Agreement between the Republic of Austria and the Republic of Bulgaria on Mutual Promotion and Protection of Investments

THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF BULGARIA, hereinafter referred to as the "Contracting Parties",

DESIRING to develop the economic cooperation between the two States,

PREOCCUPIED to encourage and create favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

CONSCIOUS that the mutual promotion and protection of investments, in accordance with the present Agreement, stimulates the initiatives in this field,

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" shall comprise every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, and in particular:

a) Movable and immovable property as well as any other rights in rem;

b) Shares, stocks or any other securities materialising participation in companies;

c) Claims to money that has been given in order to create economic value or claims to any performance having an economic value;

d) Copyrights, rights in the field of industrial and intellectual property such as patents, licences, industrial designs, trademarks and trade names, technical processes, know-how and goodwill;

e) Business concessions conferred by law to search for or exploit natural resources.

No subsequent change of the form in which the investments have been made shall affect their substance as investments, provided that such a change is in accordance with the laws of the Contracting Party, in the territory of which the investments have been made.

2. The term "returns" shall mean profits, dividends, interests, royalties, licence-fees and other incomes lawfully yielded by the investments.

3. The term "investor" shall mean:

a) A natural person who is a national of one Contracting Party in accordance with its legislation and invests in the other Contracting Party's territory;

b) Any company, organization, partnership or other forms of association incorporated or constituted in accordance with the legislation of one Contracting Party and having its seat in the territory of this Contracting Party, irrespective whether it has or has not juridical personality.

c) Any juridical person established and having its seat outside the jurisdiction of one of the Contracting Parties and being controlled by an investor of the other Contracting Party.

4. The term "without undue delay" shall mean such period as is normally required for the completion of necessary formalities for the transfer of payments. The said period shall commence on the day on which the request for transfer has been submitted and may not exceed one month.

5. The term "territory" shall mean the territory under the sovereignty of the Republic of Bulgaria, on the one hand and of the Republic of Austria, on the other hand, including the territorial sea, as well as the continental shelf and the exclusive economic zone, over which the respective State exercises sovereign rights or jurisdiction in conformity with international law.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote in its territory investments of investors of the other Contracting Party and admit such investments in accordance with its laws and regulations and accord them fair and equitable treatment and full protection of the present agreement.

2. Returns and in case of reinvestment of returns, these reinvestments and their returns shall enjoy the same treatment and protection as the initial investments.

3. In compliance with its laws and regulations, each Contracting Party shall consider favourably questions concerning entry, stay, work and movement in its territory of top managerial and technical personnel necessary for the management and operation of their investment.

Article 3. Treatment of Investments

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded treatment not less favourable than that accorded to investments made by its own investors or to investments made by investors of any third State, whichever is more favourable.

2. Investors of either Contracting Party shall be accorded in the territory of the other Contracting Party as regards expansion, management, operation, maintenance, use and disposal of their investments, treatment which is not less favourable than that which is accorded to its own investors or to investors of any third State, whichever is more favourable.

3. The provisions of paragraph 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investor of the other Contracting Party the present or future benefit of any preference or privilege which may be extended by the former Contracting Party by virtue of:paragraph 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investor of the other Contracting Party the present or future benefit of any preference or privilege which may be extended by the former Contracting Party by virtue of:

a) An existing or future customs union or free trade area, economic communities or similar international institutions, or

b) Any international or bilateral agreement on the basis of reciprocity regarding taxation.

c) Provisions related to investments, contained in bilateral agreements to facilitate frontier traffic.

4. Each Contracting Party reserves the right to make or maintain, in compliance with its legislation in force, exceptions from national treatment granted according to paragraphs 1 and 2 of this Article. However, any new exception shall only apply to investments made after the entry into force of such exception.paragraphs 1 and 2 of this Article. However, any new exception shall only apply to investments made after the entry into force of such exception.

5. Should national legislation of the Contracting Parties or present or future international agreements applicable between the Republic of Bulgaria and the Republic of Austria or other international agreements, to which they are parties, contain regulations, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulations shall to the extent that is more favourable prevail over the present Agreement.

Article 4. Compensation for Damage or Loss

When investments made by investors of either Contracting Party suffer damage or loss owing to war or other armed conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that the latter Contracting Party accords to its own investors or investors of any third state, whichever is most favourable. Resulting payments shall be made in convertible currency and be freely transferable without undue delay.

Article 5. Expropriation

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation, in the territory of the other Contracting Party, except by due process of law, for a public interest, on a non-discriminatory basis and against preliminary and adequate compensation.

2. Such compensation shall amount to the actual value of the expropriated investment and shall be determined and computed in accordance with internationally recognized principles of valuation on the basis of the fair market value of the expropriated investment at the time immediately before the expropriatory action was taken or the impending expropriation became publicly known, whichever is the earlier (hereinafter referred to as the "valuation date"). Such compensation shall be calculated in a freely convertible currency to be chosen by the investor, on the basis of the prevailing market rate of exchange for that currency on the valuation date and shall include interest at the prevailing commercial market rate, however, in no event less than the prevailing LIBOR — rate of interest or equivalent, from the date of expropriation until the date of payment.

3. Where a Contracting Party expropriates the assets of a company which is considered as a company of this Contracting Party pursuant to paragraph 2 of Article 1 of the present Agreement and in which an investor of the other Contracting Party owns shares, the provisions of paragraph 1 shall apply so as to ensure due compensation to this investor.paragraph 2 of Article 1 of the present Agreement and in which an investor of the other Contracting Party owns shares, the provisions of paragraph 1 shall apply so as to ensure due compensation to this investor.

4. The investor shall be entitled to have the legality of the expropriation reviewed by the competent authorities of the Contracting Party having induced the expropriation.

Article 6. Transfers

1. Each Contracting Party shall guarantee without undue delay, to investors of the other Contracting Party free transfer in freely convertible currency of payments in connection with an investment, in particular but not exclusively of:

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

b) Returns from the investment;

c) The proceeds from total or partial liquidation or sale of the investment;

d) The sums required for payment of the expenses which arise from the operation of the investment;

e) The repayment of loans;

f) Compensation payable in accordance with Article 4 and 5 of the present Agreement;Article 4 and 5 of the present Agreement;

2. The provisions of paragraph 1 of this Article shall not be construed so as to permit tax evasion.paragraph 1 of this Article shall not be construed so as to permit tax evasion.

3. Each Contracting Party shall guarantee free transfer of the remuneration received by the nationals of the other Contracting Party for work or services done in connection with investments made in its territory, in accordance with its law and regulations.

4. The payments referred to in this Article shall be performed at the exchange rates effective on the day of the transfer of payments in the territory of the Contracting Party from which the transfer is made.

5. The rates of exchange shall be determined according to the quotations on the stock exchanges or in the absence of such quotations according to Central Bank quotations in the territory of the respective Contracting Party.

Article 7. Subrogation

1. If a Contracting Party or its designated agency makes payment to its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

a) The assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its designated agency, as well as,

b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor. Each Contracting Party shall also recognize the subrogation of the other Contracting Party to any such rights or claims which it shall be entitled to assert to the same extent as its predecessor in title.

3. As regards the transfer of payments to the Contracting Party concerned by virtue of such assignment, Article 5 and Article 6 of the present Agreement shall apply mutatis mutandis.Article 5 and Article 6 of the present Agreement shall apply mutatis mutandis.

Article 8. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through amicable negotiations between the Contracting Parties.

2. If a dispute between the Contracting Parties cannot thus be settled within six months after the beginning of negotiations it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way:

Within three months from the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.paragraph 3 the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal reaches its decision on the basis of the provisions of the present Agreement as well as the generally accepted principles and rules of international law. The arbitral tribunal reaches its decision by a major majority of votes. Such decision shall be final and binding on both Contracting Parties. The tribunal determines its own procedure.

6. Each Contracting Party shall bear the cost of its own member of the tribunal and of its legal representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

Article 9. Settlement of Investment Disputes

1. Disputes between an investor of one of the Contracting Parties and the other Contracting Party in connection with his investment made in the territory of the latter Contracting Party shall, as far as possible be settled by the disputing parties in an amicable way.

