AGREEMENT BETWEEN THE REPUBLIC OF AUSTRIA AND THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS

THE REPUBLIC OF AUSTRIA AND THE UNION OF SOVIET SOCIALIST REPUBLICS, hereinafter referred to as the 'Contracting Parties',

DESIRING to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

TAKING INTO ACCOUNT that the promotion and reciprocal protection of such investments will foster the development of mutually beneficial cooperation in the fields of trade and the economy, as well as science and technology,

HAVE AGREED AS FOLLOWS:

Article 1.

(1) For the purposes of this Agreement

(a) the term 'investment' covers all types of assets which an investor of a Contracting Party places in the territory of the other Contracting Party in accordance with the latter's legislation, and in particular:

(i) buildings, fixed assets, equipment and other tangible assets; – property and other rights in rem, such as liens, rights of use and other rights which secure obligations;

(ii) shareholdings and other forms of equity participation;

(iii) claims to money provided for the creation of economic value, or to a benefit having economic value; – copyright, industrial property rights such as patents, trade marks, industrial designs and models, utility models, trade names, as well as technical processes and know-how;

(iv) rights to carry out an economic activity on the basis of an authorisation for the prospect for and extract natural resources;

(b) the term 'investor' means

(i) in relation to the Republic of Austria, any natural person who is a national of the Republic of Austria and any legal person or partnership under commercial law, which has been established in accordance with the legislation of the Republic of Austria and has its registered office in the territory of the Republic of Austria, which in each case makes an investment in the territory of the other Contracting Party;

(ii) with regard to the Union of Soviet Socialist Republics, any person who, in accordance with the legislation of the Union of Soviet Socialist Republics makes an investment within the territory of the other Contracting Party;

(c) the term 'returns' comprises amounts which an investment yields or could yield, in particular in the form of profits, royalties, dividends, interest, payments from licences, commissions, payments for technical assistance and technical services, as well as other remuneration;

(d) the term 'expropriation' means nationalisation or any other measure with an effect equivalent to expropriation taken by one Contracting Party against the investment of an investor of the other Contracting Party.

(2) This Agreement applies to the territory of the Republic of Austria and to the territory of the Union of Soviet Socialist Republics, as well as to the economic zone and the continental shelf extending beyond the territorial waters of the Union of Soviet Socialist Republics, over which it exercises, in accordance with international law, exercises sovereign rights and

jurisdiction for the purposes of exploration, extraction and protection of mineral resources.

Article 2.

(1) Each Contracting Party shall, in accordance with its legislation, promote within its territory investments by investors of the other Contracting Party, permit such investments and treat them in all cases fairly and equitably.

(2) Investments and their returns shall enjoy the full protection of this Agreement. The expansion or alteration of an investment shall be carried out in accordance with the legislation of the Contracting Party in whose territory the investment was made.

Article 3.

(1) Each Contracting Party undertakes to accord to investments made in its territory by investors of the other Contracting Party treatment no less favourable than that accorded to investments by investors of a third State.

(2) Each Contracting Party undertakes to treat, within its territory, the activities of investors of the other Contracting Party in relation to an investment no less favourably than the activities of investors from a third country.

(3) The provisions of this Agreement shall not be interpreted as obliging either Contracting Party to grant to investors of the other Contracting Party or to their investments any preferences or advantages which the first Contracting Party grants to investors from a third country or their investments, or will grant in the future, on the basis of

(a) an international treaty relating to a free trade area, a customs union, a common market, an organisation for mutual economic assistance, or an international agreement which entered into force prior to the signing of this Agreement, which provides for provisions comparable to those granted to members of the aforementioned organisation by a Contracting Party,

(b) an international agreement, an arrangement or domestic legislation relating to tax matters,

(c) an arrangement to facilitate border traffic.

Article 4.

(1) Neither Contracting Party shall take any measure to expropriate an investment made in its territory by an investor of the other Contracting Party, except in the public interest. Such measures shall be carried out in accordance with the legislation in force in that territory and subject to the payment of compensation. Such measures shall not be discriminatory in nature, and the compensation must be paid without undue delay. In the event that the compensation is not paid within three months of the date on which the decision determining its amount becomes final, interest shall be calculated from the expiry of that period until the date of payment, at the bank interest rate of that Contracting Party in whose territory the investment was made. The compensation must be transferable from the territory of one Contracting Party to the territory of the other Contracting Party in freely convertible currency.

(2) The compensation must correspond to the real value of the investment immediately prior to the date on which the actual measure of expropriation was taken or the imminent expropriation became known.

(3) The investor shall have the right to have the amount and the terms of payment of the compensation reviewed by the competent authority of the Contracting Party which took the expropriation measure, or by an international arbitral tribunal in accordance with Article 7 of this Agreement.

