernée les fournissant.

3. Aux fins du présent Accord, on attribue à l'expression propriété intellectuelle le sens donné à cette expression à l'article 2 de la Convention instituant l'Organisation mondiale de la propriété intellectuelle, signée à Stockholm le 14 juillet 1967.

Article VIII

1. Les matières nucléaires, matières brutes, équipements, installations et informations transférés conformément au présent Accord ainsi que les matières fissiles spéciales récupérées ou obtenues en tant que sous-produits ne seront pas transférés à une tierce partie ne relevant pas de la juridiction de la Partie les recevant sans autorisation écrite préalable de la Partie les fournissant.

2. Les matières nucléaires visées dans le présent Accord seront enrichies à plus de vingt (20) pour cent dans l'isotope U235 ou retraitées, mais uniquement après accord entre les Parties. Cet accord doit stipuler les conditions dans lesquelles l'uranium enrichi à plus de vingt (20) pour cent ou le plutonium pourra être stocké et utilisé;

Article IX

1. Les parties prendront toutes les mesures de protection physique recommandées dans le document de l'Agence INFCIRC/225/Rev.3 ainsi que toutes les modifications de ce dernier acceptées d'un commun accord par les parties en ce qui concerne les matières nucléaires, les installations reçues conformément au présent Accord ainsi que les matières fissibles spéciales récupérées ou produites comme sous-produit dans leurs juridictions respectives.

2. Les parties se consulteront afin de prendre des mesures concrètes de protection physique des matières, équipements et installations reçus en vertu du présent Accord, y compris celles concernant la protection physique au cours du transport international.

Article X

En cas de non-respect par l'une ou l'autre des Parties des dispositions de l'article VI, VII, VIII ou IX du présent Accord, les parties se consulteront immédiatement et prendront des mesures appropriées en vue de se conformer aux articles VI, VII, VIII ou IX du présent Accord.

Article XI

1. Le présent Accord entrera en vigueur dans les trente jours suivant la date à laquelle les parties se seront adressé une confirmation par la voie diplomatique que les formalités prévues à cet effet par leur droit interne ont été accomplies et demeureront en vigueur pendant une période de quinze ans. Le présent Accord sera automatiquement reconduit pour des périodes successives de cinq ans à moins que l'une ou l'autre des parties ne notifie à l'autre par écrit, six mois avant l'expiration de chaque période, son intention de le dénoncer.

2. Nonobstant la dénonciation du présent Accord, les dispositions des articles VI, VII, VIII, IX et X du présent Accord resteront en vigueur tant que les matières nucléaires, matières, équipements ou technologie visées dans le présent Accord, ainsi que les matières fissiles spéciales récupérées ou produites comme sous-produit seront soumis à la juridiction de la Partie concernée ou jusqu'à ce que les parties en conviennent autrement.

3. Le présent Accord pourra être modifié d'un commun accord par les Parties. Ces modifications entreront en vigueur à la date à laquelle les Parties se notifieront l'une l'autre que les formalités prévues à cet effet par leur droit interne ont été accomplies dans leurs pays respectifs.

En foi de quoi, les soussignés, à ce dûment autorisés par leurs gouvernements respectifs, ont signé le présent Accord.

Fait à Ankara le 26 octobre 1998 en deux exemplaires en langues coréenne, turque et anglaise, tous les textes faisant également foi. En cas de divergence d'interprétation, le texte anglais prévaudra.

Pour le Gouvernement de la République de Corée :

DUCK-SOO

Pour le Gouvernement de la République turque :

MEHMET BATALI

No. 43280

Republic of Korea
and
Ukraine

Trade Agreement between the Government of the Republic of Korea and the Government of Ukraine. Seoul, 30 November 1995

Entry into force: *25 April 1997 by notification, in accordance with article 15*

Authentic texts: *English, Korean and Ukrainian*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

République de Corée
et
Ukraine

Accord commercial entre le Gouvernement de la République de Corée et le Gouvernement d'Ukraine. Séoul, 30 novembre 1995

Entrée en vigueur : *25 avril 1997 par notification, conformément à l'article 15*

Textes authentiques : *anglais, coréen et ukrainien*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

[ENGLISH TEXT — TEXTE ANGLAIS]

TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF UKRAINE

The Government of the Republic of Korea and the Government of Ukraine (hereinafter referred to collectively as "the Contracting Parties" and individually as "the Contracting Party"),

Desiring to develop and expand the trade relations between the two countries on the basis of equality and mutual benefit,

Considering that economic ties are an important and necessary element in the strengthening of their bilateral relations,

Have agreed as follows:

Article 1

The Contracting Parties shall take all appropriate measures within the framework of the respective laws and regulations of each of the two countries to promote and facilitate the trade relations between the two countries.

Article 2

1. Each Contracting Party shall grant each other most-favored-nation treatment in all matters relating to trade, particularly with respect to:

(a) customs duties and charges of any kind imposed on or in connection with importation or exportation, including the method of levying such duties and charges;

(b) methods of payment for imports and exports, and the international transfer of such payments;

(c) rules and formalities in connection with importation and exportation, including those relating to customs clearance, transit, warehouses and transshipment;

(d) taxes and other internal charges of any kind applied directly or indirectly to imported goods; and

(e) rules concerning sale, purchase, transport, distribution, storage and use of goods on the domestic market.

2. Each Contracting Party shall grant imports of goods originating from the territory of the other country nondiscriminatory treatment as regards the application of quantitative restrictions, the granting of licenses and the allocation of the currency needed to pay for such imports.

3. The provisions of paragraphs 1 and 2 of the present Article shall not apply to:

(a) advantages which either of the Contracting Parties has granted or may grant to its neighboring countries to facilitate frontier traffic;

(b) advantages which result from a customs union or a free trade area to which either of the Contracting Parties is or may hereinafter become a party; or

(c) advantages which either of the Contracting Parties has granted or may grant to any developing country under the General Agreement on Tariffs and Trade and other international agreements.

Article 3

1. Trade in goods and services shall be effected by contracts between the juridical and natural persons of the two countries in accordance with customary commercial considerations such as price, quality, delivery and terms of payment.

2. Neither Contracting Party shall require the juridical and natural persons of either country or encourage them to carry out countertrade operations. Nevertheless, when they decide to resort to countertrade operations, the Contracting Parties shall provide the other with all the necessary information for such transaction.

Article 4

The juridical and natural persons of either country shall enjoy most-favored-nation treatment in relation to protection of their persons and property in their performance of the commercial activities in the territory of the other country.

Article 5

1. Unless otherwise agreed between the parties to individual transaction, all commercial transactions between the juridical and natural persons of both countries shall be made in freely convertible currencies in accordance with the laws and regulations in force in each country.

2. Neither Contracting Party shall impose restrictions on the transfer of freely convertible currencies from its territory obtained in a lawful manner in connection with trade in goods and services made by the juridical and natural persons of both countries.

3. Without derogation from paragraph 2 of the present Article, in connection with trade in goods and services, each Contracting Party shall grant to the juridical and natural persons of the other country most-favored-nation treatment with respect to:

(a) opening and maintaining accounts, in both foreign and local currencies, and having access to funds deposited, in financial institutions located in the territory of its country;

(b) payments, remittances and transfers of freely convertible currencies, or financial instruments representative thereof, between the territories of the two countries, as well as between the territories of its country and any third country;

(c) rates of exchange offered by financial institutions authorized to deal in foreign exchange, and authorized means of obtaining freely convertible currencies; and

(d) the receipt and use of local currency.

Article 6

The Contracting Parties shall, in accordance with the respective laws and regulations in force in each of the two countries, exempt the following goods from customs duties, taxes and other charges upon their import and export:

(a) samples and advertising materials of no commercial value;

(b) tools and articles imported for assembly or repair purposes, provided that such tools and articles are re-exported;

(c) articles for experiments and tests;

(d) goods to be displayed at fairs and exhibitions, provided that such goods are re-exported;

(e) specialized containers and packages of the type used in international trade on a returnable basis.

Article 7

1. The Contracting Parties shall encourage the interested juridical and natural persons of both countries to look for opportunities to expand their bilateral trade, including exchange of information to carry on such trade.

2. The Contracting Parties shall endeavor to provide appropriate support for small and medium-sized enterprises by promoting business cooperation networks which facilitate the search for business partners, access to publications and data bases, and information on the availability of technical innovations.

3. Each Contracting Party shall encourage and facilitate the holding of trade promotional arrangements such as fairs, exhibitions, visits and seminars in the territory of its country and in the territory of the other country.

Similarly, the Contracting Parties shall also encourage and facilitate the participation of the relevant organizations, citizens and companies of both countries in such arrangements.

Article 8

The mercantile ships of either country with cargoes thereon shall enjoy in respect of entry, departure from and stay in the ports of the other country the advantages of most-favored-nation treatment which are granted by its respective laws, rules and regulations to ships under third country flags except for the ships engaged in coastal navigation.

Article 9

The Contracting Parties shall, in accordance with their respective laws and regulations in force in each of the two countries, facilitate passage and transit of goods which:

(a) originate from the territory of the other country and are destined for a third country; or

(b) originate from a third country and are destined for the territory of the other country.

Article 10

1. Each Contracting Party shall permit the establishment within the territory of its country of commercial offices (including representations) of juridical persons of the other country and shall accord such offices treatment at least as favorable as that accorded to commercial offices of juridical persons of any third country.

2. Each Contracting Party shall permit, in accordance with its relevant laws and regulations, commercial offices of the other country access to office space and living accommodations as well as telecommunications, municipal and social services.

Article 11

The juridical and natural persons of each country shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other country, as plaintiffs, defendants or otherwise. They shall not claim or enjoy immunity from suits or execution of judgment, proceedings for the recognition and enforcement of arbitral awards or other liability in the territory of the other country with respect to commercial transactions. They also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

Article 12

1. The Contracting Parties shall encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between the juridical and natural persons of both countries. Such arbitration may be provided for by agreements in contracts or in separate written agreements between them under any internationally recognized arbitration rules.

2. Nothing in the present Article shall be construed to prevent, and the Contracting Parties shall not prohibit, the parties to such a dispute from agreeing upon any other form of arbitration or dispute settlement which they mutually prefer and agree best suits their particular needs.

3. Each Contracting Party shall ensure that an effective means exists within the territory of its country for the recognition and enforcement of arbitral awards.

Article 13

The provisions of this Agreement shall not limit the right of either Contracting Party to apply prohibitions or restrictions on import, export and transit of goods which are designed for:

(a) protection of national security;

(b) protection of public health or prevention of diseases and pests in animals or plants; or

(c) preservation of national treasures of artistic, historic and archaeological value.

Such prohibitions or restrictions shall not, however, be used as means of unreasonable discrimination or indiscreet limitation of trade between the two countries.

Article 14

The Contracting Parties agree to establish a Joint Committee composed of representatives of both Contracting Parties. The Joint Committee shall review the implementation of this Agreement and recommend to the Contracting Parties measures for the development and expansion of trade between the two countries. The Joint Committee shall meet on a mutually agreed date, alternately in the Republic of Korea and Ukraine.

Article 15

1. This Agreement shall enter into force on the day 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 five (5) years and shall be extended for successive terms of five (5) years each, unless either Contracting Party notifies the other Contracting Party in writing six months in advance of its intention to terminate the Agreement.

3. The provisions of this Agreement shall continue to be applied after its expiry to all commercial transactions concluded during the period of validity but not fully executed at the date of its expiry.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at Seoul this 30th day of November 1995 in the Korean, Ukrainian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Korea:

GONG RO-MYUNG

For the Government of the Ukraine:

GENNADY Y. UDOVENKO

[KOREAN TEXT — TEXTE CORÉEN]

대한민국 정부와 우크라이나 정부간의 무역협정

대한민국 정부와 우크라이나 정부(이하 "체약당사자"라 한다)는,

평등과 호혜의 기초위에서 양국간 무역관계를 발전·확대시킬 것을 희망하고,

경제적 유대가 양국관계 강화에 중요하고 필수적 요소임을 고려하여,

다음과 같이 합의하였다.

제 1 조

체약당사자는 양국간 무역관계를 증진하고 촉진하기 위하여 자국 법령의 범위안에서 모든 적절한 조치를 취한다.

제 2 조

1. 각 체약당사자는 무역에 관련된 모든 사항 특히 다음 사항에 관하여 상호 최혜국대우를 부여한다.

가. 수출입에 대하여, 또는 수출입과 관련하여, 부과되는 모든 종류의 관세 및 부과금과 동 관세·부과금의 징수 방법

나. 수출입을 위한 지불방법 및 동 지불의 국제 이전

다. 통관·통과·보세창고 및 환적 등 수출입에 관련된 규칙과 절차

라. 수입품에 직·간접으로 부과되는 모든 종류의 조세 및 기타 국내 부과금

마. 국내시장에서의 물품의 판매·구입·수송·유통·보관 및 이용에 관한 규칙

2. 각 체약당사자는 수량제한의 적용, 허가증 부여, 수입 결제에 필요한 통화의 할당과 관련하여 상대국의 영역을 원산지로 하는 재화의 수입에 대하여 무차별대우를 부여한다.

3. 이 조 제1항 및 제2항의 규정은 다음 사항에는 적용되지 아니한다.

가. 일방 체약당사자가 국경무역을 용이하게 하기 위하여 인접 국가에게 부여하는 혜택

나. 일방 체약당사자가 당사국인 관세동맹 또는 자유무역지대에 따른 혜택

다. 일방 체약당사자가 관세와 무역에 관한 일반협정 및 기타 국제협정에 의하여 개발도상국에 부여하는 혜택

제 3 조

1. 재화와 용역의 교역은, 가격·품질·납품·지불조건과 같은 통상적인 상업적 고려사항에 따라, 양국의 법인 및 자연인간의 계약에 의하여 시행된다.

2. 어느 체약당사자도 양국의 법인 및 자연인에게 연계무역 업무를 수행하도록 요구하거나 권장하지 아니한다. 이에 불구, 법인 또는 자연인이 연계무역 업무를 수행하기로 한 경우, 체약당사자는 동 거래에 필요한 모든 정보를 상대방에게 제공한다.

제 4 조

일방국의 법인 및 자연인은 상대국에서의 상업활동 영위와 관련하여 신체 및 재산 보호에 대한 최혜국대우를 향유한다.

제 5 조

1. 양국의 법인 및 자연인간의 모든 상거래는, 개별거래의 당사자간에 별도로 합의하지 아니하는 한, 각국에서 시행중인 법령에 따라 자유태환성 통화로 이루어진다.

2. 어느 일방 체약당사자도 양국의 법인 및 자연인이 재화 및 용역의 교역과 관련하여 합법적인 방법으로 취득한 자유태환성통화를 자국 영역외로 송금하는 것에 어떠한 제한도 가하지 아니한다.

3. 각 당사자는, 이 조 2항의 규정내용을 벗어나지 않는 범위내에서, 재화와 용역의 교역과 관련하여 상대국의 법인 및 자연인에게 다음 사항에 관한 최혜국대우를 부여한다.

가. 자국내에 소재한 금융기관에 외화 및 현지 통화로 구좌를 개설·유지하고 예치된 자금을 이용

나. 자유태환성통화 및 관련 금융증서의 양국간 또는 일방국과 제3국간 지불·송금 및 이전

다. 외환업무를 취급하는 권한있는 금융기관이 제공하는 환율 및 자유태환성통화 획득을 위하여 인가된 수단

라. 현지 통화의 수령 및 사용

제 6 조

체약당사자는 다음 재화에 대하여 자국의 관련법령에 따라 수출입에 관한 관세·조세 및 기타 부과금을 면제한다.

가. 상업적 가치가 없는 견품 및 광고물

나. 재수출을 조건으로 조립 또는 수선 목적으로 수입되는 도구 및 물품

다. 실험 및 시험용 물품

라. 재수출 조건으로 반입되는 박람회 및 전시회 전시용품

마. 반환조건부로 국제무역에 사용되는 종류의 특수 콘테이너 및 포장용기

제 7 조

1. 체약당사자는 관심있는 양국의 법인 및 자연인이 무역관련 정보의 교환을 비롯하여 양자무역을 확대할 기회를 모색하도록 장려한다.

2. 체약당사자는 사업 상대자 물색, 출판물과 데이터 베이스의 이용, 그리고 기술혁신의 이용 가능성에 관한 정보를 용이하게 하는 사업협력망을 확충시킴으로써 중소기업에 대하여 적절한 지원을 제공하도록 한다.

3. 각 체약당사자는 자국 및 상대국에서의 박람회 · 전시회 · 방문 및 세미나 등 무역증진행사의 개최를 장려하고 촉진한다.

체약당사자는 또한 자국의 관련기관, 시민 및 회사의 동 행사참가를 장려하고 촉진한다.

제 8 조

화물을 적재한 양국의 상선은, 상대국 항만에의 입 · 출항 및 체항과 관련하여 상대국이 자국 법령에 따라 연안항해에 종사하는 선박외의 제3국 상선에 부여하는 최혜국대우를 부여받는다.

제 9 조

체약당사자는 자국에서 시행중인 법령에 따라 다음 재화의 통과를 용이하게 한다.

가. 상대국을 출발지로 하여 제3국으로 향하는 재화

나. 제3국을 출발지로 하여 상대국으로 향하는 재화

제 10 조

1. 각 체약당사자는 자국내에 상대국 법인의 사무소(지사 포함) 설치를 허가하고 최소한 제3국 법인의 사무소에 부여된 것과 동등한 대우를 부여한다.

2. 각 체약당사자는, 자국 법령에 따라, 상대국의 사무소가 사무실용 공간, 거주시설, 통신 및 제반 공공역무를 이용하는 것을 허용한다.

제 11 조

각국의 법인 및 자연인은 상대국내 모든 법원과 행정기관에 원고·피고 또는 기타의 자격으로 출석함에 있어서 내국민대우를 받는다. 그들은 상거래에 관하여 상대국내에서의 소송 또는 판결의 집행, 중재 판정의 승인 및 집행 절차 또는 기타 책임으로부터의 면제를 요구하거나 이를 향유하지 아니한다. 그들은 또한, 별도의 양자간 협정에 규정되어 있는 경우를 제외하고는, 상거래에 관한 과세로부터의 면제를 요구하거나 이를 향유하지 아니한다.

제 12 조

1. 체약당사자는 양국의 법인 및 자연인이 그들간의 상거래로부터 발생하는 분쟁의 해결을 위하여 중재를 채택할 것을 장려한다. 그러한 중재는 계약상의 합의에 의하거나 국제적으로 인정된 중재규칙에 의거한 별도 서면 합의에 의하여 마련될 수 있다.

2. 이 조의 어떠한 규정도 분쟁당사자가 모두 선호하고 그들의 필요에 가장 적합하다고 합의하는 기타 형태의 중재 또는 분쟁해결방식에 합의하는 것을 금지하는 것으로 해석되지는 아니하며, 양 당사자도 이를 금지하지 아니한다.

3. 각 체약당사자는 중재판정의 국내적 승인 및 집행을 위한 효과적인 방법을 강구한다.

제 13 조

이 협정의 어떠한 규정도 일방 체약당사자가 다음 목적을 위하여 재화의 수입·수출 및 통과에 대하여 금지나 제한을 가하는 권리를 제한하지 아니한다.

가. 국가안전의 보호

나. 공중위생의 보호 또는 동식물의 질병과 해충방지

다. 예술적·역사적 및 고고학적 가치가 있는 국가보물의 보존

그러나 이러한 금지나 제한을 양국간의 무역을 비합리적으로 차별하거나 무분별하게 제한하는 수단으로 이용하여서는 아니된다.

제 14 조

체약당사자는 양측의 대표로 구성되는 공동위원회를 설치키로 한다. 공동위원회는 이 협정의 이행상황을 점검하고 양 체약당사자에게 양국간 무역발전 및 확대를 위한 조치를 권고한다. 공동위원회는 상호 합의하는 시기에 대한민국과 우크라이나에서 교대로 개최한다.

제 15 조

1. 이 협정은 체약당사자가 이 협정의 발효를 위한 모든 법적 요건을 완료하였음을 상호 통보하는 날에 발효한다.

2. 이 협정은 5년간 유효하며 일방 체약당사자가 협정 종료 6개월전에 그 종료의사를 서면으로 통보하지 아니하는 한 5년씩 계속 연장된다.

3. 이 협정의 제 규정은, 협정이 종료된 후에도 이 협정의 유효기간중 체결되었으나 협정의 종료일까지 완전히 이행되지 아니한 모든 상업계약에 대하여 계속 적용된다.

이상의 증거로, 아래 서명자는 그들 각자의 정부로부터 정당히 권한을 위임받아 이 협정에 서명하였다.

1995년 11 월 30 일 서울에서 동등히 정본인 한국어 · 우크라이나어 및 영어로 각 2부를 작성하였다. 해석상의 차이가 있을 때에는 영어본이 우선한다.

대한민국 정부를 대표하여	우크라이나 정부를 대표하여
공로명	

[UKRAINIAN TEXT — TEXTE UKRAINIEN]

ТОРГОВЕЛЬНА УГОДА
МІЖ УРЯДОМ РЕСПУБЛІКИ КОРЕЯ І УРЯДОМ УКРАЇНИ

Уряд Республіки Корея та Уряд України, які надалі іменуються "Договірні Сторони",

бажаючи розвивати та розширяти торговельні відносини між двома країнами на базі рівності і взаємної вигоди,

вважаючи, що економічні зв'язки є важливим і необхідним елементом у зміцненні їх двосторонніх відносин,

домовились про наступне:

СТАТТЯ 1

Договірні Сторони вживають усіх необхідних заходів відповідно до законодавства і положень кожної з двох країн для сприяння і полегшення торговельних відносин між двома країнами.

СТАТТЯ 2

1. Кожна Договірна Сторона гарантує одна одній режим найбільш сприятливої нації в усіх справах, що стосуються торгівлі, зокрема у відношенні до:

а) митних зборів та податків будь-якого виду, що накладаються у зв'язку з імпортом чи експортом, включаючи спосіб і стягнення таких зборів та податків;

б) способів платежів за імпорт та експорт і міжнародних перерахувань таких платежів;

в) правил та формальностей у зв'язку з імпортом та експортом, включаючи ті, що стосуються митних формальностей, транзиту, складування та перевантажень;

г) податків та інших внутрішніх зборів будь-якого виду, що накладаються безпосередньо на імпортні товари;

д) правил щодо продажу, купівлі, транспортування, розподілу, зберігання та використання товарів на внутрішньому ринку.

2. Договірні Сторони надають товарам, які походять з митної території однієї з Договірних Сторін і призначені для митної території іншої Договірної Сторони, недискримінаційний режим стосовно використання кількісних обмежень, надання ліцензій та валютних правил.

3. Положення параграфів 1 і 2 цієї Статті не повинні застосовуватися до:

а) переваг, які кожна Договірна Сторона гарантувала чи може гарантувати сусіднім з нею країнам для полегшення прикордонної торгівлі;

б) переваг, які виникають з митного союзу чи зони вільної торгівлі, гарантом яких є чи може стати будь-яка з Договірних Сторін; або

в) переваг, які кожна із Договірних Сторін гарантувала чи може гарантувати будь-якій країні, що розвивається, згідно з Генеральною

Угодою з Тарифів та Торгівлі та іншими міжнародними угодами.

СТАТТЯ 3

1. Торгівля товарами та послугами повинна здійснюватися шляхом контрактів між фізичними та юридичними особами обох країн, у відповідності зі звичними комерційними міркуваннями, як ціна, якість, строки поставки та умови оплати.

2. Жодна з Договірних Сторін не вимагає від юридичних та фізичних осіб обох країн здійснення операцій, спрямованих проти торгівлі, чи спонукає їх до таких операцій. Проте, коли вони вирішать вжити таких операцій, Договірні Сторони повинні забезпечити одна одній всю необхідну інформацію для таких дій.

СТАТТЯ 4

Юридичні та фізичні особи кожної країни повинні одержувати режим найбільшого сприяння нації по відношенню до захисту їх осіб та майна під час здійснення комерційної діяльності на території іншої країни.

СТАТТЯ 5

1. Якщо між сторонами конкретної операції не узгоджено інше, всі комерційні операції між юридичними та фізичними особами обох країн повинні здійснюватися у вільно конвертованій валюті, згідно з законами та правилами, що діють в кожній із країн.

2. Жодна з Договірних Сторін не повинна вводити обмежень на переведення вільно конвертованої валюти, одержаної законним шляхом у зв'язку з торгівлею товарами та послугами, що здійснюються юридичними та фізичними особами обох країн.

3. Без дерогації параграфу 2 цієї Статті, у зв'язку з торгівлею товарам та послугами, кожна з Договірних Сторін повинна гарантувати юридичним та фізичним особам іншої Сторони режим найбільш сприятливої нації по відношенню до:

а) відкриття та підтримання рахунків, як в іноземній, так і в місцевій валюті і наявності доступу до фондів, депонованих у фінансових організаціях, що розташовані на території її країни;

б) платежів, компенсації та перерахування вільно конвертованих валют чи фінансових документів, які представляють ці валюти, між териториями обох країн, а також між територією своєї країни та будь-якої третьої країни;

в) курсу обміну, що пропонується фінансовими організаціями, уповноваженими здійснювати операції в іноземній валюті, та офіційних засобів одержання вільно-конвертованої валюти; та

г) прийняття та використання місцевої валюти.

СТАТТЯ 6

Договірні Сторони повинні згідно з чинними законами та правилами, що діють в кожній із двох країн, звільняти наступні товари від митних зборів, податків та інших сплат за їх імпорт та експорт:

а) зразки та рекламні матеріали, що не мають комерційної цінності,

в) інструменти та речі, імпортовані з метою зборки чи ремонту, при умові, що такі інструменти та речі будуть реекспортовані,

с) предмети для експерементів та тестів,

d) товари, що будуть виставлятися на виставках та ярмарках, за умови, що такі товари будуть реекспотровані,

е) спеціалізовані контейнери та пакети типу, що використовуються як оборотна тара в міжнародній торгівлі.

СТАТТЯ 7

1. Договірні Сторони заохочуватимуть зацікавлених фізичних та юридичних осіб в обох країнах у пошуках можливостей для поширення двосторонньої торгівлі, включаючи обмін інформацією з метою продовження такої торгівлі.

2. Договірні Сторони намаються забезпечити відповідну підтримку малих і середніх підприємств шляхом сприяння створенню систем ділового співробітництва, які полегшать пошук партнерів для бізнесу, доступ до публікацій та баз даних і інформацію про наявність технічних новацій.

3. Кожна Договірна Сторона полегшує та сприяє участі здійсненню рекламних торговельних заходів, таких як ярмарки, виставки, візити та семінари на території іншої країни.

Відповідно, Договірні Сторони мають також полегшувати і сприяти участі релевантних організацій, громадян та компаній обох країн у таких заходах.

СТАТТЯ 8

Торговельні суда обох країн з грузами на них повинні мати режим найбільш сприятливої нації по відношенню до заходження, перебування і виходу з портів іншої країни, що гарантуються відповідними законами, правилами та нормами судам під прапором третьої країни, за винятком судів, які беруть участь у каботажі.

СТАТТЯ 9

Договірні Сторони повинні у відповідності до чинних законів та правил, що діють в кожній з двох країн, сприяти проходженню і транзиту товарів, які:

а) походять з території іншої країни і мають призначатися для третьої країни; або б) походять з третьої країни і мають призначатися для іншої країни.

СТАТТЯ 10

1. Кожна Договірна Сторона повинна дозволяти створення в межах її території комерційних структур (включаючи представництва) або юридичних осіб іншої країни і повинна надавати таким структурам режим, не менш сприятливий, ніж той що надається комерційним структурам або юридичним особам будь-яких третіх країн.

2. Кожна Договірна Сторона повинна дозволяти згідно з відповідними законами та правилами комерційним офісам іншої Договірної Сторони доступ до місця під структуру та житлові приміщення, а також засобів телекомунікації, муніціпальних чи соціальних послуг.

СТАТТЯ 11

Юридичним та фізичним особам обох країн повинно бути надано національне становище по відношенню до доступу до всіх судів та адміністративних органів на території іншої країни як позивачі, захисники чи інше. Вони не повинні вимагати чи користуватися імунітетом проти позовів чи виконання рішення суду, розшукових дій та здійснення рішень арбітражу чи проти іншої відповідальності на території іншої сторони, по відношенню до комерційних операцій. Вони також не повинні вимагати чи користуватися імунітетом від оподаткування в зв'язку з комерційними операціями, за винятком випадків, обумовлених в інших двосторонніх угодах.

СТАТТЯ 12

1. Договірні Сторони повинні сприяти застосуванню арбітражу для вирішення спорів, що виникають з комерційних операцій, здійснених між фізичними та юридичними особами обох країн. Такий арбітраж може передбачатися в контрактах чи окремих письмових угодах між ними, згідно з будь-якими міжнародно визнаними правилами арбітражу.

2. Ніщо в цій Статті не повинно розглядатися як заборона, і Договірні Сторони не повинні забороняти сторонам в такому спорі погоджуватися на будь-яку іншу форму арбітражу чи вирішення спорів, яку вони обидві вважають кращою і яка краще відповідає їх конкретним потребам.

3. Обидві Договірні Сторони повинні забезпечити наявність на своїй території ефективних засобів визнання та втілення в життя рішень арбітражу.

СТАТТЯ 13

Положення цієї Угоди не обмежують право кожної із Договірних Сторін застосовувати заборони чи обмеження на імпорт, експорт та транзит товарів, які призначені для:

а) захисту національної безпеки;

б) охорони громадського здоров'я або недопущення хвороб людини, рослин чи тварин, або

в) збереження національних скарбів, що мають художню, історичну або археологічну цінність.

Такі заборони чи обмеження не повинні використовуватися як засоби нерозумної дискримінації чи обмеження торгівлі між двома країнами.

СТАТТЯ 14

Договірні Сторони погоджуються створити Спільну Комісію, що складається з представників обох Договірних Сторін. Спільна Комісія повинна розглядати втілення в життя цієї Угоди та рекомендувати Договірним Сторонам заходи по розвитку та розширенню торгівлі у взаємно узгоджені дати, по черзі в Республіці Корея та Україні.

СТАТТЯ 15

1. Ця Угода набуває чинності в день, коли Договірні Сторони повідомлять одна одну про виконання всіх юридичних вимог, необхідних для набуття нею чинності.

2. Ця Угода залишається чинною на період в п'ять років і подовжується на наступні періоди по п'ять років кожний, якщо жодна із Договірних Сторін не повідомить письмово іншу Договірну Сторону про своє бажання припинити дію Угоди за шість місяців до закінчення строку дії цієї Угоди.

3. Положення цієї Угоди повинні продовжувати застосовуватися після її закінчення до всіх комерційних договорів укладених на протязі періоду її чинності але не виконаних повністю до дати закінчення її дії.

На посвідчення чого, уповноважині на те належним чином представники Урядів, підписали цю Угоду.

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ЗА УРЯД РЕСПУБЛІКИ КОРЕЯ	ЗА УРЯД УКРАЇНИ

[TRANSLATION -- TRADUCTION]

ACCORD COMMERCIAL ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CORÉE ET LE GOUVERNEMENT D'UKRAINE

Le Gouvernement de la République de Corée et le Gouvernement d'Ukraine (ci-après dénommés collectivement “les Parties contractantes” et individuellement “la partie”),

Désireux de développer et d'étendre les relations commerciales entre les deux pays dans des conditions d'égalité et dans leur intérêt mutuel,

Considérant que les liens économiques constituent un élément important et nécessaire du renforcement de leurs relations bilatérales,

Sont convenus de ce qui suit :

Article premier

Les Parties contractantes prennent toutes les mesures appropriées dans le cadre de la législation et de la règlementation nationale de chacun des deux pays pour promouvoir et faciliter les relations commerciales entre les deux pays.

Article 2

1. Chaque Partie contractante accorde à l'autre Partie le traitement de la nation la plus favorisée pour tout ce qui concerne les échanges commerciaux, notamment en matière de :

a) Droits de douane et charges de toute nature imposés aux importations et aux exportations ou afférentes à celles-ci, y compris leurs modes de perception;

b) Modes de paiement des importations et des exportations ainsi que les transferts internationaux desdits paiements;

c) Règles et formalités applicables aux importations et aux exportations, y compris celles relatives au dédouanement, au transit, aux entrepôts et au transbordement de marchandises;

d) Impôts et autres charges intérieurs de toute nature perçus directement ou indirectement sur les marchandises importées; et

e) Règles concernant la vente, l'achat, le transport, la distribution, l'entreposage et l'utilisation des marchandises sur le marché intérieur.

2. Chaque Partie accorde aux importations de marchandises en provenance du territoire de l'autre pays un traitement non discriminatoire en ce qui concerne l'application de restrictions quantitatives, l'octroi de permis et alloue les devises nécessaires au paiement desdites importations.

3. Les dispositions des paragraphes 1 et 2 du présent article ne sont pas applicables :

a) Aux avantages que l'une ou l'autre Partie contractante a déjà accordés ou pourrait accorder à des pays voisins en vue de faciliter le commerce frontalier;

b) Aux avantages qui résultent d'une union douanière ou d'une zone de libre échange à laquelle l'une ou l'autre des Parties contractantes serait ou deviendrait partie; ou

c) Aux avantages que l'une ou l'autre des Parties aurait reconnus ou pourrait reconnaître à un pays en développement en vertu de l'Accord général sur les tarifs douaniers et le commerce ou d'autres accords internationaux.

Article 3

1. Les échanges de biens et services s'effectuent par contrats entre personnes morales et physiques des deux pays, conformément aux conditions commerciales habituelles telles que le prix, la qualité, la livraison et les modes de paiement.

2. Aucune des deux Parties contractantes n'encourage les personnes physiques et morales de l'un ou l'autre pays à procéder à des échanges compensés ou n'exige d'elles qu'elles se livrent à cette pratique. Toutefois, lorsque lesdites personnes décident d'avoir recours à de tels échanges, les Parties contractantes se communiquent réciproquement les informations nécessaires auxdits échanges.

Article 4

Les personnes physiques et morales de l'un ou l'autre des pays jouissent du traitement de la nation la plus favorisée en ce qui concerne la protection de leurs personnes et de leurs biens dans l'exercice de leurs activités commerciales sur le territoire de l'autre pays.

Article 5

1. À moins que les Parties à une transaction particulière n'en décident autrement, toutes les transactions commerciales entre les personnes physiques et morales des deux pays s'effectuent en monnaie librement convertible conformément à la législation et à la réglementation en vigueur dans chaque pays.

2. Aucune des deux Parties contractantes n'impose de restriction au transfert hors de son territoire en monnaies librement convertibles acquises légalement en contrepartie d'échanges de biens et services effectués par des personnes morales et physiques des deux pays.

3. Sans déroger aux dispositions du paragraphe 2 du présent article relatives aux échanges de biens et de services, chaque Partie contractante accorde aux personnes morales et physiques de l'autre pays le traitement de la nation la plus favorisée en ce qui concerne :

a) L'ouverture et le maintien de comptes en monnaie locale ou en devises auprès d'institutions financières situées sur le territoire de l'autre pays, ainsi que l'accès aux fonds déposés dans lesdits comptes;

b) Les paiements, remises et transferts de monnaies librement convertibles, ou des effets financiers qu'ils représentent entre les territoires des deux pays ainsi qu'entre son territoire et le territoire d'un pays tiers;

c) Les taux de change offerts par les institutions financières autorisées à procéder à des transactions en devises, de même que les moyens d'obtenir des devises librement convertibles; et

d) L'acquisition et l'utilisation de la monnaie nationale.

Article 6

Conformément à la législation et à la réglementation en vigueur de chacun des deux pays, les Parties contractantes exemptent de droits de douanes, de taxes et autres charges les biens suivants à l'occasion de leur importation ou de leur exportation :

a) Les échantillons et le matériel publicitaire sans valeur commerciale;

b) Les outillages et articles importés à des fins d'assemblage ou de réparation, sous réserve que lesdits outillages et articles soient réexportés;

c) Les articles destinés à effectuer des expériences et des essais;

d) Les marchandises importées aux fins de démonstration dans les foires et les expositions sous réserve que ces marchandises soient réexportées;

e) Des conteneurs et des emballages du type utilisé dans le commerce international et qui sont consignés.

Article 7

1. Les Parties contractantes encouragent les personnes physiques et morales intéressées des deux pays à rechercher les possibilités de développer leur commerce bilatéral, y compris les échanges d'informations nécessaires à la poursuite de ce commerce.

2. Les Parties contractantes s'efforcent de fournir un soutien approprié aux petites et moyennes entreprises en promouvant les réseaux de coopération commerciale qui facilitent la recherche de partenaires commerciaux, l'accès aux publications et aux bases de données et aux informations quant à la disponibilité d'innovations techniques.

3. Chaque partie contractante encourage et facilite les activités visant à promouvoir l'organisation de manifestations à caractère promotionnel telles que les foires, les expositions, les visites et les séminaires sur le territoire de son pays et sur le territoire de l'autre pays.

De même, les Parties contractantes encouragent et facilitent la participation des organisations, des individus et des sociétés concernés des deux pays à ces activités.

Article 8

Les navires marchands de l'un ou l'autre pays ayant une cargaison à leur bord jouissent, en ce qui concerne l'entrée et le séjour dans les ports de l'autre pays ainsi que le départ desdits ports du traitement de la nation la plus favorisée qui est accordé en vertu de la législation des règles et de la réglementation dudit autre pays aux navires arborant le pavillon d'un pays tiers à l'exception des navires effectuant du cabotage.

Article 9

Conformément à leur législation et à leur réglementation respectives en vigueur, les deux pays facilitent le passage et le transit des marchandises :

a) En provenance du territoire de l'autre pays et qui sont destinées à un pays tiers; ou

b) En provenance d'un pays tiers et qui sont destinées à l'autre pays.

Article 10

1. Chaque Partie contractante permet l'établissement sur le territoire de son pays de bureaux commerciaux (représentations comprises) de personnes morales de l'autre pays et accorde auxdits bureaux un traitement aussi favorable que celui accordé aux bureaux commerciaux de personnes morales d'un pays tiers.

2. Conformément à sa législation et à sa réglementation concernées, chaque Partie contractante permet aux bureaux commerciaux de l'autre pays d'accéder aux locaux à usage de bureaux et aux habitations ainsi qu'aux télécommunications, aux services municipaux et sociaux.

Article 11

Les personnes physiques et morales de l'un ou l'autre des pays se voient accorder les droits nationaux normaux en ce qui concerne l'accès aux tribunaux et aux organismes administratifs sur le territoire de l'autre pays, en qualité de plaignants, de défendeurs ou à tout autre titre. Elles ne jouissent pas de l'immunité de juridiction et elles sont soumises aux procédures relatives aux sentences arbitrales ou à d'autres obligations juridiques sur le territoire de l'autre pays en ce qui concerne les transactions commerciales. Elles ne jouissent pas de l'immunité fiscale en ce qui concerne les transactions commerciales, sous réserve des dispositions d'autres accords bilatéraux.

Article 12

1. Les Parties contractantes encourage l'adoption de l'arbitrage pour le règlement des différends découlant de transactions commerciales conclues entre les personnes physiques et morales des deux pays. L'arbitrage peut être assuré par voie d'accords prévus aux contrats eux-mêmes ou au moyen d'accords écrits distincts conclus entre les Parties au différend conformément aux règles d'arbitrage internationalement reconnues.

2. Aucune disposition du présent article ne peut être interprétée comme une interdiction faite aux parties à un différend de se mettre d'accord sur un mode quelconque d'arbitrage ou de règlement d'un différend qu'elles pourraient préférer comme convenant mieux à leurs besoins particuliers. Pour leur part, les Parties ne peuvent elles-mêmes faire obstacle à de tels arrangements.

3. Chacune des Parties contractantes veille à ce que soient mis en place sur son territoire des moyens appropriés propres à assurer la reconnaissance et l'exécution des sentences arbitrales.

Article 13

Les dispositions du présent Accord ne portent pas atteinte aux droits de chacune des Parties contractantes d'imposer des interdictions ou des restrictions à l'importation, à l'exportation et au transit de marchandises en vue de :

a) Protéger la sécurité nationale;

b) Protéger la santé publique ou prévenir les maladies des animaux ou des végétaux ainsi que les insectes qui pourraient leur être nuisibles; ou

c) Conserver les trésors nationaux représentant une valeur artistique, historique ou archéologique.

Toutefois, ces interdictions ou ces restrictions ne doivent pas servir à des fins discriminatoires ou de restriction déraisonnable des échanges entre les deux pays.

Article 14

Les Parties conviennent d'établir un comité mixte composé de représentants des deux Parties contractantes. Le comité mixte veille à l'application du présent Accord et recommande aux Parties des mesures en vue du développement et de l'expansion des échanges entre les deux pays. Le comité mixte se réunit à des dates à convenir entre les deux Parties, tour à tour en République de Corée et en Ukraine.

Article 15

1. Le présent Accord entrera en vigueur à la date à laquelle les Parties contractantes se seront mutuellement informées de l'accomplissement des formalités juridiques nécessaires à son entrée en vigueur.

2. Le présent Accord demeurera en vigueur pendant une période de cinq (5) ans et il sera ensuite tacitement reconduit pour des périodes successives de cinq (5) ans à moins que l'une des Parties contractantes ne le dénonce au moyen d'une notification écrite adressée à l'autre Partie contractante six mois avant la date à laquelle la première Partie contractante souhaite qu'il soit mis fin à l'Accord.

3. Les dispositions du présent Accord continueront à s'appliquer après qu'il aura pris fin à l'égard de toute transaction commerciale conclue alors qu'il était en vigueur et dont les dispositions n'auraient pas été pleinement exécutées à la date de l'expiration de l'Accord.

En foi de quoi, les soussignés, à ce dûment autorisés par leurs gouvernements respectifs, ont signé le présent Accord.

Fait en double exemplaire à Séoul le 30 novembre 1995, en langues coréenne, ukrainienne et anglaise, tous les textes faisant également foi. En cas de divergence d'interprétation, le texte anglais prévaudra.

Pour le Gouvernement de la République de Corée :

GONG RO-MYUNG

Pour le Gouvernement d'Ukraine :

GENNADY Y. UDOVENKO

No. 43281

Republic of Korea
and
Ukraine

Exchange of notes on the issuance of multiple visas between the Government of the Republic of Korea and the Government of Ukraine. Kiev, 15 and 16 October 2001

Entry into force: *15 November 2001, in accordance with the provisions of the said notes*

Authentic texts: *Korean and Russian*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

République de Corée
et
Ukraine

Échange de notes relatif à la délivrance de visas multiples entre le Gouvernement de la République de Corée et le Gouvernement d'Ukraine. Kiev, 15 et 16 octobre 2001

Entrée en vigueur : *15 novembre 2001, conformément aux dispositions desdites notes*

Textes authentiques : *coréen et russe*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

[KOREAN TEXT — TEXTE CORÉEN]

II

EMBASSY OF THE REPUBLIC OF KOREA

키예프, 2001년 10월 16일

각 하,

본인은 2001년 10월 15일자 다음과 같은 각하의 각서를 접수하였음을 확인하는 영광을 가지는 바입니다.

"각 하,

본인은 우크라이나와 대한민국간의 경제적 · 문화적 협력을 증진하기 위하여 우크라이나 정부를 대표하여 아래와 같이 기업인을 위한 복수사증에 관한 협정의 체결을 제안하는 영광을 가지는 바입니다.

1. 우크라이나와 대한민국의 외교공관 및 영사관은 상업상 · 사업상 목적으로 방문하는 상대방 국민에 대하여 1년간 유효하고 최장 3월까지 체류할 수 있는 복수사증을 발급할 권리를 가진다. 다만, 상대국 국민은 체류국에서 시행중인 입국관련 법령의 기준을 충족하여야 한다.

2. 우크라이나와 대한민국의 외교공관 및 영사관은 우크라이나와 대한민국에서 각각 지사의 설치가 허가된 기업의 지사대표 · 주재원, 그 배우자 및 직계가족에 대하여 3년간 유효하고 최장 2년까지 체류할 수 있는 복수사증을 발급할 권리를 가진다. 다만, 상대국 국민은 체류국에서 시행중인 입국관련 법령의 기준을 충족하여야 한다.

3. 제1항 및 제2항의 규정에 의한 사증을 신청하는 대한민국 국민과 우크라이나 국민은 상업상 · 사업상 타방당사국을 방문할 필요가 있음을 타방당사국의 외교공관이나 영사관에 입증하여야 한다.

4. 이 협정은 일방당사국이 타방당사국에 협정의 종료의사를 서면으로 통고한 후 60일이 경과할 때까지 유효하다. 이 협정의 종료는 이미 이 협정에 따라 발급된 사증에 대하여는 영향을 미치지 아니한다.

대한민국 정부가 위 규정들을 수락할 수 있다면, 본인은 이 각서와 이에 대한 각하의 회답각서가 양국 정부간의 합의를 구성하고, 이 합의는 각하의 회답각서일부터 30일 후에 발효할 것을 제안하는 영광을 거듭 가지는 바입니다.

각하에게 본인의 최대의 경의를 표하는 바입니다."

본인은 대한민국을 대표하여 각하의 각서에 포함된 우크라이나 정부의 제안을 대한민국 정부가 수락함을 확인하며, 각하의 각서와 이 회답각서가 이 회답각서일부터 30일 후에 발효하는 양국 정부간의 합의를 구성하는 데 동의하는 영광을 거듭 가지는 바입니다.

각하에게 본인의 최대의 경의를 표하는 바입니다.

정 신

정 신

대한민국 특명전권대사

아나톨리이 즐렌코

우크라이나 외무부장관 각하

[RUSSIAN TEXT — TEXTE RUSSE]

I

МІНІСТР ЗАКОРДОННИХ СПРАВ УКРАЇНИ

15 жовтня 2001 року
м. Київ

Ваша Високоповажносте,

З метою сприяння економічному і культурному співробітництву між Україною і Республікою Корея маю честь запропонувати від імені Уряду України укласти угоду про видачу багаторазових в'їзних віз для бізнесменів на таких умовах:

1. Дипломатичні або консульські установи України і Республіки Корея мають право видавати багаторазові в'їздні візи, дійсні на період до одного (1) року з максимальним терміном перебування три (3) місяці, громадянам іншої держави, які мають намір відвідати їхню країну з комерційною або бізнесовою метою, при умові, що ці громадяни відповідають критеріям чинних у кожній країні законів та правил щодо в'їзду.

2. Дипломатичні або консульські установи України і Республіки Корея мають право видавати багаторазові в'їзні візи, дійсні на період до трьох (3) років з максимальним терміном перебування 2 (два) роки, громадянам іншої держави, які є комерційними представниками або членами персоналу постійних представництв бізнесових підприємств, заснування яких було засвідчено в установленому порядку в Україні та Республіці Корея, дітям, які знаходяться на їх утриманні, та іншому з їх подружжя, при умові, що ці громадяни відповідають критеріям чинних у кожній країні законів та правил щодо в'їзду.

3. Корейські та українські громадяни, які звертаються за візами, зазначеними в пунктах 1 та 2, мають підтвердити дипломатичній або консульській установі іншої держави необхідність здійснення ними візитів з комерційною або бізнесовою метою до цієї країни.

Його Високоповажності
Пану Чанг Шіну
Надзвичайному і Повноважному
Послу Республіки Корея

4. Ця Угода залишається чинною до закінчення шестидесяти (60) днів з дати, коли одна з країн повідомить іншу шляхом нотифікації про намір припинити дію угоди. Припинення дії цієї угоди не поширюється на ті візи, які вже видані у відповідності до цієї угоди.

Якщо вищенаведені пропозиції є прийнятними для Уряду Республіки Корея, маю честь запропонувати, щоб ця Нота і Нота-відповідь Вашої Високоповажності з цього приводу становили Угоду між Урядами обох країн, що набуде чинності на тридцятий (30) день з дати Ноти-відповіді Вашої Високоповажності.

Прийміть, Ваша Високоповажносте, запевнення у моїй високій повазі.

Анатолій Зленко

[TRANSLATION -- TRADUCTION][1]

I

MINISTER OF FOREIGN AFFAIRS OF UKRAINE

Kyiv, October 15, 2001

Excellency,

With a view to promoting economic and cultural cooperation between Ukraine and the Republic of Korea, I have the honour to propose on behalf of the Government of Ukraine an agreement on the issuance of multiple entry visas for business people in the following terms:

1. Diplomatic or consular missions of Ukraine and the Republic of Korea shall enjoy the right to issue multiple entry visas which are valid for a period of one (1) year with a maximum sojourn of three (3) months to nationals of the other country who intend to visit their country for commercial or business purposes, provided that the nationals meet the relevant entry criteria of the laws and regulations in force in each country.

2. Diplomatic or consular missions of Ukraine and the Republic of Korea shall enjoy the right to issue multiple entry visas which are valid for a period of three (3) years with a maximum sojourn of two (2) years to nationals of the other country, and their spouses and dependent children, who are commercial representatives or staff members of the resident offices of business enterprises, the establishment of which has been authorized respectively in Ukraine and the Republic of Korea, provided that the nationals meet the relevant entry criteria of the laws and regulations in force in each country.

