AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE REPUBLIC OF CROATIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Portuguese Republic and the Republic of Croatia, hereafter referred to as the "Contracting Parties":

Desiring to intensify the economic co-operation to the mutual benefit of both States;

Intending to create and maintain favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement,

1— The term "investment" shall mean every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter including, in particular, though not exclusively:

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

b) Shares, stocks, debentures, or other forms of interest in the equity of companies and/or economic interests from the respective activity;

c) Claims to money or to any performance under having an economic value;

d) Intellectual property rights such as copyrights, patents, utility models, industrial designs or models, trade or service marks, trade names, trade and business secrets, technical processes, know-how and good will;

e) Concessions conferred by law under a contract or an administrative act of a competent state authority, including concessions for prospecting, research and exploitation of natural resources.

Any alteration of the form in which assets are invested shall not affect their character as investments, provided that such a change does not contradict the laws and regulations of the relevant Contracting Party.

2— The term "investor" means:

a) Natural persons having the nationality of either Contracting Party, in accordance with its laws; and

b) Legal persons, including corporations, commercial companies or other companies or associations, which have a main office in the territory of either Contracting Party and are incorporated or constituted in accordance with the law of that Contracting Party.

3— The term "return" shall mean the amounts yielded by investments, over a given period, in particular, though not exclusively, shall include profits, dividends, interests, royalties or other forms of income related to the investments including technical assistance fees.

In cases where the returns of investment, as defined above, are reinvested, the income resulting from the reinvestment shall also be considered as income related to the first investments. 4— The term "territory" means the territory of either of the Contracting Parties, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the

territorial sea of the above territory, over which the Contracting Party concerned exercises, in accordance with international law, sovereignty, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

1— Each Contracting Party shall promote and encourage, as far as possible, within its territory investments made by investors of the other Contracting Party and shall admit such investments into its territory in accordance with its laws and regulations. It shall in any case accord such investments fair and equitable treatment.

2— Investments made by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

3— When a Contracting Party shall have admitted an investment in its territory, it shall grant in accordance with its laws and regulations the necessary permits in connection with such an investment and with the carrying out of licencing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified personnel with the nationality of third States.

4— Neither Contracting Party shall in any way impair by unreasonable arbitrary or discriminatory measures the management, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

Article 3. National and Most Favoured Nation Treatment

1— Investments made by investors of one Contracting Party in the territory of the other Contracting Party, as also the returns therefrom, shall be accorded treatment which is fair and equitable and not less favourable than the latter Contracting Party accords to the investments and returns of its own investors or to investors of any third State.

2— Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which is fair and equitable and not less favourable that the latter Contracting Party accords its own investors or to investors of any third State.

3— The provisions 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 which may be extended by the former Contracting Party by virtue of:

a) Any existing or future free trade area, customs union, common market or other similar international agreements including other forms of regional economic cooperation to which either of the Contracting Parties is or may become a Party, and

b) Any international agreement relating wholly or mainly to taxation.

Article 4. Expropriation

1— Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subject to any other measure with effects equivalent to expropriation or nationalisation (hereinafter referred to as expropriation) unless the measures are taken in the public interest, on a non-discriminatory basis and under one process of law and provided that provisions be made for effective adequate and prompt compensation.

2— Such compensation shall amount to the market value of the expropriated investments immediately before the expropriation became publicly known. The amount of compensation shall be settled in a convertible and freely transferable currency and paid without delay, in a maximum period of three months, counted from the day of the submission of the relevant request and shall include the usual commercial interest from the date of expropriation to the date of payment and shall have been made in an appropriate manner.

3— The investor whose investments are expropriated, shall have the right under the law of expropriating Contracting Party the prompt review by a judicial or other competent authority of that Contracting Party of his or its case and of valuation of his or its investments in accordance with the principles set out in this article.

Article 5. Compensation for Losses

Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to

war or armed conflict, a state of national emergency or other events considered as such by international law, shall be accorded treatment no less favourable by the latter Contracting Party than that Contracting Party accords to the investments of its own investors, or to the investments of investors of any third State, whichever is more favourable, as regards restitution, indemnification, compensation or other valuable consideration. Any payment made under this article shall be, without delay, freely transferable in convertible currency.

Article 6. Transfers

1— Pursuant to its own legislation, each Contracting Party shall guarantee investors of the other Contracting Party the free transfer of sums related to their investments, in particular, though not exclusively:

a) Capital and additional amounts necessary to maintain or increase the investments;

b) The returns defined in paragraph 2, article 1 of this Agreement;

c) Funds in service, repayment and amortisation of loans, recognized by both Contracting Parties to be an investment;

d) The proceeds obtained from the total or partial sale or liquidation of the investment;

e) Any compensation or other payment referred to in articles 4 and 5 of this Agreement;

f) Any preliminary payments that may be made in the name of the investor in accordance with article 7 of this Agreement; or

g) The earnings of nationals of one of the Contracting Parties who are allowed to work in connection with an investment in the territory of the other Contracting Party.

2— The transfers referred to in this article shall be made without restriction or delay at the prevailing exchange rate applicable on the date of the transfer in convertible currency.

Article 7. Subrogation

If either Contracting Party or its designated agency makes any payment to one of its investors as a result of a guarantee in respect of an investment made in the territory of the other Contracting Party, the former Contracting Party shall be subrogated to the rights and shares of this investor as well as the obligations, and may exercise them according to the same terms and conditions as the original holder.

Article 8. Settlement of Disputes between the Contracting Parties

1— Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled by negotiations through diplomatic channels.

2— If the Contracting Parties fail to reach such settlement within six months after the begining of negotiations, the dispute shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal, in accordance with the provisions of this article.

3— The arbitral tribunal shall be constituted ad hoc, as follows: each of the Contracting Parties shall appoint one member and these two members shall propose a national of a third State as chairman to be appointed by the two Contracting Parties. The members shall be appointed within two months and the chairman shall be appointed within three months from the date on which either Contracting Party notifies the other Contracting Party that it wishes to submit the dispute to an arbitral tribunal.

4— If the deadlines specified in paragraph 3 of this article are not complied with, 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 prevented from doing so, or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments.

If the Vice-President is also a national of either Contracting Party or if he is prevented from making the appointments for any other reason, the appointments shall be made by the member of the Court who is next in seniority and who is nota national of either Contracting Party. 5— The chairman of the arbitral tribunal shall be a national of a third State with which both Contracting Parties maintain diplomatic relations.

6— The arbitral tribunal shall rule according to majority vote. The decisions of the tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall be responsible for the costs of its own member and of its

representatives at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the expenses incurred by the chairman, as well as any other expenses. The tribunal may make a different decision regarding costs. In all other respects, the tribunal court shall define its own rules of procedure.

Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1— Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall be settled amicably through negotiations.

2— If such dispute cannot be settled within a period of six months from the date of request for settlement, the investor concerned may submit the dispute to:

a) The competent court of the Contracting Party in which territory the investment was made for decision; or

b) The International Center for the Settlement of Investments Disputes (ICSID) through conciliation or arbitration, established under the Convention on the Settlement of Investments Disputes between States and Nationals of other States, opened for signature in Washington D. C., on March 18, 1965.

3— Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting Party has failed to abide by or to comply with the award rendered by the competent court of the Contracting Party in which territory the investment was made or by the International Center for the Settlement of Investments Disputes.

4— The award shall be enforceable on the parties and shall not be subject to any appeal or remedy other than that provided for in the said Convention. The award shall be enforceable in accordance with the domestic law of the Contracting Party in whose territory the investment in question is situated.

Article 10. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extend that they are more favourable, prevail over this Agreement.

Article 11. Application of the Agreement

This Agreement shall apply to all investments, made by investors from one of the Contracting Parties in the territory of the other Contracting Party in accordance with the respective legal provisions, prior to as well as after its entry into force, but shall not apply to any dispute concerning investments which has arisen before its entry into force.

Article 12. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and a time to be agreed upon through diplomatic channels.

Article 13. Entry Into Force and Duration

1— This Agreement shall enter into force thirty days after the latter date on which either Contracting Party notifies the other Contracting Party that its internal constitutional and legal requirements for the entry into force of this Agreement have been fulfilled.

2— This Agreement shall remain in force fora period of ten years and shall continue in force thereafter unless, twelve months before its expiration or any subsequent five-year period, either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3— In respect of investments made prior to the date of termination of this Agreement the provisions of articles 1 to 12 shall remain in force fora further period of ten years from the date of termination of this Agreement.

In witness whereof, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

Done in Lisbon this 10 day of May 1995 in two originals in Portuguese, Croatian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

Protocol

On the occasion of the signing of the Agreement between the Portuguese Republic and the Republic of Croatia on the Promotion and Reciprocal Protection of the Investments, the undersigned duly authorized to this effect, have agreed also on the following provisions, which constitute an integral part of the said Agreement:

1— With reference to article 2 of this Agreement:

The provisions of article 2 of this Agreement should be applicable when investors of one of the Contracting Parties are already established in the territory of the other Contracting Party and wish to extend their activities or to carry out activities in other sectors.

Such investments shall be considered as new ones and, to that extend, shall be made in accordance with the rules on the admission of investments, according to article 2 of this Agreement.

2— With reference to article 3 of this Agreement:

The Contracting Parties consider that provisions of article 3 of this Agreement shall be without prejudice to the right of either Contracting Party to apply the relevant provisions of their tax law which distinguish between tax-payers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested.

Done in Lisbon this 10 day of May 1995 in two originals in the Portuguese, Croatian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.