Agreement on Reciprocal Encouragement and Protection of Investments between the Kingdom of the Netherlands and the Republic of Turkey

The Government of the Kingdom of the Netherlands

And

The Government of the Republic of Turkey

Desiring to strengthen the traditional ties of friendship between their countries, to extend and intensify the economic relations between them particularly with respect to investments by the investors of one Contracting Party in the territory of the other Contracting Party.

Recognizing that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investment is desirable,

Have agreed as follows :

Article 1.

For the purposes of the present Agreement:

(a) ‘investor' means:

i. A natural person who is a national of a Contracting Party under its applicable law;

ii. A legal person duly incorporated, constituted or otherwise duly organized under the applicable laws and regulations of a Contracting Party;

(b) ‘investment' means every kind of asset such as equity, debt, claims and service and investment contracts and includes:

i. Tangible and intangible property, including rights such as mortgages, liens and pledges;

ii. Shares of stock or other interests in a company or interests in the assets thereof;

iii. A claim to money or a claim to performance having economic value and associated with an investment;

iv. Industrial property rights, including rights with respect to patents, trademark,trade names, industrial designs and know-how and goodwill and copyrights;

v. Any right conferred by law or contract, and any licences and permits pursuant to law.

(c) ‘territory' includes the maritime areas adjacent to the coast of the State concerned, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

(d) ‘owned or controlled' means ownership or control that is direct or indirect, including ownership or control exercised through subsidiaries or affiliates, wherever located.

Article 2.

1) Either Contracting Party shall, within the framework of its laws and regulations, promote economic cooperation through the protection in its territory of investments of investors of the other Contracting Party. Subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit investments of investors of the other

Contracting Party.

2) The present Agreement shall apply to investments owned or controlled by investors of one Contracting Party in the territory of the other Contracting Party which are established in accordance with the laws and regulations in force in the latter Contracting Party's territory at the time the investment was made.

3) The present Agreement shall also apply to investments by investors of either Contracting Party in the territory of the other Contracting Party, made before its coming into force.

Article 3.

1) Each Contracting Party shall ensure fair and equitable treatment to the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment sale or liquidation thereof by those investors.

2) Each Contracting Party shall accord to such investments full security and protection which in any case shall not be less than that accorded to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor. Each Contracting Party shall observe any obligation it may have entered into with regard to investments.

3) The provisions of paragraph (1) and (2) 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 resulting from:

a) Any existing or future customs unions, economic unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, or

b) Any international agreement or arrangement relating wholly or mainly to taxation on the basis of reciprocity with a third State.

Article 4.

Each Contracting Party shall permit, to the extent permitted by and in conformity with its relevant laws and regulations, the transfer, without unreasonable restriction or delay, into its country or to the country of the other Contracting Party and in the currency of that country or in any freely convertible currency of payments resulting from investments and in particular of the following items:

(a) Profits, dividends, capital gains and similar payments;

(b) The proceeds of sale or liquidation of all or any part of the investment;

(c) Principal and interest payments arising under a loan agreement;

(d) Management, technical assistance, personnel or other fees;

(e) Royalty payments.

Article 5.

Neither Contracting Party shall take any measures depriving, directly or indirectly, investors of the other Contracting Party of their investments unless the following conditions are complied with:

(a) The measures are taken in the public interest and under due process of law;

(b) The measures are not discriminatory;

(c) The measures are accompanied by provision for the payment of just compensation. Such compensation shall amount to the fair market value of the investment or in the absence of a fair market value the genuine value of the investments affected and shall, in order to be effective for the investors, be paid and made freely transferable, without unreasonable delay, to the country of which the investors concerned are nationals or to any other country accepted by the Contracting Party concerned and in the currency in which the investment was originally made or in any freely convertible currency, mutually agreed to by the investor and the Contracting Party.

Article 6.

Investors of the one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, insurrection or similar events shall be accorded by the latter Contracting Party treatment as regards any measures it adopts in relation to such losses, no less favourable than that which that Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

Article 7.

If the investments of an investor of the one Contracting Party are insured against noncommercial risks under a system established by law, any subrogation of the insurer into the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party.

The insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise. Disputes between a Contracting Party and an insurer shall be settled in accordance with the provisions of Article 8 of this Agreement.

Article 8.

1) For the purposes of this Article, an investment dispute is defined as a dispute involving:

(a) The interpretation or application of any investment authorization granted by a Contracting Party's foreign investment authority to an investor of the other Contracting Party; or

(b) A breach of any right conferred or created by this Agreement with respect to an investment.

2) In the event of an investment dispute between a Contracting Party and an investor of the other Contracting Party, the parties to the dispute shall initially seek to resolve the dispute by consultations and negotiations in good faith. If such consultations or negotiations are unsuccessful, the dispute may be settled through the use of nonbinding, third party procedures upon which such investor and the Contracting Party mutually agree. If the dispute cannot be resolved through the foregoing procedures the investor concerned may choose to submit the dispute to the International Centre for the Settlement of Investment Disputes (‘Centre') for settlement by arbitration, at any time after one year from the date upon which the dispute arose provided that in case the investor concerned has brought the dispute before the courts of justice of the Contracting Country that is a party to the dispute, and there has not been rendered a final award.

3) (a) Each Contracting Party hereby consents to the submission of an investment dispute to the Centre for settlement by arbitration.

(b) Arbitration of such disputes shall be done in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States and the ‘Arbitration Rules' of the Centre.

4) For the purposes of this Article, any legal person incorporated or constituted under the applicable laws and regulations of either Contracting Party, but that, immediately before the occurrence of the event or events giving rise to the dispute, was an investment of investors of the other Contracting Party, shall in accordance with Article 25 (2)(b) of the Convention on the Settlement of Investment Disputes between States and Nationals of other States be treated as an investor of such other Contracting Party.

Article 9.

Either Contracting Party may propose the other Party to consult on any matter concerning the interpretation or application of the Agreement. The other Party shall accord sympathetic consideration to and shall afford adequate opportunity for such consultation.

Article 10.

1) The Contracting Parties shall seek in good faith and a spirit of cooperation a rapid and equitable solution to any dispute between them concerning the interpretation or application of this Agreement. In this regard, the Contracting Parties agree to engage in direct and meaningful negotiations to arrive at such solutions. If such negotiations are unsuccessful, the dispute may be submitted, upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law.

2) Within two months of receipt of a request, each party shall appoint an arbitrator. The two arbitrators shall select as

chairman a third arbitrator, who is a national of a third State. In the event either Party fails to appoint an arbitrator within the specified time, the other Party may request the President of the International Court of Justice to make the appointment. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the Court of Justice to make the necessary appointment.

3) The Tribunal shall have three months from the date of the selection of the Chairman in which to agree upon rules of procedure consistent with the provisions of this Agreement. In the absence of such agreement, the Tribunal shall request the President of the International Court of Justice to designate rules of procedure, taking into account generally recognized rules of international arbitral procedure.

4) If, in the cases provided for in the second and third paragraphs of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Party the most senior member of the Court available who is not a national of either Party shall be invited to make the necessary appointments.

5) Upon a determination that the Party requesting arbitration has attempted to resolve the dispute through direct and meaningful negotiation, the Tribunal shall proceed to arbitrate the merits of the dispute.

6) The Tribunal shall reach its decision by a majority of votes. Such decision shall be binding on the Parties. Each 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 Parties. The Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Parties, and this award shall be binding on the Parties.

7) This Article shall not be applicable to a dispute which has been submitted to and is still before the Centre pursuant to Article 8 of this Agreement.

Article 11.

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe and to Aruba.

Article 12.

The Agreement may at any time be amended by written agreement between the Contracting Parties. Any amendment shall enter into force when each Contracting Party has notified the other that it has completed all internal requirements for entry into force of such amendment.

Article 13.

1) The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the procedures constitutionally required therefor in their respective countries have been complied with, and shall remain in force for a period of 10 years.

2) Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of 10 years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least six moths before the date of expiry of the current period of validity.

3) In respect of investments made before the date of the termination of the present Agreement the foregoing Articles thereof shall continue to be effective for a further period of 15 years from that date.

IN WITNESS WHEREOF, the undersigned representatives duly authorized thereto, have signed the present Agreement.

DONE in duplicate at [place] on [date], in the Dutch, Turkish, and English languages all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of the Kingdom of the Netherlands,

For the Government of The Republic of Turkey,