AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF KENYA ON PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the People's Republic of China and the Government of the Republic of Kenya (hereinafter referred to as the Contracting Parties),

Intending to create favorable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the reciprocal encouragement, promotion and protection of such investinent will be conducive to stimulating business initiative of the investors and wil! increase prosperity in both States;

Desiring to intensify the cooperation of both States on the basis of equality and mutual benefits;

Have agreed as [ollaws:

Article I. DEFINITIONS

for the Purpose of this Agreement,

1. The term "investment" means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and in particular, though not exclusive, includes:

(a) movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges;

(b) shares, debentures, stock and any other kind of participation in companies;

(c) claims to money or to any other performance having an economic value associated with an investment;

(d) intellectual property rights, in particular copyrights, patents, trade-marks, trade- names, technical process, know-how and good-will;

(e) business concessions conferred by law or under contract permitted by law, including concessions to search for, cultivate, extract or exploit natural resources.

Any change in the form in which assets are invested does not affect their character as investments.

2. The term "investor" means,

(a) natural persons who have nationality of either Contracting Party in accordance with the laws of that Contracting Party;

(b) economic entities, including companies, associations, partnerships and other organizations, incorporated or constituted under the laws and regulations of cither Contracting Party and have their seats in that Contracting Party.

3. The term "returns" means the amounts yielded by an investment such as profit, dividends, interest, royalties or fees.

4. The term "territory" means the zones contained within the land boundaries and the Maritime zones. The latter comprises of the Marine and Submarine zones over which the Contracting Parties exercise sovereignty, and sovereign or jurisdictional rights under International Law.

Article 2. PROMOTION AND PROTECTION OF INVESTMENTS

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and

admit such investments in accordance with its laws and regulations.

2. Investments of the investors of either Contracting Party shall enjoy the constant protection and security in the territory of the other Contracting Party.

3. Without prejudice to its laws and regulations, neither Contracting Party shall take any unreasonable or discriminatory measures against the management, maintenance, use, enjoyment and disposal of the investments by the investors of the other Contracting Party.

4. Subject to its laws and regulations, one Contracting Party shall provide assistance in and facilities for obtaining visas and working permit to nationals of the other Contracting Party engaging in activities associated with investments made in the territory of that Contracting Party.

Article 3. TREATMENT OF INVESTMENTS

1. Investments of investors of each Contracting Party shall all the time be accorded fair and equitable treatment in the territory of the other Contracting Party.

2. Without prejudice to its laws and regulations, each Contracting Party shall accord to investments and activities associated with such investments by the investors of the other Contracting Party treatment not less favorable than that accorded to the investments and associated activities by its own investors.

3. Neither Contracting Party shall subject investments and activities associated with such investments by the investors of the other Contracting Party to treatment less favorable than that accorded to the investments and associated activities by the investors of any third State.

4. The provisions of Paragraphs 1 ta 3 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of

(a) any customs union, free trade zone, economic union and any international agreements resulting ta such customs union, free trade zone, economic union;

(b) any international agreement or arrangement relating wholly or mainly to taxation;

(c) any international agreement or arrangement for facilitating, frontier trade.

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, nationalised or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Cantra Party except for the public benefit and against compensation. Such compensation be equivalent to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. The compensations shall be paid without delay and shall carry the usual bank interest until the time of payment, The legality of any such expropriation, nationalization or comparable measure and amount of compensation shall be subject to review by the domestic laws.

3. Nationals or companies of either Contracting Party shall enjoy most-favored-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

Article 5. COMPENSATION FOR DAMAGES AND LOSSES

Investors of one Contracting, Party whose investments in the territory of the other Contracting Party suffer losses owing to war, a state of national emergency, insurrection, riot or other similar events in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation and other settlements vo less favorable Utan that accorded to the investors of its own or any third State.

Article 6. REPATRIATION OF INVESTMENTS AND RETURNS

1. Each Contracting Party shall, subject to its laws and regulations, guarantee to the investors of the other Contracting Party

the free transfer of payment in connection with on investment, in particular:

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

(b) the returns;

(c) the repayment of loans;

(d) the proceeds from the liquidation or the sale of the whole or any part of the investment;

(e) the compensation provided for in Article 4.

2. The transfer mentioned above shall be made in freely convertible currency and at the prevailing market rate of exchange applicable within the Contracting Party accepting the investment and on the date of transfer.

Article 7. SUBROGATION

If one Contracting Party or its designated agency makes a payment to its investor under an indemnity given in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of all the rights and claims of the indemnified investor to the former Contracting Party or its designated agency, by law or by legal transactions, and the right of the former Contracting Parly or its designated agency to exercise by virtue of subrogation any such right to same extent as the investor.

Article 8. SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled with consultation through diplomatic channels.

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

3. Such tribunal shall comprise of three arbitrators. Within two months of the receipt of the written notice requesting arbitration, each Contracting, Party shall appoint one arbitrator. Those two arbitrators shall, within further two months, together select a national of a third State having diplomatic relations with both Contracting Parties as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four months from the receipt of the written notice requesting arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said functions, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party or is not otherwise prevented from discharging the said functions shall be invited to make such necessary appointments.

5. The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.

6. The arbitral tribunal shall reach its award by a majority of votes. Such award shall be final and binding upon both Contracting Parties. The arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

7. Each Contracting Party shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and tribunal shall be borne in equal parts by the Contracting Parties,

Article 9. SETTLEMENT OF DISPUTES BETWEEN INVESTORS AND ONE CONTRACTING PARTY

1. Any legal dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2 If the dispute cannot be settled through negotiations within six months, the investor of one Contracting Party may submit the dispute to the competent court of the other Contracting Party.

3. Any dispute, if unable to be settled within six months after resort to negotiations as specified in Paragraph 1 of this

Article, shall be submitted at the request of either party to:

(a) International Center for Settlement of Investment Disputes (ICSID) under the Convention on the Settlement of Disputes between States and Nationals of Other States, done at Washington on March 18, 1965; or

(b) an ad hoc arbitral tribunal

provided that the Contracting Party involved in the dispute may require the investor concerned to exhaust the domestic administrative review procedure specified by the laws and regulations of that Contracting Party before submission of the dispute to the above-mentioned arbitration procedure.

However, if the investor concerned has resorted to the procedure specified in Paragraph 2 of this Article, the provisions of this Paragraph shall not apply.

4. Without prejudice to Paragraph 3 of this Article, the ad hoc arbitral tribunal referred to in Paragraph 3 (b) shall be constituted for each individual case in the following way: each party to the dispute shall appoint one arbitrator, and these two shall select a national of a third State who has diplomatic relations with both Contracting Parties as the Chairman first two arbitrators shall be appointed within two months of the written notice requesting, for arbitration by either party to the dispute to the other and the Chairman shall be selected within four months. If, within the period specified above, the tribunal has not been constituted, either party to the dispute may invite the Secretary-General of the International Center for Settlement of Investment Disputes to make the necessary appointments.

5. The ad hoc arbitral tribunal shall deterring its own procedure. However, the tribunal may, in the course of determination of procedure, take as guidance the Arbitration Rules of the International Center for Settlement of Investment Disputes.

6. The tribunal referred to in Paragraph 3 (a) and (b) of this Article shall reach its award by a majority of votes. Such award shall be final and binding, upon both parties to the dispute, Both Contracting Parties shall commit themselves to the enforcement of the award.

7. The tribunal referred to in Paragraph 3 (a) and (b) of this Article shall adjudicate in accordance with the law of the Contracting Party to the dispute including its rules on the conflict of laws, the provisions of this Agreement as well as the applicable principles of international law.

8. Each party to the dispute shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and tribunal shall be borne in equal parts by the parties to the dispute The tribunal may in its award direct that a higher proportion of the casts be borne by one of the parties to the dispute.

Article 10. OTHER OBLIGATIONS

1. If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties results in a position entitling investments by investors of the other Contracting Party to a treatment more favorable than is provided for by the Agreement, such position shall not be affected oy this Agreement.

2. Each Contracting shall observe any commitments it may have entered into with the investors of the other Contracting Party as regards to their investments.

Article 11. APPLICATION

The Agreement, under this clause, presupposes to apply retrospectively to investors ofeither Contracting Parties

Article 12. RELATIONS BETWEEN CONTRACTING PARTIES

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

Article 13. ENTRY INTO FORCE, DURATION AND TERMINATION

1. This Agreement shall enter into force on the first day of the following month atter the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures necessary thereof have been fulfilled and remain in force for a period of ten years

2. This Agreement shall continue in force if either Contracting Party fails to give a written notice to the other Contracting

Party to terminate this Agreement one year before the expiration of the period specified in Paragraph 1 of this Article

3. After the expiration of initial ten years period, either Contracting Party may at any time thereafter terminate this Agreement by giving at least one year's written notice to the other Contracting Party.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 12 shall continue to be effective for a further period of ten years from such date of termination.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate in Nairobi on 16th July 2001 in the English and Chinese languages, each side keeping one original and both texts being equally authentic.

For the Government of the People's Republic of China

For the Government of the Republic of Kenya