AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE ORIENTAL REPUBLIC OF URUGUAY FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of Malaysia and the Oriental Republic of Uruguay, hereinafter referred to as the "Contracting Parties;"

Desiring to expand and strengthen economic and industrial cooperation on a long term basis, and in particular, to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing the need to protect investments by investors of both Contracting Parties and to stimulate the flow of investments and individual business initiative with a view to promoting the economic prosperity of both Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(a) "investments" means every kind of asset and in particular, though not exclusively, includes:

(i) movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) shares, stocks and debentures of companies or interests in the property of such companies;

(iii) a claim to money or a claim to any performance having financial value;

(iv) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, tradenames, industrial designs, trade secrets, technical processes and know-how and goodwill;

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

(b) "returns" means the amount yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties or fees;

(c) "investor" means:

(i) any natural person possessing the citizenship of a Contracting Party, and not having the citizenship of the other Contracting Party, in accordance with its laws; or

(ii) any corporation, partnership, trust, joint-venture, organisation, association or enterprise incorporated or duly constituted in accordance with applicable laws of that Contracting Party;

(d) "territory" means:

(i) with respect to Malaysia, all land territory comprising the Federation of Malaysia, the territorial sea, its bed and subsoil and airspace above;

(ii) with respect to the Oriental Republic of Uruguay, its territory as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial area, over which Uruguay exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas;

(e) freely usable currency" means the United States dollar, pound sterling, Deutschemark, French franc, Japanese yen or any other currency that is widely used to make payments for international transactions and widely traded in the international principal exchange markets.

2. (i) The term "investments" referred to in paragraph 1(a) shall only refer to all investments that are made in accordance with the laws, regulations and national policies of the Contracting Parties.

(ii) Any alteration of the form in which assets are invested shall not affect their classification as investments, provided that such alteration is not contrary to the approval, if any, granted in respect of the assets originally invested.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest capital in its territory and, in accordance with its laws, regulations and national policies, shall admit such investments.

2. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full and adequate protection and security in the territory of the other Contracting Party.

Article 3. Most-Favoured-Nation Provisions

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall receive treatment which is fair and equitable, and not less favourable than that accorded to investments made by investors of any third State.

2. The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) any existing or future customs union or free trade area or a common market or a monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Parties is or may become a party; or the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

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

Article 4. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to investors of any third State.

Article 5. Expropriation

Neither Contracting Party shall take any measures of expropriation, nationalization or any other dispossession, having effect equivalent to nationalization or expropriation against the investments of an investor of the other Contracting Party except under the following conditions:

(a) the measures are taken for a lawful purpose and under due process of law;

(b) the measures are non-discriminatory;

(c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investments affected immediately before the measure of dispossession adopted became public knowledge, and it shall be freely transferable in freely usable currencies from the Contracting Party. Any unreasonable delay in payment of compensation shall carry an interest at prevailing commercial rate as agreed upon by both parties.

Article 6. Transfers

1. Each Contracting Party shall, allow without unreasonable delay the transfer in any freely usable currency:

(a) the net profits, dividends, royalties, technical assistance and technical fees, interest and other current income, accruing

from any investment of the investors of the other Contracting Party;

(b) the proceeds from the total or partial liquidation of any investment made by investors of the other Contracting Party;

(c) funds in repayment of borrowings/loans given by investors of one Contracting Party to the investors of the other Contracting Party which both Contracting Parties have recognised as investment; and

(d) the net earnings and other compensations of investors of one Contracting Party who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party.

2. The exchange rates applicable to such transfer in the paragraph 1 of this Article shall be the rate of exchange prevailing at the time of remittance.

3. The Contracting Parties undertake to accord to the transfers referred to in paragraph 1 of this Article a treatment as favourable as that accorded to transfer originating from investments made by investors of any third State.

4. Transfers are subject to the right of each Contracting Party to exercise equitably and in good faith powers conferred upon it by its laws and regulations at the time the investment is made as well as new laws and regulations thereafter, provided that no investor shall be put in a less favourable position than at the time of commencement of the investment.