3. Korean and Ukrainian nationals who apply for the visas referred to in paragraphs 1 and 2 shall demonstrate to the diplomatic or consular missions of the other country their need to make visits to that country for commercial or business purposes.

4. This agreement shall remain in force until the sixtieth (60th) day after the date on which either country notifies the other in writing of its intention to terminate the agreement. The termination of this agreement shall not affect those visas already granted pursuant to this agreement.

If the above provisions are acceptable to the Government of the Republic of Korea, I have further the honour to propose that this Note and Your Excellency's Note in reply to that effect shall constitute an agreement between the two Governments which will become effective on the thirtieth (30th) day after the date of Your Excellency's Note in reply.

1. Translation supplied by the Government of the Republic of Korea -- Traduction fournie par le Gouvernement de la République de Corée.

Accept, Excellency, the assurances of my highest consideration.

ANATOLIY ZLENKO

His Excellency
Chung Shin
Ambassador Extraordinary and Plenipotentiary
of the Republic of Korea

II

Embassy of the Republic of Korea

Kiev, October 16, 2001

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note dated October 15, 2001, which reads as follows:

[See note I]

I have further the honour, on behalf of the Republic of Korea, to confirm that the proposal by the Government of Ukraine contained in Your Note is acceptable to the Government of the Republic of Korea, and that Your Excellency's Note and this Note in reply shall constitute an agreement between the two Governments which will become effective on the thirtieth (30th) day after the date of this Note.

Accept, Excellency, the renewed assurances of my highest consideration.

CHUNG SHIN
Ambassador Extraordinary and Plenipotentiary
of the Republic of Korea to Ukraine

His Excellency
Mr. Anatoliy Zlenko
Minister of Foreign Affairs of Ukraine

[TRANSLATION -- TRADUCTION]

I

MINISTÈRE DES AFFAIRES ÉTRANGÈRES D'UKRAINE

Kiev, le 15 octobre 2001

Excellence,

En vue de favoriser la coopération économique et culturelle entre l'Ukraine et la République de Corée, j'ai l'honneur de vous proposer, au nom du Gouvernement d'Ukraine, un accord relatif à la délivrance de visas d'entrées multiples pour les hommes d'affaires aux conditions suivantes :

1. Les missions diplomatiques ou consulaires d'Ukraine et de la République de Corée bénéficient du droit de délivrer des visas d'entrées multiples qui sont valides pour une durée d'un (1) an, avec un séjour d'une durée maximale de trois (3) mois pour les ressortissants de l'autre pays qui ont l'intention de se rendre dans leur pays à des fins commerciales ou pour affaires, sous réserve que lesdits ressortissants respectent les critères d'entrée applicables des lois et réglementations en vigueur dans chaque pays.

2. Les missions diplomatiques ou consulaires d'Ukraine et de la République de Corée sont en droit de délivrer des visas d'entrées multiples qui sont valides pour une durée de trois (3) ans, avec un séjour d'une durée maximale de deux (2) ans pour les ressortissants de l'autre pays ainsi que leurs conjoints et enfants à charge, qui sont des représentants commerciaux ou des membres du personnel des bureaux d'entreprises dont la création a été autorisée respectivement en Ukraine et en République de Corée, sous réserve que les ressortissants respectent les critères d'entrée applicables des lois et réglementations en vigueur dans chaque pays.

3. Les ressortissants coréens et ukrainiens qui demandent des visas tels que mentionnés aux paragraphes 1 et 2 devront prouver aux missions diplomatiques ou consulaires de l'autre pays qu'ils sont tenus de se rendre dans ledit pays à des fins commerciales ou pour affaires.

4. Le présent accord restera en vigueur jusqu'au soixantième (60ème) jour suivant la date à laquelle l'un des deux pays notifie par écrit à l'autre son intention de dénoncer l'accord. La dénonciation du présent accord n'affectera pas les visas déjà accordés au titre du présent accord.

Si les propositions susmentionnées devaient rencontrer l'agrément du Gouvernement de la République de Corée, j'ai l'honneur de proposer que la présente note et votre réponse en ce sens constituent un accord entre les deux gouvernements qui entrera en vigueur le trentième (30ème) jour suivant la date de votre réponse.

Veuillez agréer, Excellence, l'assurance de ma plus haute considération.

M. ANATOLIY ZLENKO

Son Excellence Monsieur Chung Shin
Ambassadeur extraordinaire et
plénipotentiaire de la République de Corée

II

AMBASSADE DE LA RÉPUBLIQUE DE CORÉE

Kiev, le 16 octobre 2001

Monsieur,

J'ai l'honneur d'accuser réception de votre note du 15 octobre 2001, dont la teneur est la suivante :

[Voir note I]

J'ai l'honneur de vous confirmer, au nom de la République de Corée, que la proposition du Gouvernement d'Ukraine présentée dans votre note rencontre l'agrément du Gouvernement de la République de Corée, et que votre note et la présente réponse constituent un accord entre les deux gouvernements qui entrera en vigueur le trentième (30ème) jour suivant la date de la présente note.

Veuillez agréer, Excellence, l'assurance de ma plus haute considération.

M. CHUNG SHIN
Ambassadeur extraordinaire et plénipotentiaire
de la République de Corée auprès de l'Ukraine

Son Excellence Monsieur Anatoliy Zlenko
Ministre des Affaires étrangères d'Ukraine

No. 43282

Republic of Korea
and
Viet Nam

Arrangement on youth exchange between the Government of the Republic of Korea and the Government of the Socialist Republic of Viet Nam. Hanoi, 30 July 1999

Entry into force: *30 July 1999 by signature, in accordance with article 4*

Authentic texts: *English, Korean and Vietnamese*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

Not published herein in accordance with article 12(2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended.

République de Corée
et
Viet Nam

Arrangement relatif à l'échange de jeunes entre le Gouvernement de la République de Corée et le Gouvernement de la République socialiste du Viet Nam. Hanoi, 30 juillet 1999

Entrée en vigueur : *30 juillet 1999 par signature, conformément à l'article 4*

Textes authentiques : *anglais, coréen et vietnamien*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

Non publié ici conformément au paragraphe 2 de l'article 12 du règlement de l'Assemblée générale destiné à mettre en application l'Article 102 de la Charte des Nations Unies, tel qu'amendé.

No. 43283

Republic of Korea
and
Viet Nam

Arrangement between the Government of the Republic of Korea and the Government of the Socialist Republic of Viet Nam concerning a loan from the Economic Development Cooperation Fund. Hanoi, 29 September 2000

Entry into force: *29 September 2000 by signature, in accordance with article 7*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

Not published herein in accordance with article 12(2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended.

République de Corée
et
Viet Nam

Arrangement entre le Gouvernement de la République de Corée et le Gouvernement de la République socialiste du Viet Nam relatif à un prêt du Fonds de coopération au développement économique. Hanoi, 29 septembre 2000

Entrée en vigueur : *29 septembre 2000 par signature, conformément à l'article 7*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

Non publié ici conformément au paragraphe 2 de l'article 12 du règlement de l'Assemblée générale destiné à mettre en application l'Article 102 de la Charte des Nations Unies, tel qu'amendé.

No. 43284

Republic of Korea
and
Viet Nam

Arrangement between the Government of the Republic of Korea and the Government of the Socialist Republic of Viet Nam concerning loans from the Economic Development Cooperation Fund. Seoul, 23 August 2001

Entry into force: *23 August 2001 by signature, in accordance with article 8*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

Not published herein in accordance with article 12(2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended.

République de Corée
et
Viet Nam

Arrangement entre le Gouvernement de la République de Corée et le Gouvernement de la République socialiste du Viet Nam relatif à des prêts du Fonds de coopération au développement économique. Séoul, 23 août 2001

Entrée en vigueur : *23 août 2001 par signature, conformément à l'article 8*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

Non publié ici conformément au paragraphe 2 de l'article 12 du règlement de l'Assemblée générale destiné à mettre en application l'Article 102 de la Charte des Nations Unies, tel qu'amendé.

No. 43285

Republic of Korea
and
United States of America

Agreement between the Republic of Korea and the United States of America on social security. Washington, 13 March 2000

Entry into force: *1 April 2001 by notification, in accordance with article 19*

Authentic texts: *English and Korean*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

République de Corée
et
États-Unis d'Amérique

Accord de sécurité sociale entre la République de Corée et les États-Unis d'Amérique. Washington, 13 mars 2000

Entrée en vigueur : *1er avril 2001 par notification, conformément à l'article 19*

Textes authentiques : *anglais et coréen*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

[ENGLISH TEXT — TEXTE ANGLAIS]

AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE UNITED STATES OF AMERICA ON SOCIAL SECURITY

The Republic of Korea and

the United States of America (hereinafter referred to as the "Contracting States"),

Being desirous of regulating the relationship between their two countries in the field of Social Security,

Have agreed as follows:

PART I. GENERAL PROVISIONS

Article 1

1. For the purpose of this Agreement:

(a) "National" means,

as regards Korea, a national of the Republic of Korea as defined in the Nationality Law, as amended, and

as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act, as amended;

(b) "Laws" means the laws and regulations specified in Article 2 of this Agreement;

(c) "Competent Authority" means,

as regards Korea, the Minister of Health and Welfare or the Minister of Labor as the case may require, and

as regards the United States, the Commissioner of Social Security;

(d) "Agency" means,

as regards Korea, the National Pension Corporation or the Korean Labor Welfare Corporation as the case may require, and

as regards the United States, the Social Security Administration;

(e) "Period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage; and

(f) "Benefit" means any benefit provided for in the laws specified in Article 2 of this Agreement.

2. Any term not defined in this Article shall have the meaning assigned to it in the applicable laws.

Article 2

1. For the purpose of this Agreement, the applicable laws are:

(a) As regards Korea,

(i) the National Pension Law and the enforcement rules and regulations applicable thereto;

(ii) with regard to Part II only, the Industrial Accident Compensation Insurance Law and the enforcement rules and regulations applicable thereto;

(b) As regards the United States, the laws governing the Federal old-age, survivors, and disability insurance program:

(i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections;

(ii) Chapters 2 and 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters.

2. Unless otherwise provided in this Agreement, the laws referred to in paragraph 1 of this Article shall not include treaties or other international agreements on Social Security that may be concluded between one Contracting State and a third State, or laws or regulations promulgated for their specific implementation.

3. This Agreement shall also apply to future laws which amend or supplement the laws specified in paragraph 1 of this Article.

Article 3

1. A person who is or has been subject to the laws of one Contracting State and who resides within the territory of the other Contracting State shall, together with his dependents, receive equal treatment with nationals of the other Contracting State in the application of the laws of the other Contracting State regarding the eligibility for and the payment of benefits.

2. Unless otherwise provided in this Agreement, any provision of the laws of one Contracting State which restricts entitlement to or payment of cash benefits solely because the person resides outside or is absent from the territory of that Contracting State shall not be applicable to the persons who reside in the territory of the other Contracting State.

PART II. PROVISIONS ON COVERAGE

Article 4

1. Except as otherwise provided in this Article, a person employed within the territory of either Contracting State shall, with respect to that employment, be subject to the laws of only that Contracting State.

2. Where a person who is normally employed in the territory of one Contracting State by an employer having a place of business in that territory is sent by that employer to work for the same employer in the territory of the other Contracting State, the person shall

remain subject to the laws of only the first Contracting State as if the person were employed in its territory, provided that the period of employment in the territory of the other Contracting State is not expected to exceed 5 years. For purposes of applying the preceding sentence, an employer and an affiliated or subsidiary company of the employer (as defined under the laws of the Contracting State from which the person was sent) shall be considered one and the same, provided that the employment in the territory of the other Contracting State would have been covered under the laws of the Contracting State from which the person was sent in the absence of this Agreement.

3. Paragraph 2 of this Article shall apply where a person who has been sent by his employer from the territory of one Contracting State to the territory of a third State is subsequently sent by that employer from the territory of the third State to the territory of the other Contracting State.

4. A self-employed person who resides within the territory of one Contracting State shall be subject to the laws of only that State.

5. Where the same activity is considered to be self-employment under the laws of one Contracting State and employment under the laws of the other Contracting State, that activity shall be subject to the laws of only the first Contracting State if the person is a resident of that State and to the laws of only the other Contracting State in any other case.

6. A person who would otherwise be compulsorily covered under the laws of both Contracting States with respect to employment as an officer or member of a crew on a ship or aircraft shall be subject to the laws of only the Contracting State in whose territory the person resides.

7. (a) This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, of the Vienna Convention on Consular Relations of April 24, 1963, or of the Consular Convention between the United States and Korea of January 8, 1963.

(b) Nationals of one of the Contracting States who are employed by the Government of that Contracting State in the territory of the other Contracting State but who are not exempt from the laws of the other Contracting State by virtue of the Conventions mentioned in the preceding subparagraph shall be subject to the laws of only the first Contracting State. For the purpose of this paragraph, employment by the Government of a Contracting State includes employment by an instrumentality thereof.

(c) As regards Korea, employment by the Government of Korea includes employment by Korea's local governments.

8. The Competent Authorities of the two Contracting States may agree to grant an exception to the provisions of this Article with respect to particular persons or categories of persons, provided that any affected person shall be subject to the laws of one of the Contracting States.

PART III. PROVISIONS ON BENEFITS

Article 5

The following provisions shall apply to Korea:

1. If a person is not eligible for old-age, survivors or disability benefits under Korean laws based on periods of coverage credited exclusively under Korean laws, the Agency of Korea shall take into account the person's periods of coverage credited under United States laws, insofar as they do not coincide, for the purpose of establishing the person's entitlement to benefits under Korean laws. The preceding sentence shall not apply for purposes of establishing entitlement to old-age, survivors or disability benefits unless the person has completed at least 18 months of coverage under Korean laws.

2. To obtain a disability benefit or survivors benefit, the requirement of Korean laws that a person be covered when the insured event occurs shall be considered to have been met if the person is insured for a benefit under United States laws or has credit for at least four quarters of coverage under United States laws during a period of eight calendar quarters ending with the calendar quarter in which the insured event occurs according to Korean laws.

3. In determining eligibility for benefits under this Article, the Agency of Korea shall credit three months of coverage for every quarter of coverage certified by the Agency of the United States.

4. Where periods of coverage under United States laws are taken into account to establish eligibility for benefits under Korean laws in accordance with this Article, the benefit due shall be determined as follows:

(a) The Agency of Korea shall first compute a Basic Pension Amount equal to the amount that would have been payable to the person if all the periods of coverage credited under the laws of both Contracting States had been completed under Korean laws. To determine the Basic Pension Amount, the Agency of Korea shall take into account the person's average standard monthly income while covered under Korean laws.

(b) The Agency of Korea shall calculate the partial benefit to be paid in accordance with Korean laws based on the Basic Pension Amount calculated according to the preceding subparagraph, in proportion to the ratio between the duration of the periods of coverage taken into consideration under its own laws and the total duration of the periods of coverage taken into consideration under the laws of both Contracting States.

5. Entitlement to a benefit from Korea which results from paragraph 1 of this Article shall terminate with the acquisition of sufficient periods of coverage under Korean laws to establish entitlement to an equal or higher benefit without the need to invoke the provision of paragraph 1 of this Article.

6. (a) United States nationals shall receive equal treatment with Korean nationals in the application of provisions of Korean laws regarding lump-sum refunds of contributions, regardless of when the contributions were paid. Notwithstanding paragraph 1 of Article 3, lump-sum refunds of contributions shall be paid to nationals of a State other than the Contracting States in accordance with Korean laws.

(b) The periods of coverage for which contributions have been refunded in lump-sum shall not be certified by the Agency of Korea as creditable in totalizing periods to determine entitlement to a benefit.

Article 6

The following provisions shall apply to the United States:

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient periods of coverage to satisfy the requirements for entitlement to benefits under United States laws, the Agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of coverage which are credited under Korean laws and which do not coincide with periods of coverage already credited under United States laws.

2. In determining eligibility for benefits under paragraph 1 of this Article, the Agency of the United States shall credit one quarter of coverage for every three months of coverage certified by the Agency of Korea; however, no quarter of coverage shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1 of this Article, the Agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage completed under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.

4. Entitlement to a benefit from the United States which results from paragraph 1 of this Article shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provision of paragraph 1 of this Article.

PART IV. MISCELLANEOUS PROVISIONS

Article 7

The Competent Authorities of the two Contracting States shall:

(a) Conclude all necessary administrative arrangements for the implementation of this Agreement and designate liaison agencies;

(b) Communicate to each other information concerning the measures taken for the application of this Agreement; and

(c) Communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article 8

The Competent Authorities and the Agencies of the Contracting States, within the scope of their respective authorities, shall assist each other in implementing this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an administrative arrangement.

Article 9

1. In accordance with measures to be agreed upon, the Competent Authorities and Agencies of the two Contracting States shall communicate to each other any information necessary for the application of this Agreement.

2. Unless otherwise required by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with this Agreement to that Contracting State by the other Contracting State shall be used exclusively for purposes of implementing this Agreement. Such information received by one Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 10

1. Where the laws of one Contracting State provide that any document which is submitted to the Competent Authority or the Agency of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or the Agency of the other Contracting State in the application of this Agreement.

2. Documents and certificates which are presented for purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular authorities.

3. Copies of documents which are certified as true and exact copies by the Agency of one Contracting State shall be accepted as true and exact copies by the Agency of the other Contracting State, without further certification. The Agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 11

1. The Competent Authorities and Agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the official language of either Contracting State.

2. An application or document may not be rejected by the Competent Authority or Agency of one Contracting State because it is in the official language of the other Contracting State.

Article 12

1. A written application for benefits filed with the Agency of one Contracting State shall protect the rights of the claimants under the laws of the other Contracting State if the applicant requests that it be considered an application under the laws of the other Contracting State.

2. If an applicant has filed a written application for benefits with the Agency of one Contracting State and has not explicitly requested that the application be restricted to benefits under the laws of that Contracting State, the application shall also protect the rights of the claimants under the laws of the other Contracting State if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

3. The provisions of Part III shall apply only to benefits for which an application is filed on or after the date this Agreement enters into force.

Article 13

1. A written appeal of a determination made by the Agency of one Contracting State may be validly filed with the Agency of either Contracting State. The appeal shall be dealt with according to the procedure and laws of the Contracting State whose decision is being appealed.

2. Any claim, notice or written appeal which, under the laws of one Contracting State, must have been filed within a prescribed period with the Agency of that Contracting State, but which is instead filed within the same period with the Agency of the other Contracting State, shall be considered to have been filed on time.

Article 14

In any case to which the provisions of Article 13 of this Agreement apply, the Agency to which the claim, notice or written appeal has been submitted shall indicate the date of receipt on the document or on a form agreed upon for this purpose pursuant to Article 7(a) of this Agreement and transmit it without delay to the liaison agency of the other Contracting State.

Article 15

1. Payments under this Agreement may be made in the currency of the Contracting State making the payments.

2. In case provisions designed to restrict the exchange or exportation of currencies are introduced by either Contracting State, the Governments of both Contracting States

shall immediately take measures necessary to ensure the transfer of sums owed by either Contracting State under this Agreement.

Article 16

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the Contracting States.

Article 17

This Agreement may be amended in the future by supplementary agreements which, from their entry into force, shall be considered an integral part of this Agreement.

PART V. TRANSITIONAL AND FINAL PROVISIONS

Article 18

1. This Agreement shall not establish any claim to payment of a benefit for any period before the date of the entry into force of this Agreement, or to a lump-sum death benefit if the person died before the entry into force of this Agreement.

2. In determining the right to benefits under this Agreement, consideration shall be given to periods of coverage and other events which occurred before the entry into force of this Agreement. However, neither Contracting State shall take into account periods of coverage which occurred prior to the earliest date for which periods of coverage may be credited under its laws.

3. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.

4. The application of this Agreement shall not result in any reduction in the amount of a benefit to which entitlement was established prior to its entry into force.

5. In applying paragraph 2 of Article 4 in the case of persons who were sent to the territory of a Contracting State prior to the date of entry into force of this Agreement, the periods of employment referred to in that paragraph shall be considered to begin on that date.

Article 19

This Agreement shall enter into force on the first day of the third month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.

Article 20

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its termination is given by either Contracting State to the other Contracting State.

2. If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained. The Contracting States shall make arrangements dealing with rights in the process of being acquired.

In Witness Whereof, the undersigned, being duly authorized thereto, have signed this Agreement.

Done in duplicate at Washington on March 13, 2000, in the Korean and English languages, the two texts being equally authentic.

For the Republic of Korea:

LEE JOUNG-BINN

For the United States of America:

MADELEINE ALBRIGHT

[KOREAN TEXT — TEXTE CORÉEN]

대한민국과 미합중국간의 사회보장에 관한 협정

대한민국과 미합중국(이하 "체약당사국"이라 한다)은,

사회보장분야에서 그들 양국간의 관계를 규율하기를 희망하여,

다음과 같이 합의하였다.

제 1 부
일 반 규 정

제 1 조

1. 이 협정의 목적상,
   가. "국민"이라 함은,
      한국에 있어서는 적용당시 유효한 국적법에 정의된 대한민국 국민을 말하며,
      미국에 있어서는 적용당시 유효한 이민및국적법 제101조에 정의된 미국 국민을 말한다.
   나. "법"이라 함은 이 협정 제2조에 명시된 법령을 말한다.
   다. "권한있는 당국"이라 함은,
      한국에 있어서는 보건복지부장관 또는 사안의 필요에 따라 노동부장관을 말하며,
      미국에 있어서는 사회보장청장을 말한다.
   라. "실무기관"이라 함은,
      한국에 있어서는 국민연금관리공단 또는 사안의 필요에 따라 한국근로복지공단을 말하며,
      미국에 있어서는 사회보장청을 말한다.
   마. "가입기간"이라 함은 그 가입기간의 완성을 규정하는 법에 의하여 가입기간으로 정의되거나 인정되는 기여금납부기간 또는 고용이나 자영으로부터의 소득기간, 또는 그 법에 의하여 가입기간에 상응하다고 인정되는 한도안에서의 유사기간을 말한다.

바. "급여"라 함은 이 협정 제2조에 명시된 법에 규정된 급여를 말한다.

2. 이 조에서 정의되지 아니한 용어는 적용가능한 법에서 그에 부여된 의미를 가진다.

제 2 조

1. 이 협정의 목적상, 적용가능한 법은 다음과 같다.
   가. 한국에 있어서는
      (1) 국민연금법 · 동법시행령 및 동법시행규칙
      (2) 다만 제2부에 관하여는 산업재해보상보험법 · 동법시행령 및 동법시행규칙
   나. 미국에 있어서는 연방 노령 · 유족 · 장애 보험제도를 규율하는 법
      (1) 사회보장법 제2편제226조 · 제226조의1 · 제228조 및 이들 조에 관련되는 규칙을 제외한 사회보장법 제2편 및 동편에 관련되는 규칙
      (2) 1986년의 내국세법 제2장 및 제21장과 동장에 관련되는 규칙

2. 이 협정에 달리 규정되지 아니하는 한, 이 조 제1항에 언급된 법은 일방체약당사국과 제3국간에 체결될 수 있는 사회보장에 관한 조약이나 다른 국제협정 또는 이들의 구체적인 이행을 위하여 공포된 법이나 규칙을 포함하지 아니한다.

3. 이 협정은 이 조 제1항에 명시된 법을 개정하거나 보충하는 미래의 법에 대하여도 적용된다.

제 3 조

1. 일방체약당사국의 법을 적용받거나 받아 온 자로서 타방체약당사국의 영역안에 거주하는 자는, 그의 피부양자와 함께, 급여의 수급자격 및 지급에 관한 타방체약당사국의 법의 적용에 있어서 타방체약당사국의 국민과 동등한 대우를 받는다.

2. 이 협정에 달리 규정되지 아니하는 한, 어떠한 자가 일방체약당사국의 영역밖에 거주하거나 그 영역에 부재한다는 이유만으로 현금급여의 수급권 또는 지급을 제한하는 일방체약당사국의 법의 어떠한 규정도 타방체약당사국의 영역에 거주하는 자에게는 적용되지 아니한다.

제 2 부
가입에 관한 규정

제 4 조

1. 이 조에서 달리 규정되는 경우를 제외하고는, 어느 일방체약당사국의 영역안에서 고용된 자는 그 고용에 관하여는 그 체약당사국의 법만을 적용받는다.

2. 일방체약당사국의 영역에 사업장을 가지고 있는 사용자에 의하여 그 영역에서 정상적으로 고용된 자가 그 사용자에 의하여 타방체약당사국의 영역에서 동일한 사용자를 위하여 일하도록 파견되는 경우, 타방체약당사국의 영역에서의 고용기간이 5년을 초과할 것으로 예상되지 아니하는 한, 그 자는 전기 일방체약당사국의 영역에서 고용된 것으로 간주하여 그 체약당사국의 법만을 적용받는다. 전단의 적용목적상, 타방체약당사국의 영역에서의 고용이 이 협정이 없었더라도 그 자를 파견한 체약당사국의 법이 적용되었을 것이라는 조건하에(그 자를 파견한 체약당사국의 법에 의하여 정의된 바와 같이) 사용자와 그 사용자의 계열회사 또는 자회사는 하나의 동일체로 간주된다.

3. 사용자에 의하여 일방체약당사국의 영역으로부터 제3국의 영역으로 파견되었던 자가 그후에 그 사용자에 의하여 제3국의 영역으로부터 타방체약당사국의 영역으로 파견된 경우에는 이 조 제2항이 적용된다.

4. 일방체약당사국의 영역안에서 거주하는 자영자는 그 국가의 법만을 적용받는다.

5. 동일한 활동이 일방체약당사국의 법에서는 자영으로 간주되고 타방체약당사국의 법에서는 고용으로 간주되는 경우, 그 활동은 그 자가 전기 일방체약당사국의 거주자인 경우에는 그 국가의 법만을 적용받고 기타의 모든 경우에는 타방체약당사국의 법만을 적용받는다.

6. 선박이나 항공기의 승무원으로서의 고용에 관하여 양 체약당사국의 법에 의하여 달리 강제적으로 가입되는 자는 그 자가 거주하는 영역의 체약당사국의 법만을 적용받는다.

7. 가. 이 협정은 1961년 4월 18일의 외교관계에 관한 비엔나협약 또는 1963년 4월 24일의 영사관계에 관한 비엔나협약 또는 1963년 1월 8일의 한·미 영사협약의 규정에 영향을 미치지 아니한다.

나. 체약당사국중 일방의 국민은 그 체약당사국의 정부에 의하여 타방체약당사국의 영역에서 고용되었으나 위 가목에 언급된 협약에 의하여 타방체약당사국의 법으로부터 면제되지 아니하는 경우 전기 일방체약당사국의 법만을 적용받는다. 이 항의 목적상, 체약당사국 정부의 대행기관에 의한 고용은 그 정부에 의한 고용에 포함된다.

다. 한국에 있어서는, 한국의 지방정부에 의한 고용은 한국 정부에 의한 고용에 포함된다.

8. 양 체약당사국의 권한있는 당국은 특정한 자 또는 특정범주의 자에 관하여는 그들이 체약당사국중 일방의 법의 적용을 받는다는 조건으로 이 조의 규정에 대한 예외를 허용하는 데 합의할 수 있다.

제 3 부
급여에 관한 규정

제 5 조

다음의 규정은 한국에 적용된다.

1. 어떠한 자가 한국법에 따라서만 인정되는 가입기간에 근거하여서는 한국법에 따른 노령·유족 또는 장애급여에 대한 수급자격이 없는 경우, 한국의 실무기관은 수급권의 설정을 위하여 한국법 및 미국법에 따라 인정된 가입기간이 중복되지 아니하는 한 미국법에 따라 인정된 그 자의 가입기간을 고려한다. 전단은 그 자가 한국법에 따라 최소한 18월의 가입기간을 경과하지 아니하는 경우 노령·유족 또는 장애급여에 대한 수급권을 설정할 목적으로 적용되지 아니한다.

2. 장애급여 또는 유족급여를 받기 위하여는 어떠한 자가 보험사고의 발생시에 가입되어 있어야 한다는 한국법의 요건은 그 자가 미국법에 따라 급여를 위하여 보험에 가입하고 있거나 한국법에 따라 보험사고가 발생한 시점의 역분기를 마지막 분기로 하는 8역분기의 기간중 최소한 4가입분기를 미국법에 따라 인정받는 경우에는 그 요건을 충족한 것으로 간주된다.

3. 이 조에 따라 급여의 수급자격을 결정함에 있어서, 한국의 실무기관은 미국의 실무기관에 의하여 증명된 매 가입분기에 대하여 3월의 가입기간을 인정한다.

4. 미국법에 따른 가입기간이 이 조에 의하여 한국법에 따른 급여에 대한 수급자격을 설정하기 위하여 고려되는 경우, 지급할 급여는 다음 각목과 같이 결정된다.

가. 한국의 실무기관은 먼저 양 체약당사국의 법에 따라 인정되는 모든 가입기간이 한국법에 따라 완료되었을 경우 그 자에게 지급될 수 있는 금액과 동등한 기본연금액을 먼저 계산한다. 한국의 실무기관은 기본연금액을 결정하기 위하여 그 자가 한국법에 따라 가입한 기간의 평균표준월소득을 고려한다.

나. 한국의 실무기관은 위 가목에 따라 계산된 기본연금액을 기초로 하여, 한국법에 따라 고려되는 가입기간과 양 체약당사국의 법에 따라 고려되는 총 가입기간의 비율에 비례하여 한국법에 따라 지급되는 부분급여를 계산한다.

5. 이 조 제1항으로부터 발생하는 한국으로부터의 급여에 대한 수급권은 이 조 제1항의 규정을 원용할 필요없이 한국법에 따라 동등하거나 그보다 상위의 급여수급권을 설정하기에 충분한 가입기간의 취득에 의하여 소멸한다.

6. 가. 미국 국민은 기여금의 반환일시금에 관한 한국법의 규정의 적용에 있어서 언제 기여금이 납부되었는지와 관계없이 한국 국민과 동등한 대우를 받는다. 제3조제1항에 불구하고, 체약당사국외의 국민에게는 한국법에 따라 기여금의 반환일시금이 지급된다.

나. 기여금이 일시금으로 반환된 가입기간은 급여의 수급권을 결정하기 위한 기간을 합산함에 있어서 인정되는 것으로 한국 실무기관에 의하여 확인되지 아니한다.

제 6 조

다음의 규정은 미국에 적용된다.

1. 어떠한 자가 미국법에 따라 최소한 6가입분기를 완료하였으나 미국법에 따른 급여의 수급권을 취득하기 위한 요건을 충족하는 데 충분한 가입기간을 확보하지 못하는 경우, 미국의 실무기관은 이 조에 따른 급여에 대한 수급권을 설정할 목적으로 한국법에 따라 인정되는 가입기간으로서 미국법에 따라 이미 인정된 가입기간과 중복되지 아니한 가입기간을 고려한다.

2. 이 조 제1항에 따라 급여의 수급자격을 결정함에 있어서, 미국의 실무기관은 한국의 실무기관에 의하여 확인된 매 3가입월을 1가입분기로 인정한다. 그러나 미국법에 따라 가입분기로 이미 인정된 역분기는 가입분기로 인정되지 아니한다. 1년에 인정되는 가입분기의 총수는 4를 초과하지 아니한다.

3. 미국법에 따른 급여의 수급권이 이 조 제1항의 규정에 따라 설정되는 경우, 미국의 실무기관은

(가) 미국법에 따라서만 인정된 그 자의 평균소득 그리고

(나) 미국법에 따라 결정되는 평생가입기간에 대하여 미국법에 따라 완료된 그 자의 가입기간의 비율

을 기초로 하여 미국법에 따라 비례기본보험액을 계산한다. 미국법에 따라 지급되는 급여는 비례기본보험액을 기초로 한다.

4. 이 조 제1항으로부터 발생하는 미국으로부터의 급여에 대한 수급권은 이 조 제1항의 규정을 원용할 필요없이 미국법에 따라 동등하거나 그보다 상위의 급여수급권을 설정하기에 충분한 가입기간의 취득에 의하여 소멸한다.

제 4 부
보 칙

제 7 조

양 체약당사국의 권한있는 당국은,

가. 이 협정의 이행에 필요한 모든 행정약정을 체결하고 연락기관을 지정한다.

나. 이 협정의 적용을 위하여 취한 조치에 관한 정보를 상호 통보한다. 또한

다. 이 협정의 적용에 영향을 미칠 수 있는 그들 각자의 법의 모든 변경과 관련된 정보를 가능한 한 조속히 상호 통보한다.

제 8 조

체약당사국의 권한있는 당국과 실무기관은 그들 각자의 권한의 범위안에서 이 협정을 이행하는 데 상호 협조한다. 이 협조는 무료로 이루어지되, 행정약정에서 합의되는 경우에는 예외로 한다.

제 9 조

1. 양 체약당사국의 권한있는 당국과 실무기관은 합의된 조치에 따라 협정의 적용에 필요한 정보를 상호 통보한다.

2. 일방체약당사국의 국내 법률에 의하여 달리 요구되지 아니하는 한, 이 협정에 따라 그 일방체약당사국에게 타방체약당사국이 전달하는 개인에 관한 정보는 이 협정의 이행목적에 한하여 사용된다. 일방체약당사국이 접수한 그러한 정보는 사생활과 개인 정보비밀의 보호를 위한 일방체약당사국의 국내법률에 의하여 규율된다.

제 10 조

1. 일방체약당사국의 법이 그 일방체약당사국의 권한있는 당국 또는 실무기관에 제출되는 서류에 대하여 영사 및 행정수수료를 포함한 수수료 또는 비용의 전부 또는 일부가 면제되도록 규정하는 경우, 이러한 면제는 이 협정의 적용에 있어서 타방체약당사국의 권한있는 당국 또는 실무기관에 제출되는 그에 상응하는 서류에도 적용된다.

2. 이 협정의 목적을 위하여 제시되는 서류 및 확인서는 대사관 또는 영사관의 공증요건을 면제받는다.

3. 일방체약당사국의 실무기관에 의하여 정확한 사본으로 확인된 서류사본은 추가 확인의 절차없이 타방체약당사국의 실무기관에 의하여 정확한 사본으로 인정된다. 각 체약당사국의 실무기관은 출처에 관계없이 자신에게 제출된 증거물의 입증가치에 대한 최종 판단자가 된다.

제 11 조

1. 체약당사국의 권한있는 당국과 실무기관은 이 협정의 집행을 위하여 필요한 경우에는 언제든지 상호간에 직접 연락을 취할 수 있으며, 어떤 개인과도 거주지에 관계없이 연락을 취할 수 있다. 이 연락은 어느 일방체약당사국의 공식 언어로 이를 할 수 있다.

2. 신청서 또는 서류가 타방체약당사국의 공식언어로 작성되어 있다는 이유만으로 일방체약당사국의 권한있는 당국 또는 실무기관이 이를 거부하여서는 아니된다.

제 12 조

1. 서면급여신청이 일방체약당사국의 실무기관에 제출되는 때, 신청인이 이를 타방체약당사국의 법에 따른 신청으로 간주하여 줄 것을 요청하는 경우, 이는 타방체약당사국의 법에 따른 청구권자의 권리로서 보호된다.

2. 신청인이 일방체약당사국의 실무기관에 서면급여신청을 제출하면서 그 신청이 그 일방체약당사국의 법에 따른 급여에 한정되도록 명시적으로 요청하지 아니하는 경우, 그 신청은 타방체약당사국의 법에 따른 청구권자의 권리로서 보호된다. 다만, 이는 신청인이 신청서의 제출시에 그 기록에 따라 급여가 청구된 자가 타방체약당사국의 법에 따른 가입기간을 완료하였음을 나타내는 정보를 제공하는 경우에 한한다.

3. 제3부의 규정은 이 협정의 발효일에 또는 그후에 신청서가 제출된 급여에 대하여서만 적용된다.

제 13 조

1. 일방체약당사국의 실무기관이 행한 결정에 대한 서면이의신청은 어느 일방체약당사국의 실무기관에 대하여도 유효하게 제출될 수 있다. 이의신청은 그 이의신청의 대상이 된 결정을 행한 체약당사국의 절차와 법에 따라 처리된다.

2. 청구서 · 신고서 또는 서면이의신청은 일방체약당사국의 법에 따라 그 일방체약당사국의 실무기관에서 정한 기간내에 제출되어야 하나, 이에 갈음하여 동일기간내에 타방체약당사국의 실무기관에 제출되는 경우에는 그 기간내에 제출된 것으로 간주된다.

제 14 조

이 협정 제13조의 규정이 적용되는 모든 경우, 청구서 · 신고서 또는 서면 이의신청을 제출받은 실무기관은 이 협정 제7조가목에 따라 그 목적을 위하여 합의된 바대로 서류 또는 서식에 접수일을 표시하고 이를 타방체약당사국의 연락기관에 지체없이 전달한다.

제 15 조

1. 이 협정에 따른 지급은 그 지급을 행하는 체약당사국의 통화로 할 수 있다.

2. 환전 또는 국외송금을 제한하려고 하는 규정이 어느 일방체약당사국에 의하여 도입되는 경우 양 체약당사국의 정부는 즉시 어느 일방체약당사국이 이 협정에 따라 지급하여야 하는 금액의 송금을 보장하는 데 필요한 조치를 취한다.

제 16 조

이 협정의 해석 또는 적용에 관한 분쟁은 체약당사국간의 협의에 의하여 해결된다.

제 17 조

이 협정은 미래에 보충협정에 의하여 개정될 수 있으며, 그 보충협정은 발효시부터 이 협정의 불가분의 일부로 간주된다.

제 5 부

경과 및 최종규정

제 18 조

1. 이 협정은 협정의 발효일전의 어느 기간에 대한 급여의 지급청구권 또는 이 협정의 발효전에 어떠한 자가 사망한 경우의 사망일시급여에 관한 청구권을 설정하지 아니한다.

2. 이 협정에 따른 급여수급권을 결정함에 있어서 이 협정의 발효전에 발생한 가입기간과 기타 사건이 고려된다. 그러나, 어느 체약당사국도 자국의 법에 따라 인정될 수 있는 가입기간의 최초일전에 발생한 가입기간은 고려하지 아니한다.

3. 이 협정의 발효전에 행하여진 급여수급권에 관한 결정은 이 협정에 따라 발생하는 권리에 영향을 주지 아니한다.

4. 이 협정의 적용은 이 협정의 발효전에 수급권한이 설정된 급여의 액수의 감소를 초래하지 아니한다.

5. 이 협정의 발효일전에 일방체약당사국의 영역에 파견된 자의 경우 제4조제2항을 적용함에 있어서, 동항에서 언급된 고용기간은 그 발효일에 시작하는 것으로 간주된다.

제 19 조

이 협정은 이 협정의 발효를 위한 모든 헌법적·법률적 요건을 완료하였다는 서면 통보를 각 정부가 타방 정부로부터 접수한 달부터 세번째 달의 첫째 날에 발효한다.

제 20 조

1. 이 협정은 어느 일방체약당사국이 타방체약당사국에게 서면으로 이 협정의 종료를 통보한 연도의 다음 연도말까지 유효하다.

2. 이 협정이 종료되는 경우 이 협정에 따라 취득된 급여의 수급권한 또는 급여의 지급에 관한 권리는 존속한다. 체약당사국은 취득과정중에 있는 권리의 처리를 위한 약정을 체결한다.

이상의 증거로, 아래 서명자는 정당하게 권한을 위임받아 이 협정에 서명하였다.

2000년 3 월 13 일 워싱톤 에서 동등하게 정본인 한국어 및 영어로 각 2부씩 작성하였다.

대한민국을 위하여

이 정 빈

미합중국을 위하여

Madeleine Albright

[TRANSLATION -- TRADUCTION]

ACCORD DE SÉCURITÉ SOCIALE ENTRE LA RÉPUBLIQUE DE CORÉE ET LES ÉTATS-UNIS D'AMÉRIQUE

La République de Corée et les États-Unis d'Amérique (ci-après dénommés les “Parties contractantes”),

Désireux de réglementer les relations entre les deux pays dans le domaine de la sécurité sociale,

Sont convenus de ce qui suit :

TITRE I. DISPOSITIONS GÉNÉRALES

Article premier

1. Aux fins du présent Accord :

a) Le terme “ressortissant” désigne,

En ce qui concerne la Corée, un ressortissant de la République de Corée au sens de la loi sur la nationalité, telle que modifiée, et

En ce qui concerne les États-Unis, un ressortissant des États-Unis au sens de la section 101 de la Loi sur l'immigration (Immigration and Nationality Act), telle que modifiée;

b) Le terme “législation” désigne les lois et règlements visés à l'article 2 du présent Accord;

c) L'expression “autorité compétente” désigne :

Pour ce qui est de la Corée, le Ministre de la santé publique et de la protection sociale et en fonction du contexte le Ministre de l'emploi, et

Pour ce qui est des États-Unis, le Commissaire à la sécurité sociale;

d) Le terme “organisme gestionnaire” désigne :

Pour ce qui est de la Corée, le Régime national des retraites ou en fonction du contexte le Ministère de l'emploi et du bien-être social, et

Pour ce qui est des États-Unis, l'Administration de la sécurité sociale;

e) L'expression “période d'assurance” désigne une période de paiement de cotisations ou une période d'emploi salarié ou indépendant, telle que définie ou reconnue comme période d'assurance par la législation en vigueur durant ladite période ou toute période analogue considérée par ladite législation comme équivalant à une période d'assurance; et

f) Le terme prestation désigne toute prestation prévue dans la législation définie à l'article 2 du présent Accord.

2. Tout autre terme et toute autre expression qui ne seraient pas définis dans cet article aura le sens que lui attribue la législation applicable.

Article 2

1. Aux fins du présent Accord, la législation applicable est définie comme suit :

a) En ce qui concerne la Corée :

(i) la loi nationale sur les retraites ainsi que les décrets d'application et autres règlements qui s'y rapportent;

(ii) en ce qui concerne la Partie II uniquement, la législation sur les caisses d'assurance accidents du travail ainsi que les décrets d'application et autres règlements qui s'y rapportent;

b) En ce qui concerne les États-Unis, la législation régissant le programme fédéral d'assurance vieillesse, des pensions de réversion et d'assurance invalidité, à savoir :

(i) Le titre II de la Loi sur la sécurité sociale (Social Security Act) et les règlements y relatifs, à l'exception des articles 226, 226A et 228 dudit titre et les règlements y relatifs;

(ii) Les chapitres 2 et 21 du Code des impôts de 1986 (Internal Revenue Code) et les règlements y relatifs.

2. Sauf dispositions contraires du présent Accord, les lois visées au paragraphe 1 du présent article ne comprennent aucun traité ou autre accord international relatif à la sécurité sociale qui pourrait être conclu entre l'une des Parties et un État tiers, ou de lois ou règlements promulgués pour leur mise en oeuvre spécifique.

3. Le présent Accord s'applique également à toute législation future amendant ou complétant les lois spécifiées au paragraphe 1 du présent article.

Article 3

1. Une personne qui est ou a été soumise à la législation d'un des États contractants et qui réside sur le territoire de l'autre État contractant, de même que les personnes à sa charge, bénéficient d'un traitement égal à celui dont bénéficient les ressortissants de l'autre État contractant aux fins de l'application de la législation de cet autre État contractant concernant les droits aux prestations ou le service desdites prestations.

2. Sauf disposition contraire dans le présent Accord, les dispositions de la législation d'un État contractant qui restreignent les droits aux prestations ou le service desdites prestations uniquement parce que la personne réside en dehors du territoire ou est absente du territoire de cet État contractant ne seront pas applicables aux personnes qui résident sur le territoire de l'autre État contractant.

TITRE II. DISPOSITIONS EN MATIÈRE DE COUVERTURE

Article 4

1. Sauf disposition contraire dans le présent article, quiconque occupe un emploi sur le territoire de l'un ou de l'autre État contractant relève, s'agissant de cet emploi, exclusivement de la législation de cet État contractant.

2. Si une personne normalement employée sur le territoire d'un État contractant par un employeur ayant un siège d'activité sur ce territoire est détachée par cet employeur pour travailler pour le compte de celui-ci sur le territoire de l'autre État contractant, cette personne relève exclusivement de la législation du premier État contractant comme si elle était employée sur son territoire et ce, à condition qu'il soit prévu que la période de travail salarié sur le territoire de l'autre État contractant ne dépasse pas cinq ans. Aux fins d'application de la phrase précédente, un salarié, une filiale ou une succursale de l'employeur (tel que défini dans la législation de l'État contractant d'où la personne a été détachée) sont considérés comme constituant une seule et même entité pour autant que le travail salarié effectué sur le territoire de l'autre État contractant eût, en l'absence du présent Accord, été couvert par la législation de l'État contractant d'où la personne a été détachée.

3. Les dispositions du paragraphe 2 du présent article sont d'application lorsqu'une personne qui a été détachée par son employeur du territoire d'un État contractant sur le territoire d'un État tiers est par la suite envoyée par cet employeur du territoire de l'État tiers sur le territoire de l'autre État contractant.

4. Toute personne exerçant un travail en tant qu'indépendant et qui réside sur le territoire d'un État contractant relève de la législation de ce dernier.

5. Lorsqu'une même activité est considérée comme un travail indépendant en vertu de la législation d'un État contractant et un emploi en vertu de la législation de l'autre État contractant, cette activité relève exclusivement de la législation du premier État contractant si la personne est un résident de cet État et exclusivement de la législation de l'autre État contractant dans tout autre cas.

6. Une personne qui serait obligatoirement couverte par la législation des deux États contractants dans le cadre d'un emploi exercé en tant qu'officier ou membre de l'équipage d'un navire ou d'un aéronef relève exclusivement de la législation de l'État contractant sur le territoire duquel elle réside.

7. a) Par le présent Accord, il n'est pas dérogé aux dispositions de la Convention de Vienne relative aux relations diplomatiques du 18 avril 1961, à la Convention de Vienne relative aux relations consulaires du 24 avril 1963, ou à la Convention consulaire entre les États-Unis et la Corée du 8 janvier 1963.

b) Les ressortissants de l'un des États contractants qui exercent un emploi rémunéré pour le compte dudit État contractant sur le territoire de l'autre État contractant, mais qui ne sont pas exclus du champ d'application de la législation de l'autre État contractant en vertu des Conventions visées à l'alinéa précédent, ne sont soumis qu'à la législation du premier État contractant. Aux fins des dispositions du présent alinéa, les employés au service du Gouvernement d'un État contractant comprennent les employés au service d'un organisme gestionnaire relevant dudit Gouvernement.

c) En ce qui concerne la Corée, les employés du Gouvernement coréen comprennent les employés des gouvernements coréens locaux.

8. Les autorités compétentes des deux États contractants peuvent convenir que certaines personnes ou catégories de personnes pourront bénéficier de dérogations aux dispositions du présent article à condition que lesdites personnes soient soumises à la législation de l'un des États contractants.

TITRE III. DISPOSITIONS APPLICABLES AUX PRESTATIONS

Article 5

Les dispositions qui suivent s'appliquent à la Corée :

1. Si un intéressé ne remplit pas les conditions d'obtention de l'allocation de vieillesse, de la pension de survivant ou de la prestation d'incapacité prévues dans la législation coréenne en fonction des périodes de couverture validées exclusivement en application de la législation coréenne, l'organisme gestionnaire coréen tiendra compte des périodes de versements de l'intéressé validées en application de la législation des États-Unis, dans la mesure où elles ne coïncident pas, aux fins de déterminer les droits de ladite personne, aux prestations prévues par la législation coréenne. La phrase précédente n'est pas d'application lorsqu'il s'agit de déterminer le droit à l'obtention de l'allocation de vieillesse, de la pension de survivant ou de la prestation d'incapacité sauf si l'intéressé a accompli un stage en tant qu'assuré d'une durée au moins égale à 18 mois au titre de la législation coréenne.

2. La disposition de la législation coréenne précisant que pour obtenir une prestation d'incapacité ou une pension de survivant, le bénéficiaire doit être assuré lorsque l'incident qui donne droit à l'assurance se produit, est considérée comme satisfaite si l'intéressé est assuré pour une prestation au titre de la législation des États-Unis ou a une validation pour au moins quatre trimestres de versements au titre de la législation des États-Unis pendant une période de huit trimestres civils se terminant par le trimestre civil dans lequel l'événement assuré se produit conformément à la législation coréenne.

3. Lorsqu'il détermine le droit aux prestations dont il est question dans le présent article, l'organisme gestionnaire coréen valide trois mois de versements pour chaque trimestre de versements attesté par l'organisme gestionnaire des États-Unis.

