AGREEMENT BETWEEN JAPAN AND THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA CONCERNING THE PROMOTION AND PROTECTION OF INVESTMENT

Japan and the Democratic Socialist Republic of Sri Lanka,

Desirous of strengthening economic cooperation between the two countries,

Intending to create favourable conditions for investment by nationals and companies of each country within the territory of the other country, by means of the favourable treatment for investment and business activities in connection therewith and the protection of investments, and

Recognizing that the promotion and protection of investment will stimulate the flow of capital and technology for the benefit of the economies of the two countries,

Have agreed as follows:

Article 1.

For the purposes of the present Agreement:

(1) The term "investments" comprises every kind of asset including:

(a) Shares and other types of holding of companies;

(b) Claims to money or to any performance under contract having a financial value;

(c) Rights with respect to movable and immovable property;

(d) Patents of invention, rights with respect to trade marks, trade names, trade labels and any other industrial property, and rights with respect to knowhow; and

(e) Concession rights including those for the exploration and exploitation of natural resources.

(2) The term "returns" means the amounts yielded by an investment, in particular, profit, interest, capital gains, dividends royalties and fees.

(3) The term "nationals" means:

(a) In relation to Japan, physical persons possessing the nationality of Japan; and

(b) In relation to Sri Lanka, physical persons who are citizens of Sri Lanka according to its laws.

(4) The term "companies" means corporations, partnerships, companies and associations whether or not with limited liability, whether or not with legal personality and whether or not for pecuniary profit. Companies constituted under the applicable laws and regulations of one Contracting Party and having their seat within its territory shall be deemed companies of that Contracting Party.

Article 2.

1. Each Contracting Party shall, subject to its rights to exercise powers in accordance with the applicable laws and regulations, encourage and create favourable conditions for nationals and companies of the other Contracting Party to make investment in its territory, and, subject to the same rights, shall admit such investment.

2. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded

treatment no less favourable than that accorded to nationals and companies of any third country in regard to the matters relating to the admission of investment.

3. Notwithstanding the provisions of paragraph 2 of the present Article, either Contracting Party may require that the treatment with respect to rights on immovable property shall be accorded on the basis of reciprocity.

Article 3.

1. Neither Contracting Party shall within its territory subject investments and returns of nationals and companies of the other Contracting Party to treatment less favourable than that accorded to investments and returns of nationals and companies of the former Contracting Party or of nationals and companies of any third country.

2. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies of any third country in all matters relating to their business activities in connection with their investment.

3. Notwithstanding the provisions of paragraphs 1 and 2 of the present Article, either Contracting Party may:

(1) Exclude the grant of national treatment to:

(a) The conditions of registration of aircraft in the national register of either Contracting Party and matters arising from such registration, and matters related to or arising from the nationality of ship, and

(b) The activities concerning banking and the acquisition of ship or of any interest in ship;

(2) Accord special tax advantages on the basis of reciprocity or by virtue of agreements for the avoidance of double taxation or for the prevention of fiscal evasion; and

(3) Prescribe special formalities in connection with the activities of foreign nationals and companies within its territory, provided that such formalities may not impair the substance of the rights set forth in the provisions of paragraph 2 of the present Article.

Article 4.

Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies of any third country with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction both in pursuit and in defence of their rights.

Article 5.

1. Investments and returns of nationals and companies of either Contracting Party shall receive the most constant protection and security within the territory of the other Contracting Party.

2. Investments and returns of nationals and companies of either Contracting Party shall not be subjected to expropriation, nationalization, restriction or any other measure the effects of which would be tantamount to expropriation or nationalization, within the territory of the other Contracting Party unless such measures are taken for a public purpose and under due process of law; are not discriminatory; and, are taken against prompt, adequate and effective compensation.

3. The compensation referred to in the provisions of paragraph 2 of the present Article shall represent the equivalent of the normal market value of the investments and returns affected at the time when expropriation, nationalization, restriction or any other comparable measure was publicly announced or when such measure was taken, whichever is the earlier, without reduction in that value due to the prospect of the very seizure which ultimately occurs. Such compensation shall be paid without delay and shall carry an appropriate interest taking into account the length of time until the time of payment. It shall be effectively realizable and freely transferable at the exchange rate prevailing on the date used for the determination of value. Adequate provision shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization, restriction or any other comparable measure for the determination and payment thereof.

4. The provisions of paragraphs 2 and 3 of the present Article shall extend to:

(1) Interests held by nationals and companies of either Contracting Party in investments and returns subjected to expropriation, nationalization, restriction or any other measure the effects of which would be tantamount to expropriation or nationalization, within the territory of the other Contracting Party; and

(2) Interests held through other companies in which such nationals and companies have direct interests.

5. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies of any third country with respect to the matters set forth in the provisions of paragraphs 1 to 4 of the present Article.

Article 6.

Nationals and companies of either Contracting Party who suffer within the territory of the other Contracting Party damages in relation to their investments, returns, or activities in connection with their investment, owing to the outbreak of hostilities or a state of national emergency, shall be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies of any third country, as regards restitution, compensation or other valuable consideration. Payments made under the present Article shall be effectively realizable and freely transferable.

Article 7.

If either Contracting Party makes payment to any of its nationals or companies under a guarantee it has assumed in respect of investments and returns in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer to the former Contracting Party of any right or claim of such national or company in such investments and returns on account of which such payment is made and the subrogation of the former Contracting Party to any claim or cause of action of such national or company arising in connection therewith. As regards the transfer of payment to be made to that former Contracting Party by virtue of such transfer of right or claim, the provisions of paragraphs 2 to 5 of Article 5, Article 6 and Article 8 shall apply mutatis mutandis.

Article 8.

1. Nationals and companies of either Contracting Party shall be guaranteed by the other Contracting Party freedom of payments, remittances, and transfers of financial instruments or funds including value of liquidation of an investment between the territories of the two Contracting Parties as well as between the territories of such other Contracting Party and of any third country.

2. Notwithstanding the provisions of paragraph 1 of the present Article, either Contracting Party may, in exceptional financial or economic circumstances, impose such exchange restrictions in accordance with its laws and in conformity with the Articles of Agreement of the International Monetary Fund so long as such Contracting Party is a party to the said Articles of Agreement.

Article 9.

The present Agreement shall also apply to investments and returns of nationals and companies of either Contracting Party acquired within the territory of the other Contracting Party in accordance with the applicable laws and regulations of such other Contracting Party prior to the entering into force of the present Agreement.

Article 10.

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

Article 11.

Either Contracting Party and a national or a company of the other Contracting Party may submit any legal dispute that may arise out of investment made by such national or company in the former Contracting Party to conciliation or arbitration, in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States done at Washington on March 18, 1965, so long as such provisions are in force between the Contracting Parties. Each Contracting Party shall, at the request of such national or company of the other Contracting Party, consent to submit any legal dispute that may arise out of such investment to conciliation or arbitration as stated above. Any company of the former Contracting Party which was or is controlled by nationals and companies of the other Contracting Party Prior to or on the date on which the parties to such a dispute consent to submit the dispute to conciliation or arbitration shall in

accordance with the provisions of Article 25 (2) (b) of the Convention be treated for the purposes of the Convention as a company of such other Contracting Party in the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure the national or company affected shall have the right to choose.

Article 12.

1. Companies in which nationals and companies of either Contracting Party have a substantial interest shall within the territory of the other Contracting Party be accorded:

(1) Treatment no less favourable than that accorded to like companies in which nationals and companies of any third country have a substantial interest with respect to the matters set forth in the provisions of paragraph 2 of Article 2; and

(2) Treatment no less favourable than that accorded to like companies in which nationals and companies of such other Contracting Party or nationals and companies of any third country have a substantial interest with respect to the matters set forth in the provisions of Article 3, paragraph of Article 5, Article 6 and Article 9.

2. A company to which the provisions of paragraph 1 of the present Article shall apply shall be one on which nationals or companies of either Contracting Party may exercise control or decisive influence. The Contracting Party within whose territory investment is made shall bona fide and on the basis of non-discrimination decide the companies that fall within the scope of the present Article, through prior consultation with the other Contracting Party.

Article 13.

1. Each Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other Contracting Party may make with respect to any matter affecting, the operation of the present Agreement.

2. Any dispute between the Contracting Parties as to the interpretation or application of the present Agreement, not satisfactorily adjusted by diplomacy, shall be referred for decision to an arbitration board. Such arbitration board shall be composed of three arbitrators, with each Contracting Party appointing one arbitrator, within a period of thirty days from the date of receipt by either Contracting Party from the other Contracting Party of a note requesting arbitration of the dispute, and the third arbitrator to be agreed upon by the two arbitrators so chosen within a further period of thirty days, provided that the third arbitrator shall not be a national of either Contracting Party.

3. If the third arbitrator is not agreed upon between the arbitrators appointed by each Contracting Party within the period referred to in the provisions of paragraph 2 of the present Article, the Contracting Parties shall request the President of the International Court of Justice to appoint the third arbitrator who shall not be a national of either Contracting Party.

4. The arbitration board shall reach its decisions by a majority of votes. Such decisions shall be final and binding.

Article 14.

Either Contracting Party shall in accordance with its applicable laws and regulations give sympathetic consideration to applications for the entry, sojourn and residence of nationals of the other Contracting Party who wish to enter the territory of the former Contracting Party and remain therein for the purpose of making investment and carrying on business activities in connection therewith.

Article 15.

1. Nothing in the present Agreement shall be construed so as to grant any right or impose any obligation in respect of copyright.

2. (1) Nothing in the present Agreement shall be construed so as to derogate from the obligations undertaken by either Contracting Party towards the other Contracting Party by virtue of the provisions of the Parties Convention for the Protection of Industrial Property of March 20, 1883, as revised at London on June 2, 1934, or of any subsequent revision thereof, so long as such provisions are in force between the Contracting Parties.

(2) Without prejudice to the provisions of the foregoing sub-paragraph and notwithstanding the provisions of paragraph 1 of Article 3 of the present Agreement, the treatment accorded by either Contracting Party in respect of industrial property right to nationals and companies of the other Contracting Party may be limited to treatment no less favourable than that accorded to nationals and companies of the former Contracting Party.

Article 16.

1. The present Agreement shall be ratified, and the instruments of ratification thereof shall be exchanged at Tokyo as soon as possible.

2. The present Agreement shall enter into force one month after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall continue in force thereafter for another period of ten years and so forth, until terminated as provided in paragraph 3 of the present Article.

3. Either Contracting Party may, by giving one year's advance notice in writing to the other Contracting Party, terminate the present Agreement at the end of the initial ten-year period or at the end of each subsequent ten-year period.

4. In respect of in vestments and returns acquired prior to the date of termination of the present Agreement, the provisions of Article 1 to 15 shall continue to be effective for a further period of fifteen years from the date of termination of the present Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed the present Agreement.

DONE in duplicate, at Colombo, this first day of March, 1982, in the Japanese, Sinhala and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For Japan:

Kazuo Chiba

For the Democratic Socialist Republic of Sri Lanka:

W.M.P.B. Menikdiwela

Agreed minutes

The undersigned wish to record the following understanding which they have reached during the negotiations for the Agreement between Japan and the Democratic Socialist Republic of Sri Lanka concerning the Promotion and Protection of Investment (hereinafter referred to as "the Agreement") signed today:

With reference to the provisions of paragraph 2 of Article 3 of the Agreement, it is confirmed that "business activities" referred to therein of nationals and companies of either Contracting Party include the management, use, enjoyment or disposal of their investment, consisting inter alia of:

(a) The maintenance of branches, agencies, offices, factories and other establishments appropriate to the conduct of business activities;

(b) The control and management of companies which they have established or acquired;

(c) The employment of accountants and other technical experts, executive personnel, attorneys, agents and other specialists;

(d) The making and performance of contracts;

(e) The purchase of raw or auxiliary materials of power or fuel, or of means of pro- duction or operation of any kind, including the importation thereof;

(f) The marketing of products, including the exportation thereof; and

(g) The fund raising or the opening of inter-enterprise commercial credit.

Colombo, March 1, 1982

For Japan:

Kazuo Chiba

For the Democratic Socialist Republic of Sri Lanka:

W.M.P.B. Menikdiwela