AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BULGARIA AND THE GOVERNMENT OF THE REPUBLIC OF ALBANIA ON MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Bulgaria and the Government the Republic of Albania, hereinafter referred to as the "Contracting Parties".

Desiring to develop the economic cooperation between the two States.

Preoccupied to encouraging and creating favourable condition, for investments of investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit.

Conscious that the mutual promotion and protection of investments in accordance with the present Agreement stimulates the initiatives in this field.

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

1. For the purposes of this Agreement the term "investments" shall mean any kind of assets and shall include in particular:

a) Property rights and any other real rights as well as mortgages pledges or other similar rights;

b) Shares, stocks or securities, materializing participation in companies;

c) Outstanding claims or any other rights, having economic value;

d) Copyrights, rights in the field of industrial and intellectual property (such as patents, licences, industrial design, trademarks and tradenames), technical processes, know-how and goodwill;

e) Rights to carry out business activities conferred by law, under a contract or an administrative act of a competent state authority, and in particular to search for, cultivate, extract or exploit natural resources.

These assets shall be implemented in accordance with the legislation of the Contracting Party on the territory of which the investments are made.

A subsequent change of the form in which the investments have been made shall not affect their substance as investments, provided that such a change does not contradict the laws of the Contracting Party, in the territory of which the investments have been made.

2. The term "returns" shall include all amounts yielded by an investment, such as profits, dividends, interests and other lawful incomes.

3. The term "investor" shall mean:

a) With respect to the Republic of Bulgaria:

- A natural person who is a national of the Republic of Bulgaria in accordance with its applicable legislation;

- Any company, organization or association with or without juridical personality, incorporated or constituted in accordance with the laws of the Republic of Bulgaria with a seat in its territory;

b) With respect to the Republic of Albania - any natural or legal person who invests in the territory of the other Contracting Party;

- The term "natural person" shall mean any natural person having the nationality of the Republic of Albania in accordance with its laws;

- The term "legal person" shall mean any entity incorporated or constituted in accordance with, and recognized as legal person by, the laws of the Republic of Albania with a permanent seat in its territory.

4. The term "territory" shall mean:

a) With respect to the Republic of Bulgaria - the territory under the sovereignty of the Republic of Bulgaria, including the territorial sea, as well as the continental shelf and the exclusive economic zone, over which the Republic of Bulgaria exercises sovereign rights or jurisdiction in conformity with international law;

b) With respect to the Republic of Albania - the territory, the territorial sea and subsoil of the Republic of Albania, as well as the continental shelf over which the Republic of Albania exercises sovereign rights or jurisdiction in conformity with international law.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote and protect in its territory Investments of investors of the other Contracting Party and accept such investments in accordance with its laws and regulations and accord them fair and equitable treatment and protection.

2. In case of reinvestment of returns from an investment, these reinvestments and their returns shall enjoy the same protection as the Initial investments.

3. Each Contracting Party shall consider favourably, and in compliance with its laws and regulations, questions concerning entry, stay, work and movement in its territory of nationals of the other Contracting Party who carry out activities connected with the investments as defined in the present Agreement and of their families forming part of their household.

Article 3. National and Most Favoured Nation Treatment

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall be accorded treatment not loss favourable than that accorded to investments made by its own investors or by investors of any third State, whichever is more favourable.

2. Investors of either Contracting Party shall be accorded in the territory of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment which is not less favourable than that accorded to its own investors or to investors of any third State, whichover is more favourable.

3. The provisions of paragraph 1 and 2 of this Article shall not be construed so as to oblige either Contracting Party to extend to the Investors of the other Contracting Party the privileges accorded to Investors of a third State based on:

a) Participation in, or association with, existing or future customs union, free trade area, economic communities or other similar institutions, or

b) Agreements relating wholy or mainly to taxation.

4. Each Contracting Party reserves the right to make or maintain, in compliance with its legislation in force, exceptions from national treatment granted according to Paragraphs 1 and 2 of this Article. However, any new exception shall only apply to investments made after the entry into force of such exception.

5. Should national legislation of either Contracting Party or present or future international agreements applicable between the Contracting Parties, or other international agreements, to which they are parties, contain regulations, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall, to the extent that is more favourable, prevail over the present Agreement.

