Agreement between the Government of the French Republic and the Government of the Republic of Vietnam on the reciprocal encouragement and protection of investments

The Government of the Republic of France and the Government of the Republic of Vietnam, hereinafter referred to as "the Contracting Parties",

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for French investments in Vietnam and Vietnamese investments in France,

Convinced that the encouragement and protection of such investments are likely to stimulate the transfer of capital and technology between the two countries in the interest of their economic development,

have agreed on the following provisions:

Article 1.

For the application of this agreement:

1. The term "investment" means assets such as property, rights and interests of every kind and, more particularly but not exclusively

(a) Movable and immovable property, as well as all other real rights such as mortgages, liens, usufructs, bonds and similar rights;

(b) Shares, share premiums and other forms of participation, even minority or indirect, in companies incorporated in the territory of one of the Contracting Parties;

(c) Bonds, debts and rights to all benefits of economic value;

(d) copyrights, industrial property rights (such as patents, licenses, trademarks, industrial designs and models), technical processes, registered names and goodwill

(e) concessions granted by law or under contract, including concessions relating to the exploration, cultivation, extraction or exploitation of natural resources, including those located in the maritime area of the Contracting Parties, provided that such assets shall be or have been invested in accordance with the laws of the Contracting Party in whose territory or maritime areas the investment is made, whether before or after the entry into force of this Agreement.

Any change in the form of investment of the assets shall not affect their characterization as an investment, provided that such change is not contrary to the law of the Contracting Party in whose territory or maritime areas the investment is made.

2. The term "nationals" refers to persons possessing the nationality of one of the Contracting Parties.

3. The term "companies" means any legal entity incorporated in the territory of one of the Contracting Parties, in accordance with the laws of that Party and having its registered office there, or controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal entities having their registered office in the territory of one of the Contracting Parties and incorporated in accordance with the laws of that Party.

4. The term "income" means all sums produced by an investment, such as profits, royalties or interest, during a given period.

Income from the investment and, in the case of reinvestment, income from reinvestment shall enjoy the same protection as the investment.

5. "Maritime areas" means the marine and submarine areas over which Contracting Parties exercise, in accordance with international law, sovereignty, sovereign rights or jurisdiction.

Article 2.

Each Contracting Party shall, within the framework of its legislation and the provisions of this Agreement, admit and encourage investments made by the nationals and companies of the other Party in its territory and in its maritime zones.

Article 3.

Each Contracting Party undertakes to ensure, in its territory and in its maritime zones, fair and equitable treatment, in accordance with the principles of international law, of investments by the nationals and companies of the other Party, and to ensure that the exercise of the right so recognized is not hindered either in law or in fact.

Article 4.

Each Contracting Party shall, in its territory and in its maritime zones, apply to the nationals or companies of the other Party, in respect of their investments and activities related to such investments, treatment comparable to that accorded to its own nationals or companies, and not less favourable than that accorded to the nationals or companies of the most favoured nation. In this connection, nationals authorized to work in the territory and maritime zones of one of the Contracting Parties shall be afforded appropriate material facilities for the exercise of their professional activities.

This treatment shall not, however, extend to the privileges which a Contracting Party grants to the nationals or companies of a third State by virtue of its participation in or acquisition of a free trade area, a customs union, a common market, an organization for mutual economic assistance or any other form of regional economic organization.

Article 5.

1. Investments made by nationals or companies of either Contracting Party shall enjoy full protection and security in the territory and maritime zones of the other Contracting Party.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is to dispossess nationals and companies of the other Party of investments belonging to them in their territory and in their maritime zones, except in the public interest and provided that such measures are not discriminatory or contrary to any particular undertaking.

Any measures of dispossession which may be taken must give rise to the payment of prompt and adequate compensation, the amount of which, calculated on the real value of the investments concerned, must be assessed in relation to a normal economic situation prior to any threat of dispossession.

This indemnity, its amount and the way it is to be paid shall be fixed at the latest on the date of the dispossession. This compensation is effectively realizable, paid without delay and freely transferable. It produces, until the date of payment, interest calculated at the rate agreed by the Contracting Parties.

3. The nationals or companies of one of the Contracting Parties whose investments have suffered losses due to war or any other armed conflict, revolution, state of national emergency or revolt occurring in the territory or maritime zones of the other Contracting Party, shall receive from the latter treatment no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation.

Article 6.

Each Contracting Party, in whose territory or maritime zones investments have been made by nationals or companies of the other Contracting Party, shall accord to such nationals or companies the free transfer:

(a) of interests, dividends, profits and other current income;

(b) royalties derived from intangible rights referred to in paragraph 1(d) and (e) of Article 1;

(c) Payments made for the repayment of loans regularly contracted;

(d) Proceeds from the total or partial sale or liquidation of the investment, including capital gains;

(e) The compensation for loss or dispossession provided for in Article 5, paragraphs 2 and 3 above.

Nationals of each Contracting Party who have been authorized to work in the territory or maritime zones of the other Contracting Party, in connection with an approved investment, shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

The transfers referred to in the preceding paragraphs shall be made without delay at the normal rate of exchange officially applicable on the date of transfer.

Article 7.

Insofar as the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case basis, to investments made by nationals or companies of that Party in the territory or maritime zones of the other Party.

The investments of the nationals and companies of one of the Contracting Parties in the territory or maritime zones of the other Party may only obtain the guarantee referred to in the above paragraph if they have previously obtained the approval of the latter Party.

