AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF MOROCCO AND THE BELGIUM LUXEMBOURG ECONOMIC UNION CONCERNING ENCOURAGEMENT AND PROTECTION RECIPROCAL INVESTMENTS

The Government of the Kingdom of Belgium

Acting in the name and on behalf of the Government of the Grand Duchy of Luxembourg under existing agreements,

The Walloon Government,

The Flemish Government,

The Government of the Brussels-Capital Region, on the one hand,

and

The Government of the Kingdom of Morocco, of the other part,

Hereinafter referred to as the "Contracting Parties"

Desiring to strengthen economic cooperation through the creation of favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party.

Whereas the beneficial influence that may exercise such an agreement with a view to improving the business contacts and to enhance confidence in the field of investment,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

The term "investment" means every asset and any direct or indirect in all companies or firms in any sector of the economy or including but not limited to:

a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges, usufruits similar rights;

b) Shares and any other similar forms of participation in companies or indirect minority;

c) The obligations, rights, and claims to any performance having an economic value;

d) Copyrights, trademarks, patents, technical processes, trade names and any right of industrial property, and goodwill;

e) The concessions under public law or contract notanment those relating to prospecting, culture, extract or exploit natural resources.

No change in the legal form in which the assets and capital have been invested or reinvested shall affect their character as "investments" within the meaning of this Agreement. Such investments must be made in accordance with the laws and regulations in force in the host country.

If the investment is made by an investor through an agency referred to in subparagraph 2 (c) below, in which it has an equity interest, such investor shall enjoy the benefits of this Agreement in respect of the investment corresponding to such indirect interest provided, however, that such benefits shall not accrue to it if it invokes the dispute settlement mechanism provided

for in another foreign investment protection agreement concluded by a Contracting Party in whose territory the investment is made.

2. The term "investor" means:

a) Any natural person having the nationality of Luxemburg Moroccan or Belgium or under the legislation of the Kingdom of Belgium or of the Grand-Duchy of Luxembourg or of the Kingdom of Morocco respectively and making an investment in the territory of the other Contracting Party;

b) Any legal person having its head office in the territory of the Kingdom of Belgium or of the Grand-Duchy of Luxembourg or of the Kingdom of Morocco and conformént constituted under the laws of Belgium or Luxemburg or Moroccan and making an investment in the territory of the other Contracting Party;

c) Legal entities established in the territory of any country, in accordance with its laws, which are directly or indirectly controlled by nationals of either Contracting Party or by legal entities having their seat together with real economic activities, in the territory of that Contracting Party; it is understood that the control requires a significant portion of the property.

3. The term "proceeds" means those net amounts reported by an investment and in particular, though not exclusively, interests, profits, dividends, royalties and licensing directors.

4. The term "territory" means:

- For the Belgo-Luxembourg Economic Union, the territory of the Kingdom of Belgium and Luxembourg as well as the maritime areas, i.e.; marine and marine areas which extend beyond the territorial waters of the State concerned and conforméent, on which it exercises in accordance with international law sovereign rights and jurisdiction for the purpose of exploitation and exploration for and preservation of natural resources.

- For the Kingdom of Morocco, the territory of the Kingdom of Morocco including any maritime area situated beyond the territorial waters of the Kingdom of Morocco and which has been or might be subsequently designated by the legislation of the Kingdom of Morocco, in accordance with international law as an area within which the rights of the Kingdom of Morocco relating to the marine seabed or the subsoil and natural resources may be exercised.

Article 2. Promotion of Investments

Each Contracting Party shall encourage investments of investors of the other Contracting Party and admitted its legislation in conformity with such investments in its territory as well as the conclusion and the carrying out of licensing agreements and contracts for commercial, administrative or technical assistance.

Article 3. Treatment and Protection of Investments

1. Each Contracting Party undertakes to provide in its territory for investments by investors of the other contracting party fair and equitable treatment excluding any unjustified or discriminatory measure which could adversely affect in any way the management, maintenance, use, enjoyment or liquidation. This treatment shall be no less favourable than that which it accords to its own investments of investors or to investments of most-favoured-nation treatment, whichever is more favourable.

2. Revenues, in case of reinvestment in accordance with the legislation of one Contracting Party shall enjoy the same protection as the original investment.