4. Lorsque des périodes de versements au titre de la législation des États-Unis sont prises en compte pour établir le droit aux prestations au titre de la législation coréenne conformément au présent article, la prestation à verser est déterminée de la manière suivante :

a) L'organisme gestionnaire coréen calcule d'abord le montant de la pension de base égal au montant qui aurait été payé à l'intéressé si toutes les périodes de versement validées au titre de la législation des deux États contractants ont été accomplies en application de la législation coréenne. Pour déterminer le montant de la pension de base, l'organisme gestionnaire coréen tient compte du revenu mensuel moyen perçu par l'intéressé lorsqu'il relevait de la législation coréenne.

b) L'organisme gestionnaire coréen calcule ensuite la prestation partielle à verser conformément à la législation coréenne en se fondant sur le montant de la pension de base calculée conformément aux dispositions de l'alinéa précédent proportionnellement au rapport entre la durée des périodes de versements prises en considération dans le cadre de sa propre législation et la durée totale des périodes de versements prises en considération dans le cadre de la législation des deux États contractants.

5. Le droit à une prestation ouvert en Corée en vertu du paragraphe 1 du présent article est éteint lorsque le nombre des périodes d'assurance totalisées conformément à la législation coréenne est suffisant pour donner droit à une prestation d'un montant égal ou

supérieur sans qu'il soit nécessaire de faire jouer la disposition du paragraphe 1 du présent article.

6. a) Les citoyens des États-Unis recevront un traitement équivalent à celui des citoyens coréens dans l'application des dispositions de la législation coréenne en matière de remboursements forfaitaires des cotisations et ce, indépendamment du moment où les cotisations ont été versées. Nonobstant les dispositions du paragraphe 1 de l'article 3, les remboursements forfaitaires sont, en vertu de la législation coréenne, versés aux ressortissants d'un État autre que les États contractants.

b) Les périodes de versements pour lesquelles des cotisations ont été remboursées de manière forfaitaire ne sont pas attestées par l'organisme gestionnaire coréen comme étant validables lorsque l'on totalise les périodes servant à déterminer le droit à la prestation.

Article 6

Les dispositions qui suivent s'appliquent aux États-Unis :

1. Lorsqu'une personne totalise au moins six trimestres d'assurance au titre de la législation des États-Unis mais n'a pas un nombre suffisant de périodes de versements pour remplir les conditions prévues par ladite législation pour pouvoir bénéficier de prestations, l'organisme gestionnaire des États-Unis fait entrer en ligne de compte, aux fins de l'établissement du droit aux prestations conformément au présent article, les périodes d'assurance qui sont validées au titre de la législation coréenne et qui ne coïncident pas avec des périodes d'assurance déjà validées au titre de la législation des États-Unis.

2. Lorsqu'il détermine le droit aux prestations conformément aux dispositions du paragraphe 1 du présent article, l'organisme gestionnaire des États-Unis valide un trimestre d'assurance pour chaque période de trois mois d'assurance attestée par l'organisme gestionnaire coréen; toutefois, il n'est pas tenu compte des trimestres d'une année civile déjà validés en tant que trimestres d'assurance au regard de la législation des États-Unis. Au total, il ne peut être validé plus de quatre trimestres d'assurance par an.

3. Lorsque le droit à une prestation prévu par la législation des États-Unis est établi conformément aux dispositions du paragraphe 1 du présent article, l'organisme gestionnaire des États-Unis calcule le montant proportionnel de l'assurance de base à partir : (a) de la moyenne des revenus validés de l'intéressé exclusivement en vertu de la législation des États-Unis; et (b) du taux obtenu en divisant la durée des périodes d'assurance totalisées conformément à la législation des États-Unis par la durée maximale des périodes validables pendant toute la vie des assurés telle qu'elle est fixée par la législation des États-Unis. La liquidation des prestations dues conformément à la législation des États-Unis s'opère sur la base du montant proportionnel de l'assurance de base.

4. Le droit à une prestation ouvert aux États-Unis en vertu du paragraphe 1 du présent article est éteint lorsque le nombre des périodes d'assurance totalisées conformément à la législation des États-Unis est suffisant pour donner droit à une prestation d'un montant égal ou supérieur sans qu'il soit nécessaire de faire jouer la disposition du paragraphe 1 du présent article.

TITRE IV. DISPOSITIONS DIVERSES

Article 7

Les autorités compétentes des deux États contractants :

a) Arrêtent toutes les dispositions administratives nécessaires à l'application du présent Accord et désignent les organismes de liaison;

b) Se communiquent tous renseignements concernant les mesures prises aux fins de l'application du présent Accord; et

c) Se transmettent, dans les plus brefs délais, des renseignements sur les modifications apportées à leurs législations respectives susceptibles d'avoir une incidence sur l'application du présent Accord.

Article 8

Dans les limites de leur compétence, les autorités compétentes et les organismes gestionnaires des États contractants se prêtent assistance aux fins de l'application du présent Accord. Cette assistance est gratuite, sous réserve de certaines exceptions qui sont convenues dans un arrangement administratif.

Article 9

1. Conformément aux mesures restant à convenir, les autorités compétentes et les organismes gestionnaires des deux États contractants se transmettent les renseignements nécessaires à l'application du présent Accord.

2. À moins que la législation d'un État contractant n'en dispose autrement, les renseignements relatifs à une personne transmis conformément aux dispositions du présent Accord à cet État contractant sont utilisés exclusivement aux fins de l'application du présent Accord. Les renseignements ainsi reçus par un État contractant sont régis par la législation de cet État contractant dans le but de protéger la vie privée et la confidentialité de données à caractère personnel.

Article 10

1. Lorsque la législation d'un État contractant dispose que tout document soumis à l'autorité compétente ou à l'organisme gestionnaire dudit État contractant est dispensé, en tout ou en partie, de droits ou redevances, y compris de taxes consulaires et administratives, ladite exemption s'applique également aux documents correspondants soumis à l'autorité compétente ou à l'organisme gestionnaire de l'autre État contractant en application du présent Accord.

2. Les documents et certificats produits aux fins du présent Accord sont dispensés de l'obligation de légalisation par les autorités diplomatiques et consulaires.

3. Les copies de documents certifiés véridiques et conformes par l'organisme gestionnaire d'un État contractant sont acceptés en tant que telles par l'organisme gestionnaire

de l'autre État contractant, sans autre formalité. L'organisme gestionnaire de chaque État contractant décide en dernier ressort de la valeur probante des pièces justificatives qui lui sont soumises, quelle qu'en soit l'origine.

Article 11

1. Les autorités compétentes et les organismes gestionnaires des États contractants peuvent échanger de la correspondance directement entre eux et avec toute personne, où qu'elle réside, pour les besoins de la mise en oeuvre du présent Accord. La correspondance peut être rédigée dans la langue officielle de l'État contractant.

2. Une demande ou un document ne peuvent pas être rejetés par l'autorité compétente ou l'organisme gestionnaire de l'un des États contractants au motif que cette demande ou ce document sont rédigés dans la langue officielle de l'autre État contractant.

Article 12

1. Le dépôt d'une demande écrite de prestations auprès de l'organisme gestionnaire d'un État contractant protège les droits des ayants droit en vertu de la législation de l'autre État contractant si l'auteur de ladite demande indique que celle-ci doit être considérée comme une demande conforme à la législation de cet autre État contractant.

2. À moins que l'auteur de la demande écrite de prestations déposée auprès de l'organisme gestionnaire d'un État contractant n'indique expressément que sa demande ne vise que des prestations prévues par la législation de cet État contractant, le dépôt de cette demande protège également les droits des ayants droit au regard de la législation de l'autre État contractant, à condition qu'au moment où il dépose sa demande, son auteur fournisse des renseignements prouvant que la personne du chef de famille de laquelle des prestations sont réclamées a totalisé des périodes d'assurance en application de la législation de cet autre État contractant.

3. Les dispositions du Titre III ne visent que les demandes de prestations qui sont déposées à la date ou après la date d'entrée en vigueur du présent Accord.

Article 13

1. Un recours contre une décision prise par un État contractant peut être valablement formé par écrit devant l'organisme gestionnaire de l'un ou de l'autre État contractant. Le recours est examiné conformément à la procédure et à la législation de l'État contractant dont la décision est contestée.

2. Toute réclamation, notification ou tout recours écrit qui, aux termes de la législation d'un État contractant, doit être présenté à l'organisme gestionnaire dudit État contractant dans certains délais, mais qui est cependant déposé dans les mêmes délais auprès de l'organisme gestionnaire de l'autre État contractant, est réputé avoir été soumis dans les délais prescrits.

Article 14

Dans tous les cas visés par les dispositions de l'article 13 du présent Accord, l'organisme gestionnaire qui a été saisi de la réclamation, de la notification ou du recours écrit, inscrit la date à laquelle la pièce pertinente a été reçue sur la pièce ou sur un formulaire agréé au sens de l'article 7 (a) du présent Accord et la transmet sans retard à l'organisme gestionnaire de l'autre État contractant.

Article 15

1. Les paiements auxquels il est procédé en vertu du présent Accord peuvent être effectués dans la monnaie de l'État contractant qui les fait.

2. Si l'un ou l'autre des États contractants adopte des dispositions visant à soumettre le change ou l'exportation de devises à certaines restrictions, les Gouvernements respectifs des deux États contractants prennent immédiatement les mesures nécessaires pour assurer le virement des sommes dues par l'un ou l'autre des États contractants conformément au présent Accord.

Article 16

Tout différend relatif à l'interprétation ou à l'application du présent Accord est résolu par consultation entre les États contractants.

Article 17

Le présent Accord peut être amendé ultérieurement par des accords supplémentaires lesquels, à compter de leur entrée en vigueur, sont considérés comme faisant partie intégrante du présent Accord.

TITRE V. DISPOSITIONS TRANSITOIRES ET FINALES

Article 18

1. Le présent Accord n'ouvre aucun droit au service d'une prestation pour les périodes antérieures à son entrée en vigueur ou au versement d'une prestation forfaitaire en cas de décès de l'assuré avant sa mise en application.

2. Lorsque le droit aux prestations visées dans le présent Accord est déterminé, il est tenu compte des périodes d'assurance totalisées et des autres événements qui se sont produits avant l'entrée en vigueur du présent Accord. Toutefois, ni l'un ni l'autre État contractant ne fait entrer en ligne de compte les périodes d'assurance antérieures à la date à partir de laquelle les périodes d'assurance peuvent être validées aux termes de sa législation.

3. Les déterminations de droits à prestations qui ont été faites avant l'entrée en vigueur du présent Accord n'affectent pas les droits qui en découlent.

4. L'application du présent Accord n'aura pas pour effet de réduire le montant d'une prestation dont le droit à son obtention a été établi antérieurement à son entrée en vigueur.

5. En application du paragraphe 2 de l'article 4, dans le cas d'une personne qui aurait été envoyée dans le territoire d'un État contractant avant la date d'entrée en vigueur du présent Accord, la période d'emploi visée dans ce paragraphe est considérée commencer à cette date.

Article 19

Le présent Accord entrera en vigueur le premier jour du troisième mois suivant le mois au cours duquel chaque Gouvernement aura reçu de l'autre Gouvernement une communication écrite lui notifiant qu'il a accompli toutes les formalités législatives et constitutionnelles requises pour l'entrée en vigueur du présent Accord.

Article 20

1. Le présent Accord demeurera en vigueur et produira ses effets jusqu'à la fin de l'année civile faisant suite à l'année au cours de laquelle l'un ou l'autre État contractant aura adressé à l'autre État contractant une notification écrite y mettant fin.

2. S'il est mis fin au présent Accord, les droits concernant le droit à prestations et le service desdites prestations reconnus par le présent Accord sont acquis. Les États contractants adoptent tous arrangements nécessaires concernant les droits en cours d'acquisition.

En foi de quoi, les soussignés, à ce dûment autorisés, ont signé le présent Accord.

Fait à Washington le 13 mars 2000, en double exemplaire, en langues coréenne et anglaise, les deux textes faisant également foi.

Pour la République de Corée :

LEE JOUNG-BINN

Pour les États-Unis d'Amérique

MADELEINE ALBRIGHT

No. 43286

Republic of Korea
and
Uzbekistan

Agreement between the Government of the Republic of Korea and the Government of the Republic of Uzbekistan concerning loans from the Economic Development Cooperation Fund. Tashkent, 8 July 1999

Entry into force: *8 July 1999 by signature, in accordance with article 10*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

Not published herein in accordance with article 12(2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended.

République de Corée
et
Ouzbékistan

Accord entre le Gouvernement de la République de Corée et le Gouvernement de la République d'Ouzbékistan relatif à des prêts du Fonds de coopération au développement économique. Tashkent, 8 juillet 1999

Entrée en vigueur : *8 juillet 1999 par signature, conformément à l'article 10*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

Non publié ici conformément au paragraphe 2 de l’article 12 du règlement de l’Assemblée générale destiné à mettre en application l’Article 102 de la Charte des Nations Unies, tel qu’amendé.

No. 43287

Republic of Korea
and
Uzbekistan

Arrangement between the Government of the Republic of Korea and the Government of the Republic of Uzbekistan concerning a loan from the Economic Development Cooperation Fund. Tashkent, 8 July 1999

Entry into force: *8 July 1999 by signature, in accordance with article 7*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

Not published herein in accordance with article 12(2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended.

République de Corée
et
Ouzbékistan

Arrangement entre le Gouvernement de la République de Corée et le Gouvernement de la République d'Ouzbékistan relatif à un prêt du Fonds de coopération au développement économique. Tashkent, 8 juillet 1999

Entrée en vigueur : *8 juillet 1999 par signature, conformément à l'article 7*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

Non publié ici conformément au paragraphe 2 de l'article 12 du règlement de l'Assemblée générale destiné à mettre en application l'Article 102 de la Charte des Nations Unies, tel qu'amendé.

No. 43288

Republic of Korea
and
Uzbekistan

Arrangement between the Government of the Republic of Korea and the Government of the Republic of Uzbekistan concerning a loan from the Economic Development Cooperation Fund. Tashkent, 1 March 2000

Entry into force: *1 March 2000 by signature, in accordance with article 7*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

Not published herein in accordance with article 12(2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended.

République de Corée
et
Ouzbékistan

Arrangement entre le Gouvernement de la République de Corée et le Gouvernement de la République d'Ouzbékistan relatif à un prêt du Fonds de coopération au développement économique. Tashkent, 1 mars 2000

Entrée en vigueur : *1er mars 2000 par signature, conformément à l'article 7*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

Non publié ici conformément au paragraphe 2 de l'article 12 du règlement de l'Assemblée générale destiné à mettre en application l'Article 102 de la Charte des Nations Unies, tel qu'amendé.

No. 43289

Republic of Korea
and
Uzbekistan

Exchange of notes for the dispatch of the Korean medical team between the Government of the Republic of Korea and the Government of the Republic of Uzbekistan. Tashkent, 10 and 18 July 2000

Entry into force: *18 July 2000, in accordance with the provisions of the said notes*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

Not published herein in accordance with article 12(2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended.

République de Corée
et
Ouzbékistan

Échange de notes relatif à l'envoi de l'équipe médicale coréenne entre le Gouvernement de la République de Corée et le Gouvernement de la République d'Ouzbékistan. Tashkent, 10 et 18 juillet 2000

Entrée en vigueur : *18 juillet 2000, conformément aux dispositions desdites notes*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

Non publié ici conformément au paragraphe 2 de l'article 12 du règlement de l'Assemblée générale destiné à mettre en application l'Article 102 de la Charte des Nations Unies, tel qu'amendé.

No. 43290

Republic of Korea
and
Indonesia

Exchange of notes for the dispatch of the Korean Taekwondo instructor between the Government of the Republic of Korea and the Government of the Republic of Indonesia. Jakarta, 12 December 2001

Entry into force: *12 December 2001, in accordance with the provisions of the said notes*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

Not published herein in accordance with article 12(2) of the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations, as amended.

République de Corée
et
Indonésie

Échange de notes relatif à l'envoi de l'instructeur coréen de Taekwondo entre le Gouvernement de la République de Corée et le Gouvernement de la République d'Indonésie. Jakarta, 12 décembre 2001

Entrée en vigueur : *12 décembre 2001, conformément aux dispositions desdites notes*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

Non publié ici conformément au paragraphe 2 de l'article 12 du règlement de l'Assemblée générale destiné à mettre en application l'Article 102 de la Charte des Nations Unies, tel qu'amendé.

No. 43291

Republic of Korea
and
Uzbekistan

Agreement between the Government of the Republic of Korea and the Government of the Republic of Uzbekistan regarding mutual assistance in customs matters. Seoul, 5 October 1999

Entry into force: *1 December 1999 by notification, in accordance with article 17*

Authentic texts: *English, Korean and Uzbek*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

République de Corée
et
Ouzbékistan

Accord d'assistance mutuelle en matière douanière entre le Gouvernement de la République de Corée et le Gouvernement de la République d'Ouzbékistan. Séoul, 5 octobre 1999

Entrée en vigueur : *1er décembre 1999 par notification, conformément à l'article 17*

Textes authentiques : *anglais, coréen et ouzbek*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

[ENGLISH TEXT — TEXTE ANGLAIS]

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF UZBEKISTAN REGARDING MUTUAL ASSISTANCE IN CUSTOMS MATTERS

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

Considering that the offences against Customs legislation are prejudicial to the economic, fiscal and commercial interests of their respective countries,

Considering the importance of assuring the accurate assessment of Customs duties, taxes, fees and other charges,

Recognizing the need for international co-operation in matters related to the administration and enforcement of the Customs legislation,

Convinced that action against Customs offences can be made more effective by co-operation between their Customs Authorities,

Having regard to the Recommendation of the Customs Co-operation Council (World Customs Organization) on Mutual Administrative Assistance of December 5, 1953,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "Customs legislation" shall mean laws and regulations, enforced or administered by the Customs Authorities of the Contracting Parties governing the import, export, transit of goods and any customs procedure, including measures of prohibition, restriction and control;

2. The term "Customs offence" shall mean any breach or attempted breach of Customs legislation;

3. The term "Customs duties and taxes" shall mean Customs duties, taxes, fees and other charges which are collected on or in connection with the importation or exportation of goods; and

4. The term "Customs Authorities" shall mean in the Republic of Korea, the Korea Customs Service; and in the Republic of Uzbekistan, the State Customs Committee.

Article 2. Scope of the Agreement

1. All assistance under this Agreement by either Contracting Party shall be performed in accordance with its national legislation and within the competence and available resources of its Customs Authority.

2. The Customs Authorities of the Contracting Parties shall co-operate and assist each other in the prevention, investigation and combating of customs offences in accordance with the provisions of this Agreement.

Article 3. Scope of Assistance

1. At the request of the Customs Authority of one Contracting Party, the Customs Authority of the other Contracting Party shall communicate all available information which may help in ensuring the enforcement of Customs legislation, including:

(a) ensuring the proper assessment of Customs duties and taxes;

(b) accurate assessment of the value of goods for Customs purposes; and

(c) determination of the tariff classification and the origin of goods.

2. Assistance, as provided in this Agreement, shall include, but not be limited to, information related to:

(a) enforcement actions that might be useful in preventing Customs offences and, in particular, special means of combating Customs offences;

(b) new methods used in committing Customs offences;

(c) observations and findings resulting from the successful application of new enforcement aids and techniques; and

(d) techniques and improved methods of processing passengers and cargo.

Article 4. Assistance on Control

1. At the request of the Customs Authority of one Contracting Party, the Customs Authority of the other Contracting Party shall communicate to that Customs Authority information concerning the following matters:

(a) whether goods imported into the territory of the requesting Contracting Party have been lawfully exported from the territory of the other Contracting Party; and

(b) whether goods exported from the territory of the requesting Contracting Party have been lawfully imported into the territory of the requested Contracting Party.

2. Such information shall also specify the Customs procedures used for clearing the goods.

Article 5. Confidentiality of Information

1. Any information, documents or other communications communicated or obtained under this Agreement shall be treated as confidential and may be used only for the purposes specified in this Agreement. They shall be afforded in the receiving country the same protection in respect of secrecy as applies in that country to the same kind of information, documents or other such communications obtained in its own territory.

2. The requesting Contracting Party shall not use information obtained under this Agreement for purposes other than those stated in the request without the prior consent of the requested Contracting Party.

Article 6. Exemptions from Assistance

1. If the requested Contracting Party considers that the assistance sought would infringe upon its sovereignty, security or other substantial national interests, or would involve violation of its national legislation as well as industrial, commercial or professional secrets, it may decline to provide that assistance or give it subject to certain conditions or requirements.

2. If the requested assistance is declined, the requesting Contracting Party shall be informed in writing about the decision and the reason for refusal as soon as possible.

3. Assistance may be postponed by the requested Contracting Party on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case the requested Contracting Party shall consult with the requesting Contracting Party to determine if assistance can be given subject to such terms or conditions as the requested Contracting Party may require.

4. In case where the Customs Authority of the requesting Contracting Party asks for assistance which it would itself be unable to provide if so asked, it shall draw attention to that fact in its request. Compliance with such a request shall then be at the discretion of the Customs Authority of the requested Contracting Party.

Article 7. Form and Substance of Request for Assistance

1. Requests pursuant to this Agreement shall be made in writing and shall be accompanied by any documents deemed useful. When the circumstances so require, oral requests may be accepted, but must be confirmed in writing immediately.

2. Requests pursuant to paragraph 1 of this Article shall include the following details:

(a) the requesting Customs Authority;

(b) the brief description of the request;

(c) the object of and the reason for the request;

(d) the laws, rules and other legal elements involved;

(e) indications as exact and comprehensive as possible on the natural or legal persons being the target of the request; and

(f) a summary of the relevant facts.

3. Requests in writing shall be in English. Any documents accompanying such requests shall be translated into English, if necessary.

Article 8. Channel of Communication

1. Assistance under this Agreement shall be carried out by direct communication between the respective Customs Authorities.

2. In case the Customs Authority of the requested Contracting Party is not the appropriate agency to comply with a request, it shall, after appropriate consultation, either promptly transmit the request to the appropriate agency who shall act upon the request according to its powers under the law of the requested Contracting Party or advise the Customs Authority of the requesting Contracting Party of the appropriate procedure to be followed regarding such a request.

Article 9. Execution of Requests

1. The requested Customs Authority shall, subject to its national legislation, take all reasonable measures to execute the request within a reasonable amount of time.

2. The Customs Authority of either Contracting Party shall, upon the request of the Customs Authority of the other Contracting Party, conduct any necessary inquiries, including, where necessary, the taking of statements of experts.

Article 10. Documents

1. The Customs Authority of one Contracting Party shall, on its own initiative or upon request, supply to the Customs Authority of the other Contracting Party reports and/or certified copies of documents giving available information on transactions, completed or planned, which constitute, or appear to constitute an offence of the Customs legislation of that Contracting Party.

2. The documents provided for in this Agreement may be replaced by computerized information produced in any form for the same purpose. All relevant information for the interpretation or utilization of the material should be supplied at the same time.

3. Original documents shall be requested only in cases where certified copies would be inadequate. Original documents received from the Customs Authority of the other Contracting Party shall be returned without delay.

Article 11. Witnesses and Experts

1. The Customs Authority of one Contracting Party, upon request, may authorize their officials in accordance to their national legislation, if such officials consent to do so, to appear as witnesses and/or experts in administrative or judicial proceedings in the matter of Customs offences in the territory of the other Contracting Party.

2. The request pursuant to paragraph 1 of this Article must clearly indicate in what case and in what capacity the official is to appear.

Article 12. Exchange of Experience

1. The Customs Authorities of the Contracting Parties shall exchange their experience in the field of:

(a) Customs legislation;

(b) methods of Customs control over goods, passengers' luggage and postal consignments;

(c) organizational set-up;

(d) technical equipment used for Customs control purposes; and

(e) other matters of common interests.

2. The Customs Authorities of the Contracting Parties shall co-operate in the field of the Customs matters including:

(a) exchange of Customs experts and officers;

(b) professional training of Customs officers; and

(c) exchange of professional, scientific and technical data relating to Customs matters.

Article 13. Special Instances of Assistance

The Customs Authority of one Contracting Party, upon the request of the Customs Authority of the other Contracting Party, shall, within its competence and available resources, carry out special surveillance of means of transportation suspected of being used in the commission of Customs offences within the territory of the requesting Contracting Party, goods designated by the requesting Contracting Party as the object of an extensive clandestine trade of which that Contracting Party is the country of destination, and particular persons known to be or suspected of being engaged in the commission of a Customs offence.

Article 14. Costs

1. The Contracting Parties shall ordinarily waive all claims for reimbursement of costs incurred in the execution of this Agreement, with the exception of expenses for witnesses, fees of experts and costs of interpreters other than government employees.

2. If expenses of a substantial and extraordinary nature are or will be required to execute the request, the Contracting Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

Article 15. Implementation of the Agreement

1. The Customs Authorities of the Contracting Parties may conclude other arrangements to facilitate the implementation of this Agreement.

2. The Customs Authorities of the Contracting Parties shall endeavor by mutual accord to resolve any problem arising from the interpretation or application of this Agreement.

3. Conflicts for which no solutions are found shall be settled through diplomatic channels.

Article 16. Amendment

The Contracting Parties may, at any time, amend this Agreement by mutual consent.

Article 17. Entry into Force and Termination

1. This Agreement shall enter into force after thirty days from the date of receiving last notification through diplomatic channels on the fulfillment by the Contracting Parties of the national formalities required for the entry into force of this Agreement.

2. This Agreement shall remain in force for an unspecified period of time. It shall be terminated three months from the date on which either Contracting Party gives written notice through diplomatic channels of its desire for the termination of this Agreement to the other Contracting Party. Ongoing proceedings at the time of termination shall nonetheless be completed in accordance with the provisions of this Agreement.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at Seoul on 5 October 1999, in the Korean, Uzbek, and English languages, all texts being equally authentic. In case of divergence of interpretation of the provisions of this Agreement, the English text shall prevail.

For the Government of the Republic of Korea:

HONG SOON-YOUNG

For the Government of the Republic of Uzbekistan:

ABDULAZIZ KAMILOV

[KOREAN TEXT — TEXTE CORÉEN]

대한민국 정부와 우즈베키스탄공화국 정부간의 세관분야에서의 공조에 관한 협정

대한민국 정부와 우즈베키스탄공화국 정부(이하 "체약당사자"라 한다)는,

관세법 위반이 각자의 경제적 · 재정적 및 상업적 이익을 침해함을 고려하고,

관세 · 제세 · 수수료 및 기타 부과금의 정확한 산정을 보장하는 것이 중요함을 고려하며,

관세법의 집행과 관련되는 사안에서 국제협력의 필요성을 인식하고,

양국의 세관당국간 협력을 통하여 관세범죄에 대한 조치가 더욱 효과적으로 행하여질 수 있다고 확신하며,

1953년 12월 5일의 행정공조에 관한 관세협력이사회의 권고를 고려하여,

다음과 같이 합의하였다.

제 1 조
정 의

이 협정의 목적을 위하여

1. "관세법"이라 함은 체약당사자의 세관당국에 의하여 집행되는 것으로서 물품의 수입 · 수출 · 통과 및 금지 · 제한 · 통제조치를 포함하는 세관절차를 규율하는 법령을 말한다.

2. "관세범죄"라 함은 관세법의 위반 또는 미수행위를 말한다.

3. "관세 및 제세"라 함은 물품의 수출입과 관련하여 징수되는 관세 · 제세 · 수수료 및 기타 부과금을 말한다.

4. "세관당국"이라 함은 대한민국에서는 관세청, 우즈베키스탄공화국에서는 국가관세위원회를 말한다.

제 2 조
협정의 범위

1. 이 협정에 따라 어느 일방체약당사자가 제공하는 모든 공조는 국내법에 따라 세관당국의 권한 및 가용재원의 범위안에서 이행된다.

2. 체약당사자의 세관당국은 이 협정의 규정에 따라 관세범죄의 예방·수사 및 퇴치에 상호 협력하고 공조한다.

제 3 조
공조의 범위

1. 타방체약당사자의 세관당국은, 일방체약당사자의 세관당국의 요청에 따라, 다음 사항을 포함하여 관세법의 집행을 보장하는 데 도움이 될 수 있는 모든 가용 정보를 전달한다.

가. 관세 및 제세의 적절한 산정의 보장

나. 관세목적을 위한 물품가치의 정확한 산정, 그리고

다. 품목분류 및 원산지의 결정

2. 이 협정에 규정된 공조는 다음과 관련된 정보를 포함하나 이에 한정되지 아니한다.

가. 관세범죄예방에 유용한 집행조치, 그리고 특히 관세범죄퇴치의 특수한 수단

나. 관세범죄를 범하는 데 사용되는 새로운 방법

다. 새로운 단속도구 및 기술을 성공적으로 적용한 결과로서의 관찰 및 발견사항
라. 여객 및 화물의 처리기술과 개선된 방법

제 4 조
통제에 대한 공조

1. 타방체약당사자의 세관당국은, 일방체약당사자의 세관당국의 요청에 따라, 다음 사항과 관련된 정보를 그 세관당국에 전달한다.

가. 요청체약당사자의 영역으로 수입된 물품이 타방체약당사자의 영역으로부터 합법적으로 수출되었는지 여부

나. 요청체약당사자의 영역으로부터 수출된 물품이 피요청체약당사자의 영역으로 합법적으로 수입되었는지 여부

2. 그러한 정보에는 당해 물품의 통관에 이용된 세관절차가 명시된다.

제 5 조
정보의 비밀

1. 이 협정에 따라 전달되거나 획득된 모든 정보·문서 및 기타 통신은 비밀로 취급되며 이 협정에 명시된 목적에 한하여 사용될 수 있다. 이들은 접수국이 자국의 영역안에서 획득한 동종의 정보·문서 및 통신 등에 대하여 그 접수국에서 비밀에 관하여 적용하는 것과 같은 동일한 보호를 받는다.

2. 요청체약당사자는 이 협정에 의하여 획득한 정보를 피요청체약당사자의 사전동의없이 요청으로 명시된 이외의 목적에 사용할 수 없다.

제 6 조
공조로부터의 면제

1. 피요청체약당사자는 요청된 공조가 자국의 주권·안보 또는 기타 중요한 국익을 침해하거나, 국내법과 산업상·상업상 또는 직업상의 비밀을 위반할 가능성이 있다고 생각되는 경우, 이 공조의 제공을 거부하거나 또는 특정한 조건이나 요건을 부과하여 공조를 제공할 수 있다.

2. 요청된 공조가 거절되는 경우, 요청체약당사자에게 서면으로 거절의 결정과 그 사유에 대하여 지체없이 통보한다.

3. 피요청체약당사자는 공조가 진행중인 수사와 기소 또는 소송절차를 방해한다는 이유로 공조를 연기할 수 있다. 이 경우, 피요청체약당사자는 요청당사자와 협의하여 피요청당사자가 필요로 하는 조건을 부과하여 공조를 제공할 수 있는지 여부를 결정한다.

4. 요청체약당사자의 세관당국은 그 당국이 그와 같은 요청을 받는다면 제공할 수 없는 공조를 요청하는 경우에는, 요청시에 이 사실에 대하여 주의를 환기시킨다. 이러한 요청에 응할지 여부는 피요청체약당사자의 세관당국의 재량에 따른다.

제 7 조
공조요청의 형식 및 내용

1. 이 협정에 따른 요청은 서면으로 행하여지며 유익하다고 생각되는 서류가 첨부된다. 상황에 따라 필요한 경우 구두요청이 수락될 수 있으나, 즉시 서면으로 확인된다.

2. 이 조 제1항에 따른 요청에는 다음의 세부사항이 포함된다.

가. 요청하는 세관당국

나. 요청의 개요

다. 요청의 목적 및 사유

라. 법·규칙 및 기타 법적 관련요소

마. 요청의 대상이 되는 자연인 및 법인에 대한 가능한 한 정확하고 포괄적인 설명

바. 관련 사항의 요약

3. 서면요청은 영어로 한다. 이러한 요청에 첨부되는 모든 문서는 필요시 영어로 번역된다.

제 8 조

연락경로

1. 이 협정에 의한 공조는 각 세관당국간의 직접연락에 의하여 수행된다.

2. 피요청체약당사자의 세관당국이 요청에 응하기에 적절한 기관이 아닐 경우, 이 세관당국은 적절한 협의를 거쳐 피요청체약당사자의 법적 권한에 따라 요청을 처리할 적절한 기관에 그 요청을 즉시 이관하거나, 요청체약당사자의 세관당국에 그러한 요청과 관련하여 따라야 할 적절한 절차를 알린다.

제 9 조

요청의 이행

1. 피요청세관당국은 적절한 기간내에 국내법에 따라 요청을 이행하기 위한 모든 적절한 조치를 취한다.

2. 일방체약당사자의 세관당국은 타방체약당사자의 세관당국의 요청에 따라, 필요한 경우 전문가의 진술취득 등 필요한 문의를 실시한다.

제 10 조
문 서

1. 일방체약당사자의 세관당국은 자발적으로 또는 요청에 의하여 타방체약당사자의 세관당국에 일방체약당사자의 관세법 위반을 구성하거나 그 위반을 구성하는 것으로 보이는 완료된 거래 또는 계획된 거래에 관하여 가용정보를 제공할 수 있는 보고서 및/또는 문서의 인증된 사본을 제공한다.

2. 이 협정에 규정된 문서는 동일한 목적을 위하여 어떤 형태로 작성되는지에 관계없이 전산정보로 대체될 수 있다. 당해 자료의 번역 및 사용을 위한 모든 관련 정보는 동시에 제공된다.

3. 문서의 원본은 인증된 사본으로 충분하지 아니한 경우에 한하여 요청된다. 타방체약당사자의 세관당국으로부터 접수된 문서의 원본은 지체없이 반환된다.

제 11 조
증인 및 전문가

1. 일방체약당사자의 세관당국은 요청이 있는 경우 자신의 공무원을 국내법에 따라 당해 공무원의 동의하에 타방체약당사자의 영역에서의 관세범죄에 관한 행정 및 사법절차에 증인 및/또는 전문가로 출석하도록 허가할 수 있다.

2. 이 조 제1항에 따른 요청에는 어떠한 사건에 어떠한 자격으로 이 공무원이 출석할지 여부가 분명하게 기술된다.

제 12 조

경험의 교환

1. 체약당사자의 세관당국은 다음 사항에 대하여 경험을 교환한다.
   가. 관세법
   나. 화물・여객화물 및 우편물의 세관통제기법
   다. 조직의 편제
   라. 세관통제의 목적을 위하여 사용되는 기술적 장비, 그리고
   마. 기타 공동의 관심사항

2. 체약당사자의 세관당국은 다음의 사항을 포함한 세관분야에서 협력한다.
   가. 관세 전문가 및 공무원의 교환
   나. 세관원에 대한 전문훈련, 그리고
   다. 세관문제와 관련된 전문적・과학적・기술적인 자료교환

제 13 조

공조의 특례

일방체약당사자의 세관당국은 그 권한과 가용재원의 범위안에서 타방체약당사자의 세관당국의 요청에 의하여 요청체약당사자의 영역안에서 관세범죄의 범행에 사용된다는 혐의를 받는 운송수단, 요청체약당사자가 목적지로 되어 있는 대규모의 밀무역의 대상으로서 요청체약당사자에 의하여 지목된 물품, 그리고 관세범죄의 범행에 연루되어 있다고 알려지거나 혐의를 받고 있는 특정인에 대하여 특별감시를 시행한다.

제 14 조
비 용

1. 체약당사자는 일반적으로 정부관리외의 사람에 의한 증언비용, 전문가수수료, 통역비용 등을 제외하고는 이 협정의 이행으로 인하여 발생하는 비용에 대한 모든 상환청구권을 포기한다.

2. 요청을 이행하는 데 특별히 많은 비용이 요구되는 경우, 체약당사자는 비용의 부담방법과 요청의 이행조건을 협의하여 결정한다.

제 15 조
협정의 이행

1. 체약당사자의 세관당국은 이 협정의 이행을 원활히 하기 위하여 별도의 약정을 체결할 수 있다.

2. 체약당사자의 세관당국은 상호 합의에 따라 이 협정의 해석 또는 적용에 관하여 발생하는 문제를 해결하기 위하여 노력한다.

3. 해결책이 강구되지 아니하는 분쟁은 외교경로를 통하여 해결된다.

제 16 조
개 정

체약당사자는 상호 합의에 의하여 언제든지 이 협정을 개정할 수 있다.

제 17 조

발효 및 종료

1. 이 협정은 체약당사자가 이 협정의 발효에 필요한 국내절차를 완료하였음을 통보하는 최종공한을 외교경로를 통하여 접수한 날부터 30일후에 발효된다.

2. 이 협정은 무기한 유효하다. 이 협정은 어느 일방체약당사자가 외교경로를 통하여 이 협정의 종료의사를 타방체약당사자에게 서면으로 통지한 날부터 3월후에 종료된다. 그러나, 종료당시 진행중인 절차는 이 협정의 규정에 따라 완결된다.

이상의 증거로, 아래 서명자는 그들 각자의 정부로부터 정당하게 권한을 위임받아 이 협정에 서명하였다.

1999년 10월 5 일 서울 에서 동등하게 정본인 한국어·우즈베키스탄어 및 영어로 각 2부씩 작성하였다. 이 협정규정의 해석에 대한 상위가 있을 경우에는 영어본이 우선한다.

대한민국 정부를 위하여	우즈베키스탄공화국 정부를 위하여

[UZBEK TEXT — TEXTE OUZBEK]

Корея Республикаси Ҳукумати билан Ўзбекистон Республикаси Ҳукумати ўртасида Божхона ишларида ўзаро кўмаклашиш тўғрисида

БИТИМ

Корея Республикаси Ҳукумати билан Ўзбекистон Республикаси Ҳукумати (бундан кейин Аҳдлашувчи Томонлар деб аталувчилар),

божхона қонунчилигини бузиш ўз мамлакатларининг иқтисодий, молиявий ва тижорий манфаатларига зиён етказади, деб ҳисоблаб,

божхона божлари, солиқлари, йиғимлари ва бошқа тўловлари аниқ белгиланишини таъминлаш қанчалик муҳим эканлигини англаб,

божхона қонунчилигини қўллаш ва амал қилиш соҳаларида халқаро ҳамкорлик заруратини эътироф этиб,

божхона қонунчилигини бузишнинг олдини олишга қаратилган хатти-ҳаракатлар ўз божхона органлари ҳамкорлиги туфайли янада самарали бўлишига ишониб,

божхона ҳамкорлиги кенгаши(Бутунжаҳон божхона ташкилоти)нинг Ўзаро маъмурий кўмаклашиш тўғрисида 1953 йил 5 декабрдаги тавсияларини эътиборга олиб,

қуйидагилар тўғрисида аҳдлашиб олдилар:

1-модда
Таърифлар

Ушбу Битим мақсади учун:

1. «Божхона қонунчилиги» атамаси амалдаги ёки Аҳдлашувчи Томонларнинг божхона органлари товарлар импортига, экспортига, транзитига нисбатан қўллайдиган қонунлар ва қоидаларни англатади, бунга тақиқлаш, чеклаш ва назорат қилишни ўз ичига олган исталган божхона процедураларини қўллаш ҳам киради;

2. «Божхона қонунбузарлиги» атамаси божхона қонунчилигини исталган тарзда бузиш ёки бузишга уринишни англатади;

3. «Божхона божлари ва солиқлари» атамаси товарларнинг импорти ёки экспорти чоғида ундириладиган божлар, солиқлар ва йиғимларни англатати; ҳамда

4. «Божхона органлари» атамаси Корея Республикасига нисбатан - Корея божхона хизматини; ва Ўзбекистон Республикасига нисбатан - Давлат божхона қўмитасини англатади.

2-модда
Битимни қўллаш соҳаси

1. Ушбу Битим доирасида кўмаклашиш ҳар иккала Аҳдлашувчи Томонлар тарафидан миллий қонунларга мувофиқ, божхона органларининг ваколатлари ҳамда ресурслари доирасида амалга оширилади.

2. Аҳдлашувчи Томонларнинг божхона органлари ушбу Битим қоидаларига мувофиқ, божхона қонунбузарлигининг олдини олиш, текшириш ва унга қарши курашишда ҳамкорлик қиладилар ва ўзаро кўмаклашадилар.

3-модда
Кўмаклашиш соҳалари

1. Бир Аҳдлашувчи Томоннинг божхона органи бошқа Аҳдлашувчи Томон божхона органининг сўровига биноан, божхона қонунчилигига риоя қилишни таъминлашда асқотиши мумкин бўлган барча ахборотни тақдим этади, жумладан:

(а) божхона божлари ва солиқларининг мақбул ҳисоби билан таъминлаш;

(б) товарларнинг баҳосини божхона мақсадлари учун аниқ белгилаш; ҳамда

(в) товарларнинг тарифли таснифи ҳамда келиб чиқишини белгилаш.

2. Ушбу Битим доирасида кўмаклашиш, жумладан қуйидаги ахборотни ҳам ўз ичига олади, лекин бу билан чекланмайди:

(а) божхона қонунбузарлигининг олдини олишда асқотадиган ҳуқуқ муҳофазаси хатти-ҳаракатлари, жумладан божхона қонунбузарлигига қарши алоҳида кураш методларига оид;

(б)божхона қонунларини бузишнинг янги методларига оид;

(в) божхона қонунбузарлигига қарши курашда янги техникавий воситалар ҳамда методларнинг муваффақиятли равишда қўлланганлиги туфайли қўлга киритилган тажриба ва ютуқлар;

(г) йўловчилар ва юкларни расмийлаштиришнинг усули ва янги методлари.

4-модда
Назорат қилишда кўмаклашиш

1. Бир Аҳдлашувчи Томоннинг божхона органи иккинчи Аҳдлашувчи Томон божхона органининг сўровига биноан, унга қуйидаги масалаларга дахлдор ахборотни беради:

(а) сўраётган Аҳдлашувчи Томон ҳудудига иккинчи Аҳдлашувчи Томон ҳудудидан келтирилаётган товар қонуний экспортми-йўқми эканлигига оид;

(б) сўраётган Аҳдлашувчи Томон ҳудудидан сўралаётган Аҳдлашувчи Томон ҳудудига чиқарилаётган товар қонуний импортми-йўқми эканлигига оид.

2. Бундай ахборотда товарларни божхона тозаловидан ўтказишда қўлланадиган божхона процедуралари кўрсатилиши керак.

5-модда
Ахборотнинг махфийлиги

1.Ушбу Битим доирасида тақдим этилаётган ёки олинаётган ҳар қандай ахборот, ҳужжат ва бошқа маълумотга махфийлик мақоми берилади ҳамда ундан фақат ушбу Битимда кўрсатилган мақсадларда фойдаланиш мумкин. Уларни олган мамлакатда ҳам уларга ушбу мамлакатнинг ўз ҳудудида олинган шундай ахборот, ҳужжат ва бошқа маълумотга нисбатан қўлланадиган махфийлик қўлланади.

2. Сўраётган Аҳдлашувчи Томон ушбу Битим доирасида олинган ашёвий далил ёки ахборотдан сўралаётган Аҳдлашувчи Томоннинг розилигини олмасдан туриб сўровда кўрсатилганидан бошқа мақсадда фойдаланмайди.

6-модда
Кўмаклашишдан воз кечиш

1. Сўралаётган Аҳдлашувчи Томон сўровнинг бажарилиши унинг суверенитетига, хавфсизлиги ва бошқа муҳим миллий манфаатларига зиён етказади ёки миллий қонунларини, шунингдек саноатга, тижоратга ёхуд ихтисосликка оид махфийликни бузишга олиб келади деб ҳисобласа, у кўмаклашишни рад этиши ёки бундай ёрдамнинг берилишини муайян шартлар ё талабларнинг бажарилишига боғлиқ қилиб қўйиши мумкин.

2. Кўмаклашиш тўғрисидаги сўров рад этиладиган бўлса, сўраётган Аҳдлашувчи Томон зудлик билан бундай қарор ва унинг сабаби тўғрисида ёзма равишда хабардор қилинади.

3. Сўралаётган Аҳдлашувчи Томон сўровни бажариш ўтказилаётган текширув, жазолаш ёки жараённи амалга оширишга халақит беради, деб ҳисоблаган ҳолларда ҳам уни рад этиши мумкин. Бундай ҳолларда сўралаётган Аҳдлашувчи Томон сўраётган Аҳдлашувчи Томон билан бундай кўмак муайян вақтда, ўзи қўядиган маълум шартлар бажарилганида берилиши мумкинлиги хусусида маслаҳатлашиб олади.

4. Агар сўраётган Аҳдлашувчи Томоннинг божхона органи ўзи ана шундай сўров олганида кўмаклашишга қодир бўлмаса, у ўз сўровида бу ҳолга эътиборини қаратиши керак.

Бундай сўровномани қондириш масаласини сўралаётган Аҳдлашувчи Томон божхона органининг ўзи ҳал қилади.

7-модда
Кўмаклашиш тўғрисидаги сўровноманинг шакли ва мазмуни

1. Ушбу Битимга мувофиқ сўровномалар ёзма равишда жўнатилади ва асқотиши мумкин бўлган ҳар қандай ҳужжатлар унга илова қилинади. Шароит тақозо қилса, оғзаки сўровлар ҳам қабул этилади, бироқ у зудлик билан ёзма равишда тасдиқланиши керак.

2. Ушбу модданинг 1-бандида дарж этилган сўровномалар қуйидаги ахборотни ўз ичига олиши керак:

(а) сўраётган божхона органи;

(б) сўровнинг қисқача тафсили;

(в) сўровнинг мазмуни ва унинг сабаби;

(г) ишга тегишли қонунчилик, қоидалар ва бошқа ҳуқуқий меъёрлар;

(д) сўровномага дахлдор жисмоний ёки юридик шахслар тўғрисида иложи борича аниқ ва батафсил маълумот;

(е) тегишли далиллар йиғмаси.

3. Ёзма равишдаги сўровномалар инглиз тилида бўлиши лозим. Лозим бўлса, сўровномага илова этилаётган ҳужжатлар ҳам инглизчага таржима қилинади.

8-модда
Алоқа каналлари

1. Ушбу Битим доирасида кўмаклашиш тегишли божхона органлари ўртасида бевосита алоқа орқали олиб борилади.

2. Сўралаётган Аҳдлашувчи Томоннинг божхона органи сўровни бажаришга қодир ташкилот бўлмаса, тегишли маслаҳатлашувдан кейин у зудлик билан сўровномани ваколатига мувофиқ тегишли қонунларга биноан бажарадиган ташкилотга беради ёки сўраётган Аҳдлашувчи Томон божхона органини бундай сўровномани бажаришда амалга ошириш лозим бўлган тартиблардан хабардор қилади.

9-модда
Сўровномаларни бажариш

1. Сўралаётган божхона органи ўз миллий қонунларига биноан сўровномани вақтида бажариш учун оқилона тадбирларни амалга оширади.

2. Исталган Аҳдлашувчи Томоннинг божхона органи бошқа Аҳдлашувчи Томон божхона органининг сўровномасига биноан исталган зарур сўровларни ўтказади, жумладан, лозим ҳолларда экспертлар ва гувоҳлардан сўраш ёки божхона

қонунларини бузишда гумон қилинаётган шахсларни сўроқ қилиш ҳам шунга киради.

10-модда
Ҳужжатлар

1. Бир Аҳдлашувчи Томон божхона органи ўз ташаббуси ёки сўровномага биноан бошқа Аҳдлашувчи Томоннинг божхона органига бу Аҳдлашувчи Томон божхона қонунчилигини бузган ёки бузиши мумкин бўлган ҳолда амалга оширилган ёки режалаштирилаётган олди-сотдилар бўйича ҳисоботлар ва/ёки ҳужжатларнинг тасдиқланган нусхаларини беради.

2. Ушбу Битим доирасида тақдим этиладиган ҳужжатлар ўша мақсадлар учун исталган шаклдаги компьютер ахбороти билан алмаштирилиши мумкин. Бундай материалларни талқин қилиш ёки улардан фойдаланиш учун барча тегишли ахборотнинг ҳаммаси бир вақтда тақдим этилади.

3. Ҳужжатларнинг асл нусхаси фақат уларнинг нусхаси кифоя қилмайди, деб ҳисобланган чоғдагина сўраб олинади. Бошқа Аҳдлашувчи Томон божхона органидан сўраб олинган ҳужжатларнинг асл нусхаси тезда қайтарилади.

11-модда
Гувоҳлар ва экспертлар

1. Бир Аҳдлашувчи Томон божхона органи сўровномага биноан ўз ходимларини уларнинг розилигига кўра, ўз миллий қонунларига мувофиқ бошқа Аҳдлашувчи Томон ҳудудида кўриб чиқилаётган божхона қонунбузарлигига оид жиноий ёки маъмурий тартибдаги ишларда гувоҳ ва/ёки эксперт сифатида қатнашиш учун вакил қилишлари мумкин.

2. Ушбу модданинг 1-бандига мувофиқ сўровда ходимнинг қайси иш бўйича ва ким сифатида қатнашиши кўрсатилади.

12-модда
Тажриба алмашиш

1. Аҳдлашувчи Томонларниг божхона органлари қуйидаги соҳада тажриба алмашадилар:

(а) божхона қонунчилиги;

(б) товарлар, йўловчилар юки ва почта жўнатмаларини божхона кўригидан ўтказиш методлари;

(в) таркибий тузилиш;

(г) божхона назоратидан ўтказищда қўлланадиган техникавий анжомлар; ва

(д) ўзаро қизиқиш уйғотадиган бошқа масалалар.

