AGREEMENT BETWEEN THE GOVERNMENT OF ROMANIA AND THE GOVERNMENT OF THE REPUBLIC OF ALBANIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Romania and the Government of the Republic of Albania hereinafter referred to as the Contacting Parties:

DESIRING to intensify their economic cooperation to the mutual benefit of both countries on a long term basis;

HAVING as their objective to create favourable conditions for investments by investors of either Contracting Party in the territory of the other Contracting Party;

RECOGNIZING that the promotion and protection of investments on the basis of the present Agreement, will stimulate the initiative in this field;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" means every kind of asset invested in accordance with the legislation in force of each Contracting Party and in particular, though not exclusively, includes:

a) Movable and immovable property and any other rights such as: mortgages, liens, pledges and similar rights;

b) Shares, stocks, debentures and any other form of interests of participation in a company;

c) Loans, claims to money or to any performance under a contract having an economic value and related to an investment;

d) Intellectual and industrial property rights including rights with respect to copyrights, trademarks, tradenames, patents, technological processes, know-how and goodwill;

e) Any right conferred by law or under a contract including rights to search for, cultivate, extract or exploit natural resources.

Any alteration of the form in which the investments have been made, does not affect their substance as investments, provided that such alteration does not contradict the legislation of the relevant Contracting Party.

2. The term "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and other fees.

3. The term "Investor" shall comprise with regard to either Contracting Party:

a) Natural persons having the citizenship of that Contracting Party in accordance with its law;

b) Legal persons constituted in accordance with the law of that Contracting Party and having their seat within its territory.

4. The term "Territory" means in respect of either Contracting Party, the territory under its sovereignty as well as the territorial sea, the continental shelf and economic exclusive zone over which that Contracting Party exercises, in conformity with International Law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall in its territory promote, as far as possible, investments by investors of the other Contracting Party and admit such investments in accordance with its legislation.

2. Returns from the investments and, in cases of approved reinvestments, the income resulting therefrom enjoy the same protection as the original investments.

Article 3. Most Favoured-nation and National Treatment Provisions

1. Neither Contracting Party shall subject investments of the other Contracting Party to treatment less favourable than that which it accords to investments of its own investors or to investments of investors of any third State.

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 that which it accords to its own investors or to investors of any third State.

3. Such treatment shall not relates to privileges which either Contracting Party accords to investors of any third State on account of its membership or of its association to a customs or economic union, a common market, a free trade area, or similar institutions.

4. The treatment granted under this Article shall not extend to advantages which either Contracting Party accords to investors of any third State by virtue of a double taxation agreement or other agreements regarding matters of taxation.

Article 4. Expropriation

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

2. Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party except for the public purpose and against prompt, adequate and effective compensation, and always under due process of law and without discrimination. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the actual or impending expropriation, nationalization or comparable measure has been taken or become publicly known, whichever is earlier.

The compensation shall be paid without delay, and shall carry the current interest until the time of payment. It shall be effectively realizable and freely transferable.

3. Investors of either contracting Party shall enjoy Most Favoured Nation Treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

Article 5. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party, treatment as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

Article 6. Repatriation of Capital and Returns

1. Each Contracting Party shall guarantee, in respect of investments of investors of the other Contracting Party, the free transfer of the capital invested and its returns.

The transfers shall be made, without delay in the freely convertible currency in which the investment was made, or in another freely convertible currency to be agreed upon between the investor and the Contracting Party concerned and at the rate of exchange applicable on the date of transfer.

2. Such transfers include in particular, though not exclusively:

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

b) Profits, interests, dividends and other current incomes;

c) Funds in repayment of loans;

d) Royalties and other fees;

e) Proceeds of sale or liquidation of the whole or any part of the investment;

f) Personal earnings of foreign citizens employed by the investor, according to the legislation of each Contracting Party.

Article 7. Subrogation

If the investments of an investor of one of the Contracting Parties are insured against noncommercial risks under a legal system of guarantee, any subrogation of the insurer or re-insurer into the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party.

Article 8. Application

This Agreement shall also apply to investments made prior to its entry into force, by investors of either Contracting Party in the territory of the other Contracting Party consistent with the legislation of the latter Contracting Party. However the present Agreement shall not apply to disputes that have arisen before its entry into force.

Article 9. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled amicably through diplomatic channels.

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

3. The arbitral tribunal shall be constituted as follows:

Each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a citizen of a third State as Chairman. The arbitrators shall be appointed within three months, the Chairman within five 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 one of the Contracting Parties fails to appoint its arbitrator and has not proceeded to do so within the specified period, the other Contracting Party may invite the President of the International Court of Justice to make the necessary appointments. If the two arbitrators are unable to reach an agreement, in the specified period, on the choice of the third arbitrator, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointments.

5. If, in the cases provided for in the fourth paragraph of the present Article, the President of the International Court of Justice is prevented from exercising the said function, or is a citizen of either Contracting Party, the Vice President shall be invited to make the necessary appointments. If the Vice President is prevented from fulfiling of the said function or is a citizen of either Party, the most senior member of the Court available, who is not a citizen of either Party, shall be invited to make the necessary appointments.

6. The arbitral tribunal shall decide on the basis of International Law, including particularly the present Agreement and other relevant agreements existing between the two Contracting Parties, as well as the generally acknowledged rules and principles of International Law.

7. Unless the contracting Parties decide otherwise, the tribunal shall determine its own procedure.

8. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Contracting Parties.

9. Each contracting Party shall bear the costs of the arbitrator appointed by itself and of its representation in the arbitral proceedings. The cost of the Chairman as well as the other costs will be bom in equal parts by the Contracting Parties.

Article 10. Settlement of Disputes between an Investor of One Contracting Party and the other Contracting Party

1. Any dispute between an investor of one Contracting Party and the other Contracting Party concerning investments shall, as far as possible, be settled in an amicable way.

2. If such dispute cannot be settled within six months from the date either party requested amicable settlement, the investor of the contracting Party concerned may submit the dispute at his choice, for settlement either to:

a) The competent court of the contracting Party in the territory of which the investment has been made; or

b) The International Centre for Settlement of Investment Disputes (ICSID) provided for by Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, D.C., on 18 March 1965, if both Contracting Parties will become member to such Convention (untill that moment the Additional Facilities for the Administration of Conciliation, Arbitration and Fact-finding Proceedings are to be applied); or

c) An ad-hoc international tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Each Contracting Party hereby consents to the submission of an investment dispute to the international conciliation or arbitration.

4. The Contracting Party which is a party to the dispute shall at no time whatsoever during the procedures involving investment disputes, assert as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.

Article 11. Application of other Rules

If the provisions of the legislation of either Contracting Party, or obligations under International Law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific entitling investments by investors of the other Contracting Party to a treatment more favourable than that provided for by the present Agreement, such regulation shall, to the extend that it is more favourable, prevail over the present Agreement.

Article 12. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time agreed upon through diplomatic channels.

Article 13. Entry Into Force, Duration, Termination

1. This Agreement shall enter into force thirty days after the date on which the Contracting Parties inform each other through diplomatic channels of its ratification or approval, according to their respective legislation. It shall remain in force for a period of 10 years.

2. Unless notice of termination has been given by either Contracting Party at least six months before the date of expiry of its validity, this Agreement shall be extended tacitly for periods of 10 years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3. In respect of investments made prior to the date of the termination of this Agreement the foregoing Articles shall continue to be effective for a further period of 10 years from that date.

Done in Bucharest on 11th of May, 1994 in two originals texts in Romanian, Albanian and English languages, all texts being equally authentic. In case of the different interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF ROMANIA

FOR THE GOVERNMENT OF THE REPUBLIC OF ALBANIA