Article 7. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes which arise within the terms of this Agreement between an investor of one Contracting Party and the other Contracting Party shall, as far as possible, be resolved through consultation and negotiation.

2. For the purpose of this Article, an investment dispute is defined as a dispute with regard to interpretation or application of the terms of this Agreement with respect to an investment made by an investor of one Contracting Party in the territory of the other Contracting Party.

3. If the dispute, as defined in paragraph 2 of this Article, cannot thus be resolved within six months of written notification of a claim, it shall be submitted, under the claimant's choice, either to:

a) a competent court of justice or administrative tribunal of the Contracting Party in whose territory the investment has been made;

b) (i) to an arbitral tribunal of three members. The arbitrators shall be appointed in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(ii) to the International Centre for the Settlement of Investments Disputes where both Contracting Parties are party to the Convention of Settlement of Investment Disputes between States and Nationals of other States, open for signature at Washington DC on 18 March 1965, for settlement by conciliation or arbitration.

Where an investor has submitted a dispute to the aforementioned competent tribunal of the Contracting Party where an investment had been made or to international arbitration, this choice shall be final.

4. The arbitral tribunal shall decide the dispute in accordance with the terms of this Agreement, the laws of the Contracting Party involved in the dispute, the terms of any specific agreement concluded in relation to such an investment and the applicable principles of international law.

5. The judicial judgement or arbitration decision rendered shall be final and binding on both parties in the dispute.

6. Neither Contracting Party shall bring an international claim in respect of a dispute which one of its investors and the other Contracting Party have submitted to international arbitration or to the decision of the competent tribunal or the Party in whose territory the investment was made, unless such other Contracting Party shall have failed to abide by and comply with the award or judgement rendered in such dispute.

Article 8. Settlement of Disputes between the Contracting Parties

1. Disputes 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 thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two (2) months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, 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. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national! of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost 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. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 9. Subrogation

1. If a Contracting Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance it has entered into in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favor of such Contracting Party or agency thereof to any right of the investor.

2. A Contracting Party or any agency thereof which is subrogated to the rights of an investor in accordance with paragraph 1 of this Article, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment concerned and its related returns. Such rights may be exercised by the Contracting Party or any agency thereof or by the investor if the Contracting Party or any agency thereof so authorizes.

Article 10. Application to Investments

1. This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its laws, regulations or national policies by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement.

2. The Agreement shall in no event be applicable to divergencies or disputes which have arisen prior to its entry into force.

Article 11. Amendment

This agreement may be amended by mutual consent of both Contracting Parties at any time after it is in force. The amendments so agreed shall come into force thirty (30) days after both Parties have notified each other that their constitutional requirements for the entry into force of the amendments have been fulfilled. Any alteration or modification of this agreement shall be done without prejudice to the rights and obligations arising from this agreement prior to the date of such alteration or modification until such rights and obligations are fully implemented.

Article 12. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force thirty (30) days after the later date on which the Governments of the Contracting Parties have notified each E other that their constitutional requirements for the entry into force of this Agreement have been fulfilled. The later date shall refer to the date on which the last notification letter is sent.

2. This Agreement shall remain in force for a period of ten (10) years, and shall continue in force, unless terminated in accordance with paragraph 3 of this Article.

3. Unless one Contracting Party shall have given notice to the other Contracting Party of its intention to terminate the Agreement one year before the end of the ten year term, the Agreement, including this Article, shall be extended automatically for a further ten year term.

4. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all of

the other Articles of this Agreement shall continue to be effective for a period of ten (10) years from such date of termination.

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

Done in duplicate at Montevideo this 9 day of August 1995 in Bahasa Malaysia, Spanish and the English Language, all texts being equally authentic.

In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF MALAYSIA

FOR THE GOVERNMENT OF THE ORIENTAL REPUBLIC OF URUGUAY