PROTOCOL

At the time of signing the Agreement among the Government of Japan, Government of the Republic of Korea and the Government of the People's Republic of China for the Promotion, Facilitation and Protection of Investment (hereinafter referred to as "the Agreement"), the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement:

1. Paragraph 1 of Article 4 of the Agreement shall not apply to matters related to the acquisition of land property.

2. (a) The Contracting Parties confirm their shared understanding that paragraph 1 of Article 11 of the Agreement addresses the following two situations:

(i) the first situation is direct expropriation, where investments are nationalized or otherwise directly expropriated through formal transfer of title or outright seizure; and

(ii) the second situation is indirect expropriation, where an action or a series of actions by a Contracting Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(b) The determination of whether an action or a series of actions by a Contracting Party, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the action or series of actions, although the fact that such action or series of actions has an adverse effect on the economic value of investments, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the action or series of actions interferes with distinct and reasonable expectations arising out of investments; and

(iii) the character and objectives of the action or series of actions, including whether such action is proportionate to its objectives.

(c) Except in rare circumstances, such as when an action or a series of actions by a Contracting Party is extremely severe or disproportionate in light of its purpose, non-discriminatory regulatory actions adopted by the Contracting Party for the purpose of legitimate public welfare do not constitute indirect expropriation.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed the present Protocol.

DONE in triplicate at Beijing, on this thirteenth day of May, 2012, in the English language.

FOR THE GOVERNMENT OF JAPAN:

山口　壯
枝野幸男

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA:

박태호

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA:

陳徳銘