AGREEMENT BETWEEN THE CZECH REPUBLIC AND THE REPUBLIC OF MACEDONIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Czech Republic and the Republic of Macedonia (hereinafter referred to as the "Contracting Parties"),

Desiring to develop economic co-operation to the mutual benefit of both States,

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

Conscious that the promotion and reciprocal protection of investments in terms of the present Agreement stimulates 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 property rights, such as mortgages, pledges or any other kind of liens;

/b/ Shares, stocks and bonds of companies or any other form of participation or interest in a company;

/c/ Claims to money or any other claim under contract having an economic value associated with an investment;

/d/ Copyrights, trade marks, patents or other intellectual property rights, know-how, trade secrets, goodwill and technical processes associated with an investment;

/e/ Any right conferred by laws or under contract and any licenses and permits pursuant to laws, including the concessions to search for, extract, cultivate or exploit natural resources.

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 of one Contracting Party who invests 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 the permanent seat in the territory of that Contracting Party.

3. The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interest related to loans, capital gains, dividends, royalties or fees.

4. The term "territory" shall mean:

a) In respect of the Czech Republic, the territory of the Czech Republic over which it exercises sovereignty, sovereign rights

and jurisdiction in accordance with international law;

b) In respect of the Republic of Macedonia, the territory of the Republic of Macedonia, including land, water and airspace, over which it exercises, in accordance with international law, sovereign rights and jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create 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. When a Contracting Party shall have admitted an investment in its territory, it shall grant in accordance with its laws and regulations the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial and administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorisations concerning the activities of consultants and other qualified persons of foreign nationality.

3. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

Article 3. National and Most-favoured-nation Treatment

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

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 which it accords to its own investors or to investors of any third State, whichever is more favourable.

3. The provisions of paragraphs 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 a monetary union or similar international agreements leading to such unions or institutions or other forms of regional co-operation to which either of the Contracting Parties is or may become a party;

/b/ Any international agreement or arrangement relating wholly or mainly to taxation.

Article 4. Compensation for Losses

1. Where investments of investors of either Contracting Party suffer 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, such investors shall be accorded by the latter Contracting Party 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 that paragraph suffer losses in the territory of the other Contracting Party resulting from:

a) Requisitioning of their investments by the forces or authorities of the latter Contracting Party, or

b) Destruction of their investments by the forces or authorities of the latter Contracting Party which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or just and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the investment. Resulting payments shall be freely transferable in a freely convertible currency without delay.

Article 5. Expropriation

1. Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the

other Contracting Party except for a public purpose. The expropriation shall be carried out under due process of domestic law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, shall include interest from the date of expropriation until the date of payment, shall be made without delay, be effectively realizable and be freely transferable in a freely convertible currency.

2. The investor affected shall have a right to prompt review by a judicial or other independent authority of that Contracting Party in which territory the investment has been made, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

Article 6. Transfers

1. The Contracting Parties shall ensure 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, provided that all financial obligations towards the Contracting Party 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, interest, dividends and other current income;

/c/ Funds in repayment of loans;

/d/ Royalties or fees;

/e/ Proceeds of sale or liquidation of the investment;

/f/ Payments of compensation under Articles 4 and 5;

/g/ The earnings of personnel engaged from abroad who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party.

2. For the purpose of this Agreement, exchange rate shall be the prevailing rate for current transactions at the date of transfer, unless otherwise agreed.

3. Transfers shall be considered to have been made "without any undue delay" in the sense of paragraph (1) of this Article when they have been made within the period normally necessary for the completion of the transfer.-Such period shall under no circumstances exceed three months.

Article 7. Subrogation

1. If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee it has accorded in respect of 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 former 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. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

3. In the case of subrogation as defined in paragraph 1 and 2 above, the investor shall not be entitled to pursue a claim unless authorized to do so by the Contracting Party or its designated agency.

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 an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall be subject to negotiations between the parties to the dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled, the

investor shall be entitled to submit the case, at his choice, for settlement to:,

/a/ To the competent court or administrative tribunal of the Contracting Party which is the party to the dispute;

Or

/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 other Slates opened for signature at Washington D.C. on 18 March 1965, in the event both Contracting Parties shall have become a party to this Convention;

Or

/c/ An arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules.

