AGREEMENT Between the Government of the People's Republic of China and the Government ofthe Socialist Republic of Viet nam concerning the Encouragement and Reciprocal Protection of Investments

The Government of the People's Republic of China and the Government of the Socialist Republic of Vietnam (hereinafter referred to as the Contracting States),

Desiring to encourage, protect and create favourable conditions for investment by investors of one Contracting State in the territory of the other Contracting State based on the principles of mutual respect for sovereignty, equality and mutual benefit and for the purpose of the development of economic cooperation between both states,

Have agreed as follows:

Article 1.

For the purposes of this Agreement,

1. The term "investments" means every kind of asset invested by investors of one Contracting State in accordance with the laws and regulations of the other Contracting State in the territory of the Latter, including mainly:

(a) Movable and immovable property and other property rights;

(b) Shares in companies or other forms of interest in such companies;

(c) A claim to money or to any performance having an economic value;

(d) Copyrights, industrial property, know-how and technological process;

(e) Concessions conferred by law, including concessions to search for or exploit natural resources.

2. The term "investors" means:

In respect of the People's Republic of China:

(a) Natural persons who have nationality of the People's Republic of China;

(b) Economic entities established in accordance with the laws of the People's Republic of China and domiciled in the territory of the People's Republic of China;

In respect of the Socialist Republic of Vietnam:

(a) Any natural person who is a national of the Socialist Republic of Vietnam in accordance with its laws;

(b) Any legal person constituted in accordance with the laws and having its seat in the territory of the Socialist Republic of Vietnam.

3. The term "return" means amount yielded by investments, such as profits, dividends, interests, royalties or other legitimate income.

Article 2.

1. Each Contracting State shall encourage investors of the other Contracting State to make investments in its territory and admit such investments in accordance with its laws and regulations.

2. Each Contracting State shall grant assistance in and provide facilities for obtaining visa and working permit to nationals of the other Contracting State to or in the territory of the Former in connection with activities associated with such investments.

Article 3.

1. Investments and activities associated with investments of investors of either Contracting State shall be accorded fair and equitable treatment and shall enjoy protection in the territory of the other Contracting State.

2. The treatment and protection referred to in Paragraph 1 of this Article shall not be less favorable than that accorded to investments and activities associated with such investments of investors of a third State.Paragraph 1 of this Article shall not be less favorable than that accorded to investments and activities associated with such investments of investors of a third State.

3. The treatment and protection as mentioned in Paragraph 1 and 2 of this Article shall not include any preferential treatment accorded by the other Contracting State to investments of investors of a third State based on customs union, free trade zone, economic union, agreement relating to avoidance of double taxation or for facilitating frontier trade.Paragraph 1 and 2 of this Article shall not include any preferential treatment accorded by the other Contracting State to investments of investors of a third State based on customs union, free trade zone, economic union, agreement relating to avoidance of double taxation or for facilitating frontier trade.

Article 4.

1. Neither Contracting State shall expropriate, nationalize or take similar measures (hereinafter referred to as "expropriation") against investments of investors of the other Contracting State in its territory, unless the following conditions are met:

(a) In the public interest;

(b) Under domestic legal procedure;

(c) Without discrimination;

(d) Against compensation.

2. The compensation mentioned in Paragraph 1, (d) of this Article shall be equivalent to the value of the expropriated investments at the time when expropriation is proclaimed, be convertible and freely transferable. The compensation shall be paid without unreasonable delay.Paragraph 1, (d) of this Article shall be equivalent to the value of the expropriated investments at the time when expropriation is proclaimed, be convertible and freely transferable. The compensation shall be paid without unreasonable delay.

3. Investors of one Contracting State who suffer losses in respect of their investments in the territory of the other Contracting State owing to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded by the latter Contracting State, if it takes relevant measures, treatment no less favourable than that accorded to investors of a third State.

Article 5.

1. Each Contracting State shall, subject to its laws and regulations, guarantee investors of the other Contracting State the transfer of their investments and returns held in the territory of the one Contracting State, including;

(a) Profits, dividends, interests and other legitimate income;

(b) Amounts from total or partial liquidation of investments;

(c) Payments made pursuant to a loan agreement in connection with investment;

(d) Royalties in paragraph 1, (d) of Article 1;paragraph 1, (d) of Article 1;

(e) Payments of technical assistance or technical service fee, management fee;

(f) Payments in connection with contracting projects relating to investment;

(g) Earnings of nationals of the other Contracting State who work in connection with an investment in the territory of the one

Contracting State.

2. The transfer mentioned above shall be made at the official exchange rate of the Contracting State accepting investment of the date of transfer.

Article 6.

If a Contracting State or its Agency makes payment to an investor under a guarantee it has granted to an investment of such investor in the territory of the Contracting State, such other Contracting State shall recognize the transfer of any right or claim of such investor to the former Contracting State or its Agency and recognize the subrogation of the former Contracting State or its Agency to such right or claim. The subrogated right or claim shall not be greater than the original right or claim of the said investor.

Article 7.