Article 4. Compensation for Losses

Investors of a Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war, other armed conflict, state of national emergency or other similar events shall be accorded treatment no less favourable than that accorded to its own investors or to investors of any third State.

Article 5. Expropriation

1. Investments of investors of either Contracting Party shall not be expropriated or nationalized in the territory of the other Contracting Party except by virtue of law, in the public interest, on a non-discriminatory basis and against preliminary and adequate compensation.

The same conditions shall also apply to any transition of the investment to public property, submission under public control, as well as any other deprivation or limitation of property rights through sovereign measures which in their consequences are tantamount to expropriation. 2. The compensation shall amount to the market value of the investments concerned immediately before the date of entry into force of the act for expropriation and shall be paid without delay, shall carry an annual rate of interest equal to 12 months LIBOR quoted for the currency in which the investments were made until the time of payment. Any value reduction due to the fact that the impending expropriation has become public knowledge, shall not be taken into consideration when evaluating the amount of the compensation due. The payment of such compensation shall be freely transferable.

Article 6. Transfers

1. Each Contracting Party shall accord to the investors of the other Contracting Party, after the fulfilment of all their tax obligations, the free transfer of:

a) Capital and additional amounts intended to maintain or increase the investment;

b) Returns from the investment;

c) Proceeds obtained from the sale or from the total or partial liquidation of the investment;

d) The sums required for payment of the expenses which arise from the operation of the investment, such as loan repayments, payment of patents or licence fees;

e) Compensation payable in accordance with Article 5;

f) The remuneration received by nationals of the other Contracting Party for work or services done in connection with investments made in its territory, in accordance with its laws and regulations.

2. The transfers referred to in the preceding Paragraph shall be made without delay, at the exchange rate prevailing on the date of the transfer in the territory of the Contracting Party where the investment was made.

3. In accordance with the legislation of the other Contracting Party, to all transfers subject to this Article shall be accorded treatment not less favourable than that accorded to the transfers of an investment made by an investor of any third state.

Article 7. Subrogation

A Contracting Party having, by virtue of a guarantee given for an investment made in the territory of the other Contracting Party, made payment to one of its own investors is, by virtue of subrogation, entitled to exercise the rights and actions as well as to assume the obligations of the said investor. The subrogation in the rights and obligations of the ensured investor extends also to the right of transfer mentioned in Article 5. The paying Contracting Party cannot obtain rights or assume obligations greater than those of the ensured investor.

Article 8. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through negotiations between the Contracting Parties.

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

3. Such an arbitral tribunal shall be constituted for each individual case in the following way:

Within three months from the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who, on approval by the two Contracting Parties, shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of other two members.

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 agreement, invite the President of the International Court of Justice to make any 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. The Chairman and the members of the tribunal have to be nationals of States with which both Contracting Parties maintain diplomatic relations.

6. The arbitral tribunal reaches its decision on the basis of the provisions of the present Agreement as well as to the generally accepted principles and rules of international law. The arbitral tribunal reaches its decision by a majority of votes. Such decision shall be final an d binding on both Contracting Parties. The tribunal determines its own procedure.

7. Each Contracting 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 Contracting Parties.

Article 9. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes between an investor of a Contracting Party and the other Contracting Party concerning obligations of the latter under this Agreement, in relation with an investment of the former, shall, as far as possible, be settled through negotiations.

2. If such dispute cannot be settled within six months from the date either party requested settlement through negotiations, the investor concerned may submit the dispute to the competent court of the Contracting Party, which is party to the dispute.

3. In case of dispute with regard to Articles 5 and 6 of this Agreement, the investor concerned may choose, instead, to submit the dispute for settlement by arbitration to an ad hoc arbitral tribunal to be established under the Arbitral Rules of the United Nations Commission on International Trade Law (UNCITRAL).

For this purpose each Contracting Party herewith declares its consent to the abovementioned international arbitration.

4. The arbitral tribunal shall reach its decision on the basis of the national laws and regulations of the Contracting Party which is a party to the dispute, the provisions of the present Agreement, as well as the general principles of international law.

5. