Agreement between the Republic of Turkey and the Kingdom of Thailand concerning the reciprocal promotion and protection of investments

The Government of the Republic of Turkey and the Government of the Kingdom of Thailand hereinafter referred to as the "parties";

Desiring to promote greater economic cooperation between them, particularly with respect to investment by investors of one party in the tenitory of the other party;

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of capital and the Technology and Economic Development of the Parties;

Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources; and

Having resolved to conclude an agreement concerning the encouragement and reciprocal protection of investments.

Have agreed as follows:

Article I. Definitions

For the purpose of this Agreement;

1. The term "investor" means:

(a) Natural persons who, according to the law of that Party, are considered to be its nationals;

(b) Juridical persons including companies, corporations and business organizations, which are duly constituted or otherwise organized under the law of that Party and have their seat, together with real economic activities, in the territory of that same party.

2. The term "investment", in conformity with the hosting Party laws and regulations, shall include every kind of asset but not exclusively, in particular:

(a) Shares, stocks or any other form of participation in companies;

(b) Reinvested eamings, daims to money or any other rights having finaacial value related to an investment;

(c) Movable and immovable property, as well as any other rights as mortgages, bonds, pledges and any other similar rights as defined in conformity with the laws and regulations of the Party in whose territory the property is situated.

(d) Industrial and intellectual property rights, such as patents, industrial designs, technical processes, as well as trademarks, goodwill and know-how;

(e) Business concessions conferred by law or by contract, including concessions related to, natural resources.

The said term shall refer to all direct investments made in accordance with the laws and regulations in the territory of the Party where the investments are made. The term "investment" covers all investments made in the territory of a Party before or after entry into force of this Agreement.

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

3. The term "returns" amounts yielded by the means and includes an investment in particular, though not exclusively, profits, interest, capital gains, fees, royalties and dividends.

4. The term "territory" means the territory of each party, including its internal waters, its territorial seas, and the maritime areas over which each party has sovereign rights or jurisdiction under international law.

Article II. Scope of Application

1. The benefits of this Agreement shall apply only in cases where the investment of investor by one party in the territory of the other party has been specifically approved in writing by the competent authority, if so required by the laws and regulations of that Party.

2. Investor of either party shall be free to apply for such approval in respect of any investment made whether before or after the entry into force of this Agreement. However, this Agreement shall not apply to disputes which arise before its entry into force.

Article III. Promotion and Protection of Investments

1. Each Party shall promote in its territory as far as possible investments by investors of the other party.

2. Investments of investors of each 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 unreasonable or discriminatory measures by the management, maintenance, use, enjoyment, extension, or disposal of such investments.

Article IV. Treatment of Investments

1. Each Party shall permit its territory in investments and activities associated therewith, on a basis no less favourable than that accorded in similar situations to investments of investors of any third country, within the framework of its laws and regulations.

2. Each Party shall accord to these investments, once established, treatment no less favourable than that accorded to investments in similar situations of its investors or to investments of investors of any third country, whichever is more favourable.

3. Each Party shall accord investors in its territory of the other party, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors investors or of any third State, whichever is more favourable.

4. The Parties shall within the framework of their national legislation give sympathetic consideration to applications for the entry and sojoum of persons of either party who wish to enter the territory of the other party in connection with the making and carrying through of an investment; the same shall apply to nationals of either party in connection with an investment who wish to enter the territory of the other party sojoum there and to take up employment application for work permits shall also be given sympathetic consideration.

5. The provisions of this article shall hâve no effect in relation to following agreements entered into by either of the Parties:

(a) Relating to any existing or future customs union, free trade area, regional economic organization or similar international agreements,

(b) Relating wholly or mainly to taxation.

Article V. Expropriation and Compensation

1. Investments shall not be expropriated or nationalized, subject, directly or indirectly, to measures of similar effects (hereinafter referred to as "expropriation) except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in article IV of this Agreement.

2. Compensation shall be equivalent to the market value of the expropriated investment before the expropriatory action was taken or became known, compensation shall be paid without delay and be freely transferable as described in paragraph 2, article VI.

3. The investor shall have affected a right, under the law of the party making the expropriation, to review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in paragraphs 1 and 2. the party making the expropriation shall make every endeavour to ensure that

such review is carried out promptly.

4. Investors of either party whose investments suffer losses in the territory of the other party owing to war, insurrection, civil disturbance or other similar events shall be accorded by such other Party treatment no less favourable than that accorded to its own investors to investors or of any third country, whichever is the most favourable treatment, as regards any measures it adopts in relation to such losses.

Article VI. Repatriation and Transfer

1. Each Party shall permit in good faith garlic transfers related to an investment to be made freely in any currency that is widely used to make payments for international transactions and is widely traded in the principal exchange markets and without delay into and out of its territory. Such transfers include:

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

b) The retums frora investment;

c) Proceeds obtained from the sale and the total or partial liquidation of the investment;

d) Funds in repayment of loans relating to investments;

e) Compensation payable in accordance with Article V;

f) The remuneration received by tea nationals of the other party for work done or services in connection with investments made in its territory, in accordance with its laws and regulations.

g) All sums received as a payable or result of a dispute settlement

2. The transfers referred to in the preceding paragraph shall be made without delay, at the exchange rate prevailing on the date of the transfer in the territory of the other Contracting Party where the investment was made.

Article VII. Subrogation

1. If the investment of an investor of one party is insured against non-commercial risks under a system established by law, any subrogation of the insurer which stems from the terms of the insurance agreement shall be recognized by the other party.

2. The insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

3. Disputes between a party and an insurer shall be settled in accordance with the provisions of article 9 of this Agreement.

Article VIII. Application of other Rules

1. If the provisions of the law of either party or obligations under international law existing at present or hereafter established between the parties in addition to the present Agreement contain rules whether general or specifies, entitling retums of investors and investments of the other party to more favourable treatment than is provided for by the present Agreement, such inclusion shall to the extent that they are more favourable prevail over the present Agreement.

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

Article IX. Settlement of Disputes between One Party and Investors of the other Party

1. Disputes between one of the Parties and an investor of the other Party, in connection with his investment, shall be notified in writing, including a detailed information by the investor Party to the recipient of the investment. As far as possible, the investor and the concemed Party shall endeavour to settle these disputes by consultations and negotiations in good faith.

2. If these disputes, cannot be settled in this way within six months following the date of the written notification mentioned in paragraph 1, the dispute can be submitted, as the investor may choose, to:

(a) The competent courts of the party in the territory of which the investment has been made; or

(b) The International Center for Settlement of Investment Disputes (ICSID) set up by the Convention on Settlement of Investment Disputes between States and Nationals of Other States become parties in case the parties of this Convention; or

(c) An international ad hoc arbitral tribunal established under the arbitration rules of the United Nations Commission on international Trade Law (UNCITRAL).

3. The arbitral awards shall be final and binding on the parties to the dispute and shall be executed in accordance with the laws of the Party to the dispute.

4. Any matter that is a subject of dispute still pending before a court or an arbitration pursuant to the provisions of this article shall not be submitted by either party to the dispute settlement proeess under Article X.

Article X. Settlement of Disputes between the Parties

1. The Parties shall seek in good faith and a spirit of cooperation a rapid and equitable solution to any dispute between them concerning the interpretation or application of this Agreement. In this regard, the parties agreed to engage in direct and meaningfol negotiations to arrive at such solutions. If the parties cannot reach an agreement within six months after the beginning of disputes between themselves through the foregoing procedure, the disputes may be submitted, upon the request of either party to an arbitral tribunal of three members.

2. Within two months of receipt of a request, each party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State. In the event either party fails to appoint an arbitrator within the specified time, the other party may request the President of the International Court of Justice to make the appointment.

3. If both arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment, the Chairman shall be appointed upon the request of either party by the President of the International Court of Justice.

4. If, in the cases specified under paragraph 2 of this article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either party, the appointment shall be made by the Vice-President and if the Vice-President is prevented from carrying out the said function or if he is a national of either party, the appointment shall be made by the most senior member of the Court who is not a national of either party.

5. The Tribunal shall have three months from the date of the selection of the Chairman agreed upon to rules of procedure consistent with the other provisions of this Agreement. In the absence of such agreement, the Tribunal shall request the President of the International Court of Justice to designate rules of procedure, taking into account generally recognized rules of international arbitral procedure.

6. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within eight months of the date of selection of the Chairman and the tribunal shall render its decision within two months after the date of the final submissions or the date of the closing of the hearings, whichever is later. The arbitral tribunal shall reach its decisions, which shall be final and binding, by a majority of votes.

7. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the parties. The Tribunal may, however, at its discretion decide that a higher proportion of the costs be paid by one of the Parties.

Article XI. Final Provisions

1. Each Party shall notify the other in writing of the completion of the legal procedure required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2 of this article. It shall apply to existing investments at the time of entry into force as well as to investments made or acquired thereafter.

2. Either Party may by giving one year s written notice to the other party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

3. This Agreement may be amended by written agreement between the parties. Any amendaient shall enter into force when each party has notified the other that it has compieted garlic internai requirements for entry into force of such amendaient.

4. With respect to investments made or acquired prior to the date of termination of tins and agreement to which this Agreement applies, otherwise the provisions of all of the other articles of this Agreement shall thereafter continue to be

effective for a further period of ten years from such date of termination.

In WITNESS WHEREOF, the undersigned, duly authorised, have signed this agreement.

Done in duplicate at Ankara on the day of 24 June 2005, in the Turkish, Thai and English languages, all of which are equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Turkey

[signed]

(Abdullah Gül)

Deputy Prime Minister and Minister for Foreign Affairs

For the Government of the Kingdom of Thailand

[signed]

(Dr. Kantathi Suphamongkhon)

Minister of Foreign Affairs