Article 8.

1. Any dispute relating to investments between one of the Contracting Parties and a national or a company of the other Contracting Party shall, as far as possible, be settled amicably between the two parties concerned.

2. If such a dispute has not been settled within six months from the time it was raised by either of the parties to the dispute, it may be submitted in writing to arbitration by either of the parties to the dispute. Such dispute shall then be finally settled,

in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, as adopted by the General Assembly of the United Nations in its resolution No. 31-98 of December 15, 1976.

Once each of the Contracting Parties has become a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, concluded at Washington on March 18, 1965, the International Centre for Settlement of Investment Disputes (ICSID) shall replace the procedure set out in the preceding paragraph for the settlement by arbitration of disputes between one of the Contracting Parties and a national or company of the other Contracting Party.

Article 9.

If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory or in the maritime zones of the other Party, makes payments to one of its nationals or to one of its companies, it shall thereby be subrogated to the rights and actions of such national or company.

Such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to the procedure provided for in Article 8 or to pursue the actions brought until the conclusion of that procedure.

Article 10.

Investments which have been the subject of a special undertaking by one of the Contracting Parties in respect of the nationals and companies of the other Contracting Party shall, without prejudice to the provisions of this Agreement, be governed by the terms of that undertaking in so far as it contains provisions more favourable than those provided for in this Agreement.

Article 11.

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.

2. If the dispute is not settled within six months of its being raised by either Contracting Party, it shall, at the request of either Contracting Party, be submitted to an arbitration tribunal.

3. The said tribunal shall be constituted for each particular case in the following manner:

Each Party shall appoint one member, and both members shall appoint, by mutual agreement, a national of a third State

who shall be appointed by both Contracting Parties as chairman. All members shall be appointed within three months of the date on which one Contracting Party has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits set out in paragraph 3 above have not been observed

either Contracting Party shall, in the absence of any other applicable agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or is otherwise unable to serve, the most senior Deputy Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

5. The arbitration tribunal shall take its decisions by a majority vote. These decisions shall be final and binding on the Contracting Parties.

The tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal decides otherwise, taking into account particular circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the Parties.

Article 12.

Each of the Parties shall notify the other of the completion of the internal procedures required for the entry into force of this agreement, which shall take effect one month after the date of receipt of the last notification.

The Agreement is concluded for an initial period of ten years and shall remain in force after that period, unless either Party denounces it through diplomatic channels with one year's notice.

Upon the expiration of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for a further period of twenty years.

Done at Paris, this 26th day of May 1992, in two originals, each in the French and Vietnamese languages, both texts being equally authentic.

For the Government of the French Republic:

PIERRE BEREGOVOY

For the Government of the Socialist Republic of Viet-Nam:

NGUYEN MANH CAM

Exchange of Letter

Mr. Minister of Foreign Affairs of the Socialist Republic of Viet-Nam

Dear Minister,

I have the honor to refer to the agreement signed today between the Government of the French Republic and the Government of the Socialist Republic of Viet-Nam on the reciprocal encouragement and protection of investments and to inform you that the interpretation of this agreement is as follows:

(1) With regard to Article 3

(a) Any restriction on the purchase and transportation of raw and auxiliary materials, energy and fuel, and means of production and operation of any kind, any impediment to the sale and transportation of products, and any other measures having a similar effect, shall be deemed to be legal or de facto impediments to fair and equitable treatment;

(b) The Contracting Parties shall give sympathetic consideration, within the framework of their domestic legislation, to applications for entry and authorization to stay, work and travel submitted by nationals of one Contracting Party in connection with an investment in the territory of the other Contracting Party.

2. With regard to Article 4:

Comparable treatment shall be considered in a comprehensive manner taking into account the economic and social particularities of the country.

3. With regard to Article 5:

The interest rate agreed upon by the Contracting Parties shall be the official interest rate of the Special Drawing Right, as fixed by the IMF.

I should be grateful if you would inform me of your Government's agreement with the contents of this letter.

Please accept, Mr. Minister, the assurances of my highest consideration.

PIERRE BEREGOVOY

Dear Prime Minister,

I have the honor to acknowledge receipt of your letter of today, which reads as follows

"I have the honor to refer to the agreement signed today between the Government of the French Republic and the Government of the Socialist Republic of Viet-Nam on the reciprocal encouragement and protection of investments and to inform you that the interpretation of this agreement is as follows:

"1. with regard to Article 3:

"(a) Any restriction on the purchase and transportation of raw and auxiliary materials, energy and fuel, and means of production and operation of any kind, any impediment to the sale and transportation of products, and any other measures having a similar effect, shall be deemed to be de jure or de facto impediments to fair and equitable treatment;

"(b) The Contracting Parties shall give sympathetic consideration, within the framework of their domestic legislation, to applications for entry and authorization to reside, work and travel submitted by nationals of a Contracting Party in connection with an investment in the territory of the other Contracting Party.

"(2) With regard to Article 4:

"Comparable treatment shall be considered in a comprehensive manner taking into account the economic and social particularities of the country.

"(3) With regard to Article 5:

"The rate of interest agreed upon by the Contracting Parties shall be the official rate of interest of the Special Drawing Right, as fixed by the IMF.

"I should be grateful if you would inform me of your Government's agreement to the contents of this letter. "I would be grateful if you would inform me of your Government's agreement with the contents of your letter.

Please accept, Mr. Prime Minister, the assurances of my highest consideration.

NGUYEN MANH CAM