AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA ON THE PROTECTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of China and the Government of the Republic of Macedonia, hereinafter the "Parties",

Desiring to create favorable conditions for greater economic cooperation and investments on the basis of principles of equality and mutual benefit; and

Recognizing that the promotion and reciprocal protection of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(a) "investment" means every kind of asset and in particular, though not exclusively, includes:

(i) movable and immovable property as well as other, such property rights

(ii) shares in and stock and debentures of a company and any other form of interest in a company;

(iii) claims to money, or lo any performance under contract having an economic value;

(iv) intellectual properly righls, including without limitation the rights relating to trademark, patent, new design patent, copyright, trade secret, integrated circuit layout protection, and all other rights resulting from intellectual activities in the industrial, scientific, literary or artistic fields and tradenames and goodwill, in accordance with each Party's laws and regulations;

(v) rights ot permits conferred by law or under contract, including concessions to search for, cultivate, extract, ot exploit natural resources;

The said term "investment" shall refer to those investments admitted in the territories of the Parties in accordance with relevant laws, regulations and administrative practices. Any change in the form in which assets are invested does not affect theit character as investments

(b) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

(c) "investor" means any natural person who is a national of either Party or a juristic person such as a corporation, firm or associations incorporated or established under the law in force of either Party

(d) "territory" means

(i) for the Republic of China: The territory, including the territorial sea and any maritime area situated beyond the territorial sea, over which the Republic of China may exercise sovereign rights or jurisdiction in accordance with relevant international and domestic laws

(ii) For the Republic of Macedonia: The territory, including land, water, and air space, over which the Republic of Macedonia exercises sovereign rights and jurisdiction according to international law.

Article 2. Promotion and Admission of Investments

(1) Each Party shall, subject to its laws and regulations in the field of foreign investment, encourage investments in its

territory by investors of the other Party, and, subject to its rights to exercise powers conferred by its laws, shall admit such investment

(2) Each Party shall grant, in accordance with its laws and 1egulations, the necessary permits in connection with such investments and with the implementation of licensing agreements and contracts for technical, commercial, or administrative assistance

Article 3. Treatment of Investments

(1) Investments and returns of investors of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection in the territory of the other Party Neither Party shall in any way impair, by adopting umeasonable discriminatory measmes, the management, maintenance, use, enjoyment or disposal of investments in its territory of investms of the other Party.

(2) Each Party shall accord investments made by investors of the other Party in the former's territory a treatment no less favorable than that granted to investments of its own investments, or to investments of investors of any third State, whichever is more favorable

(3) The provisions of paragraph (2) shall not be construed 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:

(a) any existing or future customs union, free trade area, common market, any similar international agreement or any interim agreement leading up to such customs union, free trade area, or common market to which either of the Parties.

Article 4. Compensation for Losses

Investors of either Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, revolution, revolt, insurrection, riot, a state of national emergency or any other similar events shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable than that which the latter Party accords to its own investors or investors of any third State, whichever is more favorable.

Article 5. Expropriation

(1) Investments of investors of either Party shall not be nationalized, expropriated or subjected to measures having effects equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Party except in tlie public interest, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is earlier, shall include interest calculated according to the annual LIBOR rate until the date of payment, shall be made without delay, and be effectively realizable.

(2) The investor affected thereby shall have a right, under the law of either Party making the expropriation, to prompt review, by judicial or other independent authorities of that Party in accordance with the procedures established by the law of that Party, if his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

Article 6. Transfers of Investments and Returns

(1) Each Party, in whose territory investments have been made by investors of the other Party, shall grant those investors a free transfer of the payments relating to these investments, particularly of:

(a) the capital and additional sums necessary for the maintenance and development of the investment;

(b) gains, profits, interests, dividends and other current income;

(c) funds in repayment of loans including interest regularly contacted and documented and directly related to a specific investment;

(d) royalties and fees;

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

(f) compensations provided for in Articles 4 and 5;

(g) the earnings of nationals of one Party who are allowed to work in connection with an investment in the territory of the other.

(2) Transfers shall be effected without delay in a freely convertible currency in the normal applicable exchange rate at the date of the transfer, in accordance with the procedures established by the Party in whose territory the investment was made, provided that all financial obligations of the said investors to this Party have been fulfilled.

Article 7. Settlement of Disputes between and Investor and a Party

(1) Disputes between an investor of either Party and the other Paity concerning an obligation of the latter under this Agreement in relation to an investment of the former which have not been amicably settled shall, after a period of three months from written notification of a claim, be submitted to international arbitration if the investor concerned so wishes.

(2) Where the dispute is referred to international arbitration, the investor and the Party concerned in the dispute may agree to refer the dispute either to:

(a) the International Court of Arbitration of the International Chamber of Commerce in accordance with its Arbitration Rules; or

(b) an international arbitrator or ad hoc arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

If after a period of three months from written notification of the claim there is no agreement to one of the above alternative procedures, the dispute shall at the request in writing of the investor concerned be submitted to arbitration at the International Court of Arbitration of the International Chamber of Commerce. The parties to the dispute may agree in writing to modify the rules applicable to the arbitration. The award shall be final and binding on the parties to the dispute. Each party undertakes to enforce the awards.

(3) The arbitration award shall be based on the provisions of this Agreement, the national legislation of the Party on the territory of which the investment has been made, and the rules and generally accepted principles of international law.

Article 8. Disputes between the Parties

(1) Disputes between the Parties concerning the interpretation or application of this Agreement shall, if possible, be amicably settled through consultation.

(2) If a dispute between the Parties cannot thus be settled within a period of six months, it shall, upon the request of either Party, be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way: Within two months of the receipt of the request for arbitration, each 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 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) of this article the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the Chairman of the International Court of Arbitration of the International Chamber of Commerce to make any necessary appointments. If the Chairman is a national of either Party or if he is otherwise prevented from discharging the said function, the Vice-Chairman shall be invited to make the necessary appointments. If the Vice-Chairman is a national of either Party or if he too is prevented from discharging the said function, the Member of the International Court of Arbitration of the International Chamber of Commerce next in seniority who is not a national of either Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Each Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings; the costs of the Chairman and the remaining costs shall be borne in equal parts by the Parties. The tribunal may, however, in its decision direct that a higher proportion of this costs shall be borne by one of the two Parties. The tribunal shall determine its own procedure.

(6) The award reached by the arbitral tribunal shall be final and binding on the Parties.

Article 9. Subrogation

(1) If a Party or its designated agency makes a payment to its own investm under a guarantee it has given in respect of an investment in the territory of the other Party, the latter Party shall recognize the assignment, whether by law or by legal transaction, to the former Party of all the rights and claims of the indemnified investor, and shall Irecognize that the former Party or its designated agency is entitled to excercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor. This paragraph shall not prejudice the right of the latter Party, in whose territory the investment was made, to seek the fulfillment of the obligations of the investments concerned.

(2) In case of subrogation of paragraph 1 of this Article, the investor concerned shall no longer have the right to institute a complaint once the assignment has been transferred to the Party or the designated agency.

Article 10. Application of other Rules

(1) If the provisions of the law of either Party or obligations under international law existing at present or established hereafter between the Parties in addition to the rules contained in this Agreement, whether general or specific, entitling investments and returns of investors of the other Party to treatment more favorable than those which provided hereunder Agreement, such rules shall prevail.

(2) Each Party shall observe any obligation it may have entered into with regard to investments of investors of the other Party.

Article 11. Scope of the Agreement

This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agreement, but shall not apply to any dispute which arose before entry into force of this Agreement.

Article 12. Exchange of Information

Upon the request of either Party, the other Party will provide the necessary information on the laws, regulations, administrative practice or policies the application of which influences the investments encompassed by this Agreement.

Article 13. Final Provisions

(1) This Agreement shall enter into force on the date of signature. Each Contracting Party shall notify the other through diplomatic channels that the necessary procedure, according to the domestic legislative, has been fulfilled.

(2) This Agreement shall 1emain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Party shall have given written notice of termination to the other.

(3) In respect of investment made prior to the date when the notice of termination becomes effective, the provisions of articles 1 to 12 shall 1emain in force with respect to such investment for a further period of twenty years from that day.

IN WITNESS WHEREOF the undersigned, being duly authorized theteto, have signed this Agreement.

Done in duplicate in Taipei on the 9th of June 1999, in the Chinese, Macedonia and English languages, all the texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of China

Chih-Gang WANG

Minister of Economic Affairs

For the Government of the Republic of Macedonia

Nikola GRUEVSKI

Minister of Trade