TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA FOR THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT, WITH ANNEX AND PROTOCOL

The Government of the United States of America and the Government of the Republic of Lithuania (hereinafter the "Parties");

Desiring to promote greater economic cooperation between them, with respect to investment tay nationals and companies of one Party in the territory of the other Party;

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of private capita) and the economic development of the Parties;

Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources;

Recognizing that the development of economic and business ties can contribute to the well-being of workers in both Parties and promote respect for internationally recognized worker rights;

Noting the bilateral most favored nation trade agreement of December 23, 1925, between the Parties;

In furtherance Article three of the bilateral agreement concerning the development of trade and investment relations of 1992 between the Parties and;

Having resolved to conclude a Treaty concerning the encouragement and reciprocal protection of investment;

Have agreed as follows:

Article I.

1. For the purpose of this Treaty'

(a) "Investment" means every kind of investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party such as equity, debt, and service and investment contracts; and includes:

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

(ii) A company or 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;

(vi) Intellectual property which includes, inter alia, rights relating to:

Literary and artistic work, including sound recordings,

Inventions in all fields of human endeavor,

Industrial designs,

Semiconductor mask works,

Trade secrets, know-how, and confidential business information,

and trademarks, service marks, and trade names; and

(v) any right conferred by law or contract and any licenses and permits pursuant to law.

(b) "Company" of a Party means any kind of corporation, company, association, partnership, or other organization legally constituted under applicable laws and regulations of a Party whether or not organized for pecuniary gain, or privately or governmentally owned or controlled.

(c) "National" of a Party means a natural person who, for the United States of America, is a national of the United States under its applicable laws, and for Lithuania, is a citizen of the Republic of Lithuania under its applicable laws.

(d) "Return" means an amount derived from or associated with an investment, including profit; dividend; interest; capital gain; royalty payment; management; technical assistance or other fee; or returns in kind.

(e) "Associated activities" include the organization, control, operation, maintenance and disposition of companies, branches/ agencies, offices, factories or other facilities for the conduct of business; the making or performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual property; the borrowing of funds; the purchase, issuance and sale of equity shares and other securities; and the purchase of foreign exchange for imports.

(f) "State enterprise" means an enterprise owned or controlled through ownership interests, by a Party.

(g) "Delegation" includes a legislative grant and a government order, directive or other act transferring to a state enterprise or monopoly or authorizing the exercise by a state enterprise or monopoly of, governmental authority.

2. Each Party reserves the right to deny to any company the advantages of this Treaty if nationals of any third country control such company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying Party does not maintain normal economic relations.

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

Article II.

1. Each Party shall permit and treat investment, and activities associated therewith, on a basis no less favorable than that accorded in like situations to investment or associated activities of its own nationals or companies, or of nationals or companies of any third country, whichever is the most favorable, subject to the right of each Party to make or maintain exceptions falling within one of the sectors or matters listed in the Annex to this Treaty. Bach Party agrees to notify the other Party before or on the date of entry into force of this Treaty of all such laws and regulations of which it is aware concerning the sectors or matters listed in the Annex. Moreover, each Party agrees to notify the other of any future exception with respect to sectors or matters listed in the Annex, and to limit such exceptions to a minimum. Any future, exception by either Party shall not apply to investment existing in that sector or matter at the time the exception becomes effective. The treatment accorded pursuant to any exceptions shall unless specified otherwise in the Annex, be not less favorable than that accorded in like situations to investment and associated activities of nationals or companies of any third country.

2. (a) Nothing in this Treaty shall be construed to prevent a Party from maintaining or establishing a State enterprise.

(b) Each Party shall ensure that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under this Treaty wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees or other charges.

(c) Each Party shall ensure that any state enterprise that it maintains or establishes accords the better of national or most favored nation treatment in the sale of its goods or services in the Party's territory.

3. (a) Investment shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less favorable than required by international law.