2. Аҳдлашувчи Томонлар божхона органларининг божхона иши соҳасидаги ҳамкорлигига қуйидагилар ҳам киради:

(а) божхона экспертлари ва зобитларини алмашиш;
(б) божхона зобитларини касби юзасидан ўқитиш; ва
(в) божхона соҳасида касбий, илмий ва техникавий маълумотларни алмашиш.

13-модда
Кўмаклашишдаги алоҳида ҳолатлар

Бир Аҳдлашувчи Томоннинг божхона органи бошқа Аҳдлашувчи Томон божхона органининг сўровномасига биноан ўз ваколати доирасида ҳамда имконият мавжуд бўлса сўраётган Томон ҳудудида ҳуқуқбузарликни содир этишда фойдаланилаяпти деб гумон қилинаётган транспорт воситалари ва сўраётган Томонга юборилган ва у ноқонуний савдо предмети деб ҳисоблаётган товарлар ҳамда божхона қонунбузарлигини содир этган ёки шунда гумон қилинаётган конкрет шахслар устидан махсус кузатув ўрнатади.

14-модда
Харажатлар

1. Аҳдлашувчи Томонлар ушбу Битимни бажаришга боғлиқ равишда келиб чиққан харажатларни қоплашни талаб қилмайдилар, бундан давлат хизматчилари бўлмаган гувоҳларни жўнатиш, экспертлар ва таржимонларга ҳақ тўлаш харажатларини қоплаш мустасно.

2. Сўровномани бажариш катта харажат ва чиқимларни тақозо қилса, Аҳдлашувчи Томонлар бундай сўровномани бажариш шартларини ва харажатлар қандай қопланишини аниқлаш мақсадида маслаҳатлашиб оладилар.

15-модда
Битимни бажариш

1. Аҳдлашувчи Томонларнинг божхона органлари ушбу Битимни бажаришга кўмаклашиш мақсадида бошқа аҳдномалар ҳам тузишлари мумкин.

2. Аҳдлашувчи Томонларнинг божхона органлари ушбу Битимни талқин қилиш ёки қўллашда келиб чиқадиган ҳар қандай муаммони ўзаро келишиб ҳал этадилар.

3. Ҳал этиш амри маҳол бўлган баҳсли масалалар дипломатик каналлар орқали ечилади.

16-модда
Ўзгартишлар киритиш

Аҳдлашувчи Томонлар исталган вақтда ўзаро келишиб, ушбу Битимга ўзгартиш киритишлари мумкин.

17-модда
Кучга киритиш ва фаолиятини тугатиш

1. Ушбу Битим Аҳдлашувчи Томонлар уни кучга киритиш учун лозим бўлган давлат ички процедураларини бажарганликлари тўғрисида дипломатик каналлар орқали олинган охирги хабарнома санасидан 30 кун ўтгач кучга киради.

2. Ушбу Битимнинг амал қилиш муддати чекланмайди. У бир Аҳдлашувчи Томон дипломатик каналлар орқали иккинчи Аҳдлашувчи Томонни ушбу Битим фаолиятини тугатиш тўғрисидаги ниятидан хабардор қилган ёзма билдиришномаси санасидан уч ой ўтгач ўз фаолиятини тугаллайди. Ушбу Битим фаолияти тўхтатилган вақтгача якунланмаган ишлар унинг қоидаларига кўра охирига етказилади.

УШБУНИ ШАҲОДАТЛАБ, қуйида имзо чекувчи ўз Ҳукуматлари тарафидан лозим тарзда ваколат берилганлар ушбу Битимни имзоладилар.

Сеул шаҳрида, 1999 йил «5» октябрда, икки нусхада, корейс, ўзбек ва инглиз тилларида тузилди, бунда барча матнлар бир хил кучга эга. Ушбу Битим қоидаларини талқин қилишда тафовутлар келиб чиқса, инглиз тилидаги матндан фойдаланилади.

Корея Республикаси Ҳукумати номидан	**Ўзбекистон Республикаси Ҳукумати номидан**
Hong S.Y.	

[TRANSLATION -- TRADUCTION]

ACCORD D'ASSISTANCE MUTUELLE EN MATIÈRE DOUANIÈRE ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CORÉE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE FÉDÉRALE D'OUZBÉKISTAN

Le Gouvernement de la République de Corée et le Gouvernement de la République d'Ouzbékistan (ci-après dénommés “les Parties contractantes”),

Considérant que les infractions à la législation douanière sont préjudiciables aux intérêts économiques, financiers et commerciaux de leurs deux pays,

Considérant l'importance d'une évaluation exacte des droits de douane, taxes, redevances et autres charges,

Reconnaissant la nécessité d'une coopération internationale dans les domaines de l'administration et de l'application de la législation douanière,

Convaincus que la lutte contre les infractions douanières pourrait être rendue plus efficace par une coopération entre leurs autorités douanières,

Compte tenu de la recommandation du Conseil de coopération douanière de l'Organisation mondiale des douanes sur l'assistance administrative mutuelle du 5 décembre 1953,

Sont convenus de ce qui suit :

Article 1. Définitions

Aux fins du présent Accord :

1. L'expression “législation douanière” désigne la législation et la réglementation en vigueur ou administrées par les autorités douanières des Parties contractantes régissant l'importation, l'exportation et le transit de marchandises, y compris les mesures d'interdiction, de restriction et de contrôle;

2. L'expression “infraction douanière” s'entend de toute violation ou de toute tentative de violation de la législation douanière;

3. L'expression “droits douaniers et taxes douanières” désignent les droits douaniers, taxes, redevances et autres frais perçus à l'importation ou à l'exportation de marchandises ou en rapport avec l'importation ou à l'exportation de marchandises; et

4. L'expression “autorités douanières” désigne en République de Corée, le Service douanier coréen et en République d'Ouzbékistan, le Comité d'État chargé des questions douanières.

Article 2. Champ d'application de l'Accord

1. Dans le cadre du présent Accord, les Parties contractantes se prêtent assistance conformément à leur législation nationale et dans les limites de leurs compétentes et des ressources disponibles de leurs autorités douanières.

2. Les autorités douanières des Parties contractantes coopèrent et se prêtent mutuellement assistance dans le domaine de la prévention, des enquêtes et de la lutte contre les infractions douanières conformément aux dispositions du présent Accord.

Article 3. Portée de l'assistance

1. À la demande des autorités douanières d'une Partie contractante, les autorités douanières de l'autre Partie contractante communiquent tous les renseignements disponibles susceptibles de contribuer à ce que la législation douanière soit appliquée et que :

a) Le calcul des droits de douane et des taxes douanières s'effectue correctement;

b) L'évaluation de la valeur des marchandises pour les besoins de la douane s'effectue de manière précise; et que

c) La classification tarifaire et l'origine des marchandises puissent être déterminées.

2. L'assistance prévue dans le présent Accord comprend notamment les renseignements concernant :

a) Les mesures d'exécution pouvant être utiles pour prévenir les infractions douanières et, en particulier, les moyens spéciaux mis en oeuvre pour lutter contre les infractions douanières;

b) Les nouvelles méthodes utilisées pour commettre des infractions douanières;

c) Les observations et les conclusions résultant de l'application fructueuse des nouvelles aides et techniques d'exécution; et

d) Les techniques et les méthodes ayant été améliorées pour le traitement des passagers et du fret.

Article 4. Assistance dans le contrôle

1. À la demande des autorités douanières d'une Partie contractante, les autorités douanières de l'autre Partie contractante communiquent à ces autorités douanières tous les renseignements établissant que :

a) Les marchandises importées sur le territoire de la Partie contractante requérante ont été légalement importées depuis le territoire de l'autre Partie contractante; et que

b) Les marchandises exportées depuis le territoire de la Partie contractante requérante ont été légalement importées dans le territoire de la Partie contractante requise.

2. Ces renseignements spécifieront également les procédures douanières utilisées pour dédouaner les marchandises.

Article 5. Confidentialité des renseignements

1. Les renseignements, documents ou autres communications communiqués ou reçus dans le cadre du présent Accord sont traités de manière confidentielle et servent exclusivement aux objets visés dans le présent Accord. Ils bénéficient dans le pays destinataire de la même protection en matière de secret que celle appliquée dans ce pays pour le même

genre de renseignements, documents ou autres communications obtenus par les Parties contractantes sur leur propre territoire.

2. La Partie contractante requérante s'abstient d'utiliser les renseignements obtenus dans le cadre du présent Accord à des fins autres que celles précisées dans la demande sans l'accord préalable de la Partie contractante requise.

Article 6. Dérogations à l'obligation d'assistance

1. S'il apparaît à la Partie contractante requise que l'assistance voulue porterait atteinte à sa souveraineté, à sa sécurité ou à ses autres intérêts nationaux essentiels, ou entraînerait la violation de sa législation nationale de même que des secrets industriels, commerciaux ou professionnels, elle peut refuser de prêter cette assistance ou subordonner celle-ci à la réalisation de certaines conditions ou exigences.

2. Si l'assistance requise est refusée, la Partie contractante requérante est aussitôt avisée par écrit de la décision et des raisons du refus.

3. L'assistance peut être retardée par la Partie contractante requise au motif qu'elle entraverait une enquête, des poursuites ou une procédure en cours. Dans ce cas, la Partie contractante requise consulte la Partie contractante requérante pour déterminer si l'assistance peut être soumise aux conditions imposées par la Partie contractante requise.

4. Si les autorités douanières de la Partie contractante requérante demandent une assistance qu'elles seraient elles-mêmes incapables de fournir si celle-ci leur était demandée, elles attirent l'attention sur ce fait dans sa demande. La suite réservée à une telle demande est laissée à l'appréciation des autorités douanières de la Partie contractante requise.

Article 7. Forme et contenu de la demande d'assistance

1. Les demandes faites conformément au présent Accord doivent être présentées par écrit et être accompagnées des documents jugés utiles. Lorsque les circonstances l'exigent, des demandes verbales peuvent être acceptées mais elles doivent être confirmées immédiatement par écrit.

2. Les demandes adressées conformément au paragraphe 1 du présent article doivent contenir les précisions suivantes :

a) Autorités douanières requérantes;

b) Description succincte de la demande;

c) Objet et motif de la demande;

d) Législation, règlementation et autres éléments légaux concernés;

e) Indications aussi exactes et complètes que possible quant aux personnes physiques ou morales visées dans la demande; et

f) Résumé des faits pertinents.

3. Les demandes par écrit seront faites en anglais. Les documents accompagnant ces demandes sont si nécessaire traduits en anglais.

Article 8. Mode de communication

1. L'assistance fournie dans le cadre du présent Accord s'effectue en liaison directe entre les autorités douanières respectives.

2. Si les autorités douanières de la Partie contractante requise ne sont pas le service approprié pour donner suite à une demande, elles transmettent, après avoir effectué les consultations qui s'imposent, sans retard, la demande au service approprié, lequel traite la demande en fonction des pouvoirs qui lui sont conférés et en application de la législation de la Partie contractante requise ou avisent les autorités douanières de la Partie contractante requérante de la procédure appropriée devant être suivie concernant cette demande.

Article 9. Exécution des demandes

1. Les autorités douanières requises prennent, sous réserve des dispositions de leur législation nationale, toutes les mesures raisonnables nécessaires pour donner suite aux demandes dans des délais raisonnables.

2. Sur demande des autorités douanières de l'autre Partie contractante, les autorités douanières de l'une ou l'autre des Parties contractantes procèdent aux enquêtes nécessaires et prennent, si nécessaire, l'avis d'experts.

Article 10. Documents

1. De leur propre initiative ou sur demande, les autorités douanières d'une Partie contractante fournissent aux autorités douanières de l'autre Partie contractante des rapports et/ou des copies certifiées des documents donnant des renseignements disponibles sur les transactions, réalisées ou envisagées, qui constituent ou semblent constituer une infraction à la législation douanière de cette Partie contractante.

2. Les documents prévus dans le présent Accord peuvent être remplacés par des renseignements informatisés présentés sous n'importe quelle forme ayant le même effet. Tous les renseignements utiles pour l'interprétation ou l'utilisation des documents seront de préférence fournis en même temps.

3. La fourniture de documents originaux ne sera demandée que dans la mesure seulement où des copies certifiées seraient inadéquates. Les documents originaux reçus des autorités douanières de l'autre Partie contractante lui seront renvoyés dans les plus brefs délais.

Article 11. Témoins et experts

1. Sur demande, les autorités douanières d'une partie contractante peuvent autoriser leurs agents dans les conditions prévues dans leur législation nationale, si lesdits agents y consentent, à comparaître devant un tribunal en tant que témoins et/ou experts dans des procédures administratives ou judiciaires en matière d'infractions douanières commises sur le territoire de l'autre partie contractante.

2. Conformément au paragraphe 1 du présent article, la demande de comparution doit préciser l'affaire dans laquelle l'agent doit intervenir et à quel titre.

Article 12. Échange d'expérience

1. Les autorités douanières des Parties contractantes échangeront l'expérience qu'elles ont acquise dans les domaines suivants :

a) Législation douanière;

b) Méthodes de contrôle douanier exercé sur les marchandises, les bagages des passagers et les envois postaux;

c) Cadre organisationnel;

d) Équipements techniques utilisés à des fins de contrôle douanier; et

e) Autres matières d'intérêt commun.

2. Les autorités douanières des Parties contractantes coopéreront en matière douanière y compris dans les domaines suivants :

a) Échange d'experts et d'agents des douanes;

b) Formation professionnelle des agents des douanes; et

c) Échange de données professionnelles, scientifiques et techniques en matière de douane.

Article 13. Cas spéciaux d'assistance

Sur demande des autorités douanières de l'autre Partie contractante, les autorités douanières d'une Partie contractante exerceront, dans les limites de ses compétences et des ressources disponibles, une surveillance spéciale des moyens de transport suspectés de servir à commettre des infractions douanières sur le territoire de la Partie contractante requérante, des marchandises désignées par la Partie contractante requérante comme faisant l'objet d'un trafic clandestin important dont cette Partie contractante est le pays de destination, et des particuliers réputés être ou soupçonnés d'être engagés dans la perpétration d'infractions douanières.

Article 14. Coûts

1. Les autorités douanières d'une Partie contractante renoncent ordinairement à toute réclamation en vue de se faire rembourser les frais encourus à l'occasion de l'exécution du présent Accord, à l'exception des indemnités versées aux témoins, des honoraires d'experts et des frais d'interprètes qui ne sont pas des agents de l'État.

2. S'il s'avère que l'exécution de la demande entraînera des frais importants et de nature exceptionnelle, les Parties contractantes se consultent afin de déterminer les clauses et conditions en vertu desquelles la demande sera exécutée de même que la manière dont les coûts seront assumés.

Article 15. Application de l'Accord

1. Les autorités douanières des Parties contractantes peuvent prendre d'autres dispositions pour faciliter la mise en application du présent Accord.

2. Les autorités douanières des Parties contractantes s'efforceront de résoudre d'un commun accord tout problème découlant de l'interprétation ou de l'application du présent Accord.

3. Les conflits pour lesquels aucune solution n'a été trouvée seront résolus par la voie diplomatique.

Article 16. Amendements

Les Parties contractantes peuvent à tout moment amender le présent Accord par consentement mutuel.

Article 17. Entrée en vigueur et dénonciation

1. Le présent Accord entre en vigueur trente jours après la date à laquelle a été reçue par la voie diplomatique la dernière notification confirmant l'accomplissement par les parties contractantes de toutes les formalités nationales nécessaires pour son entrée en vigueur.

2. Le présent Accord est conclu pour une durée indéterminée. Il expirera trois mois après la date à laquelle l'une ou l'autre des Parties contractantes a adressé un avis écrit par la voie diplomatique à l'autre Partie l'informant de son désir de mettre fin au présent Accord. Les travaux en cours au moment de la dénonciation seront néanmoins menés à bien conformément aux dispositions du présent Accord.

En foi de quoi, les soussignés, à ce dûment autorisés par leurs Gouvernements respectifs, ont signé le présent Accord.

Fait en deux exemplaires à Séoul le 5 octobre 1999, en langues coréenne, ouzbèke et anglaise, les trois textes faisant également foi. En cas de divergence d'interprétation, le texte anglais prévaudra.

Pour le Gouvernement de la République de Corée :

HONG SOON-YOUNG

Pour le Gouvernement de la République d'Ouzbékistan :

ABDULAZIZ KAMILOV

No. 43292

Republic of Korea and Uzbekistan

Convention between the Government of the Republic of Korea and the Government of the Republic of Uzbekistan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (with protocol). Tashkent, 11 February 1998

Entry into force: *25 December 1998 by notification, in accordance with article 28*

Authentic texts: *English, Korean and Uzbek*

Registration with the Secretariat of the United Nations: *Republic of Korea, 15 November 2006*

République de Corée et Ouzbékistan

Convention entre le Gouvernement de la République de Corée et le Gouvernement de la République d'Ouzbékistan tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune (avec protocole). Tashkent, 11 février 1998

Entrée en vigueur : *25 décembre 1998 par notification, conformément à l'article 28*

Textes authentiques : *anglais, coréen et ouzbek*

Enregistrement auprès du Secrétariat des Nations Unies : *République de Corée, 15 novembre 2006*

[ENGLISH TEXT — TEXTE ANGLAIS]

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF UZBEKISTAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of Korea and the Government of the Republic of Uzbekistan, desiring to conclude a Convention between the Government of the Republic of Korea and the Government of the Republic of Uzbekistan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

Have agreed as follows:

Article 1. Personal Scope

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2. Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

a) in the case of the Republic of Korea:

(i) the income tax;

(ii) the corporation tax;

(iii) the inhabitant tax; and

(iv) the special tax for rural development

(hereinafter referred to as “Korean taxes”).

b) in the case of the Republic of Uzbekistan:

(i) the Tax on Income of enterprises, associations and organisations;

(ii) the Individual Income Tax; and

(iii) the Property Tax

(hereinafter referred to as “Uzbekistan Taxes”).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3. General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term "Korea" means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of Korea with respect to the sea-bed and sub-soil and their natural resources may be exercised;

b) the term "Uzbekistan" means the Republic of Uzbekistan, and when used in a geographical sense, it means the territory of the Republic of Uzbekistan including the territorial waters and the air space within which the Republic of Uzbekistan may exercise sovereign rights and jurisdiction, including rights to use the sub-soil and natural resources, under the laws of the Republic of Uzbekistan and in accordance with international law;

c) the terms "a Contracting State" and "the other Contracting State" mean Korea or Uzbekistan, as the context requires;

d) the term "tax" means Korean tax or Uzbekistan tax, as the context requires;

e) the term "person" includes an individual, a company and any other body of persons;

f) the term "company" means any person that is a body corporate, joint venture or other entity which is treated under the laws of the Contracting State from which it derives its status as such as a body corporate for tax purposes;

g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

h) the term "national" means:

(i) any individual possessing the nationality of a Contracting State; and

(ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State.

i) the term "international traffic" means any transport by a ship, aircraft, road vehicle or railway operated by an enterprise of a Contracting State, except when the ship, aircraft, road vehicle or railway is operated solely between places in the other Contracting State;

j) the term "competent authority" means:

(i) in the case of Korea, the Minister of Finance and Economy or his authorised representative.

(ii) in the case of Uzbekistan, the Chairman of the State Taxation Committee or his authorised representative; and

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State concerning the taxes to which the Convention applies.

Article 4. Resident

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. In case of doubts the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5. Permanent Establishment

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop, and

f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 12 months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise);

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person -- other than an agent of an independent status to whom paragraph 6 applies -- is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6. Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7. Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way

of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year, unless there is good and sufficient reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8. International Transport

1. Profits derived by an enterprise of a Contracting State from the operation of ships, aircraft, road vehicles or railway in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

3. In respect of operation of ships, aircraft, road vehicles or railway in international traffic carried on by an enterprise of a Contracting State, that enterprise, if an enterprise of Uzbekistan, shall be exempt from the value-added tax in Korea and, if an enterprise of Korea, shall also be exempt from any tax similar to the value-added tax in Korea which may hereafter be imposed in Uzbekistan.

Article 9. Associated Enterprises

1. Where:

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would but for those conditions have accrued to one of the enterprises, but, by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State -- and taxes accordingly -- profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the

tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall consult each other.

Article 10. Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends and is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Articles 7 or 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11. Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12. Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 2 per cent of the gross amount of such royalties which are paid for the use of, or for the right to use, industrial, commercial, or scientific equipment; and

b) 5 per cent of the gross amount of such royalties in all other cases.

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in any State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. The provisions of this Article shall not apply if it was the main purposes or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment. In application of this paragraph the competent authority of the Contracting State shall consult the other, prior to any decision-making, on the application of this provision to the particular case.

Article 13. Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent estab-

lishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft, railway or road vehicles, operated in international traffic or movable property pertaining to the operation of such ships, aircraft, road vehicles or railway, shall be taxable only in that State.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14. Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or

b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any 12-month period commencing or ending in the calendar year concerned; in that case, only so much of the income as is derived from his activities performed in that other State in the year may be taxed in that other State.

2. The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15. Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State, unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the calendar year concerned, and;

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer or any person associated with the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft, road vehicle or railway operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

Article 16. Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17. Artistes And Sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived by entertainers or sportsmen, who are residents of a Contracting State, from the activities exercised in the other Contracting State under a special programme of cultural exchange agreed upon between the Governments of both Contracting States and completely supported by the public fund of one or both of the Contracting States and local authorities, shall be exempt from tax in that other State.

Article 18. Pensions

Subject to the provisions of paragraph 2 of Article 19, pensions and similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State,

Article 19. Government Service

1. a) Salaries, wages and similar remuneration, other than a pension, paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.

b) However, such salaries, wages and similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Any pension paid by, or out of funds created by, a Contracting State or a local authority to an individual in respect of services rendered to that State or authority shall be taxable only in that State.

b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that State.

3. The provisions of Articles 15, 16 and 18 shall apply to salaries, wages and similar remuneration and pensions paid in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

4. The provisions of paragraphs 1 and 2 shall likewise apply in respect of remuneration or pensions paid by any financial institution performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States.

Article 20. Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training, receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21. Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 22. Capital

1. Immovable property of a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or movable property pertaining to a fixed base available to a resident of a Contracting State in the

other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital owned by an enterprise of a Contracting State and represented by ships, aircraft, road vehicles and railway operated in international traffic, and by movable property pertaining to the operation of such ships, aircraft, road vehicles or railway, and by containers to which the rules in paragraph 2 of Article 8 apply shall be taxable only in that State.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23. Elimination of Double Taxation

1. In the case of Korea, double taxation shall be avoided as follows:

Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof), the tax payable (excluding, in the case of dividends, tax payable in respect of profits out of which the dividends are paid) under the laws of Uzbekistan and in accordance with the provisions of this Convention, whether directly or by deduction, in respect of income from sources within Uzbekistan, shall be allowed as a credit against the Korean tax payable in respect of that income. The amount of credit shall not, however, exceed that part of Korean tax as computed before the credit is given, which is appropriate to the that income.

2. In the case of Uzbekistan, double taxation shall be avoided as follows:

Where a resident of Uzbekistan derives income or owns property which, in accordance with the provisions of this Convention, may be taxed in Korea, Uzbekistan shall allow:

a) as a deduction from the tax on the income of that resident, an amount equal to the income tax payable in Korea;

b) as a deduction from the tax on the property of that resident, an amount equal to the property tax payable in Korea.

Such deduction in either case shall not, however, exceed that part of the income tax or property tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the property which may be taxed in Korea.

3. Where in accordance with any provision of the Convention income derived or property owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or property of such resident, take into account the exempted income or property.

4. The tax payable in a Contracting State mentioned in paragraphs 1 and 2 of this Article, shall be deemed to include the tax which would have been payable but for the legal provisions concerning tax reduction, exemption or other tax incentives of the Contracting State for the promotion of economic development. For the purpose of this paragraph, the amount of tax shall be deemed to be:

a) 5 per cent of the gross amount of the dividends in the case of paragraph 2 a) of Article 10;

b) 15 per cent of the gross amount of the dividends in the case of paragraph 2 b) of Article 10;

c) 5 per cent of the gross amount of the interests in the case of paragraph 2 of Article 11;

d) 2 per cent of the gross amount of the royalties in the case of paragraph 2 a) of Article 12;

e) 5 per cent of the gross amount of the royalties in the case of paragraph 2 b) of Article 12.

5. Relief from tax by virtue of paragraph 4 of this Article shall not be given where the profits, income or chargeable gains, in respect of which tax have been payable but for the exemption or reduction of tax granted referred in that paragraph, arise or accrue after the first day of January 2004.

Article 24. Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation or connected requirements to which nationals of that other State in the same circumstances, are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs or reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 4 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25. Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26. Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 27. Diplomatic Missions and Consular Posts

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and consular posts under the general rules of international law or under the provisions of special agreements.

Article 28. Entry into Force

Each Contracting State shall notify the other Contracting State of the completion of the procedures required by its domestic law for the entry into force of this Convention. This Convention shall enter into force on the fifteenth day after the date of the later of these notifications and shall thereupon have effect:

a) with respect to taxes withheld at source from the received income on or after the first day of January of the calendar year next following that in which the Convention enters into force;

b) with respect to other taxes on income and on capital, for all taxable periods beginning on or after the first day of January of the calendar year next following that in which the Convention enters into force.

Article 29. Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention through diplomatic channels by giving to the other Contracting State a written notice of termination on or before the thirtieth of June of any calendar year from the fifth year following that in which the Convention entered into force. In such event, the Convention shall cease to have effect:

a) with respect to taxes withheld at source on received income from the first day of January in the calendar year next following that in which the denouncement notice is given;

b) with respect to other taxes on income and on capital, for any taxable year beginning on or after the first day of January of the calendar year next following that in which the denouncement notice is given.

In witness whereof the undersigned, duly authorised thereto by the respective Governments, have signed this Convention.

Done in duplicate at Tashkent this 11th day of February, 1998 in the Korean, Uzbek 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:

CHOI YOUNG-HA

For the Government of the Republic of Uzbekistan:

VILLY BEGANOV

PROTOCOL

At the time of signing the Convention between the Government of the Republic of Korea and the Government of the Republic of Uzbekistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, the undersigned have agreed that the following provisions shall form an integral part of the Convention:

1. It is understood that, in the case of Uzbekistan, the “tax on capital” referred to in the Preamble and other Articles of this Convention means property tax of Uzbekistan.

2. In connection to paragraph 1 of Article 7, where the Contracting State has concrete reason to believe that the transactions were conducted in such a manner as if it had not been made between two independent enterprises for just the purpose of decreasing the tax of the permanent establishment, income from such transactions may be adjustable as if it was the income of a permanent establishment.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed the present Protocol.

Done in duplicate at Tashkent this 11th day of February 1998 in the Korean, Uzbek 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:

CHOI YOUNG-HA

For the Government of the Republic of Uzbekistan:

VILLY BEGANOV

[KOREAN TEXT — TEXTE CORÉEN]

대한민국 정부와 우즈베키스탄공화국 정부간의 소득과 자본에 대한 조세의 이중과세회피와 탈세방지를 위한 협약

대한민국 정부와 우즈베키스탄공화국 정부는,

대한민국 정부와 우즈베키스탄 공화국 정부간의 소득과 자본에 대한 조세의 이중과세회피와 탈세방지를 위한 협약을 체결하기를 희망하여,

다음과 같이 합의하였다.

제 1 조
인적범위

이 협약은 일방 또는 양체약국의 거주자인 인에게 적용한다.

제 2 조
대상조세

1. 이 조약은 그 조세가 부과되는 방법에 관계없이 각 체약국 또는 지방 공공단체가 부과하는 소득 및 자본에 대한 조세에 대하여 적용한다.

2. 자본평가에 대한 조세 및 동산 또는 부동산의 양도로 인한 소득에 대한 조세 및 기업이 지불한 임금과 급료의 총액에 대한 조세를 포함하여 총소득·총자본 또는 소득이나 자본의 요소에 부과되는 모든 조세는 소득 또는 자본에 대한 조세로 본다.

3. 이 협약이 적용되는 현행 조세는 특히 다음과 같다.

가. 대한민국의 경우

(1) 소득세

(2) 법인세

(3) 주민세 및

(4) 농어촌특별세

(이하 "한국의 조세"라 한다.)

나. 우즈베키스탄공화국의 경우

(1) 기업 · 조합 및 협회의 소득에 대한 조세

(2) 개인소득세

(3) 재산세

(이하 "우즈베키스탄의 조세"라 한다.)

4. 이 협약은 이 협약의 서명일 이후에 현행 조세에 추가 또는 대체하여 부과되는 동일하거나 실질적으로 유사한 조세에 대하여도 적용한다. 양체약국의 권한있는 당국은 자국세법의 실질적인 개정사항을 상호통보해야 한다.

제 3 조

일반적 정의

1. 문맥에 따라 달리 해석되지 아니하는 한, 이 협약의 목적상

가. "한국"이라 함은 국제법에 따라서 해상과 하층토 및 그들의 천연자원에 대하여 대한민국의 주권적 권리가 행사될 지역으로 대한민국의 법에 의하여 지정되어 있거나 앞으로 지정될 대한민국의 영해에 인접한 지역을 포함하는 대한민국의 영역을 말한다.

나. "우즈베키스탄"이라 함은 우즈베키스탄공화국을 말하며, 지리적 의미로 사용되는 경우 우즈베키스탄 공화국법 및 국제법에 의하여, 하층토 및 천연자원을 사용할 권리를 포함하여 우즈베키스탄의 주권적 권리와 관할권을 행사할 수 있는 영해와 영공을 포함한 우즈베키스탄의 영역을 말한다.

다. "일방체약국" 및 "타방체약국"이라 함은 문맥에 따라 한국 또는 우즈베키스탄을 말한다.

라. "조세"라 함은 문맥에 따라 한국의 조세 또는 우즈베키스탄의 조세를 말한다.

마. "인"이라 함은 개인·법인 및 기타 인의 단체를 포함한다.

바. "법인"이라 함은 법인격이 있는 단체, 합작기업, 조세목적상 법인격이 있는 단체로서의 지위를 체약국의 법에 의하여 부여받는 실체를 말한다.

사. "일방체약국의 기업" 및 "타방체약국의 기업"이라 함은 각각 일방체약국의 거주자에 의하여 경영되는 기업과 타방체약국의 거주자에 의하여 경영되는 기업을 말한다.

아. "국민"이라 함은 다음을 말한다.

(1) 일방체약국의 국적을 가진 개인

(2) 법인, 조합, 일방체약국에서 시행되고 있는 법에 의하여 그러한 지위를 부여받은 단체

자. "국제운수"라 함은 일방체약국의 기업이 운영하는 선박·항공기·자동차 또는 철도에 의한 운송을 말한다. 다만, 선박·항공기·자동차 또는 철도가 타방체약국 안의 장소 사이에서만 운영되는 경우는 제외한다.

차. "권한있는 당국"이라 함은 다음을 말한다.

(1) 한국의 경우, 재정경제원장관 또는 그의 위임을 받은 자

(2) 우즈베키스탄의 경우, 국가조세위원회 의장 또는 그의 위임을 받은 자

2. 일방체약국이 이 협약을 적용함에 있어서 이 협약에서 정의되어 있지 아니한 용어는, 문맥에 따라 달리 해석되지 아니하는 한, 이 협약이 적용되는 조세에 관한 체약국의 법에 따른 의미를 가진다.

제 4 조

거주자

1. 이 협약의 목적상 "일방체약국의 거주자"라 함은, 체약국의 법에 의하여, 주소·거소·본점 또는 주사무소의 소재지·관리장소 또는 이와 유사한 성질의 다른 기준에 따라 납세의무가 있는 인을 말한다. 다만, 이 용어는 체약국내의 원천으로부터 발생하는 소득에 대하여만 체약국에서 납세의무가 있는 인은 포함하지 아니한다.

2. 제1항의 규정에 의하여 개인이 양체약국의 거주자가 되는 경우, 그의 지위는 다음과 같이 결정된다.

가. 동 개인은 그가 이용할 수 있는 항구적 주거를 두고 있는 체약국의 거주자로 본다. 동 개인이 양체약국 안에 그가 이용할 수 있는 항구적 주거를 두고 있는 경우, 동 개인은 그의 인적 및 경제적 관계가 더 밀접한(중대한 이해관계의 중심지가 있는) 체약국의 거주자로 간주된다.

나. 동 개인의 중대한 이해관계의 중심지가 있는 체약국을 결정할 수 없거나 또는 어느 체약국에도 그가 이용할 수 있는 항구적 주거를 두고 있지 아니하는 경우, 동 개인은 그가 일상적 거소를 두고 있는 체약국의 거주자로 간주된다.

다. 동 개인이 양 국가 안에 일상적인 거소를 두고 있거나 또는 어느 체약국 안에도 일상적인 거소를 두고 있지 아니하는 경우, 동 개인 은 그가 국민인 체약국의 거주자로 간주된다.

라. 동 개인이 양체약국의 국민이거나 또는 양체약국중 어느 국가의 국민도 아닌 경우, 양체약국의 권한있는 당국이 상호합의에 의하여 문제를 해결한다.

3. 제1항의 규정으로 인하여 개인 이외의 인이 양체약국의 거주자로 되는 경우, 동 인은 그 사업의 실질적인 관리장소가 소재하는 체약국의 거주자로 간주된다. 의문이 있는 경우 양체약국의 권한있는 당국이 상호합의에 의하여 문제를 해결한다.

제 5 조

고정사업장

1. 이 협약의 목적상 "고정사업장"이라 함은, 기업의 사업이 전적으로 또는 부분적으로 영위되는 사업상의 고정된 장소를 의미한다.

2. "고정사업장"이라 함은 특히 다음의 것을 포함한다.

가. 관리장소

나. 지점

다. 사무소

라. 공장

마. 작업장

바 광산 · 유전 · 가스천 · 채석장 또는 기타 천연자원의 채취장소

3. 건축장소 또는 건설 · 설비공사는 12개월 이상 존속하는 경우에만 고정 사업장이 된다.

4. 이 조 전항의 규정에도 불구하고 "고정사업장"은 다음을 포함하지 아니하는 것으로 간주된다.

가. 기업 소유의 재화나 상품의 저장 · 전시 또는 인도의 목적만을 위한 시설의 이용

나. 저장 · 전시 또는 인도의 목적만을 위한 기업 소유의 재화나 상품의 재고보유

다. 다른 기업에 의한 공정만을 위한 기업 소유의 재화나 상품의 재고보유

라. 동 기업을 위한 재화나 상품의 구입 또는 정보의 수집만을 위한 사업상 고정된 장소의 유지

마. 기업을 위한 예비적이고 보조적인 성격의 활동만을 위한 사업상 고정된 장소의 유지

바. 가목 내지 마목에 규정된 활동의 복합만을 위한 사업상 고정된 장소의 유지. 다만, 동 복합적 활동으로부터 초래되는 사업상 고정된 장소의 전반적인 활동이 예비적이고 보조적인 성격의 것이어야 한다.

5. 제1항 및 제2항의 규정에도 불구하고, 제6항의 규정이 적용되는 독립적 지위를 가지는 대리인 이외의 인이 어느 기업을 위하여 활동하며 일방체약국에서 그 기업 이름으로 계약체결권을 상시 행사하는 경우, 그 기업은 동 인이 그 기업을 위하여 수행하는 활동에 관하여 동 체약국 안에 고정사업장을 가지는 것으로 간주된다. 다만, 동 인의 활동이 사업상 고정된 장소에서 행하여진다 할지라도 제4항의 규정에 의하여 그 사업상 고정된 장소가 고정사업장으로 되지 아니하는 활동에 한정되지 아니하는 경우이어야 한다.

6. 이 조 전항의 규정에도 불구하고, 재보험을 제외한 일방체약국의 보험회사는 타방체약국의 영역 안에서 제7항이 적용되는 독립적인 지위를 가진 대리인 이외의 인을 통하여 보험료를 수금하거나 보험을 계약한 경우 타방체약국 안에서 고정사업장으로 간주된다.

7. 일방체약국의 어느 기업이 타방체약국 안에서 중개인·일반위탁매매인 또는 독립적인 지위를 가진 기타 대리인을 통하여 사업을 경영한다는 이유만으로 (동 대리인이 사업의 통상적 과정에서 활동하는 경우에는), 타방체약국 안에 고정사업장을 가지는 것으로 보지 아니한다.

8. 일방체약국의 거주자인 법인이 타방체약국의 거주자인 법인 또는 타방체약국에서(고정사업장을 통하거나 또는 다른 방법에 의하여) 사업을 경영하는 법인을 지배하거나 또는 그 법인에 의하여 지배되고 있다는 사실 그 자체만으로 어느 법인이 다른 법인의 고정사업장으로 되지는 아니한다.

제 6 조

부동산소득

1. 농업 또는 임업으로부터의 소득을 포함하여 타방체약국에 소재하는 부동산으로부터 일방체약국의 거주자가 취득하는 소득에 대하여는 동 타방체약국에서 과세할 수 있다.

2. "부동산"이라 함은 당해 재산이 소재하는 체약국의 법에서 가지는 의미를 가진다. 이 용어는 어떠한 경우에도 부동산에 부속되는 재산, 농업과 임업에 사용되는 가축 또는 장비, 토지 재산에 관한 일반법의 규정이 적용되는 권리, 부동산의 용익권 및 광상·광천 및 기타 천연자원을 채취 또는 채취할 권리에 대한 대가로서의 가변적 또는 고정적인 지급금에 대한 권리를 포함한다. 다만, 선박·항공기는 부동산으로 보지 아니한다.

3. 제1항의 규정은 부동산의 직접 사용·임대 또는 기타 형태의 사용으로부터 발생하는 소득에 대하여 적용한다.

4. 제1항 및 제3항의 규정은 기업의 부동산으로부터 발생하는 소득과 독립적 인적용역의 수행을 위하여 사용되는 부동산으로부터 발생하는 소득에 대하여도 적용한다.

제 7 조

사업소득

1. 일방체약국 기업의 이윤에 대하여는, 그 기업이 타방체약국 안에 소재하는 고정사업장을 통하여 동 타방체약국에서 사업을 경영하지 아니하는 한, 동 일방체약국에서만 과세한다. 기업이 위와 같이 사업을 경영하는 경우, 그 기업의 이윤중 동 고정사업장에 귀속시킬 수 있는 이윤에 대하여만 동 타방체약국에서 과세할 수 있다.

2. 제3항의 규정에 의할 것을 조건으로, 일방체약국의 기업이 타방체약국에 소재하는 고정사업장을 통하여 동 타방체약국에서 사업을 경영하는 경우에는 동 고정사업장이 동일하거나 유사한 조건하에서 동일하거나 유사한 활동에 종사하며 또한 동 고정사업장이 속하는 기업과 전적으로 독립하여 거래하는 별개의 분리된 기업이라고 가정하는 경우에 동 고정사업장이 취득할 것으로 기대되는 이윤은 각 체약국에서 동 고정사업장에 귀속된다.

3. 고정사업장의 이윤을 결정함에 있어서, 경영비와 일반관리비를 포함하여 동 고정사업장의 목적을 위하여 발생된 경비는 동 고정사업장이 소재하는 체약국 안에서 또는 다른 곳에서 발생되는지 여부에 관계없이 비용공제가 허용된다. 그러나 기업의 본점 또는 다른 사무소에 대하여 특허권 기타 권리의 사용에 대한 대가인 사용료·요금, 기타 유사한 대가지불 또는 특별한 용역의 수행 또는 경영에 대한 수수료 또는 고정사업장에 대부한 금전에 대한 이자(은행의 경우는 제외한다)에 대하여는 고정사업장이 지급하는 금액(실제비용의 상환이외의 부분)은 비용공제가 허용되지 아니한다. 마찬가지로, 고정사업장의 이윤을 결정함에 있어서, 기업의 본점 또는 다른 사무소에 대하여 특허권 기타 권리의 사용에 대한 대가인 사용료·요금 기타 유사한 대가 또는 특별한 용역의 수행 또는 경영에 대한 수수료 또는 고정사업장이 대부한 금전에 대한 이자(은행의 경우는 제외한다)에 대하여 고정사업장이 지급받는 금액(실제비용의 상환이외의 부분)은 고려되지 아니한다.

4. 어떠한 이윤도 고정사업장이 당해 기업을 위하여 재화나 상품을 단순히 구매한다는 이유만으로 동 고정사업장에 귀속되지 아니한다.

5. 이 조 전항의 목적상, 고정사업장에 귀속되는 이윤은 이에 반하는 타당하고 충분한 이유가 없는 한 매년 동일한 방법으로 결정되어야 한다.

6. 이윤이 이 협약의 다른 조에서 별도로 취급되는 소득의 항목을 포함하는 경우, 그 다른 조의 규정은 이 조의 규정에 의하여 영향을 받지 아니한다.

제 8 조

국제운수

1. 국제운수에 사용되는 선박 · 항공기 · 자동차 · 철도의 운행으로부터 일방체약국 기업이 취득하는 이윤은 동 일방체약국에서만 과세한다.

2. 제1항의 규정은 공동사업 · 합작사업 또는 국제경영체에의 참가로부터 발생하는 이윤에 대하여도 이를 적용한다.

3. 일방체약국의 기업에 의하여 경영되는 국제운수에 사용되는 선박 · 항공기 · 자동차 · 철도의 운행에 관하여, 그 기업이 우즈베키스탄 기업이면 한국에서의 부가가치세는 면세되며, 그 기업이 한국의 기업이면 이후 우즈베키스탄에서 부과되는 한국의 부가가치세와 유사한 조세는 면세된다.

제 9 조

특수관계기업

1. 가. 일방체약국의 기업이 타방체약국 기업의 경영 · 지배 또는 자본에 직접 또는 간접으로 참여하거나,

   나. 동일인이 일방체약국의 기업과 타방체약국 기업의 경영 · 지배 또는 자본에 직접 또는 간접으로 참여하는 경우,

그리고 위의 어느 경우에 있어서도 양 기업간 상업상 또는 재정상의 관계에 있어서 독립기업간에 설정되는 조건과 다른 조건이 설정되거나 부과된 경우, 동 조건이 없었더라면 일방기업의 이윤이 되었을 것이 동 조건으로 인하여 그러한 이윤으로 되지 아니한 것에 대하여 동 기업의 이윤에 가산되며 이에 따라 과세될 수 있다.

2. 일방체약국이 동 일방체약국 기업의 이윤에 타방체약국에서 과세된 동 타방체약국의 기업의 이윤을 포함하여 과세할 경우, 그와 같이 포함된 이윤이 양 기업간에 설정된 조건이 독립기업간에 설정되었을 조건이었다면 동 일방체약국 기업에게 발생되었을 이윤인 경우에는, 타방체약국은 그러한 이윤에 대하여 동 타방체약국의 과세액을 적절히 조정하여야 한다. 이러한 조정을 함에 있어서는 이 협약의 다른 조항이 적절히 고려되어야 하며, 양체약국의 권한있는 당국은 상호 협의하여야 한다.

제 10 조
배 당

1. 일방체약국의 거주자인 법인이 타방체약국의 거주자에게 지급하는 배당에 대하여는 동 타방체약국에서 과세할 수 있다.

2. 그러나, 그러한 배당에 대하여는 배당을 지급하는 법인이 거주자인 체약국에서도 동 체약국의 법에 의하여 과세할 수 있다. 다만, 수취인이 그 배당의 수익적 소유자이고 타방체약국의 거주자인 경우 그와 같이 부과되는 조세는 다음을 초과할 수 없다.

가. 수익적 소유자가 배당을 지급하는 법인 자본의 최소한 25퍼센트를 직접적으로 보유하고 있는 법인(조합 이외의 법인)인 경우 배당총액의 5퍼센트

나. 기타의 모든 경우에 있어서는 총 배당액의 15퍼센트

이 항은 동 배당이 지급되는 이윤에 대한 법인의 과세에 영향을 미치지 아니한다.

3. 이 조에서 사용되는 "배당"이라 함은 주식으로부터 발생하는 소득 또는 채권이 아닌 이윤에 참가하는 기타의 권리로부터 발생하는 소득과 분배를 하는 법인이 거주자인 국가의 법에 의하여 주식으로부터 발생하는 소득과 동일한 과세상의 취급을 받는 기타의 법인에 대한 권리로부터 발생하는 소득을 말한다.

4. 제1항 및 제2항의 규정은 일방체약국의 거주자인 배당의 수익적 소유자가 그 배당을 지급하는 법인이 거주자인 타방체약국에 소재하는 고정사업장을 통하여 그곳에서 사업을 경영하거나 동 타방체약국에 소재하는 고정시설을 통하여 그곳에서 독립적 인적용역을 수행하며, 또한 그 배당의 지급원인이 되는 지분이 그러한 고정사업장 또는 고정시설과 실질적으로 관련되는 경우에는 적용되지 아니한다. 그러한 경우에는 사정에 따라, 제7조 또는 제14조의 규정을 적용한다.

5. 일방체약국의 거주자인 법인이 타방체약국으로부터 이윤 또는 소득을 취득하는 경우, 타방체약국은 동 법인이 지급하는 배당에 대하여는, 타방체약국의 거주자에게 지급되거나 또는 그 배당의 지급원인이 되는 지분이 타방체약국에 소재하는 고정사업장 또는 고정시설과 실질적으로 관련되는 경우를 제외하고는, 비록 지급된 배당 또는 유보이윤이 전적으로 또는 부분적으로 타방체약국에서 발생한 이윤 또는 소득으로 구성되어 있다 할지라도, 과세할 수 없으며 동 법인의 유보이윤도 유보이윤에 대한 조세의 대상으로 할 수 없다.

제 11 조
이 자

1. 일방체약국에서 발생하여 타방체약국의 거주자에게 지급되는 이자에 대하여는 동 타방체약국에서 과세할 수 있다.

2. 그러나, 그러한 이자는 그 이자가 발생하는 체약국에서도 동 국가의 법에 의하여 과세될 수 있다. 다만, 그 이자의 수익적 소유자가 타방체약국의 거주자인 경우 그렇게 부과되는 조세는 이자 총액의 5퍼센트를 초과할 수 없다. 체약국의 권한있는 당국은 이 한도의 적용방식을 상호합의에 의하여 해결한다.

3. 이 조에서 언급된 "이자"라 함은 담보의 유무와 채무자의 이윤에 대한 참가권의 수반여부에 관계없이 모든 종류의 채권으로부터 발생하는 소득, 특히 공채로부터 발생하는 소득과 채권 또는 채무증서로부터 발생하는 소득을 말하며 그러한 공채·채권·채무증서에 부가되는 프리미엄과 장려금을 포함한다. 지연지급에 대한 벌과금은 이 조의 목적상 이자로 간주되지 아니한다.

4. 제1항 및 제2항의 규정은, 일방체약국의 거주자인 이자의 수익적 소유자가 그 이자가 발생하는 타방체약국에 소재하는 고정사업장을 통하여 그곳에서 사업을 경영하거나 동 타방체약국에 소재하는 고정시설을 통하여 그곳에서 독립적 인적용역을 수행하며, 또한 이자의 지급원인이 되는 채권이 그러한 고정사업장 또는 고정시설과 실질적으로 관련되는 경우에는 적용되지 아니한다. 그러한 경우에는, 사정에 따라 제7조 또는 제14조의 규정을 적용한다.

5. 이자는 지급인이 그 체약국의 거주자일 때 그 일방체약국에서 발생하는것으로 본다. 그러나 일방체약국의 거주자인지 여부를 불문하고, 이자지급인이 동 일방체약국 안에 그 이자의 지급원인이 되는 채무의 발생과 관련되는 고정사업장 또는 고정시설을 가지고 있고, 또한 이자가 그러한 고정사업장 또는 고정시설에 의하여 부담되는 경우, 그러한 이자는 동 고정사업장 또는 고정시설이 소재하는 국가에서 발생하는 것으로 본다.

6. 지급인과 수익적 소유자간 또는 그 양자와 기타인 간의 특수관계로 인하여 이자의 지급액이 그러한 관계가 없었더라면 지급인과 수익적 소유자간에 합의되었을 금액을 초과하는 경우, 이 조의 규정은 뒤에 언급된 금액에 대하여만 적용한다. 그러한 경우 그 지급액의 초과부분에 대하여는 이 협약의 다른 규정을 적절히 고려하여 각 체약국의 법에 의하여 과세한다.

제 12 조
사 용 료

1. 일방체약국에서 발생하여 타방체약국의 거주자에게 지급되는 사용료에 대하여는 동 타방체약국에서 과세할 수 있다.

2. 그러나, 사용료는 동 사용료가 발생하는 체약국에서도 동 체약국의 법에 의하여 과세될 수 있다. 다만, 사용료의 수익적 소유자가 타방체약국의 거주자인경우 그렇게 부과되는 조세는 다음을 초과해서는 아니된다.