The arbitral awards shall be based on provisions of this Agreement, on the rules and universally accepted principles of international law and on the national law of the Contracting Party in whose territory the investment was made to the extent that this Agreement refers to in its particular provisions.

The arbitral awards shall be final and binding on both parties to the dispute and shall be enforceable in accordance with the domestic legislation.

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 consultations or negotiations.

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

3. The Arbitral Tribunal shall be constituted for each individual case in the following way. Within two months of 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.

4. 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 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.

5. The Arbitral 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 Arbitral 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 own 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 shall be accorded.

Article 11. Applicability of this Agreement

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 this Agreement came into force. However, the provisions of this Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled, prior to its entry into force.

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 date 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 a 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 duly authorized have signed this Agreement.

DONE in duplicate at Prague, this 21st day of June, 2001. in the Czech, Macedonian and English languages. In case of any divergence of interpretation the English text shall prevail.

For the Czech Republic

For the Republic of Macedonia

Protocol between the czech republic and the republic of macedonia amending the agreement between the czech republic and the republic of macedonia for the promotion and reciprocal protection of investments

The Czech Republic and the Republic of Macedonia (hereinafter referred to as the "Contracting Parties");

Having in mind the intentions of the Czech Republic to amend the Agreement between the Czech Republic and the Republic of Macedonia for the Promotion and Reciprocal Protection of Investments signed on June 21, 2001 in Prague (hereinafter referred to as "the Agreement"), in order to comply with its obligations as a Member State of the European Union;

Acknowledging that the Czech Republic, pursuant to Article 307 of the Treaty establishing the European Community and. Article 6.10 of its Act of Accession to the European Union, must take all appropriate steps to eliminate incompatibilities between the Community Law and its other international treaties including the Agreement and;

Having in mind the status of the Republic of Macedonia as a candidate country for the European Union membership and its obligations in the process of accession;

Deciding, as a result, that certain amendments to the Agreement are necessary in order to avoid such incompatibilities;

Have agreed to conclude the following Protocol thereto:

Article 1

In Article 3 of the Agreement, paragraph 3 is replaced by new paragraph 3, which reads as follows:

3. "The National Treatment and Most-Favoured-Nation Treatment provisions of this-Article shall not apply to advantages accorded by a Contracting Party pursuant to its obligations as a member of a customs, economic or monetary union, a common market or a free trade area."

After paragraph 3 new paragraphs 4 and 5 are added, which read as follows:

4. "The Contracting Party understands the obligations of the other Contracting Party as a member of a customs, economic or monetary union, a common market or a free trade area to include obligations arising out of an international agreement or reciprocity agreement of that customs, economic or monetary union, common market or free trade area.

5. "The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party, or to the investments or returns of such investors, the benefit of any treatment, preference or privilege which may be extended by the Contracting Party by virtue of any international agreement or arrangement relating wholly or mainly to taxation."

Article 2

In Article 6 of the Agreement, at the beginning of the first sentence of paragraph 1, the following words are added:

"Without prejudice to measures adopted by the European Community"

Article 3

In Article 8, paragraph 2 of the Agreement, after the words "cannot be thus settled" the following words are added "within six months of the date when the request for the settlement has been submitted".

Article 4

After Article 9 of the Agreement new Article 10 is inserted, which reads as follows:

"Essential Security Interests

This Agreement shall not preclude the application by either Contracting Party of measures necessary for the maintenance of public order, the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests which may include interests deriving from its membership of a customs, economic or monetary union, a common market or a free trade area."

The subsequent Articles of the Agreement are re-numbered.

Article 4

This Protocol shall enter into force on the thirtieth day after the second notification by which the Contracting Parties shall notify each other that their internal legal procedures for its entry into force have been completed. The Protocol shall remain in force as long as the Agreement shall remain in force.

Done at Brussels on May 5th 2009, in two originals, each in the Czech, Macedonian and English languages, all texts being equally authentic, In case of any divergence of interpretation the English text shall prevail.

For the Czech Republic

For the Republic of Macedonia