(b) Neither Party shall in any way impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. For purpose of dispute resolution under Articles VI and VII, a measure may be arbitrary or discriminatory notwithstanding the fact that a Party has had or has exercised the opportunity to review such measure in the courts or administrative tribunals of a Party.

(c) Each Party shall observe any obligation it may have entered into with regard to investments.

4. Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising en the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

5. Companies which are legally constituted under the applicable laws or regulations of one Party, and which are investments, shall be permitted to engage top managerial personnel of their choice, regardless of nationality.

6. Neither Party shall impose performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

7. Each Party shall provide effective means of asserting claims and enforcing rights with respect to investment, investment agreements, and investment authorizations.

8. Each Party shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments.

9. The treatment accorded by the United States of America to investment and associated activities of nationals and companies of the Republic of Lithuania under the provisions of this Article shall in any state, Territory or possession of the United States of America be no less favorable than the treatment accorded therein to investments and associated activities of nationals of the United States of America resident in, and companies legally constituted under the law and regulations of other States, Territories or possessions of the United States of America.

10. The most favored nation provisions of this Treaty shall not apply to advantages accorded by either Party to nationals or companies of any third country by virtue of:

(a) That Party's binding obligations that derive from full membership in a free trade area or customs union; or

(b) That Party's binding obligations under any multilateral international agreement under the framework of the General Agreement on Tariffs and Trade that -enters into force subsequent to the signature of this Treaty.

11. The Parties acknowledge and agree that "associated activities" include, without limitation, such activities as:

(a) The granting of franchises or rights under licenses;

(b) Access to registrations, licenses, permits and other approvals (which shall in any event be issued expeditiously;

(c) Access to financial institutions and credit markets;

(d) Access to their funds held in financial institutions;

(e) The importation and installation of equipment necessary for the normal conduct of business affairs, including but not limited to, office equipment and automobiles and the export of any equipment and automobiles so imported;

(f) The dissemination of commercial information;

(g) The conduct of market studies;

(h) The appointment of commercial representatives, including agents, consultants, and distributors and their participation in trade fairs and promotion events;

(i) The marketing of goods and services, including through internal distribution and marketing systems, as well as by advertising and direct contact with individuals and companies;

(j) Access to public utilities, public services -and commercial rental space at non-discriminatory prices, if the prices are set or controlled by the government; and

(k) Access to raw materials, inputs and services of all types at nondiscriminatory prices,, if the prices are set or controlled by the government.

Article III.

1. Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except; for a public purpose; in a nondiscriminatory manner; upon

payment of prompt, adequate. and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article 11(3). Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known, whichever is earlier; be calculated in a freely usable currency on the basis of the prevailing market rate of exchange at that time; be paid without delay; include interest at a commercially reasonable rate, such as LIBOR plus an appropriate margin from the date of expropriation; be fully realisable; and be freely transferable.

2. A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Party to determine whether such expropriation has occurred and, if so, whether any such expropriation, and any associated compensation, conforms to the principles of international law.

3. Nationals or companies of either Party whose investments suffer losses in the territory of the other Party owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance or other similar events shall be accorded treatment by such other Party no less favorable than that accorded to its own nationals or companies or to nationals or companies of any third country, whichever is the most favorable treatment, as regards any measures it adopts in relation to such losses.

Article IV.

1. Each Party shall permit all transfers related to an investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) Returns;

(b) Compensation pursuant to Article III;

(c) Payments arising out of an investment dispute;

(d) Payments made under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement;

(e) Proceeds from the sale or liquidation of all or any part of an investment; and

(f) Additional contributions to capital for the maintenance or development of an investment.

2. Transfers shall be made in a freely usable currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred.

3. Notwithstanding the provisions of paragraphs 1 and 2 either Party may maintain laws and regulations (a) requiring reports of currency transfer; and (b) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable, nondiscriminatory and good faith application of its law.

Article V.

The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty.

Article VI.

1. For the purposes of this Article, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to:

(a) An investment agreement between that Party and such national or company;

(b) An investment authorization granted by that Party's foreign investment authority to such national or company; or

(c) An alleged breach of any right conferred or created by this Treaty with respect to an investment,

2. In the event of an investment dispute, the parties to the dispute should initially seek a resolution through consultation and negotiation. If the dispute cannot be settled amicably, the national or company concerned may choose to submit the dispute for resolution:

(a) To the courts or administrative tribunals of the Party that is a party to the dispute; or

(b) In accordance with any applicable, previously agreed dispute-settlement procedures; or

(c) In accordance with the terms of paragraph 3.

3. (a) Provided that the national or company concerned has not submitted the dispute for resolution under paragraph 2 (a) or (b) and that six months have elapsed from the date on which the dispute arose, the national or company concerned may choose to consent in writing to the submission of the dispute for settlement by binding arbitration:

(i) To the International Centre for the Settlement of Investment Disputes ("Centre") established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965 ("ICSID Convention"), provided that the Party is a party to such Convention, or

(ii) To the Additional Facility of the Centre, if the Centre is not available; or

(iii) In accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(iv) To any other arbitration institution, or in accordance with any other arbitration rules, as may be mutually agreed between the parties to the dispute.

(b) Once the national or company concerned has so consented, either Party to the dispute may initiate arbitration in accordance with the choice so specified in the consent.

4. Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice specified in the written consent of the national or company under paragraph 3 . Such consent, together with the written consent of the nationals or company when given under paragraph 3, shall satisfy the requirement for:

(a) Written consent of the parties to the dispute for purposes of Chapter II of the ICSID Convention (Jurisdiction of the Centre) and for purposes of the additional Facility Rules; and

(b) An "agreement in writing" for purposes of Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 ("New York Convention").A

5. Any arbitration under paragraph 3(a)(ii) , (iii) or(iv) this Article shall be held in a state that is a party to the New York Convention.

6. Any arbitral award rendered pursuant to this Article, shall be final and binding on the parties to the dispute. Bach Party undertakes to carry out without delay the provisions of any such award and to provide in its territory for its enforcement.

7. In any proceeding involving an investment dispute, a Earty shall not assert, as a defense, counterclaim, right of set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

8. For purposes of an arbitration held under paragraph 3 of this Article, any company legally constituted under the applicable laws and regulations of a Party or a political subdivision thereof but that, immediately before the occurrence of the event or events giving rise to the dispute, was an investment of nationals or companies of the other Party, shall be treated as a national or company of such other Party in accordance with Article 25(2)(b) of the ICSID Convention.

Article VII.

1. Any dispute between the Parties concerning the interpretation or application of the Treaty which is net resolved through consultations or other diplomatic channels, shall be submitted, upon the request of either Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the contrary, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), except to the extent modified by the Parties or by the arbitrators, shall govern.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third state. The UNCITRAL Rules for appointing members of three-member panels shall apply mutatis mutandis to the appointment of the arbitral panel except that the appointing authority referenced in those rules shall be the Secretary General of the Centre.

3. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the date

of selection of the third arbitrator, and the Tribunal shall render its decisions within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

4. Each Party shall pay the costs of its representation in the arbitral proceedings. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the Parties: The Tribunal may, however, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties.

Article VIII.

This Treaty shall not derogate from:

(a) Laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of either Party;

(b) International legal obligations; or

(c) Obligations assumed by either Party, including those contained in an investment agreement or an investment authorization, that entitle investments or associated activities to treatment more favorable than that accorded by this Treaty in like situations.

Article IX.

1. This Treaty shall not preclude the application by either Party of measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2. This Treaty shall not preclude either Party from prescribing special formalities in connection with the establishment of investments, but such formalities shall not impair the substance of any of the rights set forth in this Treaty.

Article X.