가. 산업적·상업적·과학적 장비의 사용 또는 사용할 권리에 대하여 지불한 사용료 총액의 2퍼센트

나. 기타 모든 경우에 있어서는 사용료 총액의 5퍼센트

3. 이 조에서 사용되는 "사용료"라 함은 영화필름 또는 라디오·텔레비전 방송용 필름·테이프를 포함하여 문학·예술·학술작품의 저작권·특허권·상표권·의장이나 신안·도면·비밀공식이나 비밀공정의 사용 또는 사용권, 산업적· 상업적 또는 학술적 설비의 사용 또는 사용권 및 산업적·상업적 또는 학술적 경험에 관한 정보의 대가로서 수취하는 모든 종류의 지급금을 의미한다.

4. 제1항 및 제2항의 규정은 일방체약국의 거주자인 사용료의 수익적 소유자가 그 사용료가 발생하는 타방체약국에 소재하는 고정사업장을 통하여 그 곳에서 사업을 경영하거나 동 타방체약국에 소재하는 고정시설을 통하여 그 곳에서 독립적 인적용역을 수행하며, 또한 그 사용료의 지급원인이 되는 권리 또는 재산이 그러한 고정사업장이나 고정시설과 실질적으로 관련되는 경우에는 적용하지 아니한다. 그러한 경우에는 사정에 따라 제7조 또는 제14조의 규정을 적용한다.

5. 사용료는 지급인이 그 체약국의 거주자일 때 그 일방체약국에서 발생하는 것으로 본다. 그러나 일방체약국의 거주자인지 여부를 불문하고, 사용료의 지급인이 어떤 체약국 안에 그 사용료의 지급원인이 되는 채무의 발생과 관련되는 고정사업장 또는 고정시설을 가지고 있고, 또한 사용료가 그러한 고정사업장 또는 고정시설에 의하여 부담되는 경우, 그러한 사용료는 동 고정사업장 또는 고정시설이 소재하는 국가에서 발생하는 것으로 간주된다.

6. 지급인과 수익적 소유자간 또는 그 양자와 기타인 간의 특수관계로 인하여 사용료의 지급액이, 그 지급의 원인이 되는 사용 · 권리 또는 정보를 고려할 때 그러한 특수관계가 없었더라면 지급인과 수익적 소유자간에 합의되었을 금액을 초과하는 경우, 이 조의 규정은 뒤에 언급된 금액에 대하여만 적용된다. 그러한 경우, 그 지급액의 초과 부분에 대하여는 이 협약의 다른 규정을 적절히 고려하여 각 체약국의 법에 의하여 과세한다.

7. 이 조의 규정은 이 조의 혜택을 향유하는 것이 사용료가 지급되는 권리의 창설 또는 양도와 관련된 자의 주목적 또는 주목적중의 하나인 경우에는 적용하지 아니한다. 이 항을 적용함에 있어서 체약국의 권한있는 당국은 구체적 사안에 대한 이 조 적용에 관한 의사결정 전에 타방당사국의 권한있는 당국과 협의하여야 한다.

제 13 조

양도소득

1. 제6조에서 언급된 타방체약국 안에 소재하는 부동산의 양도로부터 일방체약국의 거주자가 취득하는 이득에 대하여는 동 타방체약국에서 과세할 수 있다.

2. 일방체약국의 기업이 타방체약국 안에 가지고 있는 고정사업장의 사업용 자산의 일부를 형성하는 동산 또는 독립적 인적용역을 수행할 목적상 타방체약국에서 일방체약국 거주자에게 이용가능한 고정시설에 속하는 동산의 양도로부터 발생하는 이득 및 그러한 고정사업장(단독으로 또는 기업 전체와 함께) 또는 그러한 고정시설의 양도로부터 발생하는 이득에 대하여는 동 타방체약국에서 과세할 수 있다.

3. 국제운수상 운항되는 선박 · 항공기 · 철도 · 차량의 양도 또는 그러한 선박 · 항공기 · 차량 · 철도의 운영에 관련되는 동산의 양도로부터 일방체약국의 기업이 취득하는 이득은 동 체약국에서만 과세한다.

4. 제1항 · 제2항 및 제3항에 언급된 자산 이외의 자산의 양도로부터 발생하는 이득에 대하여는 그 양도인이 거주자인 체약국에서만 과세한다.

제 14 조
독립적 인적용역

1. 일방체약국의 거주자가 전문직업적 용역 또는 기타 독립적 성격의 활동과 관련하여 취득하는 소득에 대하여는, 그러한 소득이 타방체약국에서 과세되는 다음 상황을 제외하고, 동 일방체약국에서만 과세한다.

가. 그가 그의 활동 수행상 그 타방체약국 안에 그에게 정기적으로 사용되는 고정시설을 가지고 있는 경우. 그러한 경우에 당해 소득중 그 고정 그 고정시설에 귀속시킬 수 있는 소득에 대하여만 타방체약국에서 과세할 수 있다.

나. 그가 당해 역년에서 개시하거나 종료하는 어느 12월의 기간 중 총 183 일을 초과하는 단일기간 또는 총 기간동안 타방국 안에 체재하는 경우. 그러한 경우에 당해 소득중 당해년도에 타방체약국에서 수행한 그의 활동으로부터 취득한 소득에 대하여만 동 타방체약국에서 과세할 수 있다.

2. "전문직업적 용역"이라 함은 의사 · 변호사 · 기사 · 건축사 · 치과의사 · 회계사의 독립적인 활동은 물론 특히 독립적인 학술 · 문학 · 예술 · 교육 · 교수활동을 포함한다.

제 15 조
종속적 인적용역

1. 제16조 · 제18조 및 제19조의 규정에 의할 것을 조건으로, 고용과 관련하여 일방체약국의 거주자가 취득하는 급료 · 임금 및 기타 유사한 보수에 대하여는 그 고용이 타방체약국에서 수행되지 아니하는 한, 동 일방체약국에서만 과세한다. 그 고용이 타방체약국에서 수행되는 경우, 동 고용으로부터 발생하는 보수에 대하여는 동 타방체약국에서 과세할 수 있다.

2. 제1항의 규정에도 불구하고, 타방체약국 내에서 수행된 고용과 관련하여 일방체약국의 거주자가 취득하는 보수에 대하여는 다음의 경우 일방체약국에서만 과세한다.

가. 수취인이 당해 연도에 개시하거나 종료하는 어느 12월 기간중 총 183일을 초과하지 아니하는 단일기간 또는 제기간 동안 타방체약국 안에 체재하고,

나. 그 보수가 타방체약국의 거주자가 아닌 고용주에 의하여 또는 그를 대신하여 지급되며,

다. 그 보수가 타방체약국 안의 고용주 또는 고용주와 관련된 자가 가지고 있는 고정사업장 또는 고정시설에 의하여 부담되지 아니하는 경우

3. 이 조의 전항의 규정에도 불구하고, 일방체약국의 기업에 의하여 국제운수에 운항되는 선박 · 항공기 · 차량 · 철도에 탑승하여 수행되는 고용에 관하여 발생되는 보수에 대하여는 동 일방체약국에서 과세할 수 있다.

제 16 조

이사의 보수

일방체약국의 거주자가 타방체약국의 거주자인 법인의 이사회 구성원 자격으로 취득하는 이사의 보수 및 기타 유사한 지급금에 대하여는 동 타방체약국에서 과세할 수 있다.

제 17 조

연예인 및 체육인

1. 제14조 및 제15조의 규정에도 불구하고, 연극 · 영화 · 라디오 또는 텔레비전의 연예인이나 음악가와 같은 연예인으로서 또는 체육인으로서 일방체약국의 거주자가 타방체약국에서 수행하는 그의 인적 활동으로부터 취득하는 소득에 대하여는 동 타방체약국에서 과세할 수 있다.

2. 연예인 또는 체육인이 그러한 자격으로 수행한 인적활동에 관한 소득이 그 예능인 또는 체육인 자신에게 귀속되지 아니하고 타인에게 귀속되는 경우, 제7조 · 제14조 및 제15조의 규정에도 불구하고 동 소득에 대하여는 그 예능인 또는 체육인의 활동이 수행되는 체약국에서 과세될 수 있다.

3. 이 조 제1항 및 제2항의 규정에도 불구하고, 일방체약국의 거주자인 연예인 또는 체육인이 양체약국 정부간에 합의되고 일방 또는 양체약국과 지방정부의 공공기금에 의하여 완전히 지원되는 문화교류 특별프로그램에 의하여 타방체약국에서 수행되는 활동으로부터 취득하는 소득은 동 타방체약국에서 면세한다.

제 18 조
연 금

제19조 제2항의 규정에 의할 것을 조건으로, 과거 고용의 대가로 일방체약국의 거주자에게 지급되는 연금 및 이와 유사한 보수에 대하여는 동 체약국에서만 과세한다.

제 19 조
정부용역

1. 가. 일방체약국 또는 지방자치단체가 체약국 또는 자치단체에 제공된 용역에 대하여 개인에게 지급한 급료 · 임금 및 연금 이외의 이와 유사한 보수는 동 일방체약국에서만 과세한다.

   나. 그러나 그러한 급료 · 임금 및 이와 유사한 보수에 대하여는 만약 그 용역이 타방체약국에서 제공되고 그 개인이 다음에 해당하는 동 타방체약국의 거주자인 경우에는 동 타방체약국에서만 과세한다.

   (1) 동 타방체약국의 국민인 자 또는

   (2) 다만 그 용역의 제공만을 목적으로 동 체약국의 거주자가 되지 아니한 자

2. 가. 일방체약국 또는 지방자치단체에 제공되는 용역과 관련하여 동 일방체약국 또는 지방자치단체가 직접 또는 이들에 의하여 조성된 기금으로부터 개인에게 지급되는 연금에 대하여는 동 일방체약국에서만 과세한다.

나. 그러나, 그 개인이 타방체약국의 거주자이며 국민인 경우 그러한 연금에 대하여는 동 타방체약국에서만 과세한다.

3. 일방체약국 또는 지방자치단체에 의하여 수행되는 사업과 관련하여 제공되는 용역에 대하여 지급되는 급료·임금 이와 유사한 보수 및 연금에 대하여 제15조·제16조 및 제18조의 규정을 적용한다.

4. 제1항 및 제2항의 규정은 체약국의 권한있는 당국간 교환되는 서한으로 지정 합의될 수 있는 정부적 성격의 기능을 수행하는 금융기관에 의하여 지급 되는 보수 또는 연금에 관하여 동일하게 적용된다.

제 20 조
학 생

교육 또는 훈련만을 목적으로 일방체약국에 체재하며 타방체약국의 거주자이거나 일방체약국을 방문하기 직전에 타방체약국의 거주자였던 학생 또는 사업 견습생이 그의 생계·교육 또는 훈련의 목적상 받는 지급금이 일방체약국의 국외원천으로부터 발생한 것이면 동 지급금은 일방체약국에서 면세한다.

제 21 조
기타 소득

1. 이 협약의 전기 각 조에서 취급되지 아니한 일방체약국 거주자의 소득항목에 대하여는 어디에서 발생하건 동 일방체약국에서만 과세한다.

2. 일방체약국 거주자인 소득의 수취인이 타방체약국 안에 소재하는 고정 사업장을 통하여 사업을 영위하거나, 그 타방체약국에서 그곳 소재 고정시설을 통하여 독립적인 개인용역을 수행하고, 또한 지급되는 소득과 관련된 권리 또는 재산이 그러한 고정사업장 또는 고정시설과 실질적으로 관련되는 경우, 제1항의 규정은 제6조제2항에 규정된 부동산으로부터 발생한 소득 이외의 소득에는 적용되지 아니한다. 그러한 경우에는 사정에 따라, 제7조 또는 제14조의 규정이 적용된다.

제 22 조
자 본

1. 일방체약국 거주자의 부동산이 타방체약국에 소재하고 있는 경우 그 타방체약국에서 과세할 수 있다.

2. 일방체약국의 기업이 타방체약국 안에 소유하고 있는 고정사업장의 사업용 자산의 일부를 구성하는 동산 또는 일방체약국 거주자가 독립적인 인적용역의 수행을 목적으로 타방체약국에서 이용할 수 있는 고정시설과 관련된 동산은 그 타방체약국에서 과세할 수 있다.

3. 일방체약국의 기업에 의하여 소유되고 국제운수상 운항되는 선박 · 항공기 · 차량 · 철도 그리고 그러한 선박 · 항공기 · 차량 · 철도의 사용에 관계된 동산, 그리고 제8조제2항의 규정이 적용되는 콘테이너로 대표되는 자본은 동 일방체약국에서만 과세된다.

4. 일방체약국 거주자의 자본의 기타 모든 요소는 그 일방체약국에서만 과세된다.

제 23 조

이중과세방지

1. 한국의 경우, 이중과세는 다음과 같이 회피된다.

한국 이외의 국가에서 납부하는 조세에 대하여 허용하는 한국의 조세에 대한 세액공제에 관한 한국세법의 규정(이 항의 일반적인 원칙에 영향을 미쳐서는 아니된다)에 의할 것을 조건으로, 우즈베키스탄 안의 원천소득에 대하여 직접적이든 공제에 의해서든, 우즈베키스탄의 법과 이 협약에 의하여 납부할 조세(배당의 경우 배당이 지급되는 이윤에 대하여 납부할 조세를 제외한다)는 동 소득에 대하여 납부할 한국의 조세로부터 세액공제가 허용된다. 그러나 그 세액공제액은 세액공제가 주어지기 전에 계산된 동 소득에 대한 한국의 조세액을 초과하지 아니한다.

2. 우즈베키스탄의 경우, 이중과세는 다음과 같이 회피된다.

우즈베키스탄의 거주자가, 이 협약의 규정에 의하여, 한국에서 과세될 수 있는 소득을 취득하거나 재산을 소유하는 경우 우즈베키스탄은 다음을 허용하여야 한다.

가. 한국에서 납부한 총소득세상당액을 당해 거주자의 소득세에서 공제

나. 한국에서 납부한 총재산세액을 당해 거주자의 재산세에서 공제

그러나 어떤 경우이든 이같은 공제는 공제가 주어지기 전에 계산된 바에 의하여 한국에서 과세될 수 있는 소득 및 재산에 귀속될 소득세 또는 재산세액을 초과하지 아니한다.

3. 일방체약국의 거주자가 취득하는 소득 또는 소유하는 재산이 이 협약의 규정에 따라 그 일방체약국에서 면세되는 경우라 하더라도 그 일방국은 그 거주자의 잔여소득 또는 재산에 대한 세액계산에 있어서 그 면세된 소득 및 재산을 고려할 수 있다.

4. 이 조 제1항 및 제2항에 언급된 일방체약국에서 납부하는 조세는 경제개발 촉진을 위한 조세경감·면제 또는 체약국의 기타 조세유인조치에 관한 법률 규정이 없었더라면 납부하였어야 할 세액을 포함하는 것으로 본다. 이 항의 목적상 세액은 다음과 같은 것으로 간주된다.

가. 제10조제2항 가목의 경우 배당총액의 5퍼센트

나. 제10조제2항 나목의 경우 배당총액의 15퍼센트

다. 제11조제2항의 경우 이자총액의 5퍼센트

라. 제12조제2항 가목의 경우 사용료 총액의 2퍼센트

마. 제12조제2항 나목의 경우 사용료 총액의 5퍼센트

5. 이 조 제4항에 의한 조세경감은 동 조 동항에서 언급된 조세의 면제 또는 경감이 없었더라면 납부하여야 할 조세와 관련된, 2004년 1월 1일 이후에 발생하는 이윤·소득·과세이익에는 부여하지 아니한다.

제 24 조
무 차 별

1. 일방체약국의 국민은 동일한 상황에 있는 타방체약국의 국민이 부담하거나 부담할 수 있는 조세 또는 이와 관련된 요건과 다르거나 그보다 더 과중한 조세 또는 이와 관련된 요건을 동 타방체약국에서 부담하지 아니한다.

2. 일방체약국의 기업이 타방체약국 안에 가지고 있는 고정사업장에 대한 조세는 동일한 활동을 수행하는 동 타방체약국의 기업에 부과되는 조세보다 불리하게 부과되지 아니한다. 이 규정은 일방체약국의 시민으로서의 지위 또는 가족부양 책임으로 인하여 자국의 거주자에게 부여하는 조세목적상의 인적공제·경감 및 감면을 타방체약국의 거주자에게도 부여하여야 할 의무를 동 일방체약국에 대하여 부과하는 것으로 해석되지 아니한다.

3. 제9조제1항 · 제11조제6항 또는 제12조제4항의 규정이 적용되는 경우를 제외하고, 일방체약국의 기업이 타방체약국의 거주자에게 지급하는 이자 · 사용료 및 기타 지급금은, 그러한 기업의 과세이윤을 결정하기 위한 목적상 이들이 일방체약국의 거주자에게 지급되었을 때와 동일한 조건으로 공제한다.

4. 일방체약국 기업자본의 전부 또는 일부가 1인 또는 그 이상의 타방체약국 거주자에 의하여 직접 또는 간접으로 소유되거나 지배되는 경우, 그 기업은 동 일방체약국의 다른 유사한 기업이 부담하거나 부담할 수도 있는 조세 또는 이와 관련된 요건과 다르거나 그보다 더 과중한 조세 또는 이와 관련된 요건을 동 일방체약국에서 부담하지 아니한다.

5. 이 조 제2조의 규정에도 불구하고, 이 조의 규정은 모든 종류와 명칭의 조세에 적용된다.

제 25 조
상호합의 절차

1. 일방체약국 또는 양체약국의 조치가 어느 인에 대하여 이 협약의 규정에 부합하지 아니하는 과세상의 결과를 초래하거나 초래할 것이라고 동 인이 여기는 경우, 양체약국의 국내법에 규정된 구제수단에도 불구하고 그가 거주자인 체약국의 권한있는 당국에 또는 그의 문제가 제24조제1항에 해당되는 경우에는 그가 국민인 체약국의 권한있는 당국에 그의 문제를 제기할 수 있다. 동 문제는 이 협약의 제 규정에 부합되지 아니하는 과세상의 결과를 초래하는 조치의 최초통보일부터 3년 이내에 제기되어야 한다.

2. 그 이의가 정당하다고 인정되나 스스로 만족할 만한 해결에 도달할 수 없는 경우, 권한있는 당국은 이 협약에 부합되지 아니하는 과세를 회피하기 위하여 타방체약국의 권한있는 당국과 상호합의에 의하여 그 문제를 해결하도록 노력하여야 한다. 이에 따른 상호합의는 체약국 국내법상의 시한에 관계없이 시행된다.

3. 양체약국의 권한있는 당국은 이 협약의 해석 또는 적용에 관하여 발생하는 곤란 또는 의문을 상호합의에 의하여 해결하도록 노력하여야 한다. 또한 양 당국은 이 협약에 규정되지 아니한 경우에 있어서의 이중과세의 회피를 위하여도 상호협의할 수 있다.

4. 양체약국의 권한있는 당국은 전항에서 의미하는 합의에 도달하기 위한 목적으로 상호 직접적으로 의견을 교환할 수 있다.

제 26 조

정보교환

1. 체약국의 권한있는 당국은 이 협약의 제규정을 시행하거나 또는 당해 국내법에 의한 과세가 이 협약의 규정에 반하지 아니하는 한, 이 협약의 적용대상이 되는 조세에 관한 체약국의 국내법을 시행하는데 필요한 정보를 교환한다. 정보의 교환은 제1조에 의하여 제한받지 아니한다. 일방체약국이 입수하는 정보는 동 체약국의 국내법에 의하여 입수되는 정보와 동일하게 비밀로 취급되어야 하며, 이 협약의 적용대상이 되는 조세의 부과·징수, 그에 대한 강제집행·소추또는 쟁송제기의 결정에 관련되는 인 또는 당국(사법·행정기관을 포함한다)에 대하여만 공개된다. 그러한 인 또는 당국은 이러한 목적을 위하여만 정보를 사용한다. 이들은 공개 법정절차 또는 사법적 결정에 있어서 정보를 공개할 수 있다.

2. 어떠한 경우에도 제1항의 규정은 일방체약국에 대하여 다음의 의무를 부과하는 것으로 해석되지 아니한다.

가. 일방 또는 타방체약국의 법률 및 행정관행에 저촉되는 행정적 조치를 수행하는 것

나 일방 또는 타방체약국의 법률에 의하여 또는 행정의 통상적인 과정에서 입수할 수 없는 정보를 제공하는 것

다. 교역상 · 사업상 · 산업상 · 상업상 또는 전문직업상의 비밀 또는 거래의 과정을 공개할 경우 공공정책(공공질서)에 배치되는 정보를 제공하는 것

제 27 조

외교관 및 영사의 지위

이 협약의 어떠한 규정도 국제법의 일반규칙 또는 특별협약의 제규정에 의한 외교관 또는 영사 지위의 재정상의 특권에 영향을 미치지 아니한다.

제 28 조

발 효

각 체약국은 이 협약의 발효를 위하여 자국의 국내법에서 요구되는 절차의 완료를 타방체약국에 통지하여야 한다. 이 협약은 맨 나중에 행한 통지일 후 15일째에 발효되며 다음에 대하여 효력을 가진다.

가. 원천징수되는 조세에 대하여는, 이 협약이 발효되는 연도의 다음년도 1월 1일 이후에 취득한 소득부터

나. 기타 소득과 자본에 관한 조세에 관하여는, 이 협약이 발효되는 연도의 다음 년도 1월 1일 이후에 개시되는 모든 과세기간에 대하여

제 29 조

종 료

이 협약은 일방체약국에 의하여 종료될 때까지 효력을 가진다. 각 체약국은 이 협약이 효력을 발생한 날로부터 5년이 경과한 후 어느 역년의 6월 30일 또는 그 이전에 외교경로를 통하여 타방체약국에 서면으로 종료를 통고함으로써 이 협약을 종료시킬 수 있다. 그러한 경우 이 협약은 다음에 대하여 효력이 정지된다.

가. 종료 통고를 한 연도의 다음 년도 1월 1일 이후 취득한 소득에 대하여 원천징수 하는 조세

나. 종료 통고를 한 연도의 다음년도 1월 1일 이후에 개시되는 과세년도에 대한 기타 소득과 자본에 관한 조세

이상의 증거로 아래 서명자는 그들 각자의 정부로부터 정당하게 권한을 위임 받아 이 협약에 서명하였다.

1998년 2 월 11 일 타쉬켄트 에서 동등히 정본인 한국어 · 우즈벡어 및 영어로 각각 2부씩 작성하였다. 해석상 상위가 있을 경우에는 영어본이 우선한다.

대한민국 정부를 위하여

우즈베키스탄공화국 정부를 위하여

의 정 서

대한민국 정부와 우즈베키스탄공화국 정부간의 소득 및 자본에 대한 조세의 이중과세회피와 탈세방지를 위한 협약을 서명함에 있어서, 서명자는 이 협약의 불가분의 일부를 이루는 다음 규정에 합의하였다.

1. 우즈베키스탄의 경우, 이 협약의 전문과 기타 조항에서 언급된 "자본에 대한 조세"는 우즈베키스탄의 재산세를 의미한다고 양해한다.

2. 제7조제1항과 관련하여, 다만 당해 고정사업장의 조세를 감소시킬 목적으로, 독립기업간이라면 이루어지지 아니하였을 방법으로 거래가 이루어졌다고 믿을 구체적 이유를 체약국이 갖고 있는 경우, 그러한 거래로부터의 소득은 그것이 고정사업장의 소득인 것 같이 조정된다.

이상의 증거로 아래 서명자는 그들 각자의 정부로부터 정당하게 권한을 위임 받아 이 의정서에 서명하였다.

1998년 **2** 월 **11** 일 **타쉬켄트**에서 동등히 정본인 한국어 · 우즈벡어 및 영어로 각각 2부씩 작성하였다. 해석상 상위가 있을 경우에는 영어본이 우선한다.

대한민국 정부를 위하여	우즈베키스탄공화국 정부를 위하여

[UZBEK TEXT — TEXTE OUZBEK]

КОРЕЯ РЕСПУБЛИКАСИ ҲУКУМАТИ ВА ЎЗБЕКИСТОН РЕСПУБЛИКАСИ ҲУКУМАТИ ЎРТАСИДА ИККИЁҚЛАМА СОЛИҚ СОЛИНИШИНИНГ ОЛДИНИ ОЛИШ ҲАМДА ДАРОМАД ВА САРМОЯ СОЛИҚЛАРИНИ ТЎЛАШДАН БОШ ТОРТИШНИ БАРТАРАФ ҚИЛИШ ТЎҒРИСИДА

КОНВЕНЦИЯ

Корея Республикаси Ҳукумати ва Ўзбекистон Республикаси Ҳукумати, иккиёқлама солиқ солинишининг олдини олиш ҳамда даромад ва сармоя солиқларини тўлашдан бош тортишни бартараф қилиш тўғрисида Конвенция тузиш истагини билдириб,

қуйидагилар тўғрисида келишиб олдилар:

1-МОДДА
ҚЎЛЛАНИШ ДОИРАСИ

Ушбу Конвенция Аҳдлашувчи Давлатларнинг бири ёки ҳар иккисининг резиденти бўлган шахсларга нисбатан қўлланилади.

2-МОДДА
КОНВЕНЦИЯ ТАДБИҚ ЭТИЛАДИГАН СОЛИҚЛАР

1. Ушбу Аҳдлашувчи Давлатлар номидан ёки уларнинг маҳаллий ҳокимиятлари номидан олинаёттан даромад ва сармоя солиқларига нисбатан, уларни ундириш услубидан қатъи назар, тадбиқ этилади.

2. Даромад ва сармоя солиқларига умумий даромаддан, умумий сармоядан ёки даромад ёҳуд сармоянинг бир қисмидан, бутун сармоядан ёки унинг бир қисмидан олинадиган барча солиқлар, шу жумладан, кўчар ва кўчмас мулкни бегоналаштиришдан олинган даромадлардан, ҳамда корхоналар томонидан тўланадиган иш ҳақи ёки маошнинг умумий миқдоридан олинадиган солиқлар, шунингдек, сармоя қийматининг ошишидан олинган даромадлардан ундириладиган солиқлар киради.

3. Ушбу Конвенция қўлланиладиган амалдаги солиқлар, жумладан қуйидагилардир:

а) Корея Республикасига нисбатан:

i) даромад солиғи;

ii) корпоратив солиқ;

iii) жисмоний шахслардан ундириладиган даромад солиғи;

iv) қишлоқ хўжалигини ривожлантириш учун ундириладиган махсус солиқ

(бундан кейин "Корея солиқлари" деб аталадилар);

b) Ўзбекистон Республикасига нисбатан:

i) корхоналар, бирлашмалар ва ташкилотлар даромадларидан олинадиган солиқ;

ii) жисмоний шахслардан ундириладиган даромад солиғи

iii) мол-мулк солиғи

(бундан кейин "Ўзбекистон солиқлари" деб аталадилар).

4. Ушбу Конвенция, Конвенция имзоланган санадан сўнг ундириладиган солиқларга айнан ёки қисман ўхшаш ва уларга қўшимча тарзда ёки мавжудлари ўрнига киритилган ҳар қандай солиқларга нисбатан ҳам қўлланилади. Аҳдлашувчи Давлатларнинг ваколатли органлари ўзларининг тегишли солиқ қонунчилигида бўлган барча муҳим ўзгаришлар тўғрисида бир-бирларини хабардор қиладилар.

3-МОДДА
УМУМИЙ ТАЪРИФЛАР

1. Ушбу Конвенциянинг мақсадлари учун, агар матннинг мазмунидан ўзга маъно чиқмаса:

a) "КОРЕЯ" атамаси Корея Республикасининг ҳудудий денгизига ёндош, Корея Республикаси денгиз туби ва ер ости ва уларнинг табиий ресурсларига нисбатан Корея Республикасининг суверен ҳуқуқларини амалга ошириши мумкин бўлган ва халқаро ҳуқуққа биноан белгиланган бўлиши ёки Корея Республикаси қонунларига биноан келгусида белгиланиши мумкин бўлган доирани ўз ичига олган ҳолда, Корея Республикаси ҳудудини англатади;

b) "ЎЗБЕКИСТОН" атамаси Ўзбекистон Республикасини англатади ва жуғрофий маънода ишлатилганда Ўзбекистон Республикаси, улар доирасида Ўзбекистон Республикаси қонунларига ва халқаро ҳуқуққа мувофиқ ўз суверен ҳуқуқларини ва юрисдикциясини, шу жумладан ер ости бойликларидан ва табиий ресурслардан фойдаланиш ҳуқуқларини амалга ошириши мумкин бўлган, ҳудудий сувларини ва осмон кенгликларини ўз ичига олган ҳолда, Ўзбекистон Республикаси ҳудудини англатади;

c) "бир Аҳдлашувчи Давлат" ва "бошқа Аҳдлашувчи Давлат" атамалари матнга қараб Ўзбекистонни ёки Кореяни билдиради;

d) "солиқ" атамаси матндаги маъносига қараб Ўзбекистон солиғини ёки Корея солиғини англатади;

e) "шахс" атамаси жисмоний шахсни, компанияни ёки шахсларнинг ҳар қандай бошқа бирлашмасини англатади;

f) "компания" атамаси корпоратив бирлашмани, Аҳдлашувчи Давлатнинг қонунларига кўра ўзининг мақоми белгиланган ва солиққа тортиш мақсадларида корпоратив бирлашма сифатида қараладиган қўшма корхона ёки бошқа ташкилот бўлмиш ҳар қандай шахсни англатади;

g) "бир Аҳдлашувчи Давлат корхонаси" ва "бошқа Аҳдлашувчи Давлат корхонаси" атамалари тегишлича Аҳдлашувчи Давлатлардан бирининг резиденти бошқаруви остида ишлаб турган корхонани ва бошқа Аҳдлашувчи Давлатнинг резиденти бошқаруви остида фаолият кўрсатаётган корхонани англатади;

h) "миллий шахс" атамаси:

i) Аҳдлашувчи Давлат фуқаролигига эга бўлган ҳар қандай жисмоний шахсни; ва

ii) Аҳдлашувчи Давлатнинг амалдаги қонунларига мувофиқ ўз мақомини олган ҳар қандай юридик шахсни, ширкат ва ассоциацияни англатади;

i) "халқаро ташиш" атамаси Аҳдлашувчи Давлатлардан корхона томонидан фойдаланиладиган денгиз ёки ҳаво кемасида, автомобиль транспорти воситаларида ва темир йўл орқали ҳар қандай ташишни англатади, денгиз ёки ҳаво кемасининг, темир йўл ёки автомобиль транспорти воситаларининг ўзга Аҳдлашувчи Давлатда жойлашган пунктлар ўртасидагина фойдаланилиши бундан мустасно;

j) "ваколатли орган" атамаси:

i) Кореяга нисбатан - Молия ва иқтисодиёт вазирини ёки унинг ваколатли вакилини англатади; ва

ii) Ўзбекистонга нисбатан - Ўзбекистон Республикаси Давлат солиқ қўмитаси Раисини ёки унинг ваколатли вакилини.

2. Ушбу Конвенцияни Аҳдлашувчи Давлат қўллаганда унда белгиланмаган ҳар қандай атама, агар матндан бошқа маьно келиб чиқмаса, ушбу Конвенция тадбиқ этиладиган солиқларга нисбатан мазкур Давлат қонунларида эга бўлган маънони англатади,.

4-МОДДА
РЕЗИДЕНТ

1. Ушбу Конвенция мақсадлари учун "Аҳдлашувчи Давлат резиденти" атамаси шу Давлат қонунлари бўйича ўзининг яшаш жойи, доимий истиқомат жойи, бош ва асосий офиси жойлашган жойи, бошқарув жойи ва ҳар қандай бошқа шунга ўхшаш мезонлар асосида солиққа тортиладиган ҳар қандай шахсни

англатади. Бироқ бу атама ушбу Аҳдлашувчи Давлатда фақат ушбу Давлатда жойлашган манбалардан даромад олаётгани учун солиққа тортиладиган ҳар қандай шахсни ўз ичига олмайди.

2. Агар 1-банд қоидаларига мувофиқ жисмоний шахс Аҳдлашувчи Давлатларнинг ҳар иккисининг резиденти бўлса, унинг мақоми қуйидаги тарзда белгиланади:

a) у тўсиқсиз яшаши мумкин бўлган доимий уйи жойлашган Давлатнинг резиденти ҳисобланади; агар у ҳар икки Давлатда тўсиқсиз яшаши мумкин бўлган доимий уйга эга бўлса, шахсий ва иқтисодий алоқалари энг чуқур бўлган (ҳаётий манфаатлар маркази) Давлатнинг резиденти ҳисобланади;

b) агар унинг ҳаётий манфаатлари маркази жойлашган Давлатни аниқлаб бўлмаса ёки Давлатларнинг ҳеч бирида тўсиқсиз яшаши мумкин бўлган доимий уйи бўлмаса, у одатда яшаб турган Давлатнинг резиденти ҳисобланади;

c) агар шахс одатда ҳар икки Давлатда яшаса ёки уларнинг ҳеч бирида яшамаса, у миллий шахси бўлган Давлатнинг резиденти ҳисобланади;

d) агар у ҳар иккала Давлатнинг миллий шахси бўлса ёки ҳеч бириники бўлмаса, Аҳдлашувчи Давлатларнинг ваколатли органлари бу масалани ўзаро келишув йўли билан ҳал қиладилар.

3. Агар 1-банд қоидаларига мувофиқ, жисмоний шахсдан ташқари, ҳар қандай шахс, Аҳдлашувчи Давлатлардан ҳар иккисининг резиденти бўлса, ўзининг амалдаги бошқарув органи жойлашган ўша Давлатнинг резиденти ҳисобланиши керак. Агар шубҳа туғиладиган бўлса, Аҳдлашувчи Давлатларнинг ваколатли органлари ушбу масалани ўзаро келишув асосида ҳал қиладилар.

5-МОДДА
ДОИМИЙ МУАССАСА

1. Ушбу Конвенция мақсадлари учун "доимий муассаса" атамаси корхона тўлиқ ёки қисман тадбиркорлик фаолиятини олиб борадиган доимий фаолият жойини билдиради.

2. "Доимий муассаса" атамаси, жумладан, қуйидагиларни ўз ичига олади:

a) бошқарув жойи;

b) бўлим;

c) офис;

d) фабрика;

e) устахона; ва

f) шахта, нефть ёки газ қудуғини, карьер ёки табиий ресурсларни қазиб олишга тааллуқли ҳар қандай бошқа жой.

3. Қурилиш майдончаси, монтаж ёҳуд йиғма объект, агар уларнинг фаолияти ўн икки ойдан кўпроқ давом этган тақдирдагина доимий муассаса деб ҳисобланади.

4. Ушбу модданинг аввалги қоидаларига қарамай, "доимий муассаса" атамаси қуйидагиларни ўз ичига олмайди:

a) иншоотлардан шу корхонага тегишли товарлар ёки буюмларни фақат сақлаш, намойиш қилиш ёки етказиб бериш мақсадларидагина фойдаланиш;

b) шу корхонага тегишли товарлар ёки буюмлар захирасини фақат сақлаш, намойиш қилиш ёки етказиб бериш мақсадларидагина ушлаб турилиши;

c) шу корхонага тегишли товарлар ёки буюмлар захирасини бошқа корхона томонидан фақат қайта ишлов берилиши мақсадларида ушлаб турилиши;

d) доимий фаолият жойининг фақат товарлар ёки буюмлар сотиб олиш ёки мазкур корхона учун ахборот йиғиш мақсадларида ушлаб турилиши;

e) доимий фаолият жойининг ушбу корхона учун фақат бошқа ҳар қандай тайёргарлик ёки ёрдамчи тусдаги фаолиятни амалга ошириш мақсадларида ушлаб турилиши;

f) доимий фаолият жойининг, (a)дан (e)гача бўлган кичик бандларида эслатиб ўтилган фаолият турларининг ҳар қандай уйғунлашуви учунгина бундай фаолият жойининг фаолияти ана шу уйғунлашув натижаси ва тайёргарлик ҳамда ёрдамчи тусда бўлган тақдирда сақлаб турилиши.

5. 1- ва 2-бандлардаги қоидаларга қарамай, агар 6-бандда кўрсатилган мустақил мақомли агентдан ўзга бўлган шахс Аҳдлашувчи Давлатда корхона номидан иш юритса ва корхона номидан шартномалар тузиш ваколатига эга бўлса ва одатда шу ваколатни амалга оширса, бу корхона ушбу Давлатда ана шу корхона учун мазкур шахс амалга ошираётган ҳар қандай фаолиятга нисбатан доимий муассасага эга бўлади. Агар мазкур шахснинг фаолияти фақат 4-бандда эслатилган фаолият турлари билан чекланиб қолмаса, агар бу фаолият доимий фаолият жойи орқали амалга оширилса, бу доимий фаолият жойини ушбу банднинг қоидаларига асосан доимий муассасага айлантирмайди.

6. Ушбу модданинг аввалги қоидаларига қарамай, Аҳдлашувчи Давлатлардан бирининг суғурта корхонаси, қайта суғурта қилиш бундан мустасно, агар у бошқа Давлат ҳудудида мукофот олса, ёки 7-бандга тааллуқли бўлган мустақил мақомли агентдан бошқа шахс орқали таваккалчиликларни суғурта қилса, юқоридаги суғурта корхонаси бошқа Аҳдлашувчи Давлатда доимий муассасага эга бўлмоғи керак.

7. Аҳдлашувчи Давлатлардан бирининг корхонаси, агар бошқа Давлатда брокер, комиссионер ёки ҳар қандай бошқа

мустақил мақомли агент орқали тадбиркорлик фаолиятини амалга оширса, бу шахслар ўзининг одатдаги фаолияти доирасида иш юритган тақдирда, бошқа Аҳдлашувчи Давлатда доимий муассасага эга деб ҳисобланмайди.

8. Аҳдлашувчи Давлатлардан бирининг резиденти бўлган компания бошқа Аҳдлашувчи Давлатнинг резиденти бўлган компанияни назорат қилса ёки шу компания томонидан назорат қилинса ёки ана шу бошқа Давлатда тижорат фаолиятини доимий муассаса орқали ёки бошқа тарзда амалга ошираётган бўлса, бу ҳол ўз-ўзидан бу компанияларнинг бирини бошқаси учун доимий муассасага айлантириб қўймайди.

6-МОДДА
КЎЧМАС МУЛКДАН ОЛИНАДИГАН ДАРОМАДЛАР

1. Аҳдлашувчи Давлатлардан бирининг резиденти бошқа Аҳдлашувчи Давлатда жойлашган кўчмас мулкдан оладиган даромад (қишлоқ ва ўрмон хўжалигидан олинадиган даромадлар ҳам шунга киради) ана шу бошқа Давлатда солиққа тортилиши мумкин.

2. Ушбу Конвенциянинг мақсадлари учун "кўчмас мулк" атамаси кўриб чиқилаётган мулк жойлашган Аҳдлашувчи Давлат солиқ қонунчилигида белгиланган маънога эгадир. Ҳар қандай ҳолда ҳам ушбу атама ер устидаги мулкчиликка тааллуқли умумий қонунчиликнинг қоидалари билан ҳуқуқи белгилаб берилган кўчмас мулкка тегишли бўлган мулкни, чорва моллари, қишлоқ хўжалиги ва ўрмон хўжалиги воситаларини, кўчмас мулк узуфруктини ва минераллар, манбалар ва бошқа табиий ресурсларнинг қатламаларини қазиш учун товон сифатида тўланадиган ўзгарувчан ёки қайд этилган тўловлар ҳуқуқини, ёки минераллар, манбалар ва бошқа табиий ресурслар қатламларини қазиш ҳуқуқини ўз ичига олади; денгиз ва ҳаво кемаларига кўчмас мулк сифатида қаралмайди.

3. 1-банд қоидалари кўчмас мулкдан тўғридан-тўғри фойдаланиш, ижарага бериш ёки ўзга ҳар қандай шаклда фойдаланишдан олинадиган даромадга нисбатан қўлланилади.

4. 1- ва 3-банд қоидалари корхонанинг кўчмас мулкдан олган даромадига ва мустақил шахсий хизматларни амалга оширишда ишлатиладиган кўчмас мулкдан олган даромадларига ҳам қўлланилади.

7-МОДДА
ТАДБИРКОРЛИК ФАОЛИЯТИДАН ОЛИНАДИГАН ФОЙДА

1. Аҳдлашувчи Давлатлардан бирининг корхонасининг фойдаси фақат шу Аҳдлашувчи Давлатда солиққа тортилади, агар фақат корхона ўз тадбиркорлик фаолиятини бошқа Аҳдлашувчи Давлатда у ерда жойлашган доимий муассаса орқали амалга оширмаётган бўлса. Агар корхона ўз фаолиятини юқорида айтилганидек амалга ошираётган бўлса, корхонанинг фойдаси бошқа Давлатда солиққа тортилиши мумкин, аммо шу доимий муассасага тегишли бўлган қисмидагина солиққа тортилади.

2. 3-банд қоидаларига мувофиқ, агар Аҳдлашувчи Давлатлардан бирининг корхонаси тадбиркорлик фаолиятини бошқа Аҳдлашувчи Давлатда у ерда жойлашган доимий муассаса орқали амалга ошираётган бўлса, агар у алоҳида ва мустақил корхона сифатида худди шундай ёки шунга ўхшаш фаолиятни амалга ошираётган бўлган бўлса, худди шундай ёки шунга ўхшаш шартлар асосида ва у доимий муассасаси бўлган ва мутлақо мустақил равишда иш кўраётган корхона сифатида олиши мумкин бўлган фойда ҳар бир Аҳдлашувчи Давлатда ушбу доимий муассасасиники ҳисобланади.

3. Доимий муассаса фойдасини аниқлашда ушбу доимий муассаса фаолияти мақсадлари учун сарфланган ҳаражатларни чиқариб ташлашга йўл қўйилади, доимий муассаса жойлашган Давлатда ҳамда ҳар қандай ўзга ерда фаолияти мақсадлари учун сарфланган бошқарув ва умумий маъмурий ҳаражатлар ҳам шунга киради. Бироқ, доимий муассаса томонидан корхонанинг бош офисига ёки унинг бошқа офисларидан исталган бирига роялти, гонорарлар ёки бошқа шундай тўловлар сифатида патентлардан ёки бошқа ҳуқуқлардан фойдаланганлик учун тўланган тўловлар ёки кўрсатилган аниқ хизматлар ёки менежмент учун комиссион тўловлар тўлаш тарзида, ёки, ушбу доимий муассасага берилган қарз пулига фоизларни тўлаш тарзида, банк корхонасига тегишли бўлган ҳоллардан ташқари,тўланган пул миқдорини, агар улар умуман бор бўлса, (ҳақиқий ҳаражатларни қоплашдан ташқари) ҳеч қандай чегириб ташлашга йўл қўйилмайди. Шунингдек, доимий муассаса томонидан корхонанинг бош офисига ёки офисларидан бирига роялти, гонорарлар ёки патентлардан ёки бошқа ҳуқуқлардан фойдаланганлик учун тўланган, шунга ўхшаш бошқа тўловлар кўрсатилган аниқ хизматлар ёки менежмент учун комиссион тўловлар тарзида, , корхонанинг бош офисига ёки бошқа офислардан исталган бирига, банк корхонасидан ташқари, берилган қарз пулига фоизлар тарзида тўланган пул миқдори

(ҳақиқий ҳаражатларни қоплашдан ташқари) доимий муассасанинг фойдаларини аниқлашда ҳисобга олинмайди.

4. Корхона учун доимий муассаса томонидан товарлар ёки буюмларнинг харид қилинишигагина асосланиб доимий муассасага бирон-бир фойда ўтказилмайди.

5. Аввалги бандлар мақсадлари учун доимий муассасага мансуб фойда, агар бошқаси учун салмоқли ва етарли сабаблар бўлмаса, ҳар йили бир хил услубда аниқланади.

6. Агар фойда, ушбу Конвенциянинг бошқа моддаларида алоҳида айтиб ўтилган даромад турларини қамраб оладиган бўлса, мазкур моддаларнинг қоидаларига ушбу модда қоидалари таъсир этмайди.

8-МОДДА
ХАЛҚАРО ТРАНСПОРТ

1. Аҳдлашувчи Давлатлардан бирининг корхонаси халқаро ташишларда кемалар,самолётлар, темир йўл ва автотранспортдан фойдаланишдан олган фойдасига фақат шу Давлатда солиқ солиниши мумкин.

2. 1-банд қоидалари транспорт воситаларидан фойдаланиш бўйича пульда (умумий жамғармада), қўшма корхонада ёки халқаро ташкилотда иштирок этишдан олган фойдаларига нисбатан ҳам қўлланилади.

3. Аҳдлашувчи Давлатлардан бирининг корхонаси халқаро ташишларда амалга оширадиган денгиз ва ҳаво кемалари, темир йўл ва автотранспортдан фойдаланишга келганда, унда бу корхона Ўзбекистон корхонаси бўлса, Кореяда қўшилган қийматга солинадиган солиқдан озод қилинади, агар бу корхона Корея корхонаси бўлса, Кореядаги қўшилган қиймат солиғига ўхшаш Ўзбекистонда солиниши мумкин бўлган ҳар қандай солиқдан озод қилинади.

9-МОДДА
БИРЛАШГАН КОРХОНАЛАР

1. Агар:

a) Аҳдлашувчи Давлатлардан бирининг корхонаси бошқа Аҳдлашувчи Давлат корхонасини бошқаришда, назорат қилишда ёки унинг сармоясида бевосита ёки билвосита қатнашса, ёки

b) ўша шахслар Аҳдлашувчи Давлатлардан унисининг ҳам корхонасини, бунисининг ҳам корхонасини бошқаришда, назорат қилишда ёки улар сармоясида бевосита ёки билвосита қатнашса, икки корхона ўртасида уларнинг тижорат ва молиявий муносабатларида мустақил корхоналар ўртасида бўладигандан фарқли шароитлар вужудга келтирилса ёки белгиланса, корхоналардан бирида шундай муносабатлар натижасида тўпланган, лекин шундай муносабатлар сабабли зарур ҳажмда бўлмаган фойда ушбу корхона тегишли тарзда даромадига қўшилиши ва солиққа тортилиши мумкин.

2. Аҳдлашувчи Давлатлардан бири шу Давлат корхонаси фойдасига бошқа Аҳдлашувчи Давлат корхонаси бўйича ана шу бошқа Давлатда солиқ солинадиган фойдани, шунингдек солиқларни киритса ва шу тариқа киритилган фойда биринчи эслатилган Давлат корхонасига ҳисобланадиган фойда бўлса, агар иккала корхона ўртасида вужудга келтирилган муносабатлар икки мустақил корхона ўртасидаги муносабатлар каби бўлса, у ҳолда ана шу бошқа Давлат шу Давлатга тегишли фойдадан олинадиган солиқ миқдорига зарур тузатишлар киритади. Бундай тузатишни белгилашда ушбу Конвенциянинг бошқа қоидаларига тегишлича эътиборни қаратиш керак ва Аҳдлашувчи Давлатларнинг ваколатли органлари, зарур бўлса, ўзаро маслаҳатлашувларни бошлашлари лозим.

10-МОДДА
ДИВИДЕНДЛАР

1. Аҳдлашувчи Давлатлардан бирининг резиденти бўлган компания томонидан бошқа Аҳдлашувчи Давлат резидентига тўланадиган дивидендларга ана шу бошқа Давлатда солиқ солиниши мумкин.

2. Бироқ бундай дивидендларга уларни тўлаётган компания резиденти бўлган Аҳдлашувчи Давлатнинг қонунларига биноан ҳам солиқ солиниши мумкин, аммо дивидендларни олувчи, яъни дивидендларнинг ҳақиқий эгаси бошқа Аҳдлашувчи Давлатнинг резиденти бўлса, у ҳолда шу тариқа олинган солиқнинг миқдори қуйидагилардан ортиқ бўлмаслиги керак:

a) агар компания (ширкатдан ташқари) дивидендларнинг ҳақиқий эгаси бўлса ва дивидендлар тўлаёттан компаниянинг камида 25 фоизига бевосита эгалик қилса, дивидендлар ялпи миқдорининг 5 фоизидан;

b) бошқа ҳамма ҳолларда дивидендлар ялпи миқдорининг 15 фоизидан.

Бу банд компаниянинг дивидендлар тўланадиган фойдасини солиққа тортишга тааллуқли эмас.

3. "Дивидендлар" атамаси мазкур моддада қўлланилганда, акциялардан ёки қарз талаблари ҳисобланмаган, фойдада иштирок этиш ҳуқуқни берувчи бошқа ҳуқуқларга кўра олинадиган даромадни, шунингдек фойдани тақсимловчи

компания резиденти бўлган Давлатнинг қонунларига мувофиқ, акциялардан олинадиган даромад каби солиқлар орқали тартибга солинадиган бошқа корпоратив ҳуқуқларга кўра олинадиган даромадни англатади.