(4) The provisions of paragraphs 1, 2 and 3 shall also apply both to investment returns as well as to any proceeds to which the investor is entitled in connection with a partial or complete liquidation or disposal of the investment.

Article 5.

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party, without undue delay, the transfer in freely convertible currency of payments in connection with investments, and in particular:

(a) investment income;

(b) repayments arising from claims to funds provided for the creation of economic value;

(c) proceeds received by the investor in connection with the partial or complete liquidation or disposal of his investment;

(d) compensation as provided for in Article 4(1) of this Agreement.

(2) Transfers provided for in this Article shall be made at the exchange rates applicable on the date of the transfer.

(3) The exchange rate and bank charges shall be determined by the respective banking system within the territory of each Contracting Party. The bank charges shall be fair and reasonable.

Article 6.

Where one of the Contracting Parties or an institution authorised by it makes payments to its investor on the basis of a guarantee 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 investor of the former Contracting Party under Article 7(2) of this Agreement and the rights of the former Contracting Party under Article 8(1) of this Agreement, the transfer of the rights or claims of that investor by operation of law or by virtue of a legal transaction to the first-mentioned Contracting Party or an institution authorised by it for that purpose. Articles 4 and 5 of this Agreement shall apply mutatis mutandis to the transfer of payments to be made to the relevant Contracting Party or an institution authorised by it for this purpose on the basis of the transferred claims.

Article 7.

(1) Disputes between one of the Contracting Parties and an investor of the other Contracting Party concerning the amount or the terms of payment of compensation pursuant to Article 4 of this Agreement, as well as the transfer of payments pursuant to Article 5 of this Agreement, shall be settled through negotiation.

(2) If such a dispute cannot be settled in this manner within three months from the date of written notification by one of the disputing parties to the other disputing party, it may, at the investor's request, be submitted to the Arbitration Court of the Stockholm Chamber of Commerce or to an ad hoc arbitral tribunal in accordance with the UNCITRAL Arbitration Rules.

(3) The arbitral tribunal shall render its decisions on the basis of the provisions of this Agreement, the legislation of the Contracting Party in whose territory the investment was made, and the generally recognised principles and rules of international law.

(4) The award shall be final and binding on both parties to the dispute. Each Contracting Party shall ensure the recognition and enforcement of arbitral awards in accordance with its relevant legislation.

Article 8.

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be resolved through negotiation. The Contracting Parties shall endeavour to resolve any difficulties arising from the application of this Agreement by mutual agreement. If the dispute cannot be settled in this way, it shall be submitted to an arbitral tribunal at the request of either Contracting Party.

(2) The arbitral tribunal shall be constituted on a case-by-case basis. Each Contracting Party shall appoint one member to the arbitral tribunal; the chairperson of the tribunal shall be appointed jointly by the two members from among the nationals of a third State. The members of the arbitral tribunal shall be appointed within two months, and the chairperson of the arbitral tribunal within three months from the date on which one of the Contracting Parties has declared its intention to submit the dispute to an arbitral tribunal.

(3) If the time limits specified in paragraph 2 are not observed, then, in the absence of any other agreement, either Contracting Party may apply to the President of the International Court of Justice with a request to make the necessary appointments.

(4) The arbitral tribunal shall decide by a majority of votes. Its decision shall be binding. Each Contracting Party shall bear the costs associated with the services of the member of the arbitral tribunal appointed by it; the costs associated with the services of the President of the arbitral tribunal, as well as the remaining costs, shall be borne by the Contracting Parties in equal shares. In all other matters, the arbitral tribunal shall determine its own rules of procedure.

Article 9.

This Agreement shall apply to all investments made since 1 January 1956 or made after the entry into force of this Agreement.

Article 10.

(1) This Agreement is subject to ratification and shall enter into force on the first day of the third month following the month in which the instruments of ratification were exchanged.

(2) This Agreement is concluded for a period of fifteen years. Unless either of the Contracting Parties, twelve months prior to the expiry of the aforementioned fifteen-year period, submits, through diplomatic channels, a written declaration of its intention to terminate the Agreement, the Agreement shall remain in force until one of the Contracting Parties terminates it with twelve months' notice.

(3) With regard to investments made prior to the date on which the notification of the termination of this Agreement takes effect, the provisions of Articles 1 to 9 of this Agreement shall remain in force for a further fifteen years from that date.

DONE at Moscow, on 8 February 1990, in two original copies, each in the German and Russian languages, both texts being equally authentic.

For the Republic of Austria:

Dr Wolfgang Schüssel

For the Union of Soviet Socialist Republics:

W.S. Pavlov