3. Subject to such measures as are necessary for the maintenance of law and order, such investments shall enjoy continuing security and protection at least equal to that enjoyed by most-favoured-nation investors and in accordance with generally recognised principles of International Law.

4. However, the treatment referred to in paragraph 1 does not extend to privileges that a Contracting Party shall accord to investors of a third State by virtue of its participation in an economic union or association, a customs union, a common market or a free trade area or a regional economic organization of international character, or because of its commitments under the terms of an agreement for the avoidance of double taxation convention or other tax en matiére.

Article 4. Expropriation and Compensation

1. If one of the Contracting Parties should take any measures of expropriation, nationalization or any other measures which directly or indirectly dispossessing investors of the other Contracting Party of their investments in its territory, the following

conditions shall be complied with:

a) The measures are justofoed by the requirements of public security or national interest;

b) They shall be taken in accordance with due process;

c) They are neither discriminatory nor contrary to a specific commitment;

d) They are accompanied by provisions for the payment of adequate and effective compensation.

The amount of compensation will correspond to the market value of the affected investments immediately before the measures taken or are made publicly available.

2. The compensation shall be transferable under the conditions laid down in this Article and paid in convertible currency and without undue delay. In the event of late payment, they shall include interest at market conditions from the date of payment.

3. In any case, each Contracting Party shall accord to investors in its territory of the other Contracting Party treatment not less than that accorded to its own investors or to particular investors of most-favoured-nation treatment, whichever is more favourable. This treatment shall be in accordance with the generally recognized principles of international law.

Article 5. Compensation for Losses

Investors of one of the Contracting Parties whose investments suffer damage or loss as a result of war or any other armed conflict, revolution, state of national emergency, revolt, insurrection or any other similar event in the territory of the other Contracting Party shall receive from the latter non-discriminatory treatment at least equal to that accorded to its own investors or to investors of the most favoured nation with regard to restitution, compensation, indemnification or other damages, whichever is the more favourable.

Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of the other contracting party, without prejudice of tax obligations of its investors, the free transfer, in a freely convertible currency, their liquid assets relating to an investment and in particular, though not exclusively:

a) Capital and additional amounts to maintain or increase the investment;

b) Interests, profits, dividends, royalties and other current income;

c) The amounts required for the repayment of loans contracted regularly;

d) The proceeds from a total or partial liquidation of the investment;

e) The compensation pursuant to Articles 4 and 5.

2. The transfers referred to in paragraph 1 shall be effected without undue delay at the rate of exchange applicable on the date of transfer pursuant to the exchange of regulations in force the Contracting Party in whose territory the investment is made.

3. The guarantees provided for in paragraphs 1 and 2 shall be at least equal to those accorded to investors of the most favoured nation.

Article 7. Subrogation

1. If under a legal or contractual guarantee covering non-commercial risks of investors, indemnities are paid to an investor of either Contracting Party, the other Contracting Party shall recognize the subrogation into the insurer of the rights of the investor indemnified.

2. In accordance with the guarantee given for the investment concerned, the insurer is entitled to assert all the rights which the investor would have been able to exercise if the insurer had not been subrogated to it. The subrogation of rights also extends to the transfer and arbitration rights referred to in Articles 6 and 11.

3. These rights and actions may be exercised by the insurer within the limits the number of covered by the contract of guarantee by the investor and the recipient to guarantee, within the limits of the risk that is not covered by the contract.

4. With regard to the rights transferred, the other Contracting Party may assert against the insurer, who is subrogated to the rights of the indemnified investors, the obligations incumbent on the latter legally or contractually.

Article 8. Applicable Rules

Where a matter relating to investment is governed by this Agreement and simultaneously by the national law of the Contracting Party in whose territory investment is made under or existing international conventions or undertaken by the parties in the future, investors of the other Contracting Party may avail themselves of the provisions that are most favourable.

Article 9. Additional Obligations

1. Investors of one Contracting Party may conclude with the other Contracting Party specific commitments which cannot be contrary to this Agreement. Investments made under such specific commitments are governed by this Agreement.

2. Each Contracting Party shall at all times compliance with the commitments it has made to investors of the other Contracting Party.

Article 10. Settlement of Disputes Relating to the Interpretation and Application of this Agreement

1. Disputes concerning the interpretation or application of this Agreement shall be settled as far as possible between the Parties through diplomatic channels.

2. In the absence of rules through diplomatic channels, the dispute is submitted to a joint commission composed of the representatives of the Contracting Parties. It shall meet without delay upon the request of either party.

3. If the Joint Commission cannot settle the dispute within six months after the beginning of negotiations, it shall be submitted to an arbitral tribunal, at the request of one of the Contracting Parties.

4. The Tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and the two arbitrators shall appoint a third arbitrator who is a national of a third State as Chairman of the Tribunal.

The arbitrators shall be appointed within three months and the Chairman within five months from the date on which one Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

5. If the periods specified in paragraph 3 have not been observed, the President of the International Court of Justice shall be invited to make the necessary appointments. If the President of the International Court of Justice is a national of either contracting State or if he is unable to perform this function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. if the Vice-President has the nationality of either Contracting State or if he is prevented from exercising this mandate, the most senior member of the International Court of Justice who is not a national of either Contracting State shall be invited to make the necessary appointments.

6. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the rules and the recognized principles of International Law.

7. The tribunal shall determine its own rules of procedure.

8. The tribunal shall reach its decisions by a majority of the votes; they shall be final and binding on the Contracting Parties.

9. Each Contracting Party shall bear the costs of its own arbitrator and its representation in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

Article 11. Settlement of Investment Disputes

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be notified in writing by the most expeditious party.

To the extent possible, this diffdrend shall be settled by agreement between the parties to the dispute.

2. In the absence of an amicable settlement by direct arrangement between the parties to the dispute by conciliation or through diplomatic channels within six months from the date of the written notification, the dispute shall be submitted, at

the choice of the investor, to the national jurisdiction of the Contracting Party in whose territory investment has been made or to international arbitration.

In the latter case, the dispute shall be submitted to the International Centre for the Settlement of Investment Disputes (ICSID), established by the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States", opened for signature at Washington, on 18 March 1965.

To this end, each Contracting Party shall, under the terms of this Agreement, its irrevocable consent to any dispute relating to investments may be submitted to arbitration. This consent implies that they shall waive the requirement of exhaustion of administrative or judicial remedies.

3. Neither Contracting Party, party to the dispute, can raise as an objection, at any stage of the arbitration proceedings or enforcement of an arbitration award, the fact that the investor, opposing party in the dispute has received an indemnity covering the whole or part of its losses by virtue of an insurance policy or to the guarantee provided for in article 7 of this Agreement.

4. The arbitral tribunal shall decide on the basis of the national law of the Contracting Party party in the dispute in whose territory the investment is located, including the rules relating to conflicts of law, the provisions of this Agreement, the terms of the specific agreement which would be reached on investment as well as the Principles of International Law

5. The arbitration awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the decisions in accordance with its national 1égislation.

Article 12. Existing Investments

This Agreement shall also apply to investments made in foreign currency, before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the laws and regulations of that demière.

Article 13. Entry Into Force and Duration

1. This Agreement shall enter into force one month after the date on which the Contracting Parties have notified each other that the constitutional procedures required in their respective countries have been complied with. It will remain into force for a period of ten years. Unless one of the Contracting Parties denounces it at least six months before the expiration of the period of validity, whenever it shall be automatically renewed for a further period of ten years, each Contracting Party reserving the right to terminate the agreement by a notification made at least twelve months before the date of expiry of the current period of validity.

2. In the event of termination, investments within the framework of this Agreement before its expiration, and shall continue to apply for a period of ten years from the date of its termination.

3. Upon the entry into force of this Agreement, the provisions of the Agreement between the Belgo-Luxembourg Economic Union, on the one hand, and the Kingdom of Morocco concerning the encouragement of investment capital and property, signed at Rabat on 28 April 1965, shall cease to have effect between the Kingdom of Morocco and the Belgo-Luxembourg Economic Union.

Done at Rabat on 13 April 1999 in two originals each in the Arabic, Dutch and French languages, all texts being equally authentic. in the event of any inconsistency, the English text shall serve as a reference.

For the Belgo-Luxembourg Economic Union:

For the Government of the Kingdom of Belgium in its own name and acting on behalf of the Government of the Grand Duchy of Luxembourg:

For the Walloon Government:

For the Flemish Government:

For the Government of the Brussels-Capital Region:

J.L. Dehaene

For the Government of the Kingdom of Morocco:

A. Youssoufi