4. Агар дивидендларнинг ҳақиқий эгаси Аҳдлашувчи Давлатлардан бирининг резиденти бўлган ҳолда ана шу дивидендларни тўлаётган компания резиденти бўлган бошқа Аҳдлашувчи Давлатда ўз фаолиятини у ерда жойлашган доимий муассаса орқали амалга оширса ёки ушбу бошқа Давлатда мустақил хусусий хизматларни у ерда жойлашган доимий базадан кўрсатса ва дивидендлар тўланадиган холдинг аслида шу доимий муассаса ёки доимий база билан боғлиқ бўлса, ушбу модданинг 1- ва 2-бандлари қоидалари қўлланилмайди. Бундай ҳолда, вазиятга қараб 7-модда ёки 14-модда қоидалари қўлланилади.

5. Агар Аҳдлашувчи Давлатлардан бирининг резиденти бўлган компания бошқа Аҳдлашувчи Давлатдан фойда ёки даромад олаётган бўлса, ушбу бошқа Давлат компания тўлаётган дивидендларни ҳеч қандай солиққа тортиши мумкин эмас, дивидендлар ана шу бошқа Давлат резидентига тўланадиган ёки холдинг (дивидендлар унга нисбатан тўланади) шу бошқа Давлатда жойлашган доимий муассаса ёки доимий база билан ҳақиқатда боғлиқ бўлган ҳоллардан ташқари, шунингдек компаниянинг тақсимланмаган фойдаси хатто тўланаётган дивидендлар ёки тақсимланмаган фойда ана шу бошқа Давлатда тўла ёки қисман ҳосил бўлган фойда ёки даромаддан ташкил топган бўлса ҳам, компаниянинг тақсимланмаган фойдасига солиқ солиниши мумкин эмас.

11-МОДДА
ФОИЗЛАР

1. Аҳдлашувчи Давлатларнинг бирида ҳосил бўлган ва бошқа Аҳдлашувчи Давлатнинг резидентига тўланадиган фоизлар ушбу бошқа Давлатда солиққа тортилиши мумкин.

2. Аммо бундай фоизлар улар ҳосил бўладиган Аҳдлашувчи Давлатда ҳам шу Давлатнинг қонунларига биноан солиққа тортилиши мумкин, аммо фоизларнинг ҳақиқий соҳиби бошқа Аҳдлашувчи Давлатнинг резиденти бўлса, бундай ҳолда солиқнинг миқдори фоизлар ялпи миқдорининг 5 фоизидан ошмаслиги керак. Аҳдлашувчи Давлатларнинг ваколатли органлари ўзаро келишувга биноан бундай чеклашни қўллаш усулини белгилайдилар.

3. "Фоизлар" атамаси ушбу моддада қўлланилганда ипотека таъминидан қатъи назар, қарздорнинг фойдасида, хусусан,

Ҳукумат қимматбаҳо қоғозларларидан олинадиган даромадларда ва облигациялар ёки қарз мажбуриятларидан олинадиган даромадда, шу жумладан ушбу қимматбаҳо қоғозлар, облигациялар ва қарз мажбуриятлари бўйича олинадиган мукофотлар ва ютуқларда қатнашиш ҳуқуқидан қатъи назар, ҳар қандай турдаги қарз талабларидан олинадиган даромадни билдиради. Тўлов муддати чўзиб юборилганлиги учун жарималар ушбу модда мақсадлари учун фоизлар сифатида қаралмайди.

4. Агар фоизларнинг ҳақиқий эгаси Аҳдлашувчи Давлатлардан бирининг резиденти бўла туриб, у ерда жойлашган доимий муассаса орқали фоизлар ҳосил бўлаётган бошқа Аҳдлашувчи Давлатда тижорат фаолияти олиб бораётган бўлса, ёки мазкур бошқа Давлатда жойлашган доимий база орқали мустақил шахсий хизматлар кўрсатаётган бўлса ва фоизлар тўланаётган қарз талабномалари шундай доимий муассаса ёки доимий база билан ҳақиқатан ҳам боғлиқ бўлса, 1- ва 2-банд қоидалари қўлланилмайди. Бундай ҳолда, вазиятга қараб ушбу Конвенциянинг 7- ёки 14-моддаси қоидалари қўлланилади.

5. Фоизларни тўловчи Аҳдлашувчи Давлатнинг резиденти бўлса фоизлар мазкур Давлатда ҳосил бўлган деб ҳисобланади. Бироқ фоизларни тўловчи шахс, Аҳдлашувчи Давлатнинг резиденти бўлиши ёки бўлмаслигидан қатъи назар, Аҳдлашувчи Давлатда доимий муассасага ёки доимий базага эга бўлиб шу туфайли фоизлар тўлаш мажбурияти вужудга келган бўлса ва фоизлар доимий муассаса ёки доимий база томонидан тўланаётган бўлса, бундай ҳолда фоизлар доимий муассаса ёки доимий база жойлашган ўша Давлатда вужудга келган, деб ҳисобланади.

6. Агар тўловчи билан амалда фоизлар олиш ҳуқуқига эга бўлган шахс ўртасидаги, ёки улар иккаласи ва ҳар қандай бошқа шахс ўртасидаги алоҳида муносабатлар оқибатида фоизлар миқдори тўловчи билан амалда фоизлар олиш ҳуқуқига эга бўлган шахс ўртасида бундай муносабатлар йўқ бўлган тақдирда келишилиши мумкин бўлган миқдордан ортиқ бўлса, мазкур модда қоидалари фақат охирги эслатилган миқдорга нисбатан қўлланилади. Бундай ҳолда тўловнинг ортиқча қисмидан мазкур Конвенциянинг бошқа қоидалари инобатга олинган ҳолда, ҳар бир Аҳдлашувчи Давлат қонунчилигига мувофиқ аввалгидек солиқ олинади.

12-МОДДА
РОЯЛТИ

1. Аҳдлашувчи Давлатлардан бирида ҳосил бўладиган ва бошқа Аҳдлашувчи Давлатнинг резидентига тўланадиган роялтилар ушбу бошқа Давлатда солиққа тортилиши мумкин.

2. Бироқ бундай роялтилар улар ҳосил бўладиган Аҳдлашувчи Давлатда ҳам ва шу Давлат қонунларига мувофиқ солиққа тортилиши мумкин, аммо агар бошқа Аҳдлашувчи Давлатнинг резиденти роялтиларнинг амалдаги эгаси бўлса, бундай ҳолда ундириладиган солиқ:

а) саноат, тижорат ёки илмий ускуналардан фойдаланиш учун ёки фойдаланиш ҳуқуқи учун тўланадиган шундай роялтилар ялпи миқдорининг 2 фоизидан; ва

b) барча бошқа ҳолларда шундай роялтилар ялпи миқдорининг 5 фоизидан ошиб кетмаслиги керак.

3. "Роялти" ибораси ушбу моддада қўлланилганда ҳар қандай адабий, бадиий ёки илмий асарлар, шу жумладан киноматографик фильмлар ёки радио ва телевидение учун фойдаланиладиган киноплёнкалар, кассеталар, ҳар қандай патент, савдо белгиси, чизма ёки модель, режа, махфий формула ёки жараён учун ҳар қандай муаллифлик ҳуқуқидан фойдаланганлик ёки шу ҳуқуқдан фойдаланиш ҳуқуқи учун, ёки саноат, тижорат, илмий асбоб-ускуналардан фойдаланиш ҳуқуқидан фойдаланганлик ёки фойдаланиш ҳуқуқи учун ёки саноат, тижорат ёки илмий тажрибага мансуб ахборот учун мукофот тарзида олинадиган ҳар қандай кўринишдаги тўловларни билдиради.

4. Агар роялтиларнинг амалдаги эгси Аҳдлашувчи Давлатлардан бирининг резиденти бўлиб, роялти ҳосил бўлаётган бошқа Аҳдлашувчи Давлатда у ерда жойлашган доимий муассаса орқали тижорат фаолиятини юритаётган бўлса, ёки ушбу бошқа Давлатда унда жойлашган доимий база орқали мустақил шахсий хизматларни амалга ошираётган бўлса ва роялти тўланаётган ҳуқуқ ёки мулк амалда шундай доимий муассаса ёки доимий база билан боғлиқ бўлса, 1- ва 2-бандларнинг қоидалари қўлланилмайди. Бундай ҳолда 7-модда ёки 14-модданинг қоидалари вазиятта боғлиқ равишда қўлланилади.

5. Агар тўловчи қайси Давлатнинг резиденти бўлса, роялтилар ана шу Аҳдлашувчи Давлатда пайдо бўлган деб ҳисобланади. Агар, бироқ роялтини тўловчи шахс Аҳдлашувчи Давлатнинг резиденти бўлиши ёки бўлмаслигидан қатъи назар, ҳар қандай Давлатда роялтини тўлаш мажбурияти зиммасига тушган доимий муассасага ёки доимий базага эга бўлса ва бу доимий муассаса ёки база тўлов ҳаражатларини тўласа, бундай

роялтилар доимий муассаса ёки доимий база жойлашган шу Аҳдлашувчи Давлатда ҳосил бўлган, деб ҳисобланади.

6. Агар тўловчи билан амалда роялти ҳуқуқига эга шахс ўртасидаги, ёки уларнинг иккови ва бошқа бирон бир шахс ўртасидаги алоҳида муносабатлар оқибатида роялтидан фойдаланишга, фойдаланиш ҳуқуқига ёки ахборот учун тўланадиган роялтининг миқдори тўловчи ва амалда шу даромадлар ҳуқуқига эга шахс ўртасида бундай муносабатлар йўқ бўлган тақдирда, келишилиши мумкин бўлган миқдордан ошиқ бўлса, ушбу модда қоидалари фақат охирги эслатилган миқдорга нисбатан қўлланилади. Бундай ҳолда тўловнинг ортиқча қисмига ушбу Конвенциянинг бошқа қоидаларини инобатга олиб, ҳар бир Аҳдлашувчи Давлат қонунчилигига мувофиқ солиқ солинади.

7. Агар роялти тўланадиган ҳуқуқларни яратиш ёки бошқага ўтказиш билан боғлиқ бўлган ҳар қандай шахснинг асосий мақсади ёки асосий мақсадларидан бири ушбу моддадан ҳуқуқларни яратиш ёки бошқага ўтказиш йўли билан фойда олиш бўлса, ушбу модданинг қоидалари қўлланилмайди. Аҳдлашувчи Давлатнинг ваколатли органи ушбу қоиданинг маълум ҳолатда қўлланилиши бўйича бирорта қарор қабул қилингунига қадар бошқа органни хабардор қилади.

13-МОДДА
САРМОЯ ҚИЙМАТИНИНГ ЎСИШИДАН ОЛИНАДИГАН ДАРОМАДЛАР

1. Аҳдлашувчи Давлатлардан бирининг резиденти 6-моддага тааллуқли бўлган ва бошқа Аҳдлашувчи Давлатда жойлашган кўчмас мулкни бегоналаштиришдан оладиган даромадларга ана шу бошқа Давлатда солиқ солиниши мумкин.

2. Аҳдлашувчи Давлатлардан бирининг корхонаси томонидан бошқа Аҳдлашувчи Давлатда эга бўлган доимий муассасаси тижорат мулкининг бир қисмини ташкил этувчи кўчар мулкни бегоналаштиришдан олинган ёки Аҳдлашувчи Давлатлардан бирининг резиденти бошқа Аҳдлашувчи Давлатда мустақил шахсий хизматларни амалга оширишида бемалол фойдаланиши мумкин бўлган доимий базага тааллуқли кўчар мулкни бегоналаштиришдан олинган даромадларга, жумладан, шу доимий муассасани (алоҳида ёки корхона билан биргаликда) ёки шундай доимий базани бегоналаштиришдан олинган даромадга ҳам мана шу бошқа Давлатда солиқ солиниши мумкин.

3. Аҳдлашувчи Давлат корхонаси халқаро ташишларда фойдаланиладиган кемалар ёки самолётларни ёки темир йўл ва автотранспортни бегоналаштириш ёки шундай кемалар, самолётлар ёки темир йўл ва автотранспортдан фойдаланишга тааллуқли кўчар мол-мулкни сотишдан оладиган даромадлар фақат ана шу Давлатда солиққа тортилади.

4. Ҳар қандай мулкни бегоналаштиришдан олинадиган даромадга, 1-, 2- ва 3-кичик бандларда эслатилганлардан ташқари, фақат бегоналаштирувчи шахс резиденти ҳисобланган Аҳдлашувчи Давлатда солиқ солинади.

14-МОДДА
МУСТАҚИЛ ШАХСИЙ ХИЗМАТЛАР

1. Аҳдлашувчи Давлатлардан бирининг резиденти касбий хизматларни кўрсатиш ёки мустақил тусдаги бошқа фаолиятдан олган даромадига бошқа Аҳдлашувчи Давлатда солиқ солиниши мумкин бўлган қуйидаги ҳолатлардан ташқари фақат ана шу Давлатда солиқ солинади:

а) агар у ўз фаолияти амалга ошириш мақсадлари учун бошқа Аҳдлашувчи Давлатда ўзи учун мунтазам қулай бўлган доимий базага эга бўлса, бундай ҳолларда ана шу бошқа Давлатдаги доимий базага тааллуқли бўлган даромаднинг шу қисми солиққа тортилиши мумкин; ёки

b) агар унинг бошқа Аҳдлашувчи Давлатда бўлиши кўриб чиқилаётган тақвимий йилда бошланадиган ёки тугайдиган ҳар қандай 12 ойлик даврда жами 183 кунни ташкил этувчи ёки ошувчи давр ёки даврлар мобайнида чўзиладиган бўлса, бундай ҳолда унинг даромадининг ана шу бошқа Давлатда кўриб чиқилаётган йилда амалга оширган фаолиятидан олинадиган шу қисмигагина солиқ солиниши мумкин.

2. "Касбий хизматлар" атамаси, жумладан, мустақил илмий, адабий, бадиий, маърифий ёки ўқитувчилик фаолиятларини, шунингдек врачлар, юристлар, мухандислар, меъморлар, стоматологлар ва бухгалтерларнинг мустақил меҳнат фаолиятини қамраб олади.

15-МОДДА
ЁЛЛАНМА ШАХСИЙ ХИЗМАТЛАР

1. Ушбу Конвенциянинг 16-, 18- ва 19-моддалари қоидаларини ҳисобга олиб, Аҳдлашувчи Давлатлардан бирининг резиденти ёлланма иш бўйича оладиган маоши, иш хақи ва шунга ўхшаш бошқа тақдирлаш пулларига, агар ёлланма иш

бошқа Аҳдлашувчи Давлатда амалга оширилмаётган бўлса, фақат мана шу Давлатда солиқ солинади. Агар ёлланма иш шу тариқа бажариладиган бўлса, унда шу муносабат билан олинган тақдирлаш пулига ана шу бошқа Давлатда солиқ солиниши мумкин.

2. 1-банд қоидаларига қарамай, Аҳдлашувчи Давлатлардан бирининг резиденти бошқа Аҳдлашувчи Давлатда амалга оширадиган ёлланма иш учун оладиган тақдирлаш пулларига фақат биринчи эслатилган Давлатда солиқ солинади, агар:

а) тақдирлаш пули олувчи бошқа Аҳдлашувчи Давлатда кўриб чиқилаётган тақвимий йилда бошланадиган ёки тугайдиган ҳар қандай 12 ойлик давр доирасида жами 183 кундан ошмайдиган давр ёки даврлар мобайнида бўлиб тураётган, ва

b) тақдирлаш пули бошқа Давлат резиденти бўлмаган ёлловчи томонидан ёки ёлловчи номидан тўланадиган бўлса, ва

c) тақдирлаш пули бўйича ҳаражатларни ёлловчи ёки у билан боғлиқ бўлган ҳар қандай шахс бошқа Давлатда эга бўлган доимий муассаса ёки доимий база ўз зиммасига олмаса.

3. Ушбу модданинг юқоридаги қоидаларига қарамай, Аҳдлашувчи Давлат корхонаси халқаро юк ташишларда фойдаланадиган денгиз ёки ҳаво кемаси бортида, ёки темир йўл ва автотранспортда амалга ошириладиган ёлланма иш учун олинадиган тақдирлаш пулларига ушбу Давлатда солиқ солиниши мумкин.

16-МОДДА
ДИРЕКТОРЛАРНИНГ ГОНОРАРЛАРИ

Директорларнинг гонорарлари ва Аҳдлашувчи Давлатлардан бирининг резиденти бошқа Аҳдлашувчи Давлат резиденти бўлган компаниянинг Директорлар Кенгашининг аъзоси сифатида оладиган шунга ўхшаш бошқа тўловлар, ана шу бошқа Давлатда солиққа тортилиши мумкин.

17-МОДДА
САНЪАТ ХОДИМЛАРИ ВА СПОРТЧИЛАР

1. 14- ва 15-моддаларнинг қоидаларига қарамай, Аҳдлашувчи Давлатлардан бирининг резиденти театр, кино, радио ёки телевидение артисти ёки мусиқачи каби санъат ходими сифатида ёки спортчи сифатида бошқа Аҳдлашувчи Давлатда амалга ошираётган шахсий фаолияти туфайли оладиган даромадига шу бошқа Давлатда солиқ солиниши мумкин.

2. Санъат ходими ёки спортчи амалга оширган шахсий фаолиятидан олинадиган даромад санъат ходими ёки спортчининг ўзига эмас, балки бошқа шахсга ёзилса, 7-, 14- ва 15-моддалар қоидаларига қарамай, бу даромадга санъат ходими ёки спортчи фаолият кўрсатаётган ўша Аҳдлашувчи Давлатда солиқ солиниши мумкин.

3. Ушбу модданинг 1- ва 2-бандлари қоидаларига қарамай, Аҳдлашувчи Давлатдалардан бирининг резиденти бўлган санъат ходимлари ёки спортчилар бошқа Аҳдлашувчи Давлатда ҳар иккала Аҳдлашувчи Давлат Ҳукуматлари ўртасида келишиб олинган маданий алмашишнинг алоҳида дастури остида амалга ошрадиган фаолиятдан оладиган даромад Аҳдлашувчи Давлатлардан бирининг ёки ҳар иккаласининг жамоат фондлари томонидан ёки маҳаллий ҳокимиятлари томонидан маблағ билан тўлиқ таьминлаб турилса, ана шу бошқа Давлатда солиқдан озод қилинади.

18-МОДДА
ПЕНСИЯЛАР

19-модданинг 2-банди қоидаларини ҳисобга олиб, Аҳдлашувчи Давлатларнинг резидентига тўланадиган пенсиялар ёки илгари ёлланиб ишлагани учун тўланадиган шунга ўхшаш тақдирлаш ҳақларига фақат ана шу Давлатда солиқ солиниши мумкин.

19-МОДДА
ҲУКУМАТ ХИЗМАТИ

1. a) Аҳдлашувчи Давлат ёки унинг маҳаллий ҳокимиятлари томонидан шу Давлатга ёки унинг маҳаллий ҳокимиятларига кўрсатган хизматлар учун жисмоний шахсга тўланадиган пенсиядан ташқар маош, иш ҳақи ва шунга ўхшаш тақдирлаш ҳақларига, фақат шу Давлатда солиқ солинади.

b) Бироқ, бундай маош, иш ҳақи ва шунга ўхшаш тақдирлаш ҳақларига, агар хизматлар мана шу Давлатда кўрсатилаётган бўлса ва жисмоний шахс шу Давлатнинг резиденти бўлса, фақат ана шу бошқа Аҳдлашувчи Давлатда солиқ солиниши мумкин:

i) шу Давлатнинг миллий шахси бўлса; ёки

ii) фақат шундай хизматлар кўрсатиш мақсадида шу Давлатнинг резиденти бўлган бўлмаса.

2. a) Аҳдлашувчи Давлат ёки маҳаллий ҳокимият ёки улар томонидан тузилган фондлар томонидан жисмоний шахсга шу

Давлатга ёки унинг маҳаллий ҳокимият учун кўрсатилган хизматига нисбатан тўлайдиган ҳар қандай пенсия фақат ана шу Давлатда солиққа тортилади.

b) Бироқ, агар жисмоний шахс бошқа Аҳдлашувчи Давлатнинг резиденти ва миллий шахси бўлса, бундай пенсия фақат ана шу бошқа Давлатда солиққа тортилади.

3. 15-, 16- ва 18-моддаларнинг қоидалари Аҳдлашувчи Давлат ёки унинг маҳаллий ҳокимиятлари амалга оширадиган тадбиркорлик фаолияти муносабати билан кўрсатиладиган хизматларга нисбатан тўланадиган маош, иш ҳақи ва шунга ўхшаш тақдирлаш ҳақларига ва пенсияларга нисбатан қўлланилади.

4. Аҳдлашувчи Давлатларнинг ваколати органлари ўртасида белгиланиши ва алмашув хатларида келишилиши мумкин бўлган ҳукумат доирасидаги вазифаларни бажарувчи ҳар қандай молиявий муассаса томонидан тўланадиган тақдирлаш ҳақларига ёки пенсияга нисбатан ҳам 1- ва 2-бандларнинг қоидалари қўлланилади.

20-МОДДА
СТУДЕНТЛАР

Аҳдлашувчи Давлатлардан бирига келгунга қадар бевосита бошқа Аҳдлашувчи Давлатнинг резиденти ҳисобланиб турган ёки бўлган ва биринчи эслатилган Давлатда фақат ўқиш ёки маълумот олиш мақсадидагина яшаб турган студент ёки практикантнинг яшаши, ўқиши ва маълумот олиши учун мўлжалланган тўловларга мана шу Давлатда, агарда бундай тўловлар шу Давлат ҳудудидан ташқаридаги манбалардан бўлса, солиқ солинмайди.

21-МОДДА
БОШҚА ДАРОМАДЛАР

1. Аҳдлашувчи Давлат резидентининг ушбу Конвенциянинг олдинги моддаларида тилга олинмаган даромад турларига, даромаднинг қаерда пайдо бўлишидан қатъи назар, фақат мана шу Давлатда солиқ солинади.

2. Агарда даромад эгаси, 6-модданинг 2-бандида кўрсатилган кўчмас мулкдан олинган даромаддан ташқари, Аҳдлашувчи Давлатлардан бирининг резиденти бўла туриб, бошқа Аҳдлашувчи Давлатда у ерда жойлашган доимий муассаса орқали тижорат фаолиятини амалга оширса ёки шу Давлатда жойлашган доимий база орқали мустақил шахсий хизматларни

кўрсатса ва даромад тўланадиган ҳуқуқ ёки мулк ҳақиқатан ҳам бундай доимий муассаса ёки база билан боғланган бўлса, бундай даромадга нисбатан 1-банднинг қоидалари қўлланилмайди. Бу ҳолатда 14-модданинг қоидалари вазиятга қараб қўлланилади.

22-МОДДА
САРМОЯ

1. Аҳдлашувчи Давлатлардан бирининг резидентига тегишли бўлган ва бошқа Аҳдлашувчи Давлатда жойлашган кўчмас мол-мулк ана шу бошқа Давлатда солиққа тортилиши мумкин.

2. Аҳдлашувчи Давлатлардан бирининг корхонаси бошқа Аҳдлашувчи Давлатда эга бўлган доимий муассаса тижорат мулкининг бир қисмини ташкил этувчи кўчар мулкка ёҳуд мустақил шахсий хизматларни бажариш мақсадида Аҳдлашувчи Давлатлардан бирининг резиденти бошқа Аҳдлашувчи Давлатда фойдаланадиган доимий базага тааллуқли кўчар мол-мулк ана шу бошқа Давлатда солиққа тортилиши мумкин.

3. Аҳдлашувчи Давлатлардан бирининг корхонаси тасарруфидаги халқаро юк ташишларда фойдаланадиган денгиз ва ҳаво кемалари, темир йўл ва автотранспорт тарзидаги ҳамда шундай денгиз ва ҳаво кемаларидан, темир йўл ва автотраспортдан, контейнерлардан иборат, 8-модданинг 2-банди қоидалари тадбиқ этиладиган кўчар мулкдан иборат маблағ фақат шу Давлатда солиққа тортилиши мумкин.

4. Аҳдлашувчи Давлат резиденти маблағининг барча бошқа элементлари фақат шу Давлатдагина солиққа тортилади.

23-МОДДА
ИККИ ТОМОНЛАМА СОЛИҚҚА ТОРТИШНИ БАРТАРАФ ЭТИШ

1. Кореяга нисбатан икки томонлама солиқ солиш қуйидагича бартараф этилади:

Кореядан ташқари ҳар қандай мамлакатда тўланадиган Корея солиқлари ҳақидаги Кореа қонуни қоидаларига кўра, (бу ерда баён этилган умумий принципларга дахл этилмаган ҳолда) ва Ўзбекистон қонуни ҳамда ушбу Конвенциянинг қоидаларига мувофиқ (дивидендлардан тўланадиган солиқдан ташқари) бевосита ёки чегириб ташлаш йўли билан Ўзбекистон манбаларидан олинадиган даромадга солинадиган ва Кореа томонидан тўланиши лозим бўлган солиқларга нисбатан солиқ кредити берилади. Бироқ кредит миқдори сийлов берилгунга қадар ҳисоблаб чиқилган Корея солиғининг шу даромадга мос келадиган қисмидан ошмаслиги керак.

2. Ўзбекистонга нисбатан икки томонлама солиққа тортиш бартараф этилади:

Ўзбекистон резиденти ушбу Конвенция қоидаларига мувофиқ, Кореяда солиқ солиниши мумкин бўлган даромадни олса ёки мулкка эга бўлса, Ўзбекистон:

a) шу резидентнинг даромад солиғидан Кореяда тўланган даромад солиғига тенг миқдорини чегириб ташлашга;

b) шу резидентнинг мол-мулкига солинадиган солиқдан Кореяда тўланган мол-мулк солиғига тенг миқдорни чегириб ташлашга имкон бериши керак.

Бундай чегириб ташлашлар ҳар қандай ҳолда ҳам чегириб ташлангунгача даромад ёки мол-мулкка, вазиятга боғлиқ равишда Кореяда солиқ солиниши мумкин бўлган даромад ёки мол-мулкка, нисбатан ҳисобланган солиқ қисмидан ошиб кетмаслиги керак.

3. Ушбу Конвенциянинг бирон бир қоидасига мувофиқ Аҳдлашувчи Давлат резиденти олган даромад ёки мол-мулк шу Давлатда солиққа тортилишдан озод қилинган бўлса, бу Давлат шу резидент даромади ёки мол-мулкининг қолган қисмига солиқ миқдорини ҳисоблашда солиқ солишдан озод қилинган даромад ёки мол-мулкни ҳисобга олиши мумкин.

4. Ушбу модданинг 1- ва 2-бандларида эслатиб ўтилган Аҳдлашувчи Давлатда тўланадиган солиқ Аҳдлашувчи Давлатнинг иқтисодий тараққиётга кўмаклашиш мақсадида солиқларни камайтиришга, солиқ тўлашдан озод қилишга ёки солиқ имтёзига тааллуқли бошқа юридик қоидалари бўлмаганида тўланиши мумкин бўлган солиқни ўз ичига олади, деб ҳисобланади. Ушбу банд мақсадлари учун солиқ миқдори қуйидагича бўлиши керак, деб ҳисобланади:

a) 10 -модданинг 2 (a)-бандига тадбиқан дивидендлар ялпи миқдорининг 5 фоизи;

b) 10-моданинг 2 (b)-бандига тадбиқан дивидендлар ялпи миқдорининг 15 фоизини;

c) 11-модданинг 2-бандига тадбиқан фоизлар ялпи миқдорининг 5 фоизини;

d) 12-модданинг 2 (a)-бандига тадбиқан роялтилар ялпи миқдорининг 2 фоизини;

e) 12-модданинг 2 (b)-бандига тадбиқан роялтилар ялпи миқдорининг 5 фоизи;

5. Агар фойда, даромад ёки солиққа тортиладиган сармоя қийматининг ўсишидан солиқ тўланиши мумкин бўлса, ушбу бандда кўрсатилган солиқ тўлашдан озод қилишлари ёки солиқнинг пасайтирилиши 2004 йил биринчи январдан кейин

пайдо бўлса ёки ҳисобланса, ушбу модданинг 4-бандида белгиланган солиқдан чегиртама берилмайди.

24-МОДДА
КАМСИТМАСЛИК

1. Аҳдлашувчи Давлатлардан бирининг миллий шахслари бошқа Аҳдлашувчи Давлатда ушбу бошқа Давлат миллий шахсларига айни бир хил шароитларда солинадиган ёки солиниши мумкин бўлганидан ортиқ ҳар қандай солиқ солишларига ёки унга алоқадор мажбуриятларга, солиқ солишдан кўра мушкулроқ ёки унга алоқадор ҳолатларга дучор қилинмайдилар.

2. Аҳдлашувчи Давлатлардан бирининг корхонаси бошқа Аҳдлашувчи Давлатда эга бўлган доимий муассасага солиқ солиш ана шу бошқа Давлатда ушбу бошқа Давлатнинг айнан шундай фаолиятни амалга оширувчи корхоналарига солиқ солишдан кўра ёмонроқ бўлмайди. Мазкур қоида Аҳдлашувчи Давлатлардан бири бошқа Аҳдлашувчи Давлат резидентига солиқ солиш мақсадларида ўз резидентларига уларнинг фуқаролик мавқеи ёки оилавий мажбурияти ҳисобига берадиган ҳар қандай шахсий пул ёрдами, скидкалар беришга мажбурловчи тарзида талқин қилинмаслиги керак.

3. 9-модданинг 1-банди, 11-модданинг 6-банди ёки 12-модданинг 4-банди қоидалари қўлланганидан ташқари ҳолларда, Аҳдлашувчи Давлатлардан бирининг корхонаси бошқа Аҳдлашувчи Давлат резидентига тўлайдиган фоизлар, роялтилар ва бошқа қарз тўловлари, бундай корхонанинг солиққа тортиладиган фойдасини аниқлаш мақсадида бундай тўловлар биринчи эслатилган Давлат резидентига тўланганида қўлланиладиган шундай шартлар асосида чегириб ташланади.

4. Аҳдлашувчи Давлатлардан бирининг корхоналари маблағи тўлиқ ёки қисман бошқа Аҳдлашувчи Давлатга тегишли бўлган ёки шу Давлатнинг бир ёки бир неча резидентлари томонидан бевосита ёки билвосита назорат қилинаётган бўлса, улар биринчи эслатилган Давлатнинг шундай корхоналарига солинадиган ёки солиниши мумкин бўлган ҳар қандай солиқ солиш ёки унга алоқадор ҳолатлар, бошқа ёки солиқ солишдан кўра мушкулроқ ҳолатларга дучор қилинмайди.

5. Ушбу модда қоидалари 2-модда қоидаларига қарамай, турли хил ва таърифдаги солиқларга нисбатан қўлланилади.

25-МОДДА
ЎЗАРО КЕЛИШУВ ТАРТИБЛАРИ

1. Агар шахс Аҳдлашувчи Давлатлардан бири ёки ҳар иккаласинининг фаолияти унга ушбу Конвенция қоидаларига мувофиқ келмайдиган солиқ солинишига олиб келади ёки олиб келиши мумкин деб ҳисобласа, у мазкур Давлатларнинг ички қонунчилигида назарда тутилган ҳимоя воситаларидан қатъи назар, ўз аризасини ўзи резидент бўлган Аҳдлашувчи Давлатнинг ваколатли органига, ёки агарда унинг ҳолати Конвенциянинг 24-модда 1-бандига мувофиқ келса, ўзи миллий шахси бўлган Аҳдлашувчи Давлатга тақдим этиши мумкин.Бу ариза ушбу Конвенция қоидаларига номувофиқ солиқ солинишига олиб келувчи хатти ҳаракатлар тўғрисида биринчи бор ёзма равишда билдирилган вақтдан бошлаб уч йил мобайнида берилиши керак.

2. Ваколатли орган унинг аризасини асосли деб топса ва унинг ўзи қониқтирадиган қарорга кела олмаса, масалани ушбу Конвенцияга мувофиқ келмайдиган солиқ солинишидан қочиш мақсадларида бошқа Аҳдлашувчи Давлатнинг ваколатли органи билан ўзаро келишиб ҳал этишга ҳаракат қилади. Эришилган ҳар қандай келишув Аҳдлашувчи Давлатлар ички қонунларида ҳар қандай вақтинча чеклашларга қарамай бажарилади.

3. Аҳдлашувчи Давлатларнинг ваколатли органлари ушбу Конвенцияни талқин қилиш ёки қўллашда юзага келадиган ҳар қандай қийинчилик ва иккиланишларни ўзаро келишув асосида ҳал қилишга ҳаракат қиладилар. Улар Конвенцияда кўзда тутилмаган холларда икки томонлама солиққа тортишни бартараф этиш учун бир-бирлари билан маслаҳатлашишлари мумкин.

4. Аҳдлашувчи Давлатларнинг ваколатли органлари ушбу Ковенциянинг олдинги бандлари маъноларини тушунишида ҳамфикрликка эришиш мақсадида бир-бирлари билан бевосита алоқада бўлиб туришлари мумкин.

26-МОДДА
АХБОРОТ АЛМАШИШ

1. Аҳдлашувчи Давлатларнинг ваколатли органлари ушбу Конвенция қоидаларини ёки Аҳдлашувчи Давлатларнинг солиқларга тегишли ички қонунчилигини қўлланиш учун ушбу қонунчиликдан ушбу Конвенцияга зид келмайдиган даражада фойдаланиш мақсадида зарур ахборотлар билан алмашиб турадилар. Ахборот алмашиш 1-модда билан чекланмайди. Аҳдлашувчи Давлат олаётган ҳар қандай ахборот, мазкур

Давлатнинг ички қонунларига мувофиқ олинган маълумот каби махфий ҳисобланади, ҳамда фақат аниқлаш, ёки ундириш, мажбурий ундириш ёки суд орқали таъқиб этиш билан боғлиқ ёки солиқларга нисбатан апелляцияларни кўриб чиқиш билан боғлиқ шахслар ёки органларгагина (жумладан, судлар ва маъмурий органларга ҳам) очилади. Бу шахслар ёки органлар ахборотдан фақат шундай мақсадлар учун фойдаланадилар. Улар ушбу ахборотни очиқ суд мажлисида ёки юридик қарорлар қабул қилиш чоғида очишлари мумкин.

2. Ҳеч қандай ҳолатда ҳам ушбу модданинг 1-банд қоидалари Аҳдлашувчи Давлатлар ваколатли органлари зиммасига қуйидаги мажбуриятларни юкловчи қоидалар сифатида талқин қилинмайди:

а) у ёки бу Аҳдлашувчи Давлатлар қонунчилиги ёки маъмурий амалиётига зид маъмурий тадбирлар ўтказиш;

b) у ёки бу Аҳдлашувчи Давлат қонунчилигига кўра ёки одатдаги маъмурий амалиётга мувофиқ олиниши мумкин бўлмаган ахборот билан таъминлаш;

с) барча савдо, саноат, тижорат ёки касб сири ёки савдо жараёнини очувчи ёки очилиши Давлат сиёсатига зид келувчи ахборот билан тъминлаш.

27-МОДДА
ДИПЛОМАТИК ВАКОЛАТХОНАЛАР ХОДИМЛАРИ ВА КОНСУЛЛИК МУАССАСАЛАРИ ХИЗМАТЧИЛАРИ

Ушбу Конвенциянинг ҳеч бир қоидаси дипломатик ваколатхоналар ходимлари ва консуллик муассасалари ходимларининг халқаро ҳуқуқ умумий нормаларига ёки махсус битимларнинг қоидаларига мувофиқ белгилаб қўйилган солиқ имтиёзларига дахл қилмайди.

28-МОДДА
КУЧГА КИРИШИ

Аҳдлашувчи Давлатлардан ҳар бири ушбу Конвенциянинг кучга кириши учун уларнинг ички қонунларига мувофиқ талаб қилинадиган процедураларининг тугаганлиги тўғрисида бир-бирларига дипломатик каналлар орқали ёзма равишда маьлум қилади. Ушбу Конвенция шундай хабарларнинг охиргиси олингандан кейин ўн бешинчи куни кучга киради ва шундан кейин қуйидагиларга нисбатан амал қила бошлайди:

а) Конвенция кучга кирган йилдан бевосита кейинги тақвимий йилнинг биринчи январидан бошлаб ёки шу санадан кейин олинган даромад манбаларидан ундириладиган солиқларга нисбатан;

b) Конвенция кучга кирган йилдан бевосита кейинги тақвимий йилнинг биринчи январидан ва ундан кейинги санадан бошланадиган солиққа тортиш барча даврлари учун бошқа даромад солиқларига ва сармояга нисбатан.

29-МОДДА
АМАЛ ҚИЛИШИНИ ТЎХТАТИШ

1. Ушбу Конвенция унинг амал қилишини Аҳдлашувчи Давлатлардан бири тўхтатмагунча ўз кучида қолади. Бироқ ҳар бир Аҳдлашувчи Давлат Конвенциянинг амал қилишини Конвенция кучга кирган кундан кейин беш йил ўттач бошланадиган ҳар қандай тақвимий йилнинг ўттизинчи июнигача ёки ўттизинчи июнида тўхтатиш тўғрисида дипломатик йўл орқали хабар бериб тўхташи мумкин.

2. Ушбу ҳолатда Конвенциянинг амал қилиши тўхтатилади:

a) денонсация ҳақида хабардор қилинган йилдан бевосита кейин келадиган тақвимий йилнинг биринчи январидан бошлаб олинган даромад манбаидан ундириладиган солиқларга нисбатан;

b) денонсация ҳақида хабардор қилинган йилдан бевосита кейин келадиган тақвимий йилнинг биринчи январидан ёки биринчи январидан кейинги санадан бошланадиган ҳар қандай солиққа тортиш йиллари учун бошқа даромад солиқларга ва маблағ солиқларига нисбатан.

Ўз Ҳукуматлари томонидан тегишли тартибда ваколат берилган қуйидаги имзо чекувчилар шунга гувоҳлик бериб ушбу Конвенцияни имзоладилар.

Тошкент шаҳрида 1998 йил «11» февралда икки нусхада, ҳар бири корейс, ўзбек ва инглиз тилларида тузилди, барча матнлар бир хил кучга эга. Талқин қилишда келишмовчиликлар пайдо бўлса, инглиз тилидаги матн асос қилиб олинади.

КОРЕЯ РЕСПУБЛИКАСИ ҲУКУМАТИ УЧУН	ЎЗБЕКИСТОН РЕСПУБЛИКАСИ ҲУКУМАТИ УЧУН

ПРОТОКОЛ

Корея Республикаси Ҳукумати ва Ўзбекистон Республикаси Ҳукумати ўртасида иккиёқлама солиқ солинишининг олдини олиш ҳамда даромад ва сармоя солиқларини тўлашдан бош тортишни бартараф қилиш тўғрисида Конвенцияни имзолаш пайтида, қуйида имзоловчилар қуйидаги қоидалар Конвенциянинг ажралмас қисмини ташкил этишига келишиб олдилар:

1. Ушбу Конвенциянинг преамбуласида [illegible] моддаларида кўрсатилган, Ўзбекистонга нисбата[illegible]анган "Сармоя солиғи", Ўзбекистоннинг мол-мулк солиғини англатади.

2. 7-модданинг 1-банди асосида Аҳдлашувчи Давлат икки мустақил корхона ўртасида тузилган келишувлар доимий муассаса солиғини камайтириш мақсадида тузилмаганлигига ишонч ҳосил қилиш учун аниқ сабабга эга бўлади, бундай битимлардан олинадиган даромад, гўё у доимий муассасанинг даромади каби тартибга солиниши мумкин.

Ўз тегишли Ҳукуматлари томонидан тегишли тартибда ваколат берилган қуйидаги имзо чекувчилар шунга гувоҳлик бериб ушбу Конвенцияни имзоладилар.

Тошкент шаҳрида 1998 йил «11» февралда икки нусхада, ҳар бири корейс, ўзбек ва инглиз тилларида тузилди, барча матнлар бир хил кучга эга. Талқин қилишда келишмовчиликлар пайдо бўлса, инглиз тилидаги матн асос қилиб олинади.

КОРЕЯ РЕСПУБЛИКАСИ ҲУКУМАТИ УЧУН	**ЎЗБЕКИСТОН РЕСПУБЛИКАСИ ҲУКУМАТИ УЧУН**

[TRANSLATION -- TRADUCTION]

CONVENTION ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DE CORÉE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE D'OUZBÉKISTAN TENDANT À ÉVITER LA DOUBLE IMPOSITION ET À PRÉVENIR L'ÉVASION FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU ET LA FORTUNE

Le Gouvernement de la République de Corée et le Gouvernement de la République d'Ouzbékistan, désireux de conclure une convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôt sur le revenu et sur la fortune,

Sont convenus de ce qui suit :

Article premier. Personnes visées

La présente Convention s'applique aux personnes qui sont des résidents de l'un des États contractants ou des deux.

Article 2. Impôts visés

1. La présente Convention s'applique aux impôts sur le revenu et sur la fortune perçus pour le compte d'un État contractant ou de ses collectivités locales, quel que soit le système de perception.

2. Sont considérés comme impôts sur le revenu et sur la fortune les impôts perçus sur le revenu total, sur la fortune totale, ou sur des éléments du revenu et de la fortune, y compris les impôts sur les gains provenant de l'aliénation de biens mobiliers ou immobiliers, les impôts sur le montant global des salaires payés par les entreprises, ainsi que les impôts sur les plus-values.

3. Les impôts actuels auxquels s'appliquent la Convention sont notamment :

   a) Dans le cas de la République de Corée :

      i) L'impôt sur le revenu;

      ii) L'impôt sur les sociétés;

      iii) L'impôt de la capitation; et

      iv) L'impôt spécial de développement rural

      (ci-après dénommés “l'impôt coréen”) :

   b) Dans le cas de la République d'Ouzbékistan :

      i) L'impôt sur le revenu des entreprises, associations et organisations;

      ii) L'impôt sur le revenu des personnes physiques;

      iii) L'impôt sur la fortune.

      (ci-après dénommés “l'impôt ouzbek”)

4. La Convention s'applique aussi aux impôts de nature identique ou analogue qui seraient établis après la date de signature de la présente Convention et qui s'ajouteraient aux impôts actuels ou qui les remplaceraient. Les autorités compétentes des États contractants se communiquent les modifications importantes apportées à leurs législations fiscales respectives.

Article 3. Définitions générales

1. Aux fins de la présente Convention, à moins que le texte n'exige une interprétation différente :

a) Le terme “Corée” désigne le territoire de la République de Corée, y compris toute zone adjacente à la mer territoriale de la République de Corée et qui, conformément au droit international, a été ou peut être désigné ci-après, en application de la législation de la République de Corée, comme constituant une zone où la République de Corée exerce ses droits souverains à l'égard du fond des mers et de son sous-sol, ainsi que leurs ressources naturelles;

b) Le terme “Ouzbékistan” désigne la République d'Ouzbékistan et lorsqu'il est employé dans un sens géographique, il désigne le territoire de la République d'Ouzbékistan, y compris les eaux territoriales et l'espace aérien sur lesquels la République d'Ouzbékistan, en vertu de la législation de la République d'Ouzbékistan et en conformité avec le droit international, peut exercer des droits souverains et sa juridiction, y compris des droits d'exploiter le sous-sol et les ressources naturelles;

c) Les termes “un État contractant” et “l'autre État contractant” désignent, suivant le contexte, la Corée ou l'Ouzbékistan;

d) Le terme “impôt” désigne, suivant le contexte, l'impôt coréen ou l'impôt ouzbek;

e) Le terme “personne” comprend les personnes physiques, les sociétés et tous autres groupements de personnes;

f) Le terme “société” désigne toute personne morale, association en participation ou toute entité qui est considérée, au regard de la législation des États contractants par laquelle son statut est défini, comme une personne morale aux fins d'imposition;

g) Les expressions “entreprise d'un État contractant” et “entreprise de l'autre État contractant” désignent respectivement une entreprise exploitée par un résident d'un État contractant et une entreprise exploitée par un résident de l'autre État contractant;

h) Le terme “national” désigne :

i) Toute personne physique qui possède la nationalité ou la citoyenneté d'un État contractant; et

ii) Toute personne morale, société de personnes ou association constituée conformément à la législation en vigueur dans un État contractant.

i) Le terme “trafic international” désigne tout transport effectué par un navire, un aéronef, un véhicule routier ou ferroviaire exploité par une entreprise d'un État contractant, sauf lorsque le navire, l'aéronef ou le véhicule routier ou ferroviaire n'est exploité qu'entre deux points situés dans l'autre État contractant;

j) L'expression “autorité compétente” désigne :

i) Dans le cas de la Corée, le Ministre des finances et de l'économie ou son représentant autorisé;

ii) Dans le cas de l'Ouzbékistan, le Président du Comité fiscal de l'État (the State Taxation Comittee) ou son représentant autorisé;

2. Pour l'application de la Convention par un État contractant, toute expression qui n'y est pas définie a le sens que lui attribue le droit de cet État concernant les impôts auxquels s'applique la Convention, à moins que le contexte n'appelle une interprétation différente.

Article 4. Résident

1. Au sens de la présente Convention, on entend par “résident d'un État contractant” toute personne qui, en vertu de la législation de cet État, est assujettie à l'impôt dans cet État en raison de son domicile, de sa résidence, de son siège de direction ou de tout autre critère de nature analogue. Toutefois, cette expression ne vise pas les personnes qui sont assujetties à l'impôt dans cet État uniquement en raison du revenu qu'elles tirent de sources situées dans ledit État.

2. Lorsque, selon les dispositions du paragraphe 1, une personne physique est un résident des deux États contractants, sa situation est réglée de la manière suivante :

a) Cette personne est considérée comme un résident de l'État où elle dispose d'un foyer d'habitation permanent; si elle dispose d'un foyer d'habitation permanent dans les deux États elle est considérée comme un résident de l'État avec lequel ses liens personnels et économiques sont les plus étroits (centre des intérêts vitaux);

b) Si l'État où cette personne a le centre de ses intérêts vitaux ne peut être déterminé, ou si elle ne dispose d'un foyer d'habitation permanent dans aucun des États, elle est considérée comme un résident de l'État où elle séjourne de manière habituelle;

c) Si cette personne séjourne de façon habituelle dans les deux États ou si elle ne séjourne de façon habituelle dans aucun d'eux, elle est considérée comme un résident de l'État dont elle possède la nationalité;

d) Si cette personne possède la nationalité de deux États ou si elle ne possède la nationalité d'aucun d'eux, les autorités compétentes des États contractants tranchent la question d'un commun accord.

3. Lorsque, selon les dispositions du paragraphe 1, une personne autre qu'une personne physique est un résident des deux États contractants, elle est considérée comme un résident de l'État où est situé son siège de direction effective. En cas de doute, les autorités compétentes des États contractants tranchent la question d'un commun accord.

Article 5. Établissement stable

1. Au sens de la présente Convention, on entend par “établissement stable” une installation fixe d'affaires par l'intermédiaire de laquelle une entreprise exerce tout ou partie de son activité.

2. Par “établissement stable”, on entend notamment :

a) Un siège de direction;

b) Une succursale;

c) Un bureau;

d) Une usine;

e) Un atelier;

f) Une mine, un puits de pétrole ou de gaz, une carrière ou tout autre lieu d'extraction de ressources naturelles.

3. Un chantier de construction, ou un projet de construction ou d'installation ne constitue un établissement stable que si sa durée est supérieure à 12 mois.

4. Nonobstant les dispositions précédentes du présent article, ne constituent pas un “établissement stable” :

a) Les installations qui sont employées aux seules fins d'entreposer, exposer ou livrer des biens ou marchandises appartenant à l'entreprise;

b) Un dépôt de produits ou de marchandises appartenant à l'entreprise, constitué aux seules fins de stocker, exposer ou livrer ces biens ou marchandises;

c) Un dépôt de produits ou de marchandises appartenant à l'entreprise, entreposées aux seules fins de leur transformation par une autre entreprise;

d) Une installation fixe d'affaires qui est employée aux seules fins d'acheter des biens ou marchandises ou de réunir des informations pour l'entreprise;

e) Une installation fixe d'affaires qui est employée aux seules fins d'exercer, pour l'entreprise, toute autre activité de caractère préparatoire ou auxiliaire;

f) Une installation fixe d'affaires qui est employée aux seules fins d'exercer simultanément plusieurs des activités visées aux paragraphes a) à e) ci-dessus, sous réserve que l'ensemble des activités menées dans l'installation fixe d'affaires conserve son caractère préparatoire ou auxiliaire.

5. Nonobstant les dispositions des paragraphes 1 et 2, lorsqu'une personne -- autre qu'un agent jouissant d'un statut indépendant auquel s'applique le paragraphe 6 -- agit pour le compte d'une entreprise et dispose et jouit dans un État contractant du pouvoir, qu'elle y exerce habituellement, de conclure des contrats au nom de l'entreprise, cette entreprise est réputée avoir un établissement stable dans cet État pour toutes activités que cette personne exerce pour le compte de l'entreprise, à moins que les activités de cette personne ne soient limitées à celles qui sont énumérées au paragraphe 4 et qui, exercées dans une installation fixe d'affaires, ne feraient pas de cette installation fixe d'affaires un établissement stable au sens dudit paragraphe.