2. If such disputes cannot be settled within three (3) months from the date either party has requested amicable settlement, the investor concerned may submit the dispute to the competent court of the Contracting Party, or alternatively to the International Centre for Settlement of Investment Disputes (ICSID) set up by the „Convention on Settlement of Investment Disputes Between States and Nationals of other States", done at Washington, March 18th 1965 in case both Contracting Parties are parties to the Convention, with exception of reserves that may be notified.„Convention on Settlement of Investment Disputes Between States and Nationals of other States", done at Washington, March 18th 1965 in case both Contracting Parties are parties to the Convention, with exception of reserves that may be notified.

3. Investment disputes may as well be submitted for settlement by arbitration to an ad-hoc arbitral tribunal to be established under the Arbitral Rules of the United Nations Commission on International Trade Law (UNCITRAL).Arbitral Rules of the United Nations Commission on International Trade Law (UNCITRAL).

The consent to submit any such disputes to arbitration implies the renunciation of the requirement that the internal

administrative or juridical remedies should be exhausted.

4. The award shall be final and binding on both parties to the dispute and enforced in accordance with the domestic law of the Contracting Party concerned.

5. At any stage of arbitration and conciliation or the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage, or in case of subrogation, referred to in Article 7, the objection, that the investor is no longer entitled to pursue his original rights and claims.Article 7, the objection, that the investor is no longer entitled to pursue his original rights and claims.

Article 10. Consultation

Each Contracting Party may propose to the other Contracting Party to enter into consultations concerning all questions related to the implementation or interpretation of the present Agreement. The other Contracting Party shall make the necessary arrangements for holding these consultations.

Article 11. Application of the Agreement

The provisions of this Agreement shall also apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party after 1st January 1965.

Article 12. Entry Into Force and Duration

1. This Agreement is subject to ratification and shall enter into force on the first day of the third month that follows the month during which the Contracting Parties have notified each other that the Constitutional requirements for its entry into force have been complied with.

2. This Agreement is concluded for a period of ten (10) years and shall automatically continue to be valid for further successive periods of five (5) years unless either Contracting Party notifies in writing at least twelve (12) months prior to its expiry, the other Contracting Party of its decision to terminate the Agreement.

3. With respect to investents made prior to the date of termination of this Agreement, the provisions of Article 1 to 11 shall remain in force for a further period of ten years from that date.Article 1 to 11 shall remain in force for a further period of ten years from that date.

IN WITNESS whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in Sofia on 22 January 1997 in two originals in the German, Bulgarian and English language, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Republic of Austria:

Kristen

For the Republic of Bulgaria:

Kostov

At the time of signing the Agreement between the Republic of Austria and the Republic of Bulgaria on Mutual Promotion and Protection of Investments, the undersigned, duly authorised by their respective Governments, have in addition agreed upon the following provisions, which constitute an integral part of the said Agreement:

1. Ad Article 1, paragraph 3 (c): A Contracting Party may require legal persons referred to in Article 1, 3 (c) to submit proof of such control in order to obtain the benefits provided for in the provisions of this Agreement. For example the following may be considered acceptable proof:

A) that the legal person is an affiliate of a legal person having its seat in the territory of the other Contracting Party;

B) that the legal person is economically subordinated to a legal person having its seat in the territory of the other Contracting Party;

C) that the votes directly or indirectly controlled or the percentage of capital owned by natural or legal persons of the other Contracting Party makes it possible for them to exercise control power.

2. Ad Article 3, paragraph 3 (c): Article 3, paragraph 3 (c) is applicable in respect to the Agreement of Cooperation between Austria and Italy concerning Tyrol, Vorarlberg and Trentino-South Tyrol/Alto Adige of May 12th, 1949.

3. Ad Article 9: For the purposes of Article 9, an investment dispute is defined as a dispute involving (a) the interpretation or application of an investment agreement between a Contracting Party and an investor of the other Contracting Party; (b) an alleged breach of any right conferred or created by this Agreement with respect to an Investment; or (c) the interpretation or application of any investment authorization granted by a Party's foreign investment authority to such investor, provided that the denial of an investment authorization shall not in itself constitute an investment dispute unless such denial involves an alleged breach of any right conferred or created by the present Agreement.

DONE in Sofia on 22 January 1997 in two originals in the German, Bulgarian and English languages, all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Republic of Austria: Kristen

For the Republic of Bulgaria: Kostov