Agreement between the Republic of China and the Republic of Honduras on the Treatment and Protection of Investments

The Republic of China and the Republic of Honduras, hereinafter referred to as the Contracting Parties,

Desiring to enhance the economic cooperation between the two States and reciprocal favourable conditions for investments by nationals of both States;

Convinced that the promotion and protection of investments encourage the transfer of capital and technology between the two States, which leads to their economic and social development,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement are:

1. Investors

a) A national of either of the Contracting Parties. The term "national" means: natural persons from their status as nationals of either Contracting Party, the existing legislation of each of the Contracting Parties.

b) Companies are: all legal persons constituted in accordance with the legislation of each of the Contracting Parties.

2. Investment

Include every kind of asset and in particular, though not exclusively, includes:

a) Effective consisting of foreign currency in either of the contracting parties;

b) Movable and immovable property and other property rights such as mortgages and pledges;

c) A company or shares or other interests of a company or interests in the assets of the same; stocks, shares and debentures of companies and other forms of participation in the property of such companies;

d) Any right having an economic value associated with an investment; and

e) Technology in its various forms, such as Industrial and Intellectual Property Rights in accordance with the legislation of the respective contracting parties;

f) Licences and permits under the laws, including those issued for the manufacture and sale of goods within the territory of the contracting parties;

g) Any type of business concessions conferred by law or under contract, including the rights of exploration and exploitation of natural resources, within the territory of the contracting parties;

h) Reinvested earnings;

i) Loans for commercial purposes.

A change in the form of investment of assets invested does not affect their status and the term "investment" includes all investments, whether made before or after the date of entry into force of this Convention, provided that they comply with the same legal formalities and with the host State.

3. Income

The term "income" means the amounts that returns an investment of capital and in particular, though not exclusively,

includes interests, capital gains, profits, dividends, royalties or fees.

4. Specific risks

The events or events that could occur and that cause loss or damage to protected investments under this Agreement. Such risks are the following:

a) "no convertibility", or a situation where, within the period of this Convention, investors of either Contracting Party, after one year of operation of the Investment, may not make foreign currency and repatriation of their capital invested in the host State or its profits (benefits, capital gains, interest, dividends, royalties or fees) to its own country within sixty days from the date on which the investor has submitted its reasons; or to investors of either Contracting Party suffer losses in the repatriation of their investments in its original or revenue due to the exchange rate imposed by the Government of the other contracting party, not reflect the exchange rate prevailing in the banking market.

b) "expropriation" or nationalization of foreign companies or dispossession of property by the Government of the host State, with the consequent injury of investors of the other Contracting Party; or State measures, amendment or repeal of laws that adverse effects equivalent to nationalization or expropriation of businesses owned by investors of the Government of the host State.

c) "war, revolution or insurrection", or a situation of armed conflict which causes loss or damage to investors of the other party.

5. Competent authority

In the case of the Republic of China, the competent authority on matters of foreign investment is the Ministry of Economic Affairs as defined in the statute of foreign investment of that country. In the case of the Republic of Honduras, the competent authority with respect to foreign investment is the Ministry of Economy and Trade in accordance with the law of that country.

Article II. Approval of Investments

Investments referred to in this Agreement shall be approved by the contracting States. It will be considered the State of which an investor is a national has given its approval when the Government of that State has notified the Government of the host State such approval.

The Government of the host State has given its approval when it has granted the investor the commercial licence or other document required to start operations in that State. In the case of Honduras, document requirement shall be the certificate of investment in accordance with the "investment law" of that country.

Article III. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other contracting party to invest capital in its own territory.

2. Investments made by nationals or companies of one Contracting Party, shall be accorded in the territory of the other contracting party full protection and security in accordance with the domestic legislation of the latter.

3. Each Contracting Party undertakes to guarantee to investments of nationals and companies of the other party a fair and equitable treatment and non-discriminatory under domestic law and international law, and to ensure that the exercise of the right thus recognized is not unduly hampered in any form.

Article IV. National Treatment

Each Contracting Party shall apply in its territory, to nationals and companies of the other party, as regards to the protection of their investments, treatment accorded to its nationals, or the treatment accorded to nationals or companies of any third State, whichever is more favourable.

Article V. Exceptions to National Treatment

The aforementioned, in article IV, shall not be construed so as to oblige one contracting party to extend to nationals or companies of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

a) Any existing or future customs union or similar international agreement to which either of the contracting parties is or may become a party, or any

b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article VI. Specific Risks Compensation

In the case the specific risks identified in this Agreement occur, the compensation, the Government of any of the Contracting Parties could claim to the Government o f the other Contracting Party, will be within the following framework:

a) No convertibility: In the event of the situation referred to in Article I, subparagraph 4 (a), investors of either contracting party, invoking the convertibility guaranty, may apply in writing to their respective Government to make a claim to the host Government, in which case such investors transferred amounts in local currency convertibility, subject to no account maintained by its Government in the other contracting party. In such a case, the Government of the investor shall arrange in front of the recipient government of the investment, the foreign currency conversion of these sums of money, committing itself to perform the conversion.

Transfers of sums of money mentioned above shall be made in the convertible currency or in any other convertible currency agreed to by the investor and the Contracting Party concerned and shall be made at the rate of exchange prevailing in the banking market on the date of transfer.

b) Expropriation: Capital investments of nationals or companies of one Contracting Party may in the territory of the other Contracting Party, be expropriated according to the definition in article I, subparagraph 4 (b) of this Convention, except for reasons of public interest, or against a non-discriminatory basis and prompt, effective and adequate compensation.

In case occurs the mentioned in the last part of the preceding paragraph, the compensation shall be equivalent to the real value of the expropriated investment immediately made public before the date of expropriation or effective, whichever is earlier; include interest under normal commercial rate until the date on which payment is made; payment shall be made without delay, be effectively realizable and freely transferable.

The national or company affected shall have a right under the law of the contracting party making the expropriation, to prompt review by a judicial authority or another Independent authority of that Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this paragraph.

c) War, insurrection or revolution: If investors of either Contracting Party suffer losses owing to war, insurrection or revolution in the other Contracting Party, investors shall be accorded such treatment, with respect to restitution, indemnification, compensation or other settlement, not less favourable than the treatment granted under the present or future by the Government of the other contracting party to its own nationals or companies or to nationals or companies of any third country.

In such cases, shall be accorded adequate restitution or compensation payments and shall be freely transferables.

Article VII. Subrogation

If a Contracting Party or its designated agency is effected a payment to any of its investors under a guarantee it has accorded in respect of an investment in the territory of the other contracting party, the latter Contracting Party shall be without prejudice to the rights of the first contracting party under article IX, recognize the transfer of any such right or title of the investor to former Contracting Party or its designated agency and the first subrogation of the Contracting Party or its designated agency of any right or title.

Article VIII. Settlement of Disputes between an Investor and the Host State

1. Any dispute concerning the investments made pursuant to this agreement between one Contracting Party and an investor of the other Contracting Party shall as far as possible, be settled by amicable consultations.

2. If the dispute has not been settled within six months from the date on which it was raised by one or the other Contracting Party shall be submitted at the request of the investor:

a) The national courts of the Contracting Party involved in the dispute; or

b) To international arbitration.

Once the investor has submitted the dispute to the jurisdiction of the Contracting Party concerned or to international arbitration, the choice of one of these procedures is final.

3. In case of international arbitration, to be applied at the request of the investor, each party shall appoint an arbitrator within a period of two months counted from the date of receipt of the notification by the other party. Thereafter, the two already appointed arbitrators shall appoint a national of a third country as Chairman of the arbitration. The appointment of the President of the arbitration shall be made within a period of two months of the appointment of arbitrators of both parties. The arbitration shall be taken by a majority of votes. The decision shall be final and binding on both parties.

Article IX. Disputes between the Contracting Parties

1. Disputes arising between the contracting parties concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.

2. If a dispute between the contracting parties cannot be settled in this way within three months from the beginning of negotiations, be submitted to an arbitral tribunal at the request of either of the Contracting Parties.

3. Such an arbitral tribunal shall be constituted for each individual case as follows: each Contracting Party shall, within two months after receipt of the request for arbitration shall appoint one member of the Tribunal. The two abovementioned members then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two members.

4. If within the periods specified in the páirrafo (3) of this article shall not have the necessary appointments, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments.

5. The tribunal shall determine its own procedure.

6. The arbitration tribunal shall take its decision by a majority of votes. The decision shall be binding on both contracting parties.

7. Each Contracting Party shall bear the costs of its own member of the Tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties.

Article X. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing or future between the Contracting Parties in addition to this Agreement contain rules whether general or specific, which accord to investments made by investors of the other contracting party to a more favourable treatment than that provided for under the present Agreement, such rules shall prevail over the provisions of this Agreement to the extent that they are more favourable.

Article XI. Entry Into Force

This Agreement shall enter into force on the date that the Governments of the two Contracting Parties notify each other that the legal requirements for the Entry into Force of this Agreement have been fulfilled.

Article XII. Duration and Termination

This Agreement shall have a period of 10 years it shall be automatically extended for a period equal. However, after the first ten years, either Contracting Party may denounce it at any time by written notice to the other contracting party. Denunciation shall take effect one year after the date on which either contracting party notifies the complaint in writing to the other.

The provisions of this Agreement relating to investments made at any time prior to the termination of the Agreement shall remain valid for a period of ten years from the date of its termination, without prejudice to the implementation of national legislation of the host State of investment, or the general rules of international law.

In WITNESS WHEREOF, the representatives of the two States, duly authorized to this effect, have signed this Agreement.

Done in duplicate at Taipei, the Republic of China, in the English and Chinese languages, both texts being equally twenty-six identical to the day of February in the year and eighty-five of the Republic of China in the year one thousand nine hundred and ninety-six Gregorian calendar.

The Government of the Republic of China

The Government of the Republic of Honduras