1. Any dispute between the Contracting States concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channel.

2. If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting State, be submitted to an ad hoc arbitral tribunal.

3. Such tribunal comprises of three arbitrators. Within two months from the date on which either Contracting State receives the written notice requesting for arbitration from the other Contracting State, each Contracting State shall appoint one arbitrator. Those two arbitrators shall, within further two months, together select a third arbitrator who is a national of a third State which has diplomatic relations with both Contracting State. The third arbitrator shall be appointed by the two Contracting States as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four months from the date of the receipt of the written notice for arbitration, either Contracting State may, in the absence of any other agreement, invite the President of the International Court of Justice to ppoint the arbitrator (s) who has or have not yet been appointed. If the President is a national of either Contracting State or is otherwise prevented from discharging the said function, the next most senior member of the International Court of Justice who is not a national of either Contracting State shall be invited to make the necessary appointment (s).

5. The arbitral tribunal shall determine its own procedure. The tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting States.

6. The tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting States. The ad hoc arbitral tribunal shall, upon the request of either Contracting State, explain the reasons of its award.

7. Each Contracting State shall bear the cost of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting States.

Article 8.

1. Any dispute between an investor of one Contracting State and the other Contracting State in connection with an investment in the territory of the other Contracting State shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2. If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting State accepting the investment.

3. If a dispute involving the amount of compensation for expropriation cannot be settled within six months after resort to negotiations as specified in paragraph 1 of this Article, it may be submitted at the request of either party to an ad hoc arbitral tribunal. The provisions of this paragraph shall not apply if the investor concerned has resorted to the procedure specified in the paragraph 2 of this Article.paragraph 1 of this Article, it may be submitted at the request of either party to an ad hoc arbitral tribunal. The provisions of this paragraph shall not apply if the investor concerned has resorted to the procedure specified in the paragraph 2 of this Article.

4. Such an arbitral tribunal shall be constituted for each individual case in the following way: each party to the dispute shall appoint an arbitrator, and these two shall select a national of a third State which has diplomatic relations with the two Contracting States as Chairman. The first two arbitrators shall be appointed within two months of the written notice for

arbitration by either party to the dispute to the other, and the Chairman be selected within four months. If within the period specified above, the tribunal has not been constituted, either party to the dispute may invite Secretary General of the International Centre under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965 to make necessary appointments.Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965 to make necessary appointments.

5. The tribunal shall determine its own procedure. However, the tribunal may, in the course of determination of procedure, take as guidance the Arbitration Rules of the International Center for Settlement of Investment Disputes.Arbitration Rules of the International Center for Settlement of Investment Disputes.

6. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both parties to the dispute. Both Contracting States shall commit themselves to the enforcement of the decision in accordance with their respective domestic law.

7. The tribunal shall adjudicate in accordance with the law of the Contracting State to the dispute accepting the investment including its rules on the conflict of laws, the provisions of this Agreement as well as the generally recognized principle of international law accepted by both Contracting States.

8. Each party to the dispute shall bear the cost of its appointed member of the tribunal and of its representation in the proceedings. The cost of the appointed Chairman and the remaining costs shall be borne in equal parts by the parties to the dispute.

Article 9.

If the treatment to be accorded by one Contracting State in accordance with its laws and regulations to investments or activities associated with such investments of investors of the other Contracting State is more favourable than the treatment provided for in this Agreement, the more favourable treatment shall be applicable.

Article 10.

This Agreement shall apply to investments which are made prior to or after its entry into force by investors of either Contracting State in accordance with the laws and regulations of the other Contracting State in the territory of the Latter.

Article 11.

1. The representatives of the two Contracting States shall hold meetings from time to time for the purpose of:

(a) Reviewing the implementation of this Agreement;

(b) Exchanging legal information and investment opportunities;

(c) Resolving dispute arising out of investment;

(d) Forwarding proposals on promotion of investment;

(e) Studying other issues in connection with investments.

2. Where either Contracting State requests consultation on any matters of Paragraph 1 of this Article, the other Contracting State shall give prompt response and the consultation be held alternately in Beijing and Hanoi.Paragraph 1 of this Article, the other Contracting State shall give prompt response and the consultation be held alternately in Beijing and Hanoi.

Article 12.

1. This Agreement shall enter into force on the first day of the following month after the date on which both Contracting States have noticed each other in writing that their respective internal legal procedures have been fulfilled, and shall remain in force for a period of ten years.

2. This Agreement shall continue in force if either Contracting State fails to give a written notice to the other Contracting State to terminate this Agreement one year before the expiration specified in paragraph 1 of this Article.paragraph 1 of this Article.

3. After the expiration of the initial ten year period, either Contracting State may at any time thereafter terminate this Agreement by giving at least one year's written notice to the other Contracting State.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 11 shall continue to be effective for a further period of ten years from such date of termination.

Done in duplicate at Hanoi on December 2nd 1992 in the Chinese, Vietnamese and English languages, three texts being equally authentic, in case of divergence of interpretation, the English text shall prevail.

For the Government of the People's Republic of China

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM