Agreement between the Government of the Republic of Turkey and the Government of the Italian Republic on the Reciprocal Promotion and Protection of Investments

The Government of the Republic of Turkey and the Government of the Italian Republic (hereafter referred to as the Contracting Parties),

Desiring to establish favourable conditions for improved economic cooperation between the two countries, and especially for investment by investors of one Contracting Party in the territory of the other Contracting Party; and

Acknowledging that offering encouragement and mutual protection to such investments, based on International Agremeents, will contribute towards simulating business ventures that will foster the prosperity of both Contracting Parties,

Hereby agree as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment", shall be construed to mean any kind of property invested before or after the entry into force of this Agreement by a natural or juridical person of one Contracting Party in the territory of the other, in conformity with the laws and regulations of the latter.

Any alteration in the form in which assets are invested or re-invested shall not affect their character as an investment.

Without limiting the generality of the foregoing, the term "investment" comprises:

a) Movable and immovable property, and any other rights in rem including, insofar as they may be used for investment purposes, real securities on others' property;

b) Shares, debentures, stocks, equity holdings or any other form of participation in companies connected with an investment;

c) Credit for sums of money and interest payments arising under loan agreements or any right for obligations, performances or services having an economic value connected with an investment, as well as reinvested income as defined in paragraph 5 hereafter;

d) Copyrights, commercial trade marks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade secrets, trade names and goodwill;

e) Any right of a financial nature accruing by law or by contract and any licence, concession and franchise issued in accordance with current provisions governing the exercise of business activities, including prospecting for, cultivating, extracting and exploiting natural resources connected with an investment.

2. The term "investor" shall be construed to mean any natural or juridical person of a Contracting Party who effected, is effecting, or intending to effect, investments in the territory of the other Contracting Party.

3. The term "natural person", means natural person deriving his status as national of either Contracting Party according to its applicable law.

4. The term "juridical person", in reference to either Contracting Party, shall be construed to mean any entity established in the territory of one of the Contracting Parties, and recognized as juridical person in accordance with the respective national legislation such as public establishments, companies or partnerships, public trusts or associations regardless of whether their liability is limited or otherwise.

5. The term "returns", means the amounts that have been yielded or have realised but not yet yielded by an investment, including in particular, profits, interest income, income from invested capital, dividends, royalties, returns for assistance and technical services, reinvested income, capital gains and miscellaneous fees.

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

Article 2. Promotion and Protection of Investment

1. Both Contracting Parties shall encourage investors of the other Contracting Party to invest in their territory, and shall authorize these investments in accordance with their legislation.

2. Both Contracting Parties shall at all times ensure fair and equitable treatment of the investments of investors of the other Contracting Party. Both Contracting Parties shall ensure that the management, maintenance, enjoyment, use, transfer, conversion, disposal and liquidation of investments effected in their territory by investors of the other Contracting Party, as well as the companies and firms in which these investments have been made, shall in no way be subject to unjustified or discriminatory measures.

3. Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party and members of the families shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing investment.

4. Each Party shall make public all laws, regulations, administrative practices and procedures that pertain to or affect investments.

Article 3. National Treatment and the Most Favoured Nation Clause

1. Both Contracting Parties, within the bounds of their own territory, shall offer investments effected by, and the income accruing to, investors of the other Contracting Party no less favourable treatment than that accorded to investment effected by, and income accruing to, its own investors or investors of Third States.

2. The treatment accorded to the activities connected with the investments of investors of either Contracting Party shall not be less favourable than that accorded to similar activities connected with investments made by their own investors or by investors of any Third Country.

3. The provisions of 1 and 2 of this Article do not apply to any advantages or privileges which one Contracting Party grants or may grant at some future time to Third States by virtue of its membership in Customs or Economic Unions, Common Market Associations, Free Trade Areas, Regional or Subregional Agreements, or Agreements entered into in order to prevent double taxation or to facilitate frontier trade.

Article 4. Compensation for Damages or Losses

Should investors of one of the two Contracting Parties incur losses in their investments in the territory of the other Contracting Party, due to war or other forms of armed conflict, state of emergency, revolt, insurrection, riot or other similar events, the Contracting Party in which the affected investment has been made shall offer adequate compensation. Compensation payments shall be freely transferable in a convertible currency without undue delay.

The investors concerned shall receive the same treatment as the investors who are nationals of the Contracting Party having liability, and, at all events as defined in the previous paragraph, shall be treated no less favourably than investors of Third States.

Article 5. Nationalization or Expropriation

a) The investments to which this Agreement relates shall not be subject to any measure which might limit permanently or temporarily their joined rights of ownership, possession, control or enjoyment, except where specifically provided by law and by judgements or orders issued by Courts or Tribunals having jurisdiction.

b) Investments of investors of one of the Contracting Parties shall not be directly or indirectly nationalized, expropriated,

requisitioned or subjected to any measures having similar effects in the territory of the other Contracting Party, except for public purposes, or national interest, against immediate, full and effective compensation, and on condition that these measures are taken on a non-discriminatory basis and in conformity with all legal provisions and procedures.

c) The just compensation shall be equivalent to the effective market value of the investment immediately prior to the moment in which the decision to nationalize or expropriate is announced or made public; and shall be calculated according to internationally acknowledged evaluation standards. Whenever there are difficulties in ascertaining the market value, the compensation shall be calculated on the basis of a fair appraisal of establishment's constitutive and distinctive elements as well as of the firm's activities components and results. Compensation shall include interest calculated at the highest applicable interest rate of internal public borrowings of the Treasury of the concerned Party at the date of payment, accruing from the date of nationalization or expropriation to the date of payment. In the event of failure to reach an agreement between the investor and the Contracting Party having liability, the amount of the compensation shall be calculated following the settlement of dispute procedure provided by Article 9 of this Agreement. Once the compensation has been determined, is shall be paid promptly and authorization for its repatriation in convertible currency issued.

Article 6. Repatriation of Capital, Profits and Income

1. Each of the Contracting Parties shall guarantee that, after investors have complied with all their fiscal obligations, they can transfer the following abroad without undue delay in any convertible currency and at the prevailing exchange rate applicable on the date of transfer:

a) Capital and additional capital amounts used to maintain and increase investments;

b) Net income, dividends, royalties, payments for assistance and technical services, interests, and any other profits;

c) The proceeds of the total or partial sale or liquidation of an investment;

d) Funds to repay loans relating to an investment and interest due thereon;

e) Remuneration and allowances paid to nationals of the other Contracting Party in respect of subordinate work and services performed in relation to an investment effected in its territory, in the amount and manner prescribed by current national legislation and regulations;

f) Payments deriving by the provisions of articles 4 and 5 of this Agreement.

2. While considering the provisions of Article 3 of this Agreement, the Contracting Parties undertake to apply to the transfers mentioned in paragraph 1 of this Article, the same treatment that is accorded to investments effected by investors of a Third State, if this is more favourable.

3. Notwithstanding the provisions of paragraphs 1. and 2., either Contracting Party may maintain laws and regulations (a) prescribing procedures to be followed concerning transfers permitted by this Article, provided that such procedures are completed without undue delay by the concerned Contracting Party and do not impair the substance of the rights set forth in paragraphs 1. and 2.; (b) requiring reports of currency transfers.

4. For the purposes of this Agreement "without undue delay" as related to transfers, means that it shall be possible to perform such transfers as rapidly as possible in accordance with normal commercial transaction procedures.

Article 7. Subrogation

In the event that one Contracting Party or any of its institutions has provided an insurance guarantee in respect of non-commercial risks for investments effected by one of its investors in the territory of the other Contracting Party, and has made payments on the basis of that guarantee, the other Contracting Party shall recognize the assignment of the rights of the insured investor to the Contracting Party guarantor and its subrogation shall not exceed the original rights. In relation to the transfer of payments to the Contracting Party or its Institution by virtue of such subrogation, the provisions of Articles 4, 5 and 6 of this Agreement shall apply.

Article 8. Settlement of Disputes between Investors and the Contracting Parties

1. Any disputes arising between a Contracting Party and the investors of the other, including disputes relating to compensation for expropriation, nationalization, requisition or similar measures and disputes relating to the amount of the relevant payments shall be settled amicably, as far as possible.

2. In the event that such a dispute cannot be settled amicably within six months from the date of a written application, the investor in question may submit the dispute, at his discretion, for settlement to:

a) Any previously agreed applicable dispute settlement procedures, according the internal applicable law;

b) The Contracting Party's Court, at all instance, having territorial jurisdiction;

c) An ad hoc Arbitration Tribunal, in accordance with the Conciliation and Arbitration Rules of the "UN Commission on International Trade Law" (UNCITRAL);

In relation to UNCITRAL arbitration, it shall be conducted in accordance with Arbitration Standards of the United Nations Commission on International Trade Law (UNCITRAL), pursuant to Resolution 31/98 of 15th December 1976 adopted by the United Nations General Assembly, and with the following provisions:

There shall be three Arbitrators, and if they are not nationals of the Contracting Parties they shall be nationals of States which have diplomatic relations with both Contracting Parties.

d) The "International Centre for the Settlement of Investment Disputes", for the application of the concilation or arbitration procedures provided by the Washington Convention of 18th March 1965 on the "Settlement of Investment Disputes between States and Nationals of other States", whenever, or as soon as both Contracting Parties have validly acceded to it.

Each Contracting Party hereby consents to submit to the afore mentioned UNCITRAL or ICSID procedures any investments dispute arising between that Contracting Party and investors of the other Contracting Party.

3. The arbitration awards granted through the procedure which has been selected by the investor concerned shall be final and binding for all parties in dispute. Each Contracting Party commits itself to execute the award according to its national law. The acknowledgment and the enforcement of the decision to the Arbitration Tribunal in the territories of the Contracting Parties shall be governed by their respective national legislation in accordance with the relevant International Conventions to which they are Parties.

4. Both Contracting Parties shall refrain from negotiating through diplomatic channels any matter relating to any arbitration procedure or judicial procedures that may have been instituted until these procedures have been concluded, and one of the Contracting Parties has failed to comply with the ruling of the Arbitration Tribunal or the judgement of the court of law within the terms prescribed by the ruling or the judgement, or any other terms that derive from international or internal law applicable to the case at issue.

Article 9. Settlement of Disputes between the Contracting Parties

1. Any disputes which may arise between the Contracting Parties relating to the interpretation and application of this Agreement shall, as far as possible, be settled amicably through diplomatic channels.

2. In the event that the dispute cannot be settled within three months from the date on which one of the Contracting Parties notifies, in writing, the other Contracting Party, the dispute shall, at the request of one of them, be laid before an ad hoc Arbitration Tribunal as provided in this Article.

3. The Arbitration Tribunal shall be constituted in the following manner: within two months from the receipt of the request for arbitration, each Contracting Party, shall appoint a member of the Tribunal. These two members shall then select a national of a Third State to act as Chairmen. The Chairman shall be appointed within three months, from the date on which the other two members are appointed.

4. If the appointments have not been agreed within the time provided by paragraph 3. of this Article, either of the Contracting Parties, in default of any other arrangement, may apply to the President of the International Court of Justice to make the appointments within three months. In the event that the President of the Court is a national of one of the Contracting Parties or he is otherwise prevented from discharging the said function, the application shall be made to the Vice President of the Court. If the Vice-President of the Court is a national of one the Contracting Parties or he is equally prevented from discharging the said function for any reason, the most senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be invited to make the appointments.

5. The Arbitration Tribunal shall rule with a majority vote, and its decisions shall be binding. Both Contracting Parties shall pay the costs of their own arbitrator and of their own costs at the hearings. The President's costs and any other costs shall be divided equally between the Contracting Parties.

6. The tribunal shall have three months from the date of the selection of the Chairman to agree upon rules of procedure

consistent with the other provisions of this agreement. In the absence of such agreement, the tribunal shall request the International Court of Justice to designate rules of procedure, taking into account generally recognized rules of international arbitral procedure.

Article 10. Application of other Provisions

1. Whenever any issue is governed both by this Agreement and by another International Agreement to which both the Contracting Parties are parties, or whenever it is governed otherwise by general international law, the most favourable provisions, case by case, shall be applied to the Contracting Parties and their investors.

2. Whenever, as a result of laws, regulations, provisions or specific contract, one of the Contracting Parties has adopted a more advantageous treatment for the investors of the other Contracting Party than that provided in this Agreement, they shall be accorded that more favourable treatment.

Article 11. Entry Into Force

This Agreement shall become effective on the date on which both Contracting Parties have notified each other of the effected performance of their respective constitutional procedures.

Article 12. Duration and Expiry Date

1. This agreement shall remain effective for 10 years from the date in which the constitutional procedures indicated in Article 11 have been effected, and it shall be tacitly renewed for further periods of 5 years, unless either Contracting Party terminates it by giving prior written notice thereof one year before any expiry date.

2. In the case of investments effected prior to the expiry dates of the present agreement, as provided in this Article 12, the provisions of Articles 1 to 10 shall remain effective for a further five years after the aforementioned dates.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present agreement.

DONE AT ANKARA, this 22 day of MARCH one thousand nine hundred and ninety five, in three copies, one in Turkish, one in Italian and one in English, all texts beign authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC