AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the People's Republic of China and the Government of the Kingdom of Thailand;

Desiring to create favourable conditions for greater economic cooperation between both States and, in particular, for the investments by nationals and companies of one State in the territory of the other State based on the principles of equality and mutual benefit;

Recognizing that the encouragement of such investments and the reciprocal protection of investments under international agreement will be conducive to the stimulation of business initiative of investors and will increase prosperity in both States;

Have agreed as follows:

Article 1.

For the purpose of this Agreement:

(1) The term "national" shall mean any natural person who possesses nationality of either Contracting Party in accordance with the laws in force in that Contracting Party;

(2) The term "companies" shall mean juridical persons incorporated or constituted in the territory of either Contracting Party in accordance with the law in force in that Contracting Party whether or not with limited liability and whether or not for pecuniary profit;

(3) The term "investments" shall mean every kind of assets as permitted by each Contracting Party in accordance with its laws and regulations and shall include, in particular, not exclusively;

(a) Movable and immovable property and any other property rights such as mortgages, liens or pledges;

(b) Shares, stock and debentures of companies or interests in the property of such companies;

(c) Claims to money or to any performance under contract having a financial value;

(d) Intellectual property rights and goodwill;

(e) Business concessions conferred by law or under contract, if permitted by law, including concessions to search for, cultivate, extract or exploit natural resources;

(4) The term "returns" shall mean the amounts yielded by an investment and, in particular, though not exclusively, shall include profits, interests, capital gains, dividends, royalties or fees.

Article 2.

(1) The benefits of this Agreement shall apply only in cases where investments of the nationals and companies of one Contracting Party in the territory of the other Contracting Party have been specifically approved in writing by the competent authority of the latter Contracting Party.

(2) Nationals and companies of either Contracting Party shall be free to apply for such approval in respect of any investment whether made before or after the entry into force of this Agreement.

(3) When granting approval in respect of any investment the approving Contracting Party shall be free to lay down appropriate conditions.

Article 3.

(1) Each Contracting Party shall, having regard to its plans and policies, encourage and facilitate investments in its territory by the nationals and companies of the other Contracting Party.

(2) Investments of nationals and companies of one Contracting Party in the territory of the other Contracting Party shall enjoy the most constant protection and security under the laws of the latter Contracting Party.

Article 4.

(1)

(a) Investments of nationals and companies of one Contracting Party in the territory of the other Contracting Party, and also the returns therefrom, shall receive treatment which is equitable and not less favourable than that received in respect of the investments and returns by the national and companies of any third State.

(b) Each Contracting Partly shall, in its territory, accord to nationals and companies of the other Contracting Party as regards the management, use, enjoyment or disposal of their investments, treatment which is equitable and not less favourable than that it accords to the nationals and companies of any third State.

(2) Each Contracting Party shall observe any commitment, additional to those specified in this Agreement, entered into with nationals and companies of the other Contracting Party as regards their investments in accordance with its laws. If there is any change in such laws of one Contracting Party, nationals and companies of the other Contracting Party shall observe the new laws, but the former Contracting party shall make reasonable arrangements for the appropriate interest of the said nationals and companies.

Article 5.

(1)

(a) Only for the public interest and against compensation, may either Contracting Party expropriate, nationalize or take similar measures against investments of nationals or companies of the other Contracting Party in its territory. Such Compensation shall be equivalent to the appropriate value of the expropriated investments, shall be effectively realisable, shall be made without undue delay and shall, subject to the provisions of paragraph (2) of Article 6, be freely transferable.paragraph (2) of Article 6, be freely transferable.

(b) The legality of any expropriation, nationalization or similar measures mentioned above shall be subject to review by the competent court of the Contracting Party taking the expropriatory measures.

(c) In any event, for the purpose of determining the appropriate value of the expropriated investments mentioned in this Article, the investments of the nationals or companies of either Contracting Party shall receive treatment not less favourable than that accorded by the other Contracting Party to similar investments of the nationals or companies of any third State.

(2) Where a Contracting Party expropriates the investments of a company which is incorporated or constituted under the laws in force in any part of its territory, and in which a national or company of the other Contracting Party owns shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee the compensation as specified therein to such national or company of the other Contracting Party who is the owner of those shares.paragraph (1) of this Article are applied to the extent necessary to guarantee the compensation as specified therein to such national or company of the other Contracting Party who is the owner of those shares.

(3) Where investments of a national or company of one Contracting Party in the territory of the other Contracting Party suffer loss owing to war or other armed conflict, a state of national emergency, revolt or riot in the territory of the other Contracting Party, the national or company concerned shall be accorded treatment, as regards the relevant assistance which may be adopted by the other Contracting Party, not less favourable than that would be accorded in the same circumstances to a national or company of any third State.

(4) Without prejudice to the foregoing provisions of this Article, the nationals and companies of one Contracting Party shall, in respect of any matter dealt with therein, be accorded in the territory of the other Contracting Party treatment not less favourable than that accorded to the nationals and companies of any third State.

Article 6.

(1) Each Contracting Party shall guarantee the nationals or companies of the other Contracting Party the free transfer of their investments and their returns therefrom held in the territory of the former Contracting Party, including:

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

(b) Amounts from liquidation of investments;

(c) Repayments made pursuant to a loan agreement in connection with investments;

(d) Licence fees in Article 1 (3) (d);Article 1 (3) (d);

(e) Payments of technical assistance or technical service and management fees;

(f) Normal earnings of nationals of the other Contracting Party in connection with an investment in the territory of the former Contracting Party;

(g) Payments for the amount of compensation of the expropriation under Article 5.Article 5.

(2) In case where large amounts of compensation have been paid by one Contracting Party in pursuance of Article 5, the Contracting Party concerned may required the transfer thereof to be made in reasonable instalments.Article 5, the Contracting Party concerned may required the transfer thereof to be made in reasonable instalments.

(3) The free transfer mentioned in paragraph (1) of this Article shall be made at the official (selling) exchange rate prevailing in the Contracting Party accepting the investments on the date of transfer in freely transferable currency.paragraph (1) of this Article shall be made at the official (selling) exchange rate prevailing in the Contracting Party accepting the investments on the date of transfer in freely transferable currency.

Article 7.

(1) If either Contracting Party or an agency designated by it makes payment to its national or company under a policy of insurance covering non-commercial risks, which it has given in respect of any investment of that national or company or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) The assignment, whether under law or pursuant to a legal transaction, of any right or claim from such national or company to the former Contracting Party or its designated agency; and

(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 its prodecessor in title to the same extent that in may have insured.

(2) If the former Contracting Party acquires amounts in the lawful currency of the other Contracting Party or credits thereof by virtue of an assignment under subparagraph (a) of paragraph (1) of this Article, such amounts and credits shall be freely available to the former Contracting Party for the purpose of meeting its expenditure in the territory of the latter Contracting Party. The transfer outside the territory of the amounts and credits shall be subject to the provisions of paragraph (2) of Article 6.subparagraph (a) of paragraph (1) of this Article, such amounts and credits shall be freely available to the former Contracting Party for the purpose of meeting its expenditure in the territory of the latter Contracting Party. The transfer outside the territory of the amounts and credits shall be subject to the provisions of paragraph (2) of Article 6.

Article 8.

The treatment not less favourable than that accorded to the nationals and companies of any third State mentioned in this Agreement shall be accorded unconditionally and without undue delay, but shall not be construde so as to oblige one Contracting Party to extend to the nationals and companies of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting party virtue of:

(1) The formation or extension of a customs union or a free trade area or a common external tariff area or a monetary union or a regional association for economic cooperation; or

(2) The adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

(3) Any arrangement with a third country or countries in the same geographical region designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields within the framework of specific projects; or

(4) The grant to a particular person or company of the status of a "promoted person" under the laws of the kingdom of

Thailand on the promotion of investments; or

(5) The grant to a particular person or company of the status of a "favoured person" under the laws of the People's Republic of China on the promotion of investment; or

(6) Any international agreement or arrangement, or any domestic legislation, relative wholly or mainly to taxation.

Article 9.

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, it possible, be settled through consultation or negotiation.

(2) If a dispute between the Contracting Parties cannot thus be settled within six months, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted for each individual case as follows:

(a) Each Contracting Party shall appoint one member, and these two members shall then select a national of a third State which has diplomatic relations with both Contracting Parties, who, on approval by the two contracting parties, shall be appointed Chairman of the tribunal;

(b) The said members shall be appointed within two months, and the Chairman within four months, from the date on which either Contracting Party has informed the other Contracting Party that it proposes to submit the dispute to an arbitral tribunal.

(4) If, within the periods specified in paragraph (3) of this Article, the necessary appointments have not been made, either Contracting Party may, in the absence of any other relevant agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is 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 necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, 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 necessary appointments.paragraph (3) of this Article, the necessary appointments have not been made, either Contracting Party may, in the absence of any other relevant agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is 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 necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, 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 necessary appointments.

(5)

(a) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both parties.

(b) The cost of its own member and of its representation in the arbitral proceedings shall be borne by each Contracting Party and the cost of the Chairman and the remaining costs shall be borne in equal parts by the two Contracting Parties.

(c) In all respects other than those specified in subparagraphs (a) and (b) of this paragraph, the arbitral tribunal shall determine its own procedure.subparagraphs (a) and (b) of this paragraph, the arbitral tribunal shall determine its own procedure.

(d) The arbitral tribunal shall give the explanation of the basis of its award.

Article 10.

The Agreement shall enter into force thirty days after the date on which both Contracting Parties have notified each other that they have fulfilled their respective internal legal procedures shall remain in force for an initial period of ten years. It shall thereafter continue in force indefinitely, subject to the right of either Contracting Party to terminate it by twelve months prior notice in writing to the other Contracting Party, which may be given at any time after the expiry of the ninth year. However, with respect to an investment approved while the Agreement is in force, its provisions shall continue to have effect for a period of ten years from the date of its termination.

Done in duplicate at Bangkok, this Twelfth Day of March, in the One Thousand Nine Hundred and Eighty-five Year of the Christian era, corresponding to the Two Thousand Five Hundred and Twenty-Eight Year of the Buddhist? era, in the Chinese, Thai and English languages, al texts being equally authentic.

In case of divergency of interpretation the English text shall prevail.

For the Government of The People's Republic of China (Ji Pengfei)

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND (Siddhi savetsila) Minister of Foreign Affairs

On signing the Agreement between the Government of the Kingdom of Thailand and the Government of the People's Republic of China for the Promotion and Protection of Investments, the duly authorized representatives of both Parties have agreed upon the following provisions which constitute an integral part of this Agreement:

1. (a) As regards the free transfer mentioned in Article 6 (1) and (3) of this Agreement, in relation to the People's Republic of China, the free transfer shall be effected in accordance with the ! foreign exc.hange control laws and regulations of the People's Republic of China, from the foreign exchange deposit account of the nationals and companies af the Kingdom of Thailand or of the enterprises in which the nationals and companies of the Kingdom of Thailand have invested either solely or jOintly in the territory of the People's Republic of China. (b) In case the foreign exchange deposit account mentioned above does not have sufficient foreign exchange for the transfer, the competent authority of the Government of the People T B Republic of China shall, under the following conditions, provide the foreign exchange needed for the conversion of local currency into freely convertible currency so as to effectuate the transfer abroad: (i) the amount mentioned in Article 6 (1) (b) (d) (f) and (g) of this Agreement; (ii) the amount mentioned in Article 6 (1) (c) of this Agreement, which has been guaranteed by the Bank of China; (iii)the amount mentioned in Article 6 (1) (a) and (e) of this Agreement derived from the enterprises in which the nationals and companies of the Kingdom of Thailand have invested either solely or jointly in the territory of the People' B Republic of China, which have been given specific approval by the competent authority of the Government of the People's Republic of China to sell their products or to provide services mainly in the territory of the People's Republi~ of China. (c) As re.gards the transfer of the amount mentioned in Article 6 (1) (a) (c) and (e) of this Agreement, if the laws and regulations of the People's Republic of China provide more favourable treatment than that specified above, such more favourable treatment shall apply to the nationals and companies of the Kingdom of Thailand, who have invested in the People's Republic of China. (d) If there is any difficulty in transfering the amount mentioned in Article 6 (1) (a) (c) and (e) of this Agreement, the nationals and companies of the Kingdom of Thailand, who have invested in the People's Republic of China, may make an application to the competent authority of the Government of the People's Republic of China, such authority will give the most sympathetic consideration and provide possible assistance.

2. (a) As regards the free transfer mentioned in Article 6 (1) and (3) of this Agreement, in relation to the Kingdom of Thailand, the free transfer shall be effected in ac.cordance with the laws and regulations of the Kingdom of Thailand and consistent with rights and obligations of the Kingda. of Thailand as a member to the International Monetary Fund (IMP); (b) The transfer referred to in paragraph 2 (a) above shall, subject to the consideration of the competent authority of the Kingdom of Thailand, be effected on the basia of reciprocity and the competent authority of the Kingdom of Thailand will give the most sympathetic consideration to every transfer requested by the nationals and companies of the People r s Republic of China in order to render favourable treatment. In witness whereof, the underslgned~ duly authorised thereto by their respective Governments, have signed this Protocol.

Done in Duplicate at Bangk.ok~ this Twelfth Day of March, in the On~ Thousand Nine Hundred and Eighty-Five Year of the Christian era, corresponding to the Two Thousand Fi~e Hundred and Twenty-Eignt Year of the Buddhist era, in the Thai, Chinese and English languages, all texts being equally authentic. In case of divergency of interpretation the English text shall prevail.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND THE PEOPLE'S REPUBLIC OF CHINA