TREATY BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE PEOPLE'S REPUBLIC OF BULGARIA CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Federal Republic of Germany and the People's Republic of Bulgaria,

Desiring to intensify economic cooperation between both States,

Intending to create favourable conditions for investments by investors of either State in the territory of the other State,

Recognizing that contractual encouragement and contractual protection of such investments in the two States Parties to the Treaty serve to consolidate economic cooperation,

Mindful of the Final Act of the Conference on Security and Cooperation in Europe,

Have agreed as follows:

Article 1.

For the purpose of the present Treaty

(1) The term "investments" shall comprise corporate shares and other kinds of interest in companies, and all other assets connected with economic activity, in particular:

(a) Property and other rights in rem;

(b) Claims to money which has been used to create an economic value or claims to any performance having an economic value;

(c) Copyrights, industrial property rights (such as patents for inventions, trade marks, trade names), technical processes, know-how and goodwill.

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such alteration does not contravene the laws of the country concerned.

(2) The term "returns" shall mean the amounts yielded by an investment in accordance with paragraph 1 for a definite period as profit, dividends, interest, licence or other fees.

(3) The term "investors" shall mean

In respect of the Federal Republic of Germany:

1. Germans with a residence within the area of application of this Treaty,

2. Any juridical person as well as any commercial or other company or association with or without legal personality having its seat in the area of application of this Treaty and lawfully existing consistent with legal provisions, irrespective of whether the liability of its partners, associates or members is limited or unlimited and whether or not it operates for profit,

In respect of the People's Republic of Bulgaria:

Any juridical person as well as any economic company or other company or association with or without legal personality having its seat in the area of application of this Treaty and which is registered, in so far as this is required under Bulgarian legislation, whether or not it operates for profit, that under the terms of this Treaty make investments in the territory of the other Contracting Party.

Article 2.

(1) Each Contracting Party shall in its territory promote, so far as possible, investment by investors of the other Contracting Party.

(2) Each Contracting Party shall admit investments by investors of the other Contracting Party in accordance with its legislation.

(3) Investments which are permitted in accordance with the legislation of either Contracting Party shall enjoy the protection of this Treaty. Returns from the investment shall enjoy the same protection.

(4) Each Contracting Party shall in any case accord investments by investors of the other Contracting Party fair and equitable treatment.

Article 3.

(1) Neither Contracting Party shall, in its territory, subject investments from investors of the other Contracting Party to treatment less favourable than it accords to investments from investors of third countries.

(2) Neither Contracting Party shall subject investors of the other Contracting Party, as regards their activity in connection with investments in its territory, to treatment less favourable than it accords to investors of third countries.

(3) Neither Contracting Party shall, in its territory, subject companies in which investors of the other Contracting Party hold an interest, treatment less favourable, as regards their activity, than that accorded to companies with investors of third countries.

(4) Such treatment shall not extend to privileges accorded by either Contracting Party

- With regard to membership of a customs union, a free-trade area or a common market,

- By virtue of a double taxation agreement or other agreements regarding matters of taxation.

(5) Should there result from the legislation of either Contracting Party or from obligations under international law which go beyond this Treaty between the Contracting Parties, or which will be established in future, a provision whereby investors of the other Contracting Party or their investments are to be accorded treatment more favourable than that provided under this Treaty, that provision shall take precedence to the extent that it is more favourable.

(6) Each Contracting Party shall comply with all other obligations entered into with regard to investments from investors of the other Contracting Party in its territory.

Article 4.

(1) Investments from investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

(2) Investments from investors of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except on the basis of legislation in the public interest and against compensation. Such compensation shall be equivalent to the value of the investment expropriated immediately before the date the expropriation or the impending expropriation has become publicly known. The compensation shall be paid without delay following the expropriation; it shall be effectively realizable and freely transferable.

(3) The lawfulness of the expropriation shall, at the request of the investor, be reviewed in a properly constituted legal proceeding of the Contracting Party which has carried out the expropriation measure. In the event of disagreement over the amount of the compensation, the investor and the other Contracting Party shall hold consultations in order to determine the value of the expropriated investment. If agreement has not been reached within three months from the commencement of the consultations, the amount of the compensation shall, at the request of the investor, be reviewed either in a properly constituted proceeding of the Contracting Party that has carried out the expropriaton measure, or by means of an international arbitral tribunal.

(4) Investors of either Contracting Party who suffer investment losses as a result of war or other armed conflict, national emergency or other comparable events in the territory of the other Contracting Party shall be accorded treatment by that Contracting Party no less favourable than that accorded to investors of third countries in respect of any restitution,

indemnities or other valuable consideration; companies in which investors of the other Contracting Party hold an interest shall in such cases be accorded treatment no less favourable than that accorded to companies in which investors of third countries hold an interest. Payments shall be freely transferable.

(5) In matters governed by this article, the investments and investors of either Contracting Party shall enjoy treatment in the territory of the other Contracting Party that is no less favourable than that enjoyed by investments and investors of those third States that receive most favourable treatment in this respect.

Article 5.

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party free transfer of payments in connection with investments, in particular of the capital, the returns and, in the event of liquidation or sale, of the proceeds of the liquidation or sale.

(2) Transfers under articles 4, 5 and 6 shall be effected at the appropriate exchange rates of the country concerned.

Article 6.

If either Contracting Party makes payment to its investors under a guarantee that it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under article 7, recognize the assignment, whether under law or pursuant to a legal transaction, of any right or claim from such investors to the former Contracting Party. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such right or claim (assigned claims) which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments to be made to the Contracting Party concerned by virtue of which assignment, article 4, paragraph 2, and article 5 shall apply mutatis mutandis.

Article 7.