1. With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of Investment of nationals and companies of the other Party.

2. Nevertheless, the provisions of this Treaty, and in particular article VI and VII, shall apply to matters of taxation only with respect to the following:

(a) Expropriation, pursuant to Article III;

(b) Transfers, pursuant to Article IV; or

(c) The observance and enforcement of terms of an investment agreement or authorization as. referred to in Article VI(1)(a) or (b), to the extent they are not subject to the dispute settlement provisions of a Convention for the avoidance of double taxation between the two Parties, or have been raised under such settlement provisions and are not resolved within a reasonable period of time.

Article XI.

This Treaty shall apply to the political and administrative subdivisions of the Parties.

Article XII.

1. This Treaty shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2 of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.

2. Either Party may, by giving one year's written notice to the other Party, terminate this Treaty at the end cf the initial ten year period or at any time thereafter.

3. With respect to investments made or acquired prior to the date of termination of this Treaty and to which this Treaty otherwise applies, the provisions of ail of the other Articles of this Treaty shall thereafter continue to be effective for a further period of ten years from such date of termination.

4. The annex and Protocol shall form an integral part of the Treaty.

Done in duplicate at Washington on the fourteenth day of January, 1998, in the English and Lithuanian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA:

ANNEX

1. The Government of the United States of America reserves the right to make or maintain limited exceptions to national treatment, as provided in Article IX, paragraph 1, in the sectors or matters it has indicated below:

Air transportation; ocean and coastal shipping; banking, insurance, securities and other financial services; government grants; government insurance and loan programs; energy and power production; custom house brokers; ownership of real property; ownership and operation of broadcast or common carrier radio .and television stations; ownership of shares in COMSAT; the provision of common carrier telephone and telegraph services; the provisions of submarine cable services; use of land and natural resources; mining on the public domain; maritime services and maritime-related services; and primary dealership in United States government securities.

2. The Government of the United States of America reserves the right to make or maintain limited exceptions to most favored nation treatment, as provided in Article III paragraph 1, in the sectors or matters it has indicate below:

mining on the public domain; maritime services and maritime-related services; one-way satellite transmissions of DTH and DBS television services and of digital audio services; and primary dealership in United States government securities,

3, The Government of the Republic of Lithuania reserves the right to make or maintain limited exceptions to national treatment, as provided in Article II, paragraph 1, in the sectors or matters it has indioated below:

ownership of: land under the objects belonging to the Republic of Lithuania by the right of exclusive ownership; land of national parks, national reservations, reserves, protective areas of the territory of biosphere monitoring; agricultural land; forestry land, with the exception of plots necessary for operation of buildings and facilities designated for economic activities which have been provided for in approved planning documents; land of recreational forests and forest shelter belts, rivers and other water bodies exceeding one hectare in size as well as their protective bank area; land of resorts and communal recreational territories; separate communal recreational areas and objects; land of state-protected natural geographic forrnations; monuments of nature, history, archaeology and culture as well as the surrounding protective areas; land of territories reserved, according to design projects, under communal roads and engineering service lines objects of infrastructure of communal use in towns or other localities, and for other common needs of the community; land under public roads, railway lines, airports, sea and river ports; main pipelines and other engineering service lines of communal use as well as land necessary for their operation; land allotted, in accordance with the procedure established by law, under the free trade (economic) zones territory; land of protected territories where deposits of mineral resources and other natural resources have been found, with the exception of land which, according to planning documents, has been directly allotted for the construction of buildings and facilities required for the mining or use of said mineral resources; land of the Curonian Spit, the fifteen-kilometer wide strip of coastal land of the Baltic Sea and the Curonian Lagoon, with the exception of towns that are not resorts; land assigned to the frontier; land of the territories assigned or reserved for the needs of the national defense as well as territories where land acquisition restrictions are established by laws or Government decrees for safety reasons; production and sale of narcotic drugs and psychotropic substances which are not used for legitimate medicinal purppses; growing, reproduction and sale of cultures containing narcotic drugs or psychotropic substances which are not used for legitimate medicinal purposes; organization of lotteries.

PROTOCOL

The Parties confirm their mutual understanding that the provisions of this Treaty do not bind either party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of this Treaty.