6. Nonobstant les dispositions du présent Article, une entreprise d'assurance d'un État contractant est, sauf en ce qui concerne la réassurance, considérée comme ayant un établissement stable dans l'autre État contractant si elle perçoit des primes dans le territoire de cet autre État ou assure des risques situés dans le territoire dudit État par l'intermédiaire d'une personne autre qu'un agent jouissant du statut d'indépendant auquel s'applique le paragraphe 7.

7. Une entreprise d'un État contractant n'est pas réputée avoir un établissement stable dans l'autre État contractant du seul fait qu'elle y exerce des activités par l'entremise d'un courtier, d'un commissionnaire général ou de tout autre agent jouissant d'un statut indépendant, pourvu que ces personnes agissent dans le cadre ordinaire de leur activité.

8. Le fait qu'une société qui est un résident d'un État contractant contrôle ou est contrôlée par une société qui est un résident de l'autre État contractant ou qui y exerce son activité (que ce soit ou non par l'intermédiaire d'un établissement stable) ne suffit pas en lui-même à faire de l'une de ces sociétés un établissement stable de l'autre.

Article 6. Revenus de biens immeubles

1. Les revenus qu'un résident d'un État contractant tire de biens immeubles (y compris les revenus des exploitations agricoles ou forestières) situés dans l'autre État contractant sont imposables dans cet autre État.

2. L'expression “bien immeuble” s'entend au sens que lui donne le droit de l'État contractant où ce bien est situé. Elle comprend en tous cas les accessoires des biens immeubles, le cheptel et le matériel servant aux exploitations agricoles et forestières, les droits auxquels s'appliquent les dispositions du droit privé concernant la propriété foncière, l'usufruit des biens immeubles et les droits à des paiements variables ou fixes pour l'exploitation ou de la concession de l'exploitation de gisements miniers, de sources et d'autres ressources naturelles. Les navires et aéronefs ne sont pas considérés comme des biens immeubles.

3. Les dispositions du paragraphe 1 s'appliquent aux revenus provenant de l'exploitation directe, de la location ou de l'affermage, ainsi que de toute autre forme d'exploitation de biens immeubles.

4. Les dispositions des paragraphes 1 et 3 s'appliquent également aux revenus provenant des biens immeubles d'une entreprise ainsi qu'aux revenus des bien immeubles servant à l'exercice d'une profession indépendante.

Article 7. Bénéfices des entreprises

1. Les bénéfices d'une entreprise d'un État contractant ne sont imposables que dans cet État, à moins que l'entreprise n'exerce son activité dans l'autre État contractant par l'intermédiaire d'un établissement stable situé dans cet autre État. Si l'entreprise exerce son activité d'une telle façon, les bénéfices de l'entreprise sont imposables dans l'autre État contractant, mais uniquement dans la mesure où ils sont imputables audit établissement stable.

2. Sous réserve des dispositions du paragraphe 3, lorsqu'une entreprise d'un État contractant exerce son activité dans l'autre État contractant par l'intermédiaire d'un établissement stable qui est situé dans cet autre État, il est imputé, dans chaque État contractant, à cet établissement stable les bénéfices qu'il aurait pu réaliser s'il avait constitué une entreprise distincte exerçant des activités identiques ou analogues dans des conditions identiques ou analogues et traitant en toute indépendance avec l'entreprise dont il constitue un établissement stable.

3. Pour déterminer les bénéfices d'un établissement stable, sont admises en déduction les dépenses exposées aux fins poursuivies par cet établissement stable, y compris les

dépenses de direction et les frais généraux d'administration ainsi exposés, soit dans l'autre État où est situé cet établissement stable, soit ailleurs. Toutefois aucune déduction n'est admise pour les sommes qui seraient, le cas échéant, versées (à d'autres titres que le remboursement des frais encourus) par l'établissement stable ou au siège central de l'entreprise ou à l'un quelconque de ses bureaux, comme redevances, honoraires ou autres paiements similaires, pour l'usage de brevets et d'autres droits ou comme commission, pour des services précis rendus ou pour une activité de direction ou, sauf dans le cas d'une entreprise bancaire, comme intérêts sur des sommes prêtées à l'établissement stable. De même, il ne sera pas tenu compte, pour déterminer les bénéfices d'un établissement stable, des sommes imposées (à d'autres titres que le remboursement des frais encourus) par l'établissement stable ou au siège central de l'entreprise ou à l'un quelconque de ses bureaux, comme redevances, honoraires ou autres paiements similaires, pour l'usage de brevets et d'autres droits ou comme commission, pour des services précis rendus ou pour une activité de direction ou, sauf dans le cas d'une entreprise bancaire, comme intérêts sur des sommes prêtées à la direction de l'établissement stable ou à l'un quelconque de ses autres bureaux.

4. Aucun bénéfice n'est imputé à un établissement stable pour la seule raison que celui-ci achète des biens ou des marchandises pour le compte de l'entreprise.

5. Aux fins des paragraphes précédents, les bénéfices à imputer à l'établissement stable sont calculés chaque année selon la même méthode, à moins qu'il n'existe des motifs valables et suffisants de les calculer autrement.

6. Lorsque les bénéfices comprennent des éléments de revenu traités séparément dans d'autres articles de la présente Convention, les dispositions desdits articles ne sont pas affectées par les dispositions du présent article.

Article 8. Transport international

1. Les bénéfices d'une entreprise d'un État contractant provenant de l'exploitation, en trafic international, de navires ou d'aéronefs ou de véhicules routiers ou ferroviaires ne sont imposables que dans cet État.

2. Les dispositions du paragraphe 1 s'appliquent aussi aux bénéfices provenant de la participation à un pool, à une exploitation en commun ou à un organisme international d'exploitation.

3. S'agissant de l'exploitation, en trafic international, de navires, d'aéronefs ou de véhicules routiers ou ferroviaires par une entreprise d'un État contractant, cette entreprise, si elle est ouzbèke, sera également exonérée de la taxe sur la valeur ajoutée établie en Corée et, si elle est coréenne, de toute taxe similaire à la taxe sur la valeur ajoutée qui pourrait ultérieurement être établie en Ouzbékistan.

Article 9. Entreprises associées

1. Lorsque :

a) Une entreprise d'un État contractant participe directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise de l'autre État contractant; ou que

b) Les mêmes personnes participent directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise d'un État contractant et d'une entreprise de l'autre État contractant; et que, dans l'un ou l'autre cas, les deux entreprises sont, dans leurs relations commerciales ou financières, liées par des conditions convenues ou imposées, qui diffèrent de celles qui seraient convenues entre des entreprises indépendantes, les bénéfices qui, sans ces conditions, auraient été réalisés par l'une des entreprises mais n'ont pu l'être en fait à cause de ces conditions, peuvent être inclus dans les bénéfices de cette entreprise et imposés en conséquence.

2. Lorsqu'un État contractant inclut dans les bénéfices d'une entreprise de cet État -- et impose en conséquence -- des bénéfices sur lesquels une entreprise de l'autre État contractant a été imposée dans cet autre État, et que les bénéfices ainsi inclus sont des bénéfices qui auraient été réalisés par l'entreprise du premier État si les conditions convenues entre les deux entreprises avaient été celles qui auraient été convenues entre des entreprises indépendantes, l'autre État procède à un ajustement approprié du montant de l'impôt qui y a été perçu sur ces bénéfices. Pour déterminer cet ajustement, il est dûment tenu compte des autres dispositions de la présente Convention, et, si c'est nécessaire, les autorités compétentes des deux États contractants se consultent.

Article 10. Dividendes

1. Les dividendes payés par une société qui est un résident d'un État contractant à un résident de l'autre État contractant sont imposables dans cet autre État.

2. Toutefois, ces dividendes sont imposables aussi dans l'État contractant dont la société distributrice est résidente et selon la législation de cet État; mais si la personne qui perçoit les dividendes en est le bénéficiaire effectif et est un résident de l'autre État contractant, l'impôt ainsi établi ne peut dépasser :

a) 5 pour cent du montant brut des dividendes si le bénéficiaire effectif est une société (autre qu'un partenariat) qui détient directement au moins 25 pour cent du capital de la société distributrice;

b) 15 pour cent du montant brut des dividendes dans tous les autres cas.

Les dispositions du présent paragraphe ne portent pas atteinte à l'imposition de la société au titre des bénéfices qui servent au paiement des dividendes.

3. Le terme “dividendes” employé dans le présent article désigne les revenus provenant d'actions ou autres droits, à l'exception des créances, ainsi que les revenus provenant d'autres parts sociales soumises au même régime fiscal que les revenus d'actions par la législation fiscale de l'État dont la société distributrice est résidente.

4. Les dispositions des paragraphes 1 et 2 du présent article ne s'appliquent pas lorsque le bénéficiaire effectif des dividendes, résident de l'un des États contractants, exerce dans l'autre État contractant dont la société distributrice est un résident, une activité par l'intermédiaire d'un établissement stable qui y est situé, ou une profession indépendante à partir d'une base fixe qui y est située, et que la participation génératrice des dividendes se rattache effectivement à l'établissement stable ou à la base fixe en question. En pareil cas, les dispositions de l'article 7 ou de l'article 14, selon le cas, sont applicables.

5. Lorsqu'une société résidente de l'un des États contractants tire des bénéfices ou des revenus de l'autre État contractant, cet autre État ne peut prélever aucun impôt sur les dividendes payés par la société sauf dans la mesure où ils le sont à un résident de cet autre État, ou dans la mesure où la participation génératrice des dividendes se rattache effectivement à un établissement stable ou à une base fixe situés dans cet autre État; l'autre État ne peut pas non plus prélever un impôt sur les bénéfices non distribués de la société, même si les dividendes payés ou les bénéfices non distribués de la société consistent en tout ou en partie en bénéfices ou revenus provenant de cet autre État.

Article 11. Intérêts

1. Les intérêts provenant d'un État contractant et payés à un résident de l'autre État contractant sont imposables dans cet autre État.

2. Toutefois, ces intérêts sont aussi imposables dans l'État contractant d'où ils proviennent et selon la législation de cet État, mais si le bénéficiaire effectif des intérêts est un résident de l'autre État contractant, l'impôt ainsi établi ne peut excéder 5 pour cent du montant brut des intérêts. Les autorités compétentes des États contractants décident mutuellement d'établir le mode d'application de cette limite.

3. Le terme “intérêts” employé dans le présent article désigne les revenus des créances de toute nature, assorties ou non de garanties hypothécaires ou d'une clause de participation aux bénéfices du débiteur, et notamment les revenus des fonds publics et des obligations d'emprunts, y compris les primes et lots attachés à ce titre. Les pénalisations pour paiement tardif ne sont pas considérées comme des intérêts au sens du présent article.

4. Les dispositions des paragraphes 1, 2 et 3 ne s'appliquent pas lorsque le bénéficiaire effectif des intérêts, résident d'un État contractant, exerce dans l'autre État contractant d'où proviennent les intérêts, soit une activité industrielle ou commerciale par l'intermédiaire d'un établissement stable qui y est situé, soit une profession indépendante au moyen d'une base fixe qui y est située, et que la créance génératrice des intérêts s'y rattache effectivement. Dans ce cas, les dispositions de l'article 7 ou de l'article 14, suivant le cas, sont applicables.

5. Les intérêts sont considérés comme provenant d'un État contractant lorsque le débiteur est un résident de cet État. Toutefois, lorsque le débiteur des intérêts, qu'il soit ou non un résident d'un État contractant, a dans un État contractant un établissement stable, ou une base fixe, pour lequel la dette donnant lieu au paiement des intérêts a été contractée et qui supporte la charge de ces intérêts, ceux-ci sont considérés comme provenant de l'État où l'établissement stable, ou la base fixe, est situé.

6. Lorsque, en raison de relations spéciales qui existent entre le débiteur et le bénéficiaire effectif ou que l'un et l'autre entretiennent avec de tierces personnes, le montant des intérêts, compte tenu de la créance pour laquelle ils sont payés, excède celui dont seraient convenus le débiteur et le bénéficiaire effectif en l'absence de pareilles relations, les dispositions du présent article ne s'appliquent qu'à ce dernier montant. Dans ce cas, la partie excédentaire des paiements reste imposable selon la législation de chaque État contractant et compte tenu des autres dispositions de la présente Convention.

Article 12. Redevances

1. Les redevances provenant d'un État contractant et versées à un résident de l'autre État contractant sont imposables dans cet autre État.

2. Toutefois, ces redevances sont aussi imposables dans l'État contractant d'où elles proviennent et selon la législation de cet État, mais si le bénéficiaire effectif des redevances est un résident de l'autre État contractant, l'impôt ainsi établi ne peut excéder :

a) 2 pour cent du montant brut des redevances versées en contrepartie de l'utilisation ou du droit d'utilisation d'un matériel industriel, commercial ou scientifique;

b) 5 pour cent du montant brut de ces redevances dans tous les autres cas.

3. Le terme “redevances” employé dans le présent article désigne les rémunérations de toute nature payées pour l'usage ou la concession de l'usage d'un droit d'auteur sur une oeuvre littéraire, artistique ou scientifique, y compris les films cinématographiques, ou les films ou bandes utilisés pour les émissions radiophoniques ou télévisées, d'un brevet, d'une marque de fabrique ou de commerce, d'un dessin ou d'un modèle, d'un plan, d'une formule ou d'un procédé secrets, ainsi que pour l'usage ou la concession de l'usage d'un matériel industriel, commercial ou scientifique, pour des informations ou un savoir-faire ayant trait à une expérience acquise dans le domaine industriel, commercial ou scientifique.

4. Les dispositions des paragraphes 1 et 2 ne s'appliquent pas lorsque le bénéficiaire effectif des redevances, résident d'un État contractant, exerce dans l'autre État contractant d'où proviennent les redevances, soit une activité industrielle ou commerciale par l'intermédiaire d'un établissement stable qui y est situé, soit une profession indépendante au moyen d'une base fixe qui y est située, et que le droit ou le bien générateur des redevances se rattache effectivement à l'établissement stable ou à la base fixe en question. En pareil cas, les dispositions de l'article 7 ou de l'article 14, selon le cas, sont applicables.

5. Les redevances sont considérées comme provenant d'un État contractant lorsque le débiteur est un résident de cet État. Toutefois, lorsque le débiteur des redevances, qu'il soit ou non un résident d'un État contractant, a dans un État contractant un établissement stable, ou une base fixe, pour lequel l'engagement donnant lieu au paiement des redevances a été contracté et qui supporte la charge de ces redevances, celles-ci sont considérées comme provenant de l'État où l'établissement stable, ou la base fixe, est situé.

6. Lorsque, en raison de relations spéciales existant entre le débiteur et le bénéficiaire, ou entre eux et un tiers, le montant des redevances excède celui dont seraient convenus le débiteur et le bénéficiaire effectif en l'absence de pareilles relations, les dispositions du présent article ne s'appliquent qu'à ce dernier montant. Dans ce cas, la partie excédentaire des paiements reste imposable selon la législation de chaque État contractant, compte dûment tenu des autres dispositions de la présente Convention.

7. Les dispositions du présent article ne s'appliquent pas lorsque le principal objectif ou l'un des principaux objectifs de toute personne concernée par la création ou la cession des droits générateurs des redevances consistait à tirer avantage des dispositions du présent article par le biais de cette création ou cession. En application du présent paragraphe, l'autorité compétente de l'État contractant consulte l'autre, avant de prendre toute décision, sur l'application de la présente disposition au cas particulier.

Article 13. Gains en capital

1. Les gains qu'un résident d'un État contractant tire de l'aliénation des biens immobiliers visés à l'article 6 et situés dans l'autre État contractant sont imposables dans cet autre État.

2. Les gains provenant de l'aliénation de biens mobiliers inclus dans l'actif d'un établissement stable qu'une entreprise de l'un des États contractants a dans l'autre État contractant ou de l'aliénation de biens mobiliers attachés à une base fixe dont un résident dispose dans l'autre État contractant pour l'exercice d'une profession indépendante, y compris les gains provenant de l'aliénation de cet établissement stable (pris isolément ou avec l'ensemble de l'entreprise) ou de cette base fixe, sont imposables dans cet autre État.

3. Les gains qu'une entreprise d'un État contractant tire de l'aliénation de navires, d'aéronefs ou de véhicules routiers et ferroviaires exploités en trafic international, ou de biens mobiliers affectés à l'exploitation de ces navires, aéronefs ou véhicules routiers et ferroviaires, ne sont imposables que dans cet État.

4. Les gains provenant de l'aliénation de tous biens autres que ceux visés aux paragraphes 1, 2 et 3 ne sont imposables que dans l'État contractant dont le cédant est un résident.

Article 14. Professions indépendantes

1. Les revenus qu'un résident d'un État contractant tire d'une profession libérale ou d'autres activités de caractère indépendant ne sont imposables que dans cet État; toutefois, ces revenus sont aussi imposables dans l'autre État contractant dans les cas suivants :

a) si ce résident dispose de façon habituelle, dans l'autre État contractant, d'une base fixe pour l'exercice de ses activités; dans ce cas, seule la fraction du revenu qui est imputable à cette base fixe est imposable dans l'autre État; ou

b) si son séjour dans l'autre État contractant s'étend sur une période ou des périodes d'une durée totale égale ou supérieure à 183 jours durant toute période de douze mois commençant ou se terminant durant l'année civile considérée; dans ce cas, seule la fraction des revenus qui est tirée de ses activités exercées dans cet autre État durant l'année est imposable dans cet autre État.

2. L'expression “profession libérale” comprend notamment les activités indépendantes d'ordre scientifique, littéraire, artistique, éducatif ou pédagogique, ainsi que les activités indépendantes des médecins, avocats, ingénieurs, architectes, dentistes et comptables.

Article 15. Professions dépendantes

1. Sous réserve des dispositions des articles 16, 18 et 19, les salaires, traitements et autres rémunérations similaires qu'un résident d'un État contractant reçoit au titre d'un emploi salarié ne sont imposables que dans cet État, à moins que l'emploi ne soit exercé dans l'autre État contractant. Si l'emploi y est exercé, les rémunérations reçues à ce titre sont imposables dans cet autre État.

2. Nonobstant les dispositions du paragraphe 1, les rémunérations qu'un résident d'un État contractant reçoit au titre d'un emploi salarié exercé dans l'autre État contractant ne sont imposables que dans le premier État si :

a) le bénéficiaire séjourne dans l'autre État pendant une période ou des périodes n'excédant pas au total 183 jours au cours de toute période de douze mois commençant ou se terminant durant l'année civile considérée; et

b) les rémunérations sont payées par un employeur ou pour le compte d'un employeur qui n'est pas un résident de l'autre État, et

c) la charge des rémunérations n'est pas supportée par un établissement stable ou une base fixe que l'employeur, ou toute personne associée à l'employeur, a dans l'autre État.

3. Nonobstant les dispositions du présent article, les rémunérations reçues au titre d'un emploi salarié à bord d'un navire, d'un aéronef ou d'un véhicule routier et ferroviaire exploité en trafic international par une entreprise d'un État contractant, sont imposables dans cet État.

Article 16. Tantièmes

Les tantièmes, jetons de présence et autres rétributions similaires qu'un résident d'un État contractant reçoit en sa qualité de membre du conseil d'administration d'une société qui est un résident de l'autre État contractant sont imposables dans cet autre État.

Article 17. Artistes et sportifs

1. Nonobstant les dispositions des articles 14 et 15, les revenus qu'un résident d'un État contractant tire de ses activités personnelles exercées dans l'autre État contractant en tant qu'artiste du spectacle, tel qu'un artiste de théâtre, de cinéma, de la radio ou de la télévision, ou qu'un musicien, ou en tant que sportif, sont imposables dans cet autre État.

2. Lorsque les revenus d'activités qu'un artiste du spectacle ou un sportif exerce personnellement et en cette qualité sont attribués non pas à l'artiste du spectacle ou au sportif lui-même mais à une autre personne, ces revenus sont imposables, nonobstant les dispositions des articles 7, 14 et 15, dans l'État contractant où les activités de l'artiste ou du sportif sont exercées.

3. Nonobstant les dispositions des paragraphes 1 et 2 du présent article, les revenus qu'un résident d'un État contractant tire des activités exercées dans l'autre État contractant en tant qu'artiste du spectacle ou que sportif dans le cadre d'un programme spécial d'échanges culturels convenu par les gouvernements des États contractants et qui est entièrement financé par le gouvernement de l'un des États contractants ou les deux et les autorités locales, sont exonérés d'impôt dans cet autre État.

Article 18. Pensions

Sous réserve des dispositions du paragraphe 2 de l'article 19, les pensions et autres rémunérations similaires payées à un résident d'un État contractant au titre d'un emploi antérieur ne sont imposables que dans cet État.

Article 19. Fonctions publiques

1. a) Les salaires, traitements et autres rémunérations similaires, autres que les pensions, payés par un État contractant ou l'une de ses collectivités locales à une personne physique, au titre de services rendus à cet État ou à cette collectivité, ne sont imposables que dans cet État.

b) Toutefois, ces salaires, traitements et autres rémunérations similaires ne sont imposables que dans l'autre État contractant si les services sont rendus dans cet État et si la personne physique est un résident de cet État qui :

i) possède la nationalité de cet État; ou

ii) n'est pas devenu un résident de cet État à seule fin de rendre les services.

2. a) Les pensions payées par un État contractant ou l'une de ses collectivités locales, soit directement soit sur des fonds qu'ils ont constitués, à une personne physique, au titre de services rendus à cet État contractant ou à cette collectivité, ne sont imposables que dans cet État.

b) Toutefois, ces pensions ne sont imposables que dans l'autre État contractant si la personne physique est un résident de cet État et en possède la nationalité.

3. Les dispositions des articles 15, 16 et 18 s'appliquent aux salaires, traitements et autres rémunérations similaires ainsi qu'aux pensions payées au titre de services rendus dans le cadre d'une activité industrielle ou commerciale exercée par un État contractant ou l'une de ses collectivités locales.

4. Les dispositions des paragraphes 1et 2 s'appliquent également aux salaires, traitements et autres rémunérations similaires et aux pensions payées par une institution financière publique exerçant des fonctions de nature gouvernementale telles que spécifiées et convenues dans les lettres échangées entre les autorités compétentes des États contractants.

Article 20. Étudiants

Les sommes qu'un étudiant ou un stagiaire qui est, ou qui était immédiatement avant de se rendre dans un État contractant, un résident de l'autre État contractant, et qui séjourne dans le premier État à seule fin d'y poursuivre ses études ou sa formation, reçoit pour couvrir ses frais d'entretien, d'études ou de formation ne sont pas imposables dans cet État, à condition qu'elles proviennent de sources situées en dehors de cet État.

Article 21. Autres revenus

1. Les éléments de revenu d'un résident d'un État contractant, d'où qu'ils proviennent, qui ne sont pas traités dans les articles précédents de la présente Convention ne sont imposables que dans cet État.

2. Les dispositions du paragraphe 1 ne s'appliquent pas aux revenus autres que les revenus provenant de biens immobiliers tels qu'ils sont définis au paragraphe 2 de l'article 6, lorsque le bénéficiaire de tels revenus, résident d'un État contractant, exerce dans l'autre État contractant, soit une activité industrielle ou commerciale par l'intermédiaire d'un établissement stable qui y est situé, soit une profession indépendante au moyen d'une base fixe qui y est située, et que le droit ou le bien générateur des revenus s'y rattache effectivement. Dans ce cas, les dispositions de l'article 7 ou de l'article 14, suivant le cas, sont applicables.

Article 22. Fortune

1. La fortune constituée par des biens immobiliers que possède un résident d'un État contractant et qui sont situés dans l'autre État contractant est imposable dans cet autre État.

2. La fortune constituée par des biens mobiliers qui font partie de l'actif d'un établissement stable qu'une entreprise d'un État contractant a dans l'autre État contractant, ou par des bien immobiliers qui appartiennent à une base fixe dont un résident d'un État contractant dispose dans l'autre État contractant pour l'exercice d'une profession indépendante, est imposable dans cet autre État.

3. La fortune constituée par des navires, des aéronefs ou des véhicules routiers et ferroviaires exploités en trafic international par une entreprise d'un État contractant, ainsi que par des biens mobiliers (y compris les conteneurs visés au paragraphe 2 de l'article 8), n'est imposable que dans cet État.

4. Tous les autres éléments de la fortune d'un résident d'un État contractant ne sont imposables que dans cet État.

Article 23. Élimination de la double imposition

1. Dans le cas de la Corée, la double imposition est évitée comme suit :

Sous réserve des dispositions de la législation fiscale coréenne touchant le crédit sur l'impôt exigible dans un pays autre que la Corée (et sans qu'il soit porté atteinte au principe général de cette législation), l'impôt exigible (à l'exclusion, dans le cas des dividendes, de l'impôt dû au titre des bénéfices sur la base desquels les dividendes sont payés) conformément à la législation ouzbèke et aux dispositions de la présente Convention, directement ou par voie de retenue à la source, en raison de revenus provenant de sources situées en Ouzbékistan, est admis en crédit de l'impôt coréen dû au titre de ces revenus. Le montant du crédit ne peut toutefois excéder la fraction de l'impôt coréen, calculé avant que le crédit ne soit octroyé, correspondant à ces revenus.

2. Dans le cas de l'Ouzbékistan, la double imposition est évitée de la manière suivante :

Lorsqu'un résident d'Ouzbékistan reçoit des revenus ou possède de la fortune qui, conformément aux dispositions de la présente Convention, sont imposables en Corée, l'Ouzbékistan accorde :

a) sur l'impôt qu'il perçoit sur les revenus de ce résident, une déduction d'un montant égal à l'impôt sur le revenu payé en Corée;

b) sur l'impôt qu'il perçoit sur l'impôt sur la fortune de ce résident, une déduction d'un montant égal à l'impôt sur la fortune payé en Corée;

Dans l'un ou l'autre cas, cette déduction ne peut toutefois excéder la fraction de l'impôt sur le revenu ou de l'impôt sur la propriété, calculé avant déduction, correspondant selon le cas aux revenus ou à la fortune imposables en Corée.

3. Lorsque, conformément à une disposition quelconque de la Convention, les revenus qu'un résident d'un État contractant reçoit ou les biens qu'il possède sont exempts d'impôt dans cet État. Cet État peut néanmoins, pour calculer le montant de l'impôt sur le reste des revenus ou des biens de ce résident, tenir compte des revenus ou des biens exemptés.

4. L'impôt exigible dans un État contractant mentionné aux paragraphes 1 et 2 du présent article inclut l'impôt exigible à l'exception des dispositions légales relatives à la déduction et à l'exemption fiscales ou autres incitants fiscaux de l'État contractant pour la promotion du développement économique. Aux fins du présent paragraphe, le montant de l'impôt est réputé pour être de :

a) 5 pour cent du montant brut des dividendes dans le cas du paragraphe 2 a) de l'article 10;

b) 15 pour cent du montant brut des dividendes dans le cas du paragraphe 2 b) de l'article 10;

c) 5 pour cent du montant brut des intérêts dans le cas du paragraphe 2 de l'article 11;

d) 2 pour cent du montant brut des redevances dans le cas du paragraphe 2 a) de l'article 12;

e) 5 pour cent du montant brut des redevances dans le cas du paragraphe 2 b) de l'article 12.

5. L'allègement fiscal visé au paragraphe 4 du présent article ne sera pas accordé si les bénéfices, revenus ou gains imposables, pour lesquels l'impôt est exigible, à l'exception de l'exemption ou de la réduction fiscale accordée à laquelle il est fait référence dans ce paragraphe, sont engrangés ou cumulés après le 1er janvier 2004.

Article 24. Non-discrimination

1. Les nationaux de l'un des États contractants ne devraient être assujettis dans l'autre État contractant à aucune imposition ou obligation connexe autre ou plus lourde que celles auxquelles sont ou peuvent être assujettis, dans les mêmes conditions, les nationaux de cet autre État.

2. L'imposition d'un établissement stable qu'une entreprise d'un État contractant a dans l'autre État contractant ne peut être établie dans cet autre État d'une façon moins favorable que l'imposition des entreprises de cet autre État qui exercent les mêmes activités. La présente disposition ne peut être interprétée comme obligeant un État contractant à accorder aux résidents de l'autre État contractant les déductions personnelles, abattements et réductions d'impôt en fonction de la situation ou des charges de famille qu'il accorde à ses propres résidents.

3. À moins que les dispositions du paragraphe 1 de l'article 9, du paragraphe 6 de l'article 11, ou du paragraphe 4 de l'article 12 ne soient applicables, les intérêts, redevances et autres dépenses payés par une entreprise d'un État contractant à un résident de l'autre État contractant sont déductibles, pour la détermination des bénéfices imposables de cette entreprise, dans les mêmes conditions que s'ils avaient été payés à un résident du premier État.

4. Les entreprises d'un État contractant, dont le capital est en totalité ou en partie, directement ou indirectement, détenu ou contrôlé par un ou plusieurs résidents de l'autre État contractant, ne peuvent être soumises dans le premier État à aucune imposition ou obligation y relative qui soit autre ou plus lourde que celles auxquelles sont ou peuvent être assujetties les autres entreprises similaires du premier État.

5. Nonobstant les dispositions de l'article 2, les dispositions du présent article s'appliquent aux impôts de toute nature ou dénomination.

Article 25. Procédure amiable

1. Lorsqu'une personne estime que les mesures prises par un État contractant ou par les deux États contractants entraînent ou entraîneront pour elle une imposition non conforme aux dispositions de la présente Convention, elle peut, indépendamment des recours prévus par le droit interne de ces États, soumettre son cas à l'autorité compétente de l'État contractant dont elle est un résident ou, si son cas relève du paragraphe 1 de l'article 24, à celle de l'État contractant dont il possède la nationalité. Le cas doit être soumis dans les trois ans qui suivent la première notification de la mesure qui entraîne une imposition non conforme aux dispositions de la Convention.

2. L'autorité compétente s'efforce, si la réclamation lui paraît fondée et si elle n'est pas elle-même en mesure d'y apporter une solution satisfaisante, de résoudre le cas par voie d'accord amiable avec l'autorité compétente de l'autre État contractant, en vue d'éviter une imposition non conforme à la Convention. L'accord est appliqué quels que soient les délais prévus par le droit interne des États contractants.

3. Les autorités compétentes des États contractants s'efforcent, par voie d'accord amiable, de résoudre les difficultés ou de dissiper les doutes auxquels peuvent donner lieu l'interprétation ou l'application de la Convention. Elles peuvent aussi se concerter en vue d'éliminer la double imposition dans des cas non prévus par la Convention.

4. Les autorités compétentes des États contractants peuvent communiquer directement entre elles en vue de parvenir à un accord comme il est indiqué aux paragraphes précédents.

Article 26. Échange de renseignements

1. Les autorités compétentes des États contractants échangent les renseignements nécessaires pour appliquer les dispositions de la présente Convention ou celles de la législation interne des États contractants relative aux impôts visés par la Convention dans la mesure où l'imposition qu'elle prévoit n'est pas contraire à la Convention. L'échange de renseignements n'est pas restreint par l'article premier. Les renseignements reçus par un État contractant sont tenus secrets de la même manière que les renseignements obtenus en application de la législation interne de cet État et ne sont communiqués qu'aux personnes ou autorités (y compris les tribunaux et organes administratifs) concernées par l'établissement ou le recouvrement des impôts visés par la Convention, par les procédures ou poursuites concernant ces impôts, ou par les décisions sur les recours relatifs à ces impôts. Ces personnes ou autorités n'utilisent ces renseignements qu'à ces fins. Elles peuvent révéler ces renseignements au cours d'audiences publiques de tribunaux ou dans des jugements.

2. Les dispositions du paragraphe 1 ne peuvent en aucun cas être interprétées comme imposant à un État contractant l'obligation :

a) de prendre des mesures administratives dérogeant à sa législation et à sa pratique administrative ou à celle de l'autre État contractant;

b) de fournir des renseignements qui ne pourraient être obtenus sur la base de sa législation ou dans le cadre de sa pratique administrative normale ou de celles de l'autre État contractant;

c) de fournir des renseignements qui révéleraient un secret commercial, industriel, professionnel ou un procédé commercial ou des renseignements dont la communication serait contraire à l'ordre public.

Article 27. Membres des missions diplomatiques ou permanentes ou des postes consulaires

Les dispositions de la présente Convention ne portent pas atteinte aux privilèges fiscaux dont bénéficient les membres des missions diplomatiques ou postes consulaires en vertu soit des règles générales du droit international, soit des dispositions d'accords particuliers.

Article 28. Entrée en vigueur

1. Chacun des États contractants notifie l'autre État contractant de l'accomplissement des formalités requises par sa législation à l'entrée en vigueur de la présente Convention. La présente Convention entrera en vigueur à l'expiration d'une période de 15 jours suivant la date de la dernière de ces notifications et s'appliquera alors :

a) en ce qui concerne les impôts retenus à la source, aux revenus attribués le ou après le 1er janvier de l'année civile suivant immédiatement celle au cours de laquelle la Convention est entrée en vigueur;

b) en ce qui concerne les autres impôts sur le revenu et sur la fortune, pour toute année d'imposition commençant le ou après le 1er janvier de l'année civile suivant immédiatement celle au cours de laquelle la Convention est entrée en vigueur.

Article 29. Dénonciation

La présente Convention restera en vigueur tant qu'elle n'aura pas été dénoncée par un État contractant. Chacun des États contractants peut jusqu'au 30 juin inclus de toute année civile postérieure à l'expiration d'une période de cinq années suivant l'année au cours de laquelle la Convention est entrée en vigueur, donner par la voie diplomatique un avis écrit de dénonciation à l'autre État contractant. Dans ce cas, la Convention cessera de s'appliquer :

a) en ce qui concerne les impôts retenus à la source, aux revenus attribués le ou après le 1er janvier de l'année civile suivant immédiatement celle au cours de laquelle l'avis de dénonciation est donné;

b) en ce qui concerne les autres impôts sur le revenu et sur la fortune, pour toute année d'imposition commençant le ou après le 1er janvier de l'année civile suivant immédiatement celle au cours de laquelle l'avis de dénonciation est donné.

En foi de quoi, les soussignés, à ce dûment autorisés par leur gouvernement respectif, ont signé la présente Convention.

Fait en deux exemplaires à Tachkent, le 11 février 1998, en langues coréenne, ouzbèke et anglaise, les trois textes faisant également foi. En cas de divergence d'interprétation, le texte en anglais l'emporte.

Pour le Gouvernement de la République de Corée :

CHOI YOUNG-HA

Pour le Gouvernement de la République d'Ouzbékistan :

VILLY BEGANOV

PROTOCOLE

Au moment de signer la Convention entre le Gouvernement de la République de Corée et le Gouvernement de la République d'Ouzbékistan tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune, les soussignés sont convenus que les dispositions font partir intégrale de Convention.

1. Il est entendu que, dans le cas de l'Ouzbékistan, “l'impôt sur la fortune” auquel il est fait référence dans le Préambule et dans d'autres articles de la présente Convention désigne l'impôt sur la propriété d'Ouzbékistan.

2. S'agissant du paragraphe 1 de l'article 7, si l'État contractant a de sérieuses raisons de penser que les transactions ont été effectuées comme si elles n'avaient pas été effectuées entre deux entreprises indépendantes aux seules fins de réduire l'impôt de l'établissement stable, les revenus provenant de ces transactions peuvent être considérés comme étant des revenus d'un établissement permanent.

En foi de quoi, les soussignés, à ce dûment autorisés par leur gouvernement respectif, ont signé le présent Protocole.

Fait en deux exemplaires à Tachkent, le 11 février 1998, en langues coréen, ouzbèke et anglaise, les trois textes faisant également foi. En cas de divergence d'interprétation, le texte en anglais l'emporte.

Pour le Gouvernement de la République de Corée :

CHOI YOUNG-HA

Pour le Gouvernement de la République d'Ouzbékistan :

VILLY BEGANOV

No. 43293

Multilateral

Agreement establishing the Caribbean Investment Fund (with schedule). Port of Spain, 13 October 1993

Entry into force: *15 October 1993, in accordance with section 13 (see following page)*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Caribbean Community, 14 November 2006*

See also No. A-43293 in volume 2399.

Multilatéral

Accord portant création du Fonds d'investissement des Caraïbes (avec annexe). Port of Spain, 13 octobre 1993

Entrée en vigueur : *15 octobre 1993, conformément à la section 13 (voir la page suivante)*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *Communauté des Caraïbes, 14 novembre 2006*

Voir aussi No A-43293 du volume 2399.

Participant	Definitive signature
Antigua and Barbuda	13 Oct 1993 s
Belize	13 Oct 1993 s
Insurance Company of the West Indies Limited	13 Oct 1993 s
Jamaica	13 Oct 1993 s
Saint Kitts and Nevis	13 Oct 1993 s
Saint Lucia	13 Oct 1993 s
Saint Vincent and the Grenadines	13 Oct 1993 s
Trinidad and Tobago	13 Oct 1993 s

Participant	Signature définitive
Antigua-et-Barbuda	13 oct 1993 s
Belize	13 oct 1993 s
Insurance Company of the West Indies Limited	13 oct 1993 s
Jamaïque	13 oct 1993 s
Saint-Kitts-et-Nevis	13 oct 1993 s
Saint-Vincent-et-les Grenadines	13 oct 1993 s
Sainte-Lucie	13 oct 1993 s
Trinité-et-Tobago	13 oct 1993 s

[ENGLISH TEXT — TEXTE ANGLAIS]

AGREEMENT ESTABLISHING THE CARIBBEAN INVESTMENT FUND AGREEMENT

This Agreement made between the Governments of the Member States and Associate Members of the Caribbean Community (CARICOM) listed in paragraph 1 of the Schedule to this Agreement which are signatories to this Agreement (hereinafter referred to as "the Signatory States") and ICWI Group Limited of 2 St. Lucia Avenue, Kingston 5 in the parish of St. Andrew, Jamaica (hereinafter called ICWI) Witnesseth as follows:

1. Objectives:

1.1 To establish through a public company an investment fund or series of investment funds in United States Dollars to be known as the Caribbean Investment Fund (hereinafter called "the Fund") the main objects of which shall be the investment in private sector majority owned and controlled companies and corporations located in the Signatory States listed in the Schedule hereto preferably those which are listed or which have committed to list on a stock exchange in any of the Signatory States. Such investment shall include but not be limited to investment by way of new stock and joint venture participation, project financing, and share issues, joint venture participations, project financing, and loan funding.

1.2 The main thrust of investment by the Fund shall be the encouragement and promotion of projects involving new ventures, business expansion and plant expansion (including divestments and privatization of public sector owned and/or controlled companies, corporations and authorities) which are geared towards increasing exports and/or fostering import substitution and/or increasing hard currency earnings and/or increasing production of goods or services which are projected to stimulate economic growth in the Signatory States in which the investment and/or funding is made.

2. Establishment and Management of the Fund:

2.1 ICWI shall be responsible for the establishment of the Fund which shall be capitalised at a minimum of fifty million United States dollars (US$50,000,000) in two tranches. The first tranche or a minimum of US$25,000,000 shall be subscribed and paid up within 365 days of the entry into force of this Agreement. The second tranche comprising the difference between the capital of the Fund and the amount of the first tranche shall be subscribed and paid up within two years of the latest date for subscription of the first tranche.

2.2 ICWI shall be responsible for promoting the Fund and for procuring suitable managers of the Fund. The appointment of members of the Board of the Fund shall be made in accordance with Charter and By-Laws of the Fund.

2.3 Unless the Signatory States otherwise determine, if the first tranche is not fully subscribed and paid up within the period required by Clause 2.1 hereof this Agreement will forthwith terminate.

2.4 In the event that the Signatory States determine that this Agreement should be terminated as provided in Clause 2.3 hereof this Agreement shall terminate without ICWI incurring any liability whatsoever to the Signatory States.

2.5 In the event that the Signatory States determine that this Agreement should not be terminated as provided in Clause 2.3 hereof then such of the first tranche as has not been subscribed and paid up shall form part of the second tranche to be subscribed and paid up within the further period required by Clause 2.1 hereof.

2.6 If the second tranche (including such amount of the first tranche pursuant to Clause 2.5 if applicable) is not fully-subscribed within the period required by Clause 2.1 hereof ICWI shall not incur any liability whatsoever to the Signatory States and the provisions of Clause 12 shall cease to apply, unless the Signatory States otherwise determine.

3. Subscription of Capital to the Fund:

3.1 The investment in the Fund shall be in hard currency. For this purpose it shall be denominated in US dollars.

4. Concessions and Privileges of the Fund:

4.1 ICWI and the Signatory States recognize that the grant of certain concessions and privileges to the Fund for a certain period of time will facilitate the establishment and operation of the Fund and enhance its viability and that the grant of concessions and privileges is subject to legislative and/or administrative authority as required in the respective Signatory States.

4.2 In consideration of the Fund becoming duly established as provided herein and of the Fund pursuing the objectives of Clause 1.2 in the Signatory States each Signatory State hereby undertakes to ensure that the following concessions and privileges are granted to and may be enjoyed by the Fund in its territory:

4.2.1 The Fund's operations may be established in any Signatory State and the Signatory States will promptly provide all consents and approvals necessary for the establishment of the Fund's operations in their respective territories without any restrictions;

4.2.2 The Fund shall be entitled to acquire, hold and dispose of both real and personal property whether by way of purchase, mortgage, charge, transfer, sale or otherwise without any restrictions;

4.2.3 The shares of the Fund shall be freely transferable both within and outside of the Signatory States to residents and nonresidents thereof without any restrictions;

4.2.4 The Signatory States will promptly provide all consents and approvals necessary in order to permit or provide that any restrictions (including without limitation exchange control restrictions) contained in any legislation or governmental or statutory order from time to time in force in any of the signatory States shall not be applicable to:

4.2.4.1 any investment or subscription in the Fund whether made inside or outside and whether made by residents or nonresidents of a Signatory State;

4.2.4.2 gold and any currency held by the Fund whether issued by the Signatory States or not;

4.2.4.3 securities of any nature whatsoever including but not limited to shares, stocks, bonds, notes, debentures, debenture stocks, mortgages, charges or liens on realty and personality and units under a unit trust scheme whether issued by the Fund as part of its capitalisation or issued to the Fund as a result of any investment by the Fund including investment in or funding provided by the Fund in any project in a Signatory State;

4.2.4.4 any real and personal property and any certificates of title in relation thereto which form part of or affecting any project in which the Fund has invested or provided funding In the Signatory State;

4.2.4.5 the remittance by the Fund of any profits, dividends, capital gains, interest and other income and revenues of whatsoever nature of and in the Fund and the proceeds of any sale, transfer or other disposition of any shares of the Fund and of any securities issued by or to the Fund.

4.2.5 The Signatory States will promptly provide all consents and approvals necessary in order to permit or provide that no taxes, duties, levies or imposts shall be payable on or levied in respect following:

4.2.5.1 Subscriptions to or investments in the Fund and any securities issued by the Fund;

4.2.5.2 Revenues, income, dividends, interest or profits of whatsoever nature accruing to the Fund from any project in which the Fund has made an investment and/or provided funding;

4.2.5.3 The proceeds of sale, transfer or other disposition of any securities issued to the Fund as a result of any investment in and/or funding to any project by the Fund pursuant to the objectives for which the Fund was established;

4.2.5.4 Any revenue, profits (including capital profits), capital gains and income generated by the Fund;

4.2.5.5 Remittances of any interest, dividends, distributions or other payments paid by the Fund to any subscriber, investor or shareholder in the Fund.

4.3 Unless otherwise agreed by the parties in writing, the Signatory States and each of them shall not be obliged to extend any or all of the concessions and privileges which they are obliged to grant to the Fund beyond ten (10) years from the date of the subscription of the second tranche under Clause 2.1 hereof.

4.4 At the expiration of 5 years from the date of the subscription of the second tranche under Clause 2.1 hereof the parties shall either directly or through the Advisory Board consult and discuss the desirability of extending the concessions and privileges granted to and enjoyed by the Fund and if considered desirable the concessions and privileges granted to and enjoyed by the Fund shall be duly extended for such period as the Signatory States consider appropriate.

5. <u>Limitation on Investment in a Project</u>:

5.1 The Fund in consultation with the Fund's managers shall from time to time set the investment policy of the Fund in projects and the minimum and maximum investment by the Fund in any single project.

6. <u>Policy on Investment in Signatory States</u>:

6.1 The Fund in consultation with the Fund's managers shall set the investment policy of the Fund in projects in Signatory States but they will nevertheless give due consideration to investing in every participating Signatory State from time to time. It is acknowledged that there is no obligation on the Fund and/or the Fund's managers to invest in any particular Signatory State.

7. Start up Date:

7.1 The proposed start up date of the Fund is 90 days after the entry into force of this Agreement.

8. Promotion of Capital Markets:

8.1 The Fund and the Fund's managers will use their best endeavours to ensure that generally investment by the Fund will be in projects which will promote and enhance the capital markets in the Signatory States.

9. Investment of Funds:

9.1 Not less than 75 percent of the funds from the first tranche and not less than 75 percent of the total funds from both tranches shall, within two and three years, respectively, of the entry into force of this Agreement, be invested in projects contemplated in Clause 1.

9.2 If the Fund fails to satisfy the requirements of Clause 9.1 the provisions of Clause 12 shall cease to apply unless the Signatory States otherwise determine.

10. Borrowing by the Fund:

10.1 Nothing contained in this Agreement shall restrict the Fund's right to borrow money, from time to time, and use same or any part thereof to invest in projects contemplated by Clause 1.

11. Advisory Board:

11.1 There shall be an Advisory Board consisting of not more than 7 members to be appointed by the countries listed in Item 1 of the Schedule which become parties to this Agreement. Subject to Clause 11.2, each participating country shall have the right to appoint one (1) member to the Advisory Board.

11.2 For the purposes of Clause 11.1 such member countries of the Organisation of Eastern Caribbean States (OECS) and such Associate Members which become parties to this Agreement shall have the right collectively to appoint only one (1) member to the Advisory Board.

11.3 The function of the Advisory Board shall be to monitor performance of the Fund and to liaise between the Signatory States and the Fund on matters relating to this Agreement and the performance of the Fund.

11.4 The Fund will provide written quarterly reports to the Advisory Board indicating the investments in and/or funding provided to projects by the Fund and the investment of its funds in activities. The reports shall also include an outline of the status of projects being investigated for investment and/or funding.

12. Exclusivity of Fund:

12.1 The Signatory States recognise that in order for the Fund to be successful and meet its objectives the Fund needs exclusivity for investment in the Signatory States for a period of not less than 5 years and to this end undertake not to grant to any other CARICOM

Regional Fund or institution, that is to say, a CARICOM Regional Fund or institution established by an Agreement open for signature by all CARICOM Member States, the concessions and privileges or any of them granted to the Fund under Clause 4.

12.2 During the existence of the Fund the Signatory States undertake not to grant to any other fund or institution which is established to operate regionally in the Signatory States in competition with the Fund any concession and privileges more favourable than those granted to the Fund from time to time.

13. Entry into Force:

13.1 Subject to Clause 13.2, this Agreement shall enter into force when it has been duly executed by ICWI and any number of the Signatory States listed in the Schedule hereto which number must include any three of the States of Barbados, Guyana, Jamaica and Trinidad and Tobago.

13.2 If this Agreement is not executed pursuant to Clause 13.1 within 60 days of the date that the CARICOM Secretary-General declares it to be open for signature this Agreement shall not enter into force unless ICWI and the prospective Signatory States otherwise.

13.3 None of the parties hereto shall incur any liability to the other after the date that this Agreement shall enter into force.

14. Additional Parties to the Agreement:

14.1 The parties hereto affirm that it is their intention that upon the incorporation of the Fund the rights and obligations carried out and performed by the Fund and the Signatory States under this Agreement shall be binding on each of the Fund and the Signatory States. To this end the parties hereto hereby knowledge and agree each with the other that on its incorporation the Fund will become a party to this Agreement by depositing with the Secretary General of the Caribbean Community at the Caribbean Community Secretariat a written notice duly executed by the Fund under its common seal stating that it undertakes to be bound by the terms and conditions of this Agreement as if it had been a signatory hereto at the time of execution by the other parties. The deposit of the abovementioned notice will create a valid and binding Agreement between the Fund and the Signatory States, collectively and individually as if the Fund had been an original party and signatory hereto.

14.2 The parties hereto acknowledge and recognise that non-signatory Member States or Associate Members of CARICOM listed in Item 1 of the Schedule hereto at the time this Agreement enters into force and countries to which paragraph 2 of the Schedule to this Agreement refers may wish to become parties to this Agreement subsequent to the entry into force of this Agreement. The parties hereto hereby acknowledge and agree each with the other that any Member State or Associate Member of CARICOM shall be entitled at any time to sign the counterpart of this Agreement deposited with Secretary-General of the Caribbean Community at the Caribbean Community Secretariat pursuant to Clause 17 and the signing thereof by the Government of such Member State or Associate Member and each of them as if such Member State or Associate Member had been an original party and signatory hereto.

