AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA ON THE MUTUAL PROMOTION AND GUARANTEE OF INVESTMENTS

The Government of the Kingdom of Denmark and the Government of the Socialist Republic of Romania, hereinafter referred to as "the Contracting Parties";

Desiring to develop the relations of economic cooperation existing between the two States;

Preoccupied to create favourable conditions for investments by investors of one State in the territory of the other State;

Conscious that the reciprocal protection of investments, according to the present Agreement, stimulates the initiative in this field;

Have agreed as follows:

Article 1. Promotion and Protection of Investments

(1) Each Contracting Party shall in accordance with its legislation encourage in its territory the investments by the investors of the other Contracting Party.

(2) Investments shall be admitted in accordance with the legal provisions of the Contracting Party in the territory of which the investments are made and shall enjoy protection as provided in this Agreement.

Article 2. Definitions

For the purpose of this Agreement:

(1) "Investment" means any right of participation in any enterprise including any share of the capital to which an investor is entitled as well as any capital appreciation and in particular, but not exclusively:

(a) Shares, parts or any other forms of participation in enterprises incorporated in the territory of one Contracting Party;

(b) Profits reinvested, claims to money or other rights relating to services having a financial value;

(c) Goods movable and immovable, as well as any other real rights as mortgages, privileges, guarantees and any other similar rights as defined in conformity with the law of the Contracting Party in the territory of which the good in question is situated;

(d) Industrial and intellectual property rights, technology, trade-marks, goodwill, know-how and any other similar rights;

(e) Concessions conferred by law or by contract, particularly the concessions related to prospection, extraction and exploitation of natural riches, including those in the sea-areas under the jurisdiction of either of the Contracting Parties.

(2) "Profits" means the amounts yielded by capital.

(3) "Investors" means:

(a) In respect of Denmark: enterprises incorporated or constituted under the law in force in Denmark and Danish nationals.

(b) In respect of the Socialist Republic of Romania: Romanian economic units having legal personality and which, under the law of Romania, are entitled to trade abroad and undertake international economic cooperation activities.

Article 3. Most-favoured Nation Treatment

(1) Neither Contracting Party shall in its territory subject investors of the other Contracting Party or their investments and profits to treatment less favourable than that which it accords to investors of any third State or to their investments and profits.

(2) If the legislation of either of the Contracting Parties, or existing or future international agreements concluded by either of them, accord to any other investors of their investments and profits more favourable treatment than that provided for in the present Agreement, such more favourable treatment shall apply to investors of the other Contracting Party, their investments and profits.

(3) The provisions of the present Agreement, concerning the most-favoured-nation treatment, shall not apply to advantages that either of the Contracting Parties accords to the investors of any third State, on the basis of its participations, existing or future, to an economic or customs union, free trade area or taking into account membership of an economic community.

(4) The provisions of this Agreement shall have no legal effect in relation to the Convention between the Kingdom of Denmark and the Socialist Republic of Romania for the avoidance of double taxation with respect to taxes on income and capital, drawn in Copenhagen on the 13th December, 1976.(1)

(5) Each Contracting Party shall observe all other obligations entered into with regard to investors of the other Contracting Party, their investments and profits.

Article 4. Expropriation and Compensation

(1) Neither Contracting Party shall take measures of expropriation or any other measures having a similar effect except for the public interest under due process of law and against compensation. Such compensation shall amount to the value of the investment on the date of expropriation, shall be effectively realizable, freely transferable and made without delay.

The amount of compensation shall be subject to review by due process of law, within the jurisdiction of the Contracting Party where the investment has been made. The compensation once finally established shall incur interest for the period of any undue delay in making payment.

(2) If any dispute between an investor of one Contracting Party and the other Contracting Party concerning the amount of compensation continues to exist after the exhaustion of remedies available in the territory of the Contracting Party in which the investment was made, either Party to the dispute shall be entitled to submit the case for conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18th March, 1965.

(3) Investors of one Contracting Party whose investment in the territory of the other Contracting Party suffers losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot, including losses occasioned by requisitioning in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards compensation or other settlement, not less favourable than that which the latter Contracting Party accords to investors of any third State. The amounts concerning these compensations shall be freely transferable.

Article 5. Repatriation of Capital and Profits

(1) Each Contracting Party guarantees to the investors of the other Contracting Party, in respect of their investments, subject to the right of each Contracting Party to exercise equitably, in good faith and on a non-discriminatory basis the powers conferred by its laws, the transfer of:

(a) The invested capital or the proceeds of total or partial liquidation or alienation of the investment;

(b) The profits realized, dividends and other current income resulting from the investment;

(c) The payments made for the reimbursement of the credits for investments and interests due;

(d) An adequate portion of the earnings of the citizens who are allowed to work in an investment made in the territory of the other Contracting Party.

(2) Transfers of the above-mentioned amounts shall be effected without delay in accordance with appropriate procedures after payment of taxes and dues of all kinds which the investor owes in the territory of the other Contracting Party in which the investment was made.

Article 6. Subrogation

If a Contracting Party makes payment to its own investors under a guarantee it has accorded in respect of an approved investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) The assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party, as well as

(b) That the former Contracting Party is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment including payment of taxes and fees.

Article 7. Transfers of Currency

Transfers of currency pursuant to Articles 4, 5 and 6 shall be made without delay in the convertible currency in which the investment has been made or in any other convertible currency if so agreed by the investor, at the official rate of exchange in force at the date of transfer.

Article 8. 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 through negotiations between the Contracting Parties. If such a dispute cannot be settled within six months from the beginning of negotiation, it shall upon the request of either Contracting Party, be submitted to an arbitral tribunal.

(2) Such an arbitral tribunal shall be constituted for each individual case in the following way:

Within three 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 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. If within any of the periods specified 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 any 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.

(3) The arbitral tribunal shall apply the provisions of this Agreement, other Agreements concluded between the Contracting Parties, and the rules of general international law. It shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties who alone shall have the right of audience before the tribunal.

(4) 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.

(5) The arbitral tribunal determines its own procedure.

Article 9. Entry Into Force, Duration and Termination

(1) The present Agreement shall enter into force on the day the Governments of the two Contracting Parties notify each other that their constitutional requirements for the entering into force of the Agreement have been fulfilled, and shall remain binding for a period of ten years. Unless denounced one year before the expiration of the ten-year period it shall be considered as renewed for new periods of ten years therefrom.

(2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1-9 shall continue to be effective for a further period of ten years in respect of investments made before official notice was given.

(3) The present Agreement shall not apply to the Faroe Islands and Greenland.

SIGNED at Copenhagen on 12th November 1980 in two original copies in the Danish, Romanian and English languages, all

texts being equally authentic. In case of differences of interpretation the text in the English language shall be considered as the text of reference.

ERLING JENSEN

For the Government of the Kingdom of Denmark

GHEORGHE OPREA

For the Government of the Socialist Republic of Romania