(1) Divergencies between the Contracting Parties concerning the interpretation or application of the present Treaty should so far as possible be settled by the Governments of the two Contracting Parties.

(2) If a divergency cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted ad hoc as follows: Each Contracting Party shall appoint one member, and these two members shall agree upon a national of the third State as their chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the most senior Under-Secretary-General who is not a national of either Contracting Party should make the necessary appointments.

(5) The chairman and the members of the arbitral tribunal must be nationals of a State with which both the Contracting Parties maintain diplomatic relations.

(6) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of the member it appoints and of its representatives in the arbitral proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 8.

The present Treaty shall apply to investments which investors of either Contracting Party have made in conformity with the legislation of the other Contracting Party in the territory of the other Contracting Party after 1 January 1965.

Article 9.

(1) With regard to the transport of goods and persons connected with investments, neither Contracting Party shall exclude or obstruct the haulage companies of the other Contracting Party and they shall, if required, grant licences for such transport operations.

(2) Within the scope of their domestic legislation the Contracting Parties shall give favourable consideration to applications for entry and residence of persons of one Contracting Party wishing to enter the territory of the other Contracting Party in connection with an investment; the same applies to employees of one Contracting Party who, in connection with an investment, wish to enter and reside in the territory of the other Contracting Party for the purpose of working as employees. Applications for work permits shall also be favourably considered.

Article 10.

In conformity with the Quadripartite Agreement of 3 September 1971,(1) this Treaty shall be extended to Berlin (West) in accordance with established procedure.

Article 11.

(1) The present Treaty shall be subject to ratification; the instruments of ratification shall be exchanged in Sofia.

(2) The present Treaty shall enter into force one month from the date of the exchange of the instruments of ratification. It shall remain in force for a period of 10 years; it shall be extended thereafter for an unlimited period unless denounced in writing by either Contracting Party 12 months before its expiration.

After the expiry of the period of 10 years the present Treaty may be denounced at any time by either Contracting Party giving 1 year's notice.

(3) In respect of investments made prior to the date of termination of the present Treaty, the provisions of articles I to 10 shall continue to be effective for a further period of 15 years from the date of termination of the present Treaty.

Done at Hanover on 12 April 1986, in two originals, in the German and Bulgarian languages, both texts being equally authentic.

For the Federal Republic of Germany:

HANS-DIETRICH GENSCHER

For the People's Republic of Bulgaria:

OGNJAN DOlNOW

PROTOCOL

On signing the Treaty concerning the Reciprocal Encouragement and Reciprocal Protection of Investments between the Federal Republic of Germany and the People's Republic of Bulgaria, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which shall be regarded as an integral part of the said Treaty:

(1. Ad Article 3

The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of article 3: the management, maintenance, use and enjoyment of an investment. The following shall, in particular, be deemed "treatment less favourable" within the meaning of article 3: restricting the purchase of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, impeding the marketing of products inside or outside the country, as well as any other measures having similar effects. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favourable".

(2. Ad Article 4

(a) The provisions of article 4 shall also apply to the nationalization or taking into public control of an investment and to any other withdrawal or restriction of property rights by means of sovereign measures, the effects of which are equivalent to an expropriation.

(b) The international arbitral tribunal referred to in paragraph 3 shall be constituted ad hoc as follows: Each Party shall appoint one member and these two members shall agree upon a national of a third State as their chairman. Such members shall be appointed within two months, and such chairman within three months, from the date on which either Party has informed the other Party that it intends to submit the dispute to an arbitral tribunal. If the periods specified above have not been observed, either Party may, in the absence of any other relevant arrangement, invite the chairman of the international arbitral tribunal in the Stockholm Chamber of Commerce to make the necessary appointments. The chairman and members of the arbitral tribunal must be citizens of a State with which both Contracting Parties have diplomatic relations.

The arbitral tribunal shall establish its own procedures under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) of 15 December 1976. The tribunal shall reach its decisions by a majority vote; its decisions shall be final and binding. They shall be applied in accordance with national law. The decision must state the bases on which it is issued. The grounds for the decision must be specified if either Party so requests.

Each Party shall bear the cost of its own member and of its representation in the arbitral procedures; the cost of the chairman and the remaining costs shall be borne in equal parts by both Parties.

(c) In the consultations and arbitral procedures referred to in article 4, paragraph 3, the Contracting Parties shall be represented by their competent ministries.

(3. Ad Article 5

(a) The transfer shall be deemed to have been made "without delay" for the purpose of article 5, paragraph 2, if effected within the period normally required for the completion of transfer formalities. The period shall commence on the day on which the relevant request has been submitted and may on no account exceed two months.

(b) In article 5, the expression "each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments in connection with investments, in particular of the capital, returns and, in the event of liquidation or sale, of the proceeds of the liquidation or sale" shall mean, in respect of the People's Republic of Bulgaria: in accordance with the foreign-currency regulations of the People's Republic of Bulgaria at the time the present Treaty is signed, payments under article 5 from the funds of mixed companies shall be transferred abroad from their foreign-currency account. If the mixed company does not have sufficient foreign-currency reserves for the payments under article 5, the National Bank of Bulgaria shall make available the foreign-currency reserves necessary for the transfer in exchange for national currency. With regard to the transfer of profits and interest, the above provision shall apply if the mixed company is carrying on an economic activity with the authorization of the appropriate Bulgarian authorities, the earnings from which shall be wholly or partly in national currency.

Done at Hanover on 12 April 1986, in two originals, in the German and Bulgarian languages, both texts being equally authentic.

For the Federal Republic of Germany:

HANS-DIETRICH GENSCHER

For the People's Republic of Bulgaria:

OGNJAN DOlNOW