15. Release of Obligations:

15.1 After delivery of the written notice by the Fund under Clause 14.1 and after the date for subscription of the first and second tranche referred to in Clause 2.1 ICWI shall, notwithstanding anything hereto to the contrary, be deemed to have performed all of its obligations under this Agreement and shall be released from this Agreement.

16. Amendments:

16.1 This Agreement may be amended by consent of the parties hereto.

16.2 No amendment to this Agreement shall be binding on the parties unless it is in writing and duly executed by all the parties to the Agreement. Any such document amending this Agreement shall be deposited with the Secretary-General of the Community at the Caribbean Community Secretariat within 30 days of its execution.

17. Deposit of Agreement:

17.1 This Agreement shall be deposited with the Secretary-General of the Caribbean Community and the Secretary-General shall furnish each party to this Agreement with a certified copy thereof.

18. Jurisdiction for Registration of the Fund:

18.1 The parties hereto agree that, at the discretion of ICWI and the Fund, the Fund shall be registered in a jurisdiction highly conducive to the enhancement of the attractiveness of the Fund in the eyes of prospective investors.

19. Administrative Headquarters of the Fund:

19.1 The Administrative Headquarters of the Fund shall be in Jamaica.

20. Choice of Law:

20.1 The parties hereto agree that prior to the written notice by the Fund under Clause 14.1, this Agreement shall be governed by the laws of Jamaica.

20.2 The parties hereto agree that upon delivery of the written notice by the Fund under Clause 14.1, this Agreement shall be governed by the laws of England.

21. Arbitration:

21.1 The parties hereto agree that:

21.1.1 In the event of any controversy, dispute or question arising out of or in connection with or in relation to this Agreement or its interpretation, performance or non-performance or any breach thereof, the matter shall first be subjected to negotiation.

21.1.2 If the controversy, dispute or question is not resolved by negotiation pursuant to Clause 21.1.1 hereof within 30 days, it shall be referred to arbitration.

21.1.3 All controversies, disputes or questions arising in connection with this Agreement save and except as hereinafter provided shall be finally settled under the Rules of Conciliation and arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules.

21.1.4 If any event giving rise to any controversy, dispute or question arises prior to ICWI being released under Clause 15.1, then such controversy, dispute or question shall be finally settled by arbitration before a single arbitrator under the rules of arbitration in accordance with the Arbitration Act of Jamaica as amended from time to time.

SCHEDULE

1. (i) Antigua and Barbuda
   (ii) The Bahamas
   (iii) Barbados
   (iv) Belize
   (v) Dominica
   (vi) Grenada
   (vii) Guyana
   (viii) Jamaica
   (ix) Montserrat
   (x) St. Kitts/Nevis
   (xi) St. Lucia
   (xii) St. Vincent and the Grenadines
   (xiii) Trinidad and Tobago
   (xiv) The British Virgin Islands
   (xv) The Turks and Caicos Islands

2. Any other country which becomes a Member State of the Caribbean Community or an Associate Member of the Caribbean Community.

Signed by

L. BIRD

For the Government of Antigua and Barbuda, on 13 October 1993 at Port-of-Spain, Trinidad and Tobago, on behalf of Antigua and Barbuda.

Signed by

ARLINGTON E. BUTTERS

For the Government of The Bahamas, on 17 February 1995 at Belize City, Belize, on behalf of The Bahamas.

Signed by

LLOYD ERSKINE SANDIFORD

For the Government of Barbados, on 31 May 1994 at Christ Church, Barbados, on behalf of Barbados.

Signed by MANUEL ESQUIVEL

For the Government of Belize, on 13 October 1993 at Port-of-Spain, Trinidad and Tobago, on behalf of Belize.

Signed by M. EUGENIA CHARLES

For the Government of Dominica, on 25 May 1994 at Castries, Saint Lucia, on behalf of Dominica.

Signed by

For the Government of Grenada, on 30 September 1994 at St. George's, Grenada, on behalf of Grenada.

Signed by A. ALLY

For the Government of Guyana, on 15 October 1993 at the Presidential Secretariat, Georgetown, Guyana, on behalf of Guyana.

Signed by
P.J. PATTERSON
For the Government of Jamaica, on 13 October 1993 at Port-of-Spain, Trinidad and Tobago, on behalf of Jamaica.

Signed by
R.T. MEADE
For the Government of Montserrat, on 12 March 1994 at Kingstown, Saint Vincent and the Grenadines, on behalf of Montserrat.

Signed by
KENNEDY SIMMONDS
For the Government of St. Kitts and Nevis, on 13 October 1994 at Port-of-Spain, Trinidad and Tobago, on behalf of St. Kitts and Nevis.

Signed by
JOHN COMPTON
For the Government of Saint Lucia, on 13 October 1994 at Port-of-Spain, Trinidad and Tobago, on behalf of Saint Lucia.

Signed by
J. MITCHELL
For the Government of St. Vincent and the Grenadines, on 13 October 1994 at Port-of-Spain, Trinidad and Tobago, on behalf of St. Vincent and the Grenadines.

Signed by
PATRICK MANNING
For the Government of Trinidad and Tobago, on 13 October 1994 at Port-of-Spain, Trinidad and Tobago, on behalf of Trinidad and Tobago.

[TRANSLATION -- TRADUCTION]

ACCORD PORTANT CRÉATION DU FONDS D'INVESTISSEMENT DES CARAÏBES

Le présent Accord passé entre les Gouvernements des États membres et Membres associés de la Communauté des Caraïbes (CARICOM) énumérés dans le paragraphe 1 du Tableau du présent Accord, signataires au présent Accord (ci-après dénommés " les États signataires ") et le Groupe d'entreprises ICWI Ltd dont le siège est situé au 2, St Lucia Avenue, Kingston 5 dans la commune de St. Andrew, Jamaïque (ci-après dénommé ICWI), atteste de ce qui suit :

1. <u>Objectifs</u> :

1.1. Pour créer, par le biais d'une entreprise publique, un fonds d'investissement ou une série de fonds d'investissement en dollars des États-Unis, connu sous le nom de Fonds d'investissement des Caraïbes (ci-après dénommé " le Fonds "), dont les principaux objectifs sont l'investissement dans des sociétés majoritairement détenues et contrôlées par le secteur privé et dans des sociétés situées dans les États signataires énumérés dans le Tableau ci-joint, et de préférence celles qui sont énumérées ou qui se sont engagées à apparaître sur une place boursière de l'un quelconque des États signataires. Cet investissement peut prendre la forme, mais pas uniquement, d'un investissement par la voie d'une nouvelle participation boursière et d'une participation dans une entreprise par association, du financement d'un projet, et de l'émission de parts, d'une participation dans une entreprise par association, du financement d'un projet et d'un emprunt de consolidation.

1.2. La principale impulsion d'investissement donnée par le Fonds sera d'encourager et de promouvoir des projets impliquant de nouvelles entreprises, l'expansion de sociétés et d'usines (y compris la cession de parts et la privatisation de sociétés, entreprises ou collectivités détenues et/ou contrôlées par le secteur public), destinés à augmenter les exportations et/ou à intensifier la substitution des importations et/ou augmenter les recettes en devises fortes et/ou augmenter la production de biens ou de services projetés pour stimuler la croissance économique dans les États signataires dans lesquels les investissements et/ou la collecte de fonds sont effectués.

2. <u>Création et gestion du Fonds</u> :

2.1. L'ICWI est responsable de la création du Fonds, qui est capitalisé à un minimum de cinquante millions de dollars des États-Unis (50 000 000 dollars É.U.) en deux tranches. La première tranche, soit un minimum de 25 000 000 de dollars des États-Unis, sera apportée et versée dans les 365 jours suivant l'entrée en vigueur du présent Accord. La seconde tranche, soit la différence entre le capital du Fonds et le montant de la première tranche, sera apportée et versée dans les deux ans suivant la date limite d'apport de la première tranche.

2.2. L'ICWI est responsable de la promotion du Fonds et de la désignation de directeurs aptes à la gestion de ce dernier. La désignation des membres du Conseil d'administration du Fonds se fait conformément à la Charte et aux Statuts du Fonds.

2.3. À moins que les États signataires ne décident qu'il soit procédé autrement, si la première tranche n'est pas entièrement apportée et versée au cours de la période requise par la clause 2.1 ci-dessus, le présent Accord est immédiatement dénoncé.

2.4. Si les États signataires décident que le présent Accord doit être dénoncé tel que prévu dans la clause 2.3 ci-dessus, le présent Accord est dénoncé sans que l'ICWI ne soit responsable dans quelle que mesure que ce soit envers les États signataires.

2.5. Si les États signataires décident que le présent Accord ne doit pas être dénoncé tel que prévu dans la clause 2.3 ci-dessus, la première tranche qui n'aurait alors pas été apportée et versée fait partie de la seconde tranche qui doit être apportée et versée dans la période supplémentaire requise par la clause 2.1 ci-dessus.

2.6. Si la seconde tranche (y compris le montant en question de la première tranche conformément à la clause 2.5 si cette dernière est applicable) n'est pas apportée et versée dans son intégralité dans la période requise par la clause 2.1 ci-dessus, l'ICWI n'est en rien responsable envers les États signataires, et les dispositions de la clause 12 cessent de s'appliquer, à moins que les États signataires ne décident qu'il soit procédé autrement.

3. Apport de capital au Fonds :

3.1. Les investissements apportés au Fonds se font en devises fortes. À ces fins, ils sont libellés en dollars des États-Unis.

4. Concessions et privilège du Fonds :

4.1. L'ICWI et les États signataires reconnaissent que l'accord de certaines concessions et privilèges au Fonds pour un certain laps de temps facilite la création et l'exécution du Fonds et améliore sa viabilité. Ils reconnaissent également que l'accord de concessions et de privilèges est soumis à l'autorité législative et/ou administrative telle que requise dans les États signataires respectifs.

4.2. En contrepartie de la création régulière du Fonds telle que requise par le présent Accord et de la poursuite des objectifs de la clause 1.2 dans les États signataires, chaque État signataire s'engage à s'assurer que les concessions et privilèges suivants sont accordés au Fonds et que ce dernier peut en jouir sur son territoire :

4.2.1. Les opérations du Fonds peuvent être créées dans l'un quelconque des États signataires et ces derniers donnent dans les plus brefs délais tous les consentements et accords nécessaires à la création des opérations du Fonds dans leurs territoires respectifs sans aucune restriction;

4.2.2. Le Fonds est autorisé à acquérir, détenir et disposer de tout bien immobilier et mobilier, que ce soit par la voie de l'achat, d'hypothèque, de taxe, de transfert, de vente ou de tout autre moyen sans aucune restriction;

4.2.3. Les parts du Fonds sont librement transférables à la fois dans et en dehors des États signataires aux résidents et aux non-résidents de ces derniers sans aucune restriction;

4.2.4. Les États signataires accordent dans les plus brefs délais tous les consentements et accords nécessaires pour permettre ou accorder que quelle que restriction que ce soit (y compris les restrictions relatives au contrôle des échanges sans limite) contenue dans toute législation ou ordre gouvernemental ou juridique le cas échéant en vigueur dans l'un quelconque des États signataires n'est pas applicable à :

4.2.4.1. Tout investissement ou apport au Fonds, qu'il provienne de l'intérieur ou de l'extérieur et qu'il soit fait par des résidents ou des non-résidents d'un État signataire;

4.2.4.2. L'or ou toute devise détenue par le Fonds, qu'elle soit émise par un État signataire ou non;

4.2.4.3. Les titres de toute nature quelle qu'elle soit, y compris, mais pas uniquement, les parts, actions, emprunts, bons, obligations, actions par obligation, hypothèques, charges ou liens sur les biens immobiliers et mobiliers et les parts conformément à un régime fiduciaire de parts, qu'elles soient émises par le Fonds en tant que partie se sa capitalisation ou émises au Fonds suite à tout investissement réalisé par le Fonds, y compris les investissements dans ou le financement apporté par le Fonds dans tout projet au sein d'un État signataire;

4.2.4.4. Tous biens immobiliers et mobiliers et tous certificats de titre qui y sont liés et qui forment partie de ou affectent tout projet dans lequel le Fonds a investi ou a apporté un financement dans l'État signataire;

4.2.4.5. Le transfert par le Fonds de tous bénéfices, dividendes, gains en capital, intérêts ou tous autres revenus et recettes de quelle que nature que ce soit et dans le Fonds et les produits de toute vente, tout transfert, ou de toute autre disposition de toutes parts dans le Fonds et de tous titres émis par le ou au Fonds.

4.2.5. Les États signataires donnent dans les plus brefs délais leur accord et leur consentement nécessaires afin de permettre ou de s'assurer qu'aucunes taxes, aucuns droits, prélèvements ou impôts ne sont exigibles ou prélevés dans les domaines suivants :

4.2.5.1. Apports ou investissements dans le Fonds et tous titres émis par le Fonds;

4.2.5.2. Revenus, recettes, dividendes, intérêts ou bénéfices de quelle que nature que ce soit au bénéfice du Fonds provenant de tout projet dans lequel le Fonds a investi et/ou apporté des fonds;

4.2.5.3. Les produits d'une vente, d'un transfert, ou toute autre disposition de tous titres émis au Fonds provenant de tout investissement et/ou financement de tout projet réalisé par le Fonds conformément aux objectifs pour lesquels le Fonds a été créé;

4.2.5.4. Toutes les recettes, tous les bénéfices, (y compris les bénéfices en capital), gains en capital et revenus générés par le Fonds;

4.2.5.5. Les transferts de tous intérêts, dividendes, distributions ou autres paiements versés par le Fonds à tout souscripteur, investisseur ou actionnaire du Fonds.

4.3. À moins que les Parties ne décident par écrit qu'il soit procédé autrement, les États signataires, collectivement et individuellement, ne sont pas tenus d'étendre les concessions et privilèges, en tout et en partie, qu'ils sont dans l'obligation d'accorder au Fonds au-delà des dix (10) années suivant la date de la souscription de la seconde tranche conformément à la clause 2.1 ci-dessus.

4.4. À l'expiration des 5 ans suivant la date de la souscription de la seconde tranche conformément à la clause 2.1 du présent Accord, les Parties se consultent et discutent directement ou par la voie du Comité consultatif de l'opportunité d'étendre les concessions et privilèges accordés, et si cela est jugé utile, les concessions et privilèges accordés au Fonds dont celui-ci jouit sont dûment étendus pour la période jugée appropriée par les États signataires.

5. Limitation des investissements dans un projet :

5.1. Le Fonds, en consultation avec les directeurs du Fonds, établit, le cas échéant, la politique d'investissement du Fonds applicable dans des projets et le montant minimal et maximal d'investissement par le Fonds dans tout projet unique.

6. Politique d'investissement dans les États signataires :

6.1. Le Fonds, en consultation avec les directeurs du Fonds, établit la politique d'investissement du Fonds applicable aux projets dans les États signataires. Ils examinent néanmoins régulièrement les investissements dans chaque État signataire participant. Il est reconnu qu'il n'existe aucune obligation pour le Fonds et/ou pour les directeurs du Fonds d'investir dans un État signataire particulier.

7. Date de lancement :

7.1. La date de lancement du Fonds proposée est 90 jours après l'entrée en vigueur du présent Accord.

8. Promotion des marchés de capitaux :

8.1. Le Fonds et les directeurs du Fonds s'efforcent d'assurer que les investissements généraux réalisés par le Fonds le seront dans des projets qui promeuvent et améliorent les marchés financiers dans les États signataires.

9. Investissement du Fonds :

9.1. Non moins de 75 % du Fonds issus de la première tranche et non moins de 75 % des fonds totaux issus des deux tranches sont, dans les deux et trois ans, respectivement, suivant l'entrée en vigueur du présent Accord, investis dans les projets envisagés dans la clause 1.

9.2. Si le Fonds ne satisfait pas aux exigences de la clause 9.1, les dispositions de la clause 12 cessent de s'appliquer à moins que les États signataires n'en décident autrement.

10. Emprunt par le Fonds :

10.1 Aucune disposition du présent Accord ne restreint le droit du Fonds à emprunter de l'argent, de temps en temps, et à utiliser cet emprunt à même hauteur ou en partie pour investir dans les projets visés dans la clause 1.

11. Comité consultatif :

11.1. Un comité consultatif doit être constitué et se composer d'au moins 7 membres désignés par les pays énumérés dans l'Objet 1 du Tableau qui deviennent Parties au présent Accord. Conformément à la clause 11.2, chaque pays participant a le droit de désigner un (1) membre du Comité consultatif.

11.2. Aux fins de la clause 11.1, les pays membres de l'Organisation des États des Caraïbes orientales (OECO) et Membres associés qui deviennent Parties au présent Accord ont le droit de désigner collectivement un (1) seul membre du Comité consultatif.

11.3. La fonction du Comité consultatif est de surveiller l'exécution du Fonds et de faire le lien entre les États signataires et le Fonds pour des questions relatives au présent Accord et les actions du Fonds.

11.4. Le Fonds transmet au Comité consultatif un rapport trimestriel mentionnant les investissements et/ou les financements apportés aux projets par le Fonds et injection de ses fonds dans des activités. Les rapports incluent également un exposé des statuts des projets qui sont à l'étude pour investissement et/ou financement.

12. <u>Exclusivité du Fonds</u> :

12.1. Les États signataires reconnaissent que, pour que le Fonds réussisse et remplisse ses objectifs, il a besoin d'exclusivité d'investissement dans les États signataires pour une période de 5 ans minimum et qu'à cette fin, les États signataires s'engagent à ne pas accorder à toute autre Fonds régional de la CARICOM ou institution, à savoir un Fonds régional de la CARICOM ou une institution, établi par un Accord ouvert à la signature par tous les États membres de la CARICOM, les concessions et privilèges, ou l'un quelconque d'entre eux, accordés au Fonds conformément à la clause 4.

12.2. Au cours de l'existence du Fonds, les États signataires s'engagent à n'accorder à aucun autre fonds ou institution, établi pour opérer au niveau régional dans les États signataires en concurrence avec le Fonds, toute concession ou tout privilège plus favorable que ceux accordés au Fonds le cas échéant.

13. <u>Entrée en vigueur</u> :

13.1. Conformément à la clause 13.2, le présent Accord entrera en vigueur lorsqu'il aura été dûment exécuté par l'ICWI et tout numéro des États signataires énumérés dans le Tableau, dont le nombre doit inclure trois des membres parmi les États suivants : la Barbade, la Guyane, la Jamaïque et Trinité-et-Tobago.

13.2. Si le présent Accord n'est pas exécuté conformément à la clause 13.1 dans les 60 à jours suivant la date à laquelle le Secrétaire général de la CARICOM le déclare ouvert à la signature, le présent Accord n'entre pas en vigueur à moins que l'ICWI et les États signataires potentiels ne décident qu'il soit procédé autrement.

13.3. Aucune des Parties au présent Accord n'est responsable envers l'autre après la date à laquelle le présent Accord entre en vigueur.

14. <u>Parties additionnelles à l'Accord</u> :

14.1. Les Parties au présent Accord affirment vouloir que, lors de la constitution du Fonds, les droits et obligations portés et réalisés par le Fonds et les États signataires conformément au présent Accord soient contraignants pour chacun des États signataires et le Fonds. À cette fin, les Parties reconnaissent et conviennent ensemble que lors de sa constitution, le Fonds devient partie au présent Accord en déposant, auprès du Secrétaire général de la Communauté des Caraïbes au Secrétariat de la Communauté des Caraïbes, une note écrite dûment exécutée par le Fonds, conformément à son objectif commun, déclarant qu'il s'engage à être lié par les termes et conditions du présent Accord comme s'il avait été un signataire au présent Accord au moment de son exécution par les autres parties. Le dépôt de la note susmentionnée crée un accord valable et contraignant entre le Fonds et les États signataires, collectivement et individuellement, comme si le Fonds avait été partie originelle et signataire du présent Accord.

14.2. Les Parties reconnaissent et admettent que les États membres ou Membres associés de la CARICOM non-signataires énumérés dans l'objet 1 du Tableau ci-joint au moment de l'entrée en vigueur du présent Accord et les pays visés au paragraphe 2 du Tableau au présent Accord peuvent souhaiter devenir parties au présent Accord après son entrée en vigueur. Les Parties reconnaissent et conviennent entre elles que tout État membre ou Membre associé de la CARICOM est en droit, à tout moment, de signer le double du présent Accord déposé auprès du Secrétaire général de la Communauté des Caraïbes au Secrétariat de la Communauté des Caraïbes conformément à la clause 17 et que la signature de ce dernier par le gouvernement de cet État membre ou Membre associé et par chacun d'entre eux a effet comme si cet État membre ou Membre associé avait été partie et signataire originel du présent Accord.

15. Dégagement des obligations :

15.1. Après que le Fonds a délivré la note écrite conformément à la clause 14.1 et après la date de souscription de la première tranche visée à la clause 2.1, l'ICWI, nonobstant toute mention contraire, est réputé avoir rempli toutes ses obligations conformément au présent Accord et est dégagé du présent Accord.

16. Amendements :

16.1. Le présent Accord pour être amendé par consentement des Parties.

16.2. Aucun amendement au présent Accord n'est contraignant pour les Parties, à moins qu'il ne soit fait sous forme écrite et dûment exécuté par toutes les parties à l'Accord. Tout document portant amendement au présent Accord est déposé auprès du Secrétaire général de la Communauté des Caraïbes au Secrétariat de la Communauté des Caraïbes dans les 30 jours suivants son exécution.

17. Dépôt de l'Accord :

17.1. Le présent Accord est déposé auprès du Secrétaire général de la Communauté des Caraïbes et le Secrétariat de la Communauté des Caraïbes fournit à chacune des parties au présent Accord une copie de celui-ci.

18. Juridiction pour l'enregistrement du Fonds :

18.1. Les parties au présent Accord conviennent que, à la discrétion de l'ICWI et du Fonds, le Fonds est enregistré dans une juridiction hautement favorable à l'amélioration du côté attractif du Fonds aux yeux d'investisseurs potentiels.

19. Siège administratif du Fonds :

19.1. Le siège administratif du Fond se situe en Jamaïque.

20. Choix de la législation :

20.1. Les parties conviennent par le présent Accord que ce dernier est régi par la législation jamaïcaine jusqu'à ce que la notice écrite soit livrée par le Fonds, conformément à la clause 14.1.

20.2. Les Parties conviennent qu'à la livraison de la notice écrite par le Fonds conformément à la clause 14.1, le présent Accord est régi par la législation anglaise.

21. Arbitrage :

21.1. Les Parties conviennent que :

21.1.1. En cas de tout litige, différend ou question à propos du présent Accord, connexe ou en relation avec celui-ci, son interprétation, son exécution ou sa non-exécution, ou toute violation du présent Accord, la question est en premier lieu l'objet de négociations.

21.1.2. Si le litige, différend ou question n'est pas résolu par négociation dans les 30 jours, conformément à la clause 21.1.1 du présent Accord, il est soumis à arbitrage.

21.1.3. Tous litiges, différends ou questions relatives au présent Accord, à l'exception de ce qui est ci-après mentionné, sont définitivement réglés conformément aux Règles de conciliation et d'arbitrage de la Chambre internationale de commerce par un arbitre désigné conformément auxdites Règles.

21.1.4. Si un événement créant un litige, un différend ou une question apparaît avant que l'ICWI ne soit dégagé en vertu de la clause 15.1, dans ce cas le litige, le différend ou la question est définitivement réglé par arbitrage devant un arbitre unique, selon les règles d'arbitrage en vertu de la loi sur l'Acte d'arbitrage de Jamaïque tel qu'amendée le cas échéant.

TABLEAU

1. (i) Antigua-et-Barbuda
   (ii) Les Bahamas
   (iii) La Barbade
   (iv) Belize
   (v) Dominique
   (vi) Grenade
   (vii) Guyane
   (viii) Jamaïque
   (ix) Montserrat
   (x) Saint-Kitts-et-Nevis
   (xi) Sainte-Lucie
   (xii) Saint-Vincent-et-les-Grenadines
   (xiii) Trinité-et-Tobago
   (xiv) Les ÎlesVierges britanniques
   (xv) Les Îles Turques et Caïques

2. Tout autre pays qui devient un État membre de la Communauté des Caraïbes ou Membre associé de la Communauté des Caraïbes.

Pour le Gouvernement d'Antigua-et-Barbuda, le 13 octobre 1993 à Port-of-Spain, Trinité-et-Tobago, au nom d'Antigua-et-Barbuda :

L. BIRD

Pour le Gouvernement des Bahamas, le 17 février 1995 à Belize City, Belize, au nom des Bahamas :

ARLINGTON E. BUTTERS

Pour le Gouvernement de la Barbade, le 31 mai 1994 à Christ Church, la Barbade, au nom de la Barbade :

LLOYD ERSKING SANDIFORD

Pour le Gouvernement du Belize, le 13 octobre 1993 à Port-of-Spain, Trinité-et-Tobago, au nom du Belize :

MANUEL ESQUIVEL

Pour le Gouvernement de la Dominique, le 25 mai 1994 à Castries, Sainte-Lucie, au nom de la Dominique :

EUGENIA CHARLES

Pour le Gouvernement de la Grenade, le 30 septembre 1994 à Saint-Georges, la Grenade, au nom de la Grenade :

[ILLISIBLE]

Pour le Gouvernement de la Guyane, le 15 octobre 1993 au Secrétariat du Président, Georgetown, la Guyane, au nom de la Guyane :

A. ALLY

Pour le Gouvernement de la Jamaïque, le 13 octobre 1993 à Port-of-Spain, Trinité-et-Tobago, au nom de la Jamaïque :

P.J. PATTERSON

Pour le Gouvernement de Montserrat, le 12 mars 1994 à Kingstown, Saint-Vincent-et-les-Grenadines, au nom de Montserrat :

R.T. MEADE

Pour le Gouvernement de Saint-Kitts-et-Nevis, le 13 octobre 1994 à Port-of-Spain, Trinité-et-Tobago, au nom de Saint-Kitts-et-Nevis :

KENNEDY SIMMONDS

Pour le Gouvernement de Sainte-Lucie, le 13 octobre 1994 à Port-of-Spain, Trinité-et-Tobago, au nom de Sainte-Lucie :

JOHN COMPTON

Pour le Gouvernement de Saint-Vincent-et-les-Grenadines, le 13 octobre 1994 à Port-of-Spain, Trinité-et-Tobago, au nom de Saint-Vincent-et-les-Grenadines :

J. MITCHELL

Pour le Gouvernement de Trinité-et-Tobago, le 13 octobre 1994 à Port-of-Spain, Trinité-et-Tobago, au nom de Saint-Vincent-et-les-Grenadines :

PATRICK MANNING

Pour le Gouvernement des Îles Vierges britanniques, le ... à ... , au nom des Îles Vierges britanniques :

No. 43294

Multilateral

Agreement concerning the Caribbean Investment Fund (with appendices). St. John's, 24 August 1998

Entry into force: *7 September 1998, in accordance with section 13.1 (see following page)*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Caribbean Community, 14 November 2006*

See also No. A-43294 in volume 2399.

Multilatéral

Accord relatif au Fonds d'investissement des Caraïbes (avec appendices). Saint John's, 24 août 1998

Entrée en vigueur : *7 septembre 1998, conformément à la section 13.1 (voir la page suivante)*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *Communauté des Caraïbes, 14 novembre 2006*

Voir aussi No A-43294 du volume 2399.

Participant	Definitive signature
Barbados	24 Aug 1998 s
Grenada	25 Aug 1998 s
Guyana	3 Sep 1998 s
Insurance Company of the West Indies Limited	7 Sep 1998 s
Jamaica	7 Sep 1998 s
Trinidad and Tobago	26 Aug 1998 s

Participant	Signature définitive
Barbade	24 août 1998 s
Grenade	25 août 1998 s
Guyana	3 sept 1998 s
Insurance Company of the West Indies Limited	7 sept 1998 s
Jamaïque	7 sept 1998 s
Trinité-et-Tobago	26 août 1998 s

[ENGLISH TEXT — TEXTE ANGLAIS]

AGREEMENT CONCERNING THE CARIBBEAN INVESTMENT FUND

This Agreement made on the__________day of August 1998 between the Governments of the Member States and Associate Members of the Caribbean Community which are signatories to the Agreement Establishing the Caribbean Investment Fund (hereinafter called "the Signatory States") and the ICWI Group Limited of 28-48 Barbados Avenue, Kingston 5 in the Parish of St. Andrew, Jamaica (hereinafter called "ICWI"),

Witnesseth as follows:

Whereas:

The Parties to the Agreement Establishing the Caribbean Investment Fund (hereinafter called "the Fund") which entered into force on the 15th day of October 1993 (hereinafter called "the Original Agreement") have made the commitments specified in the Original Agreement which appears at Appendix I to this Agreement;

The Parties to the Original Agreement concluded a Supplemental Agreement which entered into force on the 26th day of October 1996 (hereinafter called "the Supplemental Agreement") amending the Original Agreement and which Supplemental Agreement appears at Appendix II to this Agreement;

The Signatory States of the Original Agreement recognise that their omission to implement in a timely way the enabling legislation to accord the agreed concessions and privileges to the Fund as required by the said Original Agreement and Supplemental Agreement, coupled with unfavourable conditions in international capital markets, adversely affected the ability of ICWI to mobilise the resources for the operation of the Fund;

The Signatory States of the Original Agreement by the relevant decisions of the Conference of Heads of Government (hereinafter called "the Conference") reached at the 14th and 15th Meetings of the Conference agreed, inter alia, to extend the time limit for the mobilisation of the resources and the registration of the Fund;

The Parties to the Original Agreement and the Supplemental Agreement have been and are desirous of fulfilling the obligations and commitments assumed under the said agreements;

The Parties to this Agreement have agreed as follows:

(I) Notwithstanding any action or lack of action on the part of any of the Parties to the Original Agreement which might have operated to call into question the subsistence of the Original Agreement or Supplemental Agreement, the Parties hereby agree to continue to be bound by the terms and conditions of the Original Agreement and Supplemental Agreement from the dates the said Agreements entered into force.

(II) Subject to Clause 4, the provisions of the Original Agreement set out at Appendix I and the provisions of the Supplemental Agreement set out at Appendix II are hereby incorporated in this Agreement and shall bind the Parties to this Agreement like any other provision of this Agreement.

(III) The Parties to the Original Agreement agree that the relevant decisions of the Conference relating to the Fund and which appear at Appendix III to this Agreement are hereby incorporated in this Agreement and shall have the same legally binding effect as the other provisions of this Agreement.

(IV) Unless the Signatory States otherwise determine, this Agreement shall terminate and the Parties shall thereupon be released from all obligations under this Agreement without incurring any liability to one another if ICWI fails to mobilise the resources for the first tranche of the Fund by 31 March 1999 or the second tranche by 30 September 1999.

(V) Nothing in this Agreement shall be construed as precluding any one Signatory State from according under its national legislation any or all of the privileges and concessions set out in the Original Agreement to any investment fund other than a regional investment fund organised on a basis similar to the Fund.

IN WITNESS WHEREOF *the undersigned duly appointed in that behalf by their respective Governments and Company have signed this Agreement.*

Signed by
for THE GOVERNMENT OF ***ANTIGUA AND BARBUDA*** *on* 18 SEPTEMBER, 1998
at ST. JOHNS ANTIGUA AND BARBUDA
on behalf of ***ANTIGUA AND BARBUDA.***

Signed by
for ***THE GOVERNMENT OF THE BAHAMAS*** *on* 8th September, 1998
at NASSAU
on behalf of ***THE BAHAMAS.***

Signed by
for ***THE GOVERNMENT OF BARBADOS*** *on* 24th August, 1998
at Bridgetown
on behalf of ***BARBADOS.***

Signed by
for **THE GOVERNMENT OF BELIZE** *on* 5 July, 1999
at Port of Spain
on behalf of **BELIZE**.

Signed by
for **THE GOVERNMENT OF DOMINICA** *on*
at PARAMARIBO 4th March, 1999
on behalf of **DOMINICA**.

Signed by
for **THE GOVERNMENT OF GRENADA** *on* 25th August 1998.
at St George's.
on behalf of **GRENADA**.

Signed by
for **THE GOVERNMENT OF GUYANA** *on* Sept. 3, 1998
at Georgetown.
on behalf of **GUYANA**.

Signed by
for **THE GOVERNMENT OF JAMAICA** *on* 7th September, 1998
at Kingston.
on behalf of **JAMAICA**.

Signed by
for **THE GOVERNMENT OF MONTSERRAT** *on* 5th July, 1999
at Port of Spain
on behalf of **MONTSERRAT**.

Signed by
for **THE GOVERNMENT OF ST KITTS AND NEVIS** *on* 18th SEPTEMBER 1998
at BASSETERRE, ST KITTS
on behalf of **ST. KITTS AND NEVIS**.

Signed by
for **THE GOVERNMENT OF SAINT LUCIA** *on* 21st October
at St. Georges, Grenada
on behalf of **SAINT LUCIA**.

Signed by
for **THE GOVERNMENT OF ST. VINCENT AND THE GRENADINES** *on*
at [illegible] 5th Mar '99
on behalf of **ST. VINCENT AND THE GRENADINES**.

Signed by
for **THE GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO**
on 26th August 1998 *at* Port of Spain.
on behalf of **THE REPUBLIC OF TRINIDAD AND TOBAGO**.

Signed by

for ***THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS*** *on*

at

on behalf of ***THE BRITISH VIRGIN ISLANDS****.*

Signed by

for ***THE GOVERNMENT OF THE TURKS AND CAICOS ISLANDS*** *on*

at

on behalf of ***THE TURKS AND CAICOS ISLANDS****.*

Signed by

For ***ICWI GROUP LIMITED*** *on* 3rd September 1998

at Kingston Jamaica

.... August 1998*.*

APPENDIX 1

PART I: ORIGINAL AGREEMENT

Agreement between the ICWl Group and CARICOM Governments on the Establishment of the Caribbean Investment Fund (with schedule)

[For the text of the Agreement (with schedule), see p. 339 of this volume.]

APPENDIX II

PART II: SUPPLEMENTAL AGREEMENT

Supplemental Agreement to the Agreement Establishing the Caribbean Investment Fund (with schedule)

[For the text of the Agreement (with schedule), see United Nations, Treaty Series, vol. 2399, No. A-43293.]

APPENDIX III

Decision of the Conference of Heads of Government reached at its fifteenth meeting [Rep. 94/15/47 HGC]

Caribbean Investment Fund (CIF)

The Conference:

<u>Noted</u> the report from the SCMF that -

(i) the Agreement for the establishment of the CIF entered into force on 15 October 1993, with the signature of the Agreement by the Government of Guyana;

(ii) a Joint Venture Company between the ICWI and Foreign and Colonial Emerging Markets Limited of London had been formed to manage the Fund;

(iii) the CIF had not yet been registered by the ICWI;

(iv) Member States had not yet enacted the domestic legislation or put in place the administrative arrangements required to provide the agreed incentives to the CIF but had the matter under active consideration;

(v) some Member States were still to amend existing legislation which will otherwise constrain the operation of the Fund in their respective jurisdictions;

(vi) The Bahamas, Grenada, the British Virgin Islands and the Turks and Caicos Islands had not yet signed the Agreement establishing the CIF;

(vii) the ICWI had requested an extension of the period provided in the Agreement to mobilise the first tranche of US$25M;

(viii) the provision relating to the registration of the Fund had not been satisfied and will also need to be extended;

<u>Agreed</u> -

(i) to extend the period for registration of the Fund to 15 October 1994;

(ii) to extend the period required to mobilise the first tranche of the resources by 180 days;

<u>Requested</u> the CARICOM Secretariat to work with the ICWI to determine the amendments to the Agreement to give effect to the agreed extensions;

<u>Urged</u> -

(i) Member States concerned to expedite action to put in place the domestic legislation required to provide the incentives to the CIF, and to amend, where necessary, their domestic legislation to facilitate the operation of the Fund in their respective jurisdictions;

(ii) Member States, which had not yet signed the Agreement for the CIF, to seek to do so.

Decision of the Conference of Heads of Government
reached at its Sixteenth Meeting
[Rep, 95/1/16/59 HGC]

Caribbean Investment Fund (CIF)

The Conference:

Having considered this Item in Caucus,

Noted that the Governments of Grenada and The Bahamas have, since the last Meeting of Finance Managers, signed the Agreement for the establishment of the CIF;

Agreed to grant the ICWI Group of Companies a further extension until 1 July 1996 to mobilise resources for the first tranche of the CIF;

Urged that the ICWI Group of Companies use its best endeavours to mobilise the financing for the first tranche of the CIF before 1 July 1996;

Also urged all Member States which have not yet done so, to implement the necessary legislation to facilitate the operation of the CIF.

Decision of the Conference of Heads of Government
reached at its Nineteenth Meeting

Caribbean Investment Fund (CIF)

The Conference:

Agreed to enter into a new Agreement with the Insurance Company of the West Indies (ICWI) for a Caribbean Investment Fund (CIF) incorporating the exclusivity provision which is a pre-existing contractual obligation;

Also agreed that, to give effect to the Agreement, the States which are parties to it, will, if necessary, seek a WTO waiver;

Further agreed that the period to operationalise the Caribbean Investment Fund (CIF) is extended to 31 March 1999;

Urged Member States to enact relevant legislation taking into account the deadline set for ICWI to operationalise the Fund;

Agreed that in the light of the pre-existing commitments to the ICWI, the Community would not be in a position to grant any other Investment Fund concessions and privileges similar to those being provided to the CIF;

Also agreed that there was no objection to the Commonwealth Development Corporation (CDC) or any other promoter establishing an Investment Fund and obtaining the concessions available under national legislation.

[TRANSLATION -- TRADUCTION]

ACCORD RELATIF AU FONDS D'INVESTISSEMENT DES CARAÏBES

Le présent Accord conclu le _____ août 1998 entre les Gouvernements des États membres et Membres associés de la Communauté des Caraïbes, signataires de l'Accord portant création du Fonds d'investissement des Caraïbes (ci-après dénommés “les États signataires”) et le Groupe d'entreprises ICWI Ltd., dont le siège est situé aux 28-48 Barbados Avenue, Kingston 5 dans la commune de St. Andrew, Jamaïque (ci-après dénommé “ICWI”),

Atteste de ce qui suit :

Attendu que :

Les Parties à l'Accord portant création du Fonds d'investissement des Caraïbes (ci-après dénommé “le Fonds”), entré en vigueur le 15 octobre 1993 (ci-après dénommé “l'Accord original”), se sont engagées à ce qui est précisé dans l'Accord original qui apparaît à l'Annexe I au présent Accord;

Les Parties à l'Accord original ont conclu un Accord complémentaire qui est entré en vigueur le 26 octobre 1996 (ci-après dénommé “l'Accord complémentaire”) portant amendement à l'Accord original et dont l'Accord complémentaire apparaît à l'Annexe II au présent Accord;

Les États signataires de l'Accord original reconnaissent que leur omission de mettre en oeuvre dans les temps impartis la législation permettant d'accorder au Fonds les concessions et les privilèges convenus exigés par lesdits Accord original et Accord complémentaire, associée à des conditions défavorables sur les marchés des capitaux internationaux, a porté préjudice à la capacité de l'ICWI à mobiliser les ressources pour l'exécution du Fonds;

Les États signataires de l'Accord original ont décidé, par le biais de décisions pertinentes prises par la Conférence des Chefs de Gouvernements (ci-après dénommée “la Conférence”) conclues lors des 14e et 15e assemblées de la Conférence, entre autres choses, de prolonger le délai imparti pour mobiliser les ressources et enregistrer le Fonds;

Les Parties à l'Accord original et à l'Accord complémentaire étaient et sont désireuses de remplir leurs obligations et engagements repris conformément auxdits accords;

Les Parties au présent Traité sont convenues de ce qui suit :

I. Nonobstant toute mesure de la part de l'une quelconque des Parties à l'Accord original qui aurait pu être prise ou non pour remettre en question l'existence de l'Accord original ou de l'Accord complémentaire, les Parties s'accordent par la présente disposition à continuer d'être liés par les termes et conditions de l'Accord original et de l'Accord complémentaire à partir des dates auxquelles lesdits Accord sont entrés en vigueur.

II. Conformément à la clause 4, les dispositions de l'Accord original énoncées dans l'Annexe I et les dispositions de l'Accord complémentaire énoncées dans l'Annexe II ci-jointes au présent Accord lient les Parties au présent Accord comme toute autre disposition du présent Accord.

III. Les Parties à l'Accord original conviennent que les décisions pertinentes de la Conférence relatives au Fonds qui apparaissent à l'Annexe III au présent Accord sont jointes au présent Accord et ont le même effet juridique contraignant que les autres dispositions du présent Accord.

IV. À moins que les Parties signataires ne décident qu'il soit procédé autrement, le présent Accord est dénoncé et les Parties sont libérées de toutes les obligations prévues par le présent Accord sans que l'une ne soit responsable envers l'autre si l'ICWI ne mobilise pas les ressources pour la première tranche du Fonds pour le 31 mars 1999 ou la deuxième tranche pour le 30 septembre 1999.

V. Le présent Accord ne peut en aucun cas être interprété comme constituant un obstacle pour l'un quelconque des États signataires pour accorder, conformément à sa législation nationale, les privilèges et concessions énoncés dans l'Accord original, en tout ou en partie, à tout fonds d'investissement autre qu'un fonds d'investissement régional organisé de manière analogue au Fonds.

En foi de quoi, les soussignés, à ce dûment autorisés par leurs Gouvernements et Sociétés respectifs, ont signé le présent Accord.

Signé par [Illisible]
Pour le Gouvernement d'Antigua-et-Barbuda, le 18 septembre 1998.
À St. Johns, Antigua-et-Barbuda.
Au nom d'Antigua-et-Barbuda.

Signé par [Illisible]
Pour le Gouvernement des Bahamas, le 8 septembre 1998.
À Nassau.
Au nom des Bahamas.

Signé par [Illisible]
Pour le Gouvernement de la Barbade, le 24 août 1998.
À Bridgetown.
Au nom de la Barbade.

Signé par [Illisible]
Pour le Gouvernement du Bélize, le 5 juillet 1999.
À Port-of-Spain.
Au nom du Bélize.

Signé par [Illisible]
Pour le Gouvernement de la Dominique, le 4 mars 1999.
À Paramaribo.
Au nom de la Dominique.

Signé par [Illisible]
Pour le Gouvernement de la Grenade, le 25 août 1998.
À St Georges.
Au nom de la Grenade.

Signé par [Illisible]
Pour le Gouvernement de la Guyane, le 3 septembre 1998.
À Georgetown.
Au nom de la Guyane.

Signé par [Illisible]
Pour le Gouvernement de la Jamaïque, le 7 septembre 1998.
À Kingston.
Au nom de la Jamaïque.

Signé par [Illisible]

Pour le Gouvernement de Montserrat, le 5 juillet 1999.
À Port-of-Spain.
Au nom de Montserrat.

Signé par [Illisible]

Pour le Gouvernement de Saint-Kitts-et-Nevis, le 18 septembre 1998.
À Basseterre, Saint-Kitts.
Au nom de Saint-Kitts-et-Nevis.

Signé par [Illisible]

Pour le Gouvernement de Sainte-Lucie, le 21 octobre.
À Saint-Georges, la Grenade.
Au nom de Sainte-Lucie.

Signé par [Illisible]

Pour le Gouvernement de Saint-Vincent-et-les-Grenadines, le 5 mai 1999.
À ...
Au nom de Saint-Vincent-et-les-Grenadines.

Signé par [Illisible]

Pour le Gouvernement de la République de Trinité-et-Tobago, le 26 août 1998.
À Port-of-Spain.
Au nom de la République de Trinité-et-Tobago.

Signé par [Illisible]

Pour le Gouvernement des Îles Vierges Britanniques, le ...
À ...
Au nom des Îles Vierges Britanniques.

Signé par [Illisible]

Pour le Gouvernement des Îles Turques et Caïques, le ...
À ...
Au nom des Îles Turques et Caïques.

Signé par [Illisible]

Pour le Groupe d'entreprises ICWI Ltd, le 7 septembre 1998.
À Kingston, Jamaïque.

.... août 1998.

ANNEXE I

PARTIE I : ACCORD ORIGINAL

Accord entre le Groupe d'entreprises ICWI Ltd et les Gouvernements de la CARICOM portant création du Fonds d'investissement des Caraïbes (avec annexe)

[Pour le texte de l'Accord (avec annexe), voir p. 339 du présent volume.]

ANNEXE II

PARTIE II : ACCORD COMPLÉMENTAIRE

Accord additionnel à l'Accord portant création du Fonds d'investissement des Caraïbes (avec annexe)

[Pour le texte de l'Accord (avec annexe), voir le volume 2399 du Recueil des Traités des Nations Unies, no A-43293.]

ANNEXE III

Décision de la Conférence des Chefs de Gouvernement de la Communauté des Caraïbes lors de sa quinzième assemblée

[Rep. 94/15/47 HGC]

Fonds d'Investissement des Caraïbes (FIC)

La Conférence :

<u>A pris note</u> du rapport du SCMF selon lequel :

i) L'Accord portant création du FIC est entré en vigueur le 15 octobre 1993, avec la signature de l'Accord par le Gouvernement de la Guyane;

ii) Une société en participation entre l'ICWI et la Société Foreign and Colonial Emerging Markets Limited de Londres avait été créée pour gérer le Fonds;

iii) Le FIC n'a pas encore été enregistré par l'ICWI;

iv) Les États membres n'avaient pas encore édicté la législation intérieure ou mis en place les mesures administratives nécessaires pour accorder les incitants convenus au FIC, mais étudiaient activement la question;

v) Certains États membres devaient encore amender la législation existante qui, s'il elle ne l'est pas, constituera un obstacle à l'exécution du Fonds dans leurs juridictions respectives;

vi) Les Bahamas, la Grenade, les Îles Vierges britanniques et les Îles Turques et Caïques n'avaient pas encore signé l'Accord portant création du FIC;

vii) L'ICWI avait demandé de prolonger le temps imparti prévu par l'Accord pour mobiliser la première tranche de 25 millions de dollars des États-Unis;

viii) La disposition relative à l'enregistrement du Fonds n'avait pas encore été remplie et devra être également étendue;

<u>Est convenue</u> :

i) D'étendre le temps imparti pour l'enregistrement du Fonds au 15 octobre 1994;

ii) D'étendre la période nécessaire pour mobiliser le première tranche de ressources de 180 jours;

<u>A demandé</u> : au Secrétariat de la CARICOM de travailler avec l'ICWI pour déterminer les amendements à l'Accord afin de donner effet aux extensions convenues;

<u>A demandé instamment</u> :

i) Aux États membres concernés de poursuivre activement la mise en place de la législation intérieure nécessaire pour accorder les incitants au FIC et d'amender, si nécessaire, leur législation intérieure en vue de faciliter l'exploitation du Fonds dans leurs juridictions respectives;

ii) Aux États membres, qui n'avaient pas encore signé l'Accord portant création du FIC, de le faire.

Décision de la Conférence des Chefs de Gouvernement lors de sa seizième Assemblée [Rep. 95/1/16/59 HGC]

Fonds d'Investissement des Caraïbes (FIC)

La Conférence :

Ayant examiné le présent objet à huis clos,

A noté que les gouvernements de la Grenade et des Bahamas ont, depuis la dernière Assemblée des Directeurs financiers, signé l'Accord portant création du FIC;

Est convenue d'accorder au Groupe d'entreprises ICWI une autre prolongation jusqu'au 1er juillet 1996 pour mobiliser la première tranche du FIC;

A instamment demandé que le Groupe d'entreprises ICWI fasse tout son possible pour mobiliser le financement de la première tranche du FIC avant le 1er juillet 1996;

A également instamment demandé à tous les États membres qui ne l'ont pas encore fait, de mettre en oeuvre la législation nécessaire pour faciliter l'exécution du FIC.

Décision de la Conférence des Chefs de Gouvernement de la Communauté des Caraïbes lors de sa dix-neuvième Assemblée

Fonds d'Investissement des Caraïbes (FIC)

La Conférence :

Est convenue de conclure un nouvel Accord avec la société Insurance Company of the West Indies (ICWI) pour un Fonds d'investissement des Caraïbes comprenant une clause d'exclusivité qui est une obligation contractuelle préexistante;

Est également convenue que, pour donner effet à l'Accord, les États parties de ce dernier, si nécessaire, demanderont une dispense auprès de l'OMC;

Est en outre convenue que la période accordée pour rendre opérationnel le Fonds d'investissement des Caraïbes (FIC) est prolongée jusqu'au 31 mars 1999;

A instamment demandé aux États membres d'édicter la législation pertinente en tenant compte de la date limite à laquelle l'ICWI doit avoir rendu opérationnel le Fonds;

Est convenue qu'à la lumière des engagements préexistants envers l'ICWI, la Communauté ne serait pas en position de garantir à tout autre Fonds d'investissement les concessions et privilèges analogues à ceux accordés au FIC;

Est également convenue qu'il n'y avait aucune objection pour le Commonwealth Development Corporation (CDC) ou pour tout autre promoteur pour créer un Fonds d'investissement et pour obtenir les concessions disponibles conformément à la législation nationale.

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