AGREEMENT BETWEEN THE CZECH REPUBLIC AND THE ITALIAN REPUBLIC FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Czech Republic and the Italian Republic (hereinafter referred to as the "Contracting Parties").

Desiring to further develop economic cooperation to the mutual benefit of both Contracting Parties,

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

Conscious that the promotion and protection of investments stimulate the business initiatives in this field,

Have agreed as follows :

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall comprise every kind of asset invested in connection with economic activities by an investor of one contracting Party in the territory of the other contracting Party, in accordance with the laws and regulations of the latter and shall include in particular, though not exclusively :

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

b) shares, stocks, debentures, public securities or any other form of participation in a company;

c) financial credits and claims to any performance having an economic value associated with an investment, as well as reinvested income and capital gains;

d) intellectual property rights, including copyrights, trade marks, patents, industrial designs. technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;

e) any right conferred by law or under contract and any licence and permit pursuant to law, including the concessions to search for, extract, cultivate or exploit natural resources;

f) any additional contribution to the equity of the original investment.

Any alteration of the form in which assets are invested shall not affect their character as investment.

2. The term "investor" shall mean any natural or legal person who invests, directly or through its own subsidiary, in the territory of the other Contracting Party.

a) The term "natural person" shall mean any natural person having the nationality of either Contracting Party in accordance with its laws.

b) The term "legal person" shall mean, with respect to either Contracting Party, any entity incorporated or constituted in accordance with, and recognized as legal person by, its laws, having its permanent seat in the territory of one of the Contracting Parties, such as public companies, corporations, partnerships, foundations and associations, regardless of whether their liability is limited or otherwise.

3. The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, shall include profits, interests, interests related to loans, capital gains, shares, dividends, royalties or fees as well as any return in kind.

4. The term "territory " shall mean, in addition to the zones contained within the land boundaries, any marine or submarine zones within which both Contracting Parties exercise, in accordance to the international law, sovereignty, sovereign and/ or jurisdictional rights.

5. The term "associated activities" shall include the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories and other facilities as well as the importation and installation of equipment necessary for the normal conduct of business affairs; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual property; access to the financial market, in particular the borrowing of funds, the purchase, issuance and sale of equity shares and other securities; the purchase of foreign exchange for imports; the granting of franchises or rights under licenses and leasing services rendered in or to the territory of the Contracting Parties.

Article 2. Promotion and Protection of Investments

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

2. Each Contracting Party shall accord to investments and associated activities made in its territory by investors of the other Contracting Party fair and equitable treatment and shall refrain from adopting unjustified or discriminatory measures which might affect the management, maintenance, use, disposal, transformation or liquidation of investments, as well as the procurement of the goods necessary to the investment and the sale of the production on domestic and international markets.

3. Each Contracting Party or its designated Agency may stipulate, in accordance with its laws and regulations, with an investor of the other Contracting Party an investment agreement on the conditions of the investment project.

4. Each Contracting Party shall, in accordance with its laws and regulations, permit investors of the other Contracting Party who have made investments in its territory to employ top managerial personnel regardless of their nationality.

Article 3. National and Most Favored Nation Treatment

1. Each Contracting Party shall in its territory accord investments and returns of investors of the other Contracting Party treatment which is fair and equitable and not less favourable than that accorded to investments and returns of its own investors or to investments and returns of investors of any third State.

2. Each Contracting Party shall in its territory accord to investors of the other contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment which is fair and equitable and not less favourable than that accorded to its own investors or of any third State.

3. The provisions of paragraph 1 and 2 of this Article 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 which may be extended by the former Contracting Party by virtue of:

a) any customs union or free trade area or economic and monetary union or similar international agreements leading to such unions or institutions or other forms of regional cooperation to which either of the Contracting Parties is or may become a Party;

b) any international agreement or arrangement relating wholly or mainly t.o taxation, in particular to prevent double taxation, or intended to facilitate cross border trade and cooperation.

Article 4. Compensation for Damage or Losses

1. When investments by investors of either Contracting Party suffer damage or losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party a treatment as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

2. Without prejudice to paragraph 1 of this Article, investors of one contracting Party who in any of the events referred to in thAr paragraph suffer damage or losses in the territory of the other Contracting Party resulting from:

a) requisitioning of their property by its forces or authorities,

b) destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation.

shall be accorded just and adequate compensation for the damage or losses sustained during the period of the requisitioning or as a result of the destruction of the property.

3. Compensation payments deriving from the events referred to in paragraph 1 and 2 of this Article shall be freely transferable in freely convertible currency without any undue delay.

Article 5. Nationalization or Expropriation

1. Investments of investors of either Contracting Party, including related returns, shall not be, de jure or de facto, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation (hereinafter referred as "expropriation") in the territory of the other Contracting party except for a public purpose and national interest.

The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by the payment of prompt , adequate and effective compensation.

Such compensation shall be equivalent to the market value of the investment expropriated immediately prior to the moment in which the decision of expropriation has been announced.

The compensation shall include interest calculated on the LIBOR basis from the date of expropriation to the date of payment, shall be made without any undue delay and in any case within two months, shall be effectively realizable and shall be freely transferable in convertible currency.

2. The provisions of this Article shall also apply when a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in its territory and of which investors of the other contracting Party own shares.

In case that the object of expropriation is a joint-venture constituted in the territory of one of the Contracting Parties, the compensation to be paid to the investor of the other Contracting Party shall be calculated taking into account the share of such investor in the joint-venture in accordance with its basic documents.

3. An investor of either Contracting Party that asserts that all or part of its investment has been affected by expropriation shall have the right to a prompt review by the competent Judicial or administrative authorities of the other Contracting Party in order to determine whether such measure has occurred and, if it has, whether such measure and any compensation thereof conform to the provisions of this Agreement and to the principles of international law, and in order to decide all other relevant matters.

4. Compensation will be considered as actual if it has been paid in the same currency in which the investment has been made by the foreign investor, in so far as such currency is - or remains - convertible, or, otherwise, in any other currency accepted by the investor. Compensation will be freely transferable.

Article 6. Subrogation

1. If a Contracting Party or its designated Agency makes payments to its own investors under a guarantee it has accorded in respect of non-commercial risks for an 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 or its designated Agency, as well as,

b) that the other Contracting Party or its designated Agency 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..

2. In relation to the transfer of payments to the Contracting Party or its designated Agency by virtue of this assignment, the provisions of Article 7 of this Agreement shall apply.

Article 7. Transfers

1. The Contracting Parties shall guarantee the transfer of payments related to investments and returns. The transfers shall be made in a freely convertible currency, without any restriction and undue delay, after all fiscal obligations have been fulfilled. Such transfers shall include in particular, though not exclusively:

a) capital and additional amounts to maintain or increase the investment;

b) profits, interests, dividends and other current income;

c) funds in repayment of loans;

d) royalties or fees, payments for assistance and technical services;

e) proceeds of total or partial sale or liquidation of the investment;

f) remuneration and fees paid to nationals of one Contracting Party for work and services performed in relation to an investment effected in the territory of the other contracting Party subject to the laws and regulations of the latter Contracting Party;

g) compensation for nationalization or expropriation.

2. All the transfers referred to in paragraph 1 of this Article shall be made at the prevailing exchange rate applicable on the date on which the investor applies for the related transfer, unless otherwise agreed.

3. Transfers referred to in Articles 4, 5, 6 and in paragraph 1 of this Article, shall be considered to have been made "without any undue delay " when they have been made within the period normally necessary for the completion of the transfer. Such period shall under no circumstances exceed two months.

Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute which may arise between one of the Contracting Parties and an investor of the other contracting Party on investments, including disputes relating to the amount of compensation, shall be settled amicably, as far as possible.

2. In the event that such dispute cannot be settled amicably within six months from the date of the written application to settlement, the investor may submit at his choice the dispute for settlement to;

a) a Competent court or Arbitration Tribunal of the Contracting Party in whose territory the investments have been made;

b) the International Centre for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of the other States opened for signature at Washington D.C. on March 18th 1965 ;

c) an ad hoc Arbitration Tribunal, according to the Arbitration Rules of the UN Commission on the International Trade Law (UNCITRAL) ;

d) any other international arbitration body agreed upon by the parties to the dispute.

Should the dispute be submitted to the Arbitration Tribunal envisaged in paragraph 2 c) of this Article the following provisions will apply:

- the Arbitration Tribunal will be composed of three arbitrators;

- the President of the Arbitration Institute of Stockholm Chamber will act as competent Appointing Authority;

- the Arbitration Tribunal shall make its decision taking into consideration the provisions of this Agreement as well as commonly recognized principles of the international law.

Article 9. Settlement of Disputes between the Contracting Parties

1. Disputes between the contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultation or negotiation.

2. If dispute cannot be thus settled within six months, it shall, upon request of either Contracting Party, be submitted to an Arbitration Tribunal in accordance '.lith the provisions of this Article.

3. The Arbitration Tribunal shall be constituted for each individual case in the following way. Within two months from the receipt of the request for arbitration, each contracting Party shall appoint one member of the Tribunal. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three months from the date of appointment of the other two members.

3. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, a request may be made to the President of the International Court of Justice to make the appointments. If he happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said fUnction, the Vice-President of the Court shall be invited to make the appointments. If the Vice-President also happens to be a national of either Contracting Party or 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 appointments.

4. The Arbitration Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The Arbitration Tribunal shall determine its own procedure.

Article 10. Application of other Rules and Special Commitments

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement. to which both Contracting Parties are parties, nothIng in this Agreement shall prevent either Contracting Party or any of its investors who owns investments in the territory of the other Contracting Party from taking advantage of ... whichever rules are more favourable to his case.

2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions of contracts is more favourable than that accorded by the Agreement, the more favourable treatment shall be accorded.

Article 11. Applicability of this Agreement

1. The provisions of this Agreement shall apply to future investments made by investors of one Contracting Party in the territory of the other Contracting Party, and also to the investments existing in accordance with the laws of the Contracting Parties on the date of this Agreement coming into force.

2. The provisions of this Agreement shall be applied irrespective of whether or not the Contracting Parties have diplomatic or consular relations.

Article 12. Entry Into Force, Duration and Termination

1. Each of the Contracting Parties shall notify the other of the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force on the first day of the second month after the da:e of the second notification.

2. This Agreement shall remain in force for a period of ten years. Thereafter, it shall remain in force until the expiration of at twelve month period from the date either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination.

In WITNESS WHEREOF, the undersigned, being duly authorised have signed the present Agreement.

Done in duplicate at Rome, this 22ns day of January 1996 in the Czech, Italian and English languages.

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

FOR THE CZECH REPUBLIC

FOR THE ITALIAN REPUBLIC