AGREEMENT ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ALBANIA AND THE GOVERNMENT OF UKRAINE

The Government of the Republic of Albania and the Government (the Cabinet of Ministers) of Ukraine hereinafter referred to as "the Parties",

Desiring to intensify their economic cooperation for the mutual benefit of both countries,

Intending to create favorable conditions for investments made by investors of each Party in the territory of the other Party,

Recognizing that the promotion and protection of investments under this Agreement will stimulate initiatives in this field,

Have agreed as follows:

Article I. Definitions

For the purposes of the present Agreement,

1. The term "investor" means with regard to either Party:

a) physical persons who, according to the law of that Party, are considered to be its nationals.

b) legal entities, including companies, associations, partnerships, corporations, branches and any other organization incorporated or constituted or, otherwise, duly organized under the law of that Party.

2. The term "investment" means every kind of asset and in particular, although not exclusively, the following:

a) shares in and stocks and debentures of a company and any other form of participation in a company;

b) claims to money or to any performance under contract having economic value, including every loan granted for the purpose of creating economic value;

c) movable and immovable property and any other property rights such as mortgages, liens, usufructs, pledges and similar rights;

d) industrial and intellectual property rights, including patents, licenses, trademarks and tradenames, as well as technical processes, know-how and goodwill;

e) rights to undertake economic and commercial activities conferred by law or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment, provided that such a change is made in accordance with the law and regulations of the host Party of the investment.

3. The term "returns means the amounts yielded by an investment and includes, in particular although not exclusively, profit, dividends, interest, capital gains, royalties and fees.

4. The term "territory" designates the land territory and territorial waters of each of the Parties, as well as the exclusive economic zone and the continental shelf that extends outside the limits of the territorial waters of each of the Parties, over which they have or may have jurisdiction and sovereign rights for the purposes of exploitation, exploration and conservation of natural resources, pursuant to international law.

Article II. Promotion and Admission

1. Each Party shall encourage and create favorable conditions for investors of the other Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. In order to encourage mutual investment flows, each Party shall endeavor to inform in accordance with its national legislation in force the other Party, at the request of the latter Party, on the investment opportunities in its territory.

3. When a Party shall have admitted an investment in its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Party shall, whenever needed, endeavor to issue the necessary authorizations concerning the activities of consultants and other qualified persons, regardless of their nationality.

4. This Agreement shall also be applicable to investments made prior to its entry into force by investors of one Party in the territory of the other Party.

Article III. Protection

1. Investments made by investors of one Party in the territory of the other Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security. In no case shall a Party accord to such investments treatment less favorable than that required by international law.

2. Neither Party shall in any way impair by arbitrary or discriminatory measures the operation, management, maintenance, use, enjoyment, sale, and if it is the case, the liquidation of such investments. Each Party shall observe any obligation it may have entered into with regard to investments of investors of the other Party.

Article IV. National Treatment and Most Favoured Nation Treatment

1. Each Party shall in its territory accord to investments or returns of investors of the other Party treatment no less favorable than that which it accords to the investments or returns of its own investors or to investments or returns of investors of any third State, whichever is more favorable to the investor concerned.

2. This treatment shall not extend to the privileges which either Party may grant to investors of a third State by virtue of its membership of, or association with any existing or future free trade area, customs union, common

Market or similar international agreement to which either of the Parties is or may become a party.

3. Each Party shall, in accordance with its laws and regulations, grant to investments or returns of investors of the other Party no less favorable treatment than that granted to the investments or returns of its own investors.

4. The treatment granted under this Article shall not be consider so as to oblige one Party to extend to the investors of the other Party the benefit of

Any treatment, preference or privilege resulting from any international agreement relating wholly or mainly to taxation, including any agreement for the avoidance of double taxation, or any domestic legislation relating wholly or mainly to taxation.

Article V. Expropriation

1. Investments or returns of investors of either Party in the territory of the other Party shall not be nationalized, expropriated or subjected to measures having equivalent effect to nationalization or expropriation (hereinafter referred to as "expropriation") except for public interest, pursuant to the law, on a non discriminatory basis and against the payment of prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the expropriated investment immediately before the expropriator measure was taken or before the impending expropriation became public knowledge, whichever is the earlier. Compensation shall include interest at a normal commercial rate until the date of payment, shall be paid without delay, in a freely convertible currency, shall be effectively realizable and freely transferable.

3. The investor affected shall have the right, under the law of the Party making the expropriation, to prompt review, by a judicial authority or other competent and independent authority of that Party, of its case to determine whether such expropriation and the valuation of its investment conform to the principles set out in this Article.

4. Where a Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Party own shares, it shall ensure that the provisions of this

Article are applied so as to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Party who are owners of those shares.

Article VI. Compensation for Losses

1. Investors of one Party, whose investments or returns in the territory of the other Party suffer losses owing to war or to other armed conflict, state of national emergency, revolution, insurrection, civil disturbance or any other similar event, shall be accorded by the latter Party, as regards restitution, indemnification, compensation or other settlement, treatment no less favorable than that which the latter Party accords to its own investors or to investors of any third State whichever is more favorable to the investor concerned. Resulting payments shall be freely transferable.

2. Notwithstanding paragraph 1), an investor of a Party which, in any of the situations referred to in that paragraph, suffers a loss in the territory of another Party resulting from

a) requisitioning of its investment or part thereof by the latter's forces or authorities; or

b) destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

Shall be accorded by the latter Party restitution or compensation which in either case shall be prompt, adequate and effective. Resulting payments shall be made without delay in a freely convertible currency and be freely transferable.

Article VII. Transfers

1. Each Party shall guarantee to investors of the other Party the free transfer of all payments relating to their investments. Such transfers shall include, in particular, though not exclusively:

a) the initial capital and additional amounts needed for the maintenance or increase of an' investment;

b) investment returns, as defined in Article I;

c) funds in repayment of loans related to an investment;

d) compensations provided for under Articles V and VI;

e) proceeds from the total or partial sale or liquidation of an investment;

f) earnings and other remuneration of personnel engaged from abroad in connection with an investment;

g) payments arising out of the settlement of a dispute.

2. The host Party of the investment shall allow the investor of the other Party, to have access to the foreign-exchange market in a non-discriminatory manner so that the investor may purchase the necessary foreign currency to make the transfers pursuant to this article.

3. Transfers under the present Agreement shall be made without delay in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

4. The Parties undertake to facilitate the procedures needed to make these transfers without delay. In particular, no more than one month must elapse from the date on which the investor properly submits the necessary application in order to make the transfer until the date the transfer actually takes place.

5. The Parties shall grant to transfers referred to in this present Article treatment no less favorable than that accorded to the transfer of payments originating from investments made by investors of any third State.

Article VIII. More Favourable Terms

1. If the legislation of either Party or obligations under international law existing at present or established hereafter between the Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Party to a treatment more favorable than that provided for by this Agreement, such regulation shall to the extent that it is more favorable prevail over this Agreement.

2. More favorable terms than those of this Agreement which have been agreed to by one of the Parties with investors of the other Party shall not be affected by this Agreement.

Article IX. Subrogation

If one Party or its designated Agency makes a payment under an indemnity, guarantee or contract of insurance against non-commercial risks given in respect of an investment made by any of its investors in the territory of the other Party, the latter Party shall recognize the assignment of any right or claim of such investor to the former Party or its designated Agency and the right of the former Party or its designated Agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title. This subrogation will make it possible the former Party or its designated Agency to be the direct beneficiary of any payment for indemnification or other compensation of which the investor could be entitled to.

Article X. Settlement of Disputes between the Parties

1. Any dispute between the Parties relative to the interpretation or application of this Agreement will be as far as possible settled through diplomatic channels.

2. If it were not possible to settle the dispute in this way within six months from the start of the negotiations, it shall be submitted, at the request of either of the two Parties, to an arbitrage tribunal.

3. The tribunal shall be set up in the following way: each Party shall appoint an arbitrator and these two arbitrators shall elect a national of a third country as president. The arbitrators shall be appointed within three months and the president within five months from the date on which either of the two Parties informed the other Party of its intention to submit the dispute to a court of arbitration.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either 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 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 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 Party shall be invited to make the necessary appointments.

5. The tribunal shall issue its decision on the basis of respect for the law, of the rules contained in this Agreement or in other agreements in force between the Parties, and as well as of the universally accepted principles of international law.

6. Unless the Parties decide otherwise, the court shal 1 lay down its own procedure.

7. The tribunal shall reach its decision by a majority of votes and that decision shall be final and binding on both Parties.

8. Each Party shall bear the expenses of the arbitrator appointed by it and those connected with representing it in the arbitration proceedings. The other expenses, including those of the president, shall be borne in equal parts by the two Parties.

Article XI. Disputes between One Party and Investors of the other Party

1. Disputes that may arise between one of the Parties and an investor of the other Party with regard to an investment in the sense of the present Agreement, shall be notified in writing, including a detailed information, by the investor to the host Party of the investment. As far as possible, the parties concerned shall endeavor to settle these differences amicably.

2. If these disputes cannot be settled amicably within six months from the date of the written notification mentioned in paragraph 1, the dispute shall be submitted, at the choice of the investor, to:

- The competent court of the Party in whose territory the investment was made;

- An ad hoc court of arbitration established under the Arbitration Rules of the United Nations Commission on International Trade Law;

- The International Center for Settlement of Investment Disputes (ICSID) set up, by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", opened for signature at Washington on 18 March 1965,in case both Parties become members of this Convention. As long as a Party which is party in the dispute has

Not become a Contracting State of the Convention mentioned above, the dispute shall be dealt with pursuant to the Additional Facility for the Administration of proceedings by the Secretariat of the Center;

3. The arbitration shall be based on:

- The provisions of this Agreement and of the other agreements in force between the contracting Parties;

- The rules and the universally accepted principles of international law;

- The national law of the Party in whose territory the investment was made, including the rules relative to conflicts of law,

4. A Party shall not assert as a defense that indemnification or other compensation for all or part of the alleged damages has been received or will be received by the investor pursuant to a guarantee or insurance contract.

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

Article XII. Entry Into Force, Extension and Termination

1. This Agreement shall enter into force on the date on which the Parties shall have notified each other that their respective constitutional formalities required for the entry into force of international agreements have been completed. It shall remain in force for an initial period of ten years and, by tacit renewal, for consecutive periods of two years.

2. Either Party may terminate this Agreement by prior notification in writing, six months before the date of its expiration.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement.

Done in_on the_2002, in two originals in the Albanian, Ukrainian and

English languages, all of which are 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 ALBANIA

FOR THE GOVERNMENT OF UKRAINE