AGREEMENT

BETWEEN

HIS MAJESTY'S GOVERNMENT OF NEPAL

AND

THE GOVERNMENT OF THE REPUBLIC OF FRANCE

ON THE RECIPROCAL PROMOTION AND PROTECTION

OF INVESTMENTS
His Majesty's Government of Nepal and the Government of the Republic of France (hereinafter referred to as the Contracting Parties)

Desiring to strengthen the economic cooperation between both States, in accordance with the principles of International Law, and to create favourable conditions for French investments in Nepal and Nepalese investments in France,

Being convinced that the promotion and protection of these investments would succeed in stimulating transfers of capital and technology between the two countries in the interest of their economic development,

Have agreed as follows:
ARTICLE 1

For the purpose of this agreement:

1.1

The term "investment" means every kind of goods, rights and interests of whatever nature, in particular though not limited to the following:

(a) Movable and immovable property as well as any other rights in them, such as mortgages, liens, usufructs, pledges and similar rights;

(b) Shares, premiums on share and other kinds of interests including minority participation or indirect forms of participation in companies constituted in the territory of one Party;

(c) Title to money or debentures, or title to any legitimate performance having an economic value;

(d) Copyrights, industrial property rights (such as patents, licences, trademarks, industrial models and mockups), technical processes, trade names and goodwill;

(e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources, including those which are located in the maritime areas of either Contracting Party.

It is understood that those investments are investments which have already been made before or may be made subsequent to the entering into force of this agreement on the territory or in the maritime areas of a Contracting Party in accordance with its legislation.
Any alteration of the form in which assets are invested on the territory or in the maritime areas of a Contracting Party shall not affect their qualification as investments provided that such alteration is not in conflict with its legislation.

1.2
The term "nationals" means physical persons possessing the nationality of either Contracting Party.

1.3
The term "company" means any legal person constituted in the territory of one Contracting Party in accordance with the legislation of that Party, having its head office in the territory of that Party, or controlled directly or indirectly by the nationals of one Contracting Party.

1.4
The term "revenue" means all amounts produced by an investment, such as profits, royalties and interests, during a given period. Investment revenues, and, in case of re-investment, re-investment revenues, shall enjoy the same protection as the investment.

1.5
The expression "maritime areas" means marine and submarine areas over which the Contracting Parties have sovereignty, sovereign rights or a jurisdiction, in accordance with International Law.

ARTICLE 2
Each Contracting Party shall admit and encourage on its territory and in its maritime areas, in accordance with its legislation and with the provisions of this agreement, investments by nationals or companies of the other Contracting Party.
ARTICLE - 3

Either Contracting Party shall extend fair and equitable treatment to investments made by nationals and companies of the other Contracting Party on its territory or in its maritime areas, and shall ensure that the exercise of the right thus recognized shall not be hindered by de jure or de facto impediments.

ARTICLE - 4

Each Contracting Party shall apply on its territory and in its maritime areas, to the nationals and companies of the other Party, with respect to their investments and activities related to the investments, the treatment granted to its nationals or companies, or the treatment granted to the nationals or companies of the most favoured nation, if the latter is more favourable. In this respect, nationals authorized to work on the territory and in the maritime areas of one Contracting Party shall enjoy the facilities relevant to the exercise of their professional activities.

This treatment shall not include the privileges granted by one Contracting Party to nationals or companies of a third State by virtue of its participation or association in a free trade zone, customs union, common market or any other form of regional economic organization.

ARTICLE - 5

5.1

The investments made by nationals or companies of one Contracting Party shall enjoy full and complete protection and safety on the territory and in the maritime areas of the other Contracting Party.
Neither Contracting Party shall take any measures of expropriation or nationalization, or any other measures having the effect of dispossessing, direct or indirect, of nationals or companies of the other Contracting Party, of their investments on its territory and in its maritime areas, except in the public interest and provided that these measures are not discriminatory, or contrary to a particular obligation.

Any measures of dispossess which might be taken shall give rise to prompt and just compensation, the amount of which shall be calculated on the basis of the real value of the investments concerned and shall be set in accordance with the normal economic situation.

The said compensation, the amount and conditions of payment, shall be set not later than the date of dispossess. This compensation shall be effectively realizable. It shall be paid without delay, in any case not later than six months after the date of the dispossess. It shall be freely transferable.

5.3

Investors of one Contracting Party whose investments have sustained losses due to war or any other armed conflict, revolution, national state of emergency or revolt occurring in the territory or in the maritime areas of the other Contracting Party, shall enjoy treatment from the latter Contracting Party that is not less favourable than that granted to its own investors, or to those of the most favoured nation.

ARTICLE 6

Each Contracting Party, on the territory or in the maritime areas of which the investments have been made by nationals or companies of the other Contracting Party, shall guarantee to these nationals and companies the free transfer of:
(a) interest, dividends, profits, and other current income;
(b) royalties deriving from incorporeal rights as defined in Section 1.1
(d) and (e),
(c) repayment of loans,
(d) value of partial or total sale of the investment, including capital
gain on the capital invested,
(e) compensations for dispossession or loss described in Section 5.2, and
5.3 above.

The nationals of either Contracting Party who have been authorized to work on
the territory or in the maritime areas of the other Contracting Party as the
result of an approved investment, shall also be permitted to transfer to their
country of origin an appropriate proportion of their earnings.

The transfers referred to in the foregoing paragraphs shall be promptly
effected at the official exchange rate prevailing on the date of transfer.

ARTICLE - 7

In case the regulations of either Contracting Party provide for a guarantee
for investments made abroad, this guarantee may be extended to investments
made by nationals or companies of the said Contracting Party on the territory
or in the maritime areas of the other Party, after due examination of each
particular case.

Investments made by nationals or companies of one Contracting Party on the
territory or in the maritime areas of the other Contracting Party may obtain
the guarantee referred to in the foregoing paragraph provided that such
investments have been previously approved by the other Party.
ARTICLE - 8

Should any dispute concerning the investments arise between one Contracting Party and a national or company of the other Contracting Party, it shall be settled amicably between the two parties concerned.

If the dispute has not been settled within a period of six months from the date on which it has been raised by either party, it shall be submitted at the request of either party to the arbitration of the International Center for the Settlement of Investment Disputes (ICSID) created by the Convention for the settlement of disputes in respect of investments occurring between States and nationals of other States signed in Washington on March 18, 1965.

ARTICLE - 9

If one Contracting Party, as a result of a guarantee given for an investment made on the territory or in the maritime areas of the other Contracting Party, makes payments to its own nationals or companies, the first mentioned Party has in this case full rights of subrogation with regard to the rights and actions of the said nationals or company.

The said payments shall not affect the rights of the beneficiary of the guarantee to recourse to the ICSID, or to continue proceedings submitted to it until completion of the proceedings.

ARTICLE - 10

Investments having formed the subject of a special commitment of one Contracting Party with respect to the nationals or companies of the other Contracting Party, shall be governed, without prejudice to the provisions of this agreement, by the terms of the said commitment if the latter includes provisions more favourable than those of the present agreement.
ARTICLE - 11

11.1
Disagreements relating to the interpretation or application of this agreement should be settled by diplomatic channels.

11.2
If the disagreement has not been settled within a period of six months from the date on which the matter was raised by one Contracting Party, it may be submitted at the request of either Contracting Party to an Arbitral Tribunal.

11.3
The said Tribunal shall be created as follows for each specific case:

Each Contracting Party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint by mutual agreement a third arbitrator, who must be a national of a third Country, and who shall be designated as chairman of the Tribunal. All the arbitrators must be appointed within two months from the date of notification by one Contracting Party to the other Contracting Party of its intention to submit the disagreement to arbitration.

11.4
If the periods specified in Section 11.3 above have not been met, either Contracting Party, in the absence of any other agreement, shall invite the Secretary General of the United Nations Organization to make the necessary appointment. If the Secretary General is a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Under-Secretary next in seniority to the Secretary General, who is not a national of either Contracting Party, shall make the necessary appointment.
11.5

The Tribunal shall arrive at its decisions by a majority of votes. The decisions of the said Tribunal shall be final and legally binding upon the Contracting Parties.

The Tribunal shall frame its own rules of procedure. It shall interpret its judgement at the request of either Contracting Party. Unless otherwise decided by the Tribunal, in special circumstances, the legal costs including the fees of the arbitrators shall be shared equally between the two Governments.

ARTICLE 12

Each Contracting Party shall notify the other of the completion of its constitutional requirements concerning the entry into force of this agreement. This agreement shall enter into force one month after the date of receipt of both the notifications.

This agreement shall be in force for an initial period of ten years. It shall thereafter remain in force unless one of the Contracting Parties gives one year's written notice to the other Contracting Party through diplomatic channels of its intention to terminate it.

In the case of termination of the period of validity of this agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of twenty years.

Signed in: KATHMANDU on: MAY 2, 1983

in duplicate in the French and the English languages, both texts being equally authentic.

For His Majesty's Government of Nepal

[Signature]

Padma Bahadur Khatri
Minister for Foreign Affairs and Water Resources

For the Government of the Republic of France

[Signature]

Claude Cheysson
Minister of External Relations
Your Excellency,

I have the honour to refer to the Agreement signed today between the Government of the Republic of France and His Majesty's Government of Nepal on the Reciprocal Promotion and Protection of Investments, and wish to inform you that the interpretation of this Agreement is the following, with respect to article 3:

a) We shall consider as de jure or de facto impediments to fair and equitable treatment any restriction on the purchase or transport of raw materials and auxiliary materials, energy and fuels, as well as the means of production and operation of all types, any hindrance of the sale or transport of products within the country and abroad, as well as any other measures that have a similar effect. Measures that are taken for reasons of public security, public health or public order shall not be considered as de jure or de facto impediments as far as they are not abusive or discriminatory. I understand that the expression "public morality" in Nepal law is included in the expression of "public order" in the French law.

b) Within the framework of their respective legislation, the Contracting Parties shall favourably examine requests for entry and authorization to reside, work and travel made by the nationals of one Contracting Party in relation to an investment in the territory of the other Contracting Party.

I would appreciate receiving from you a declaration of the agreement of your Government to the contents of this letter.

With compliments of my highest esteem,

Yours sincerely,

Claude CHEYSSON
Ministre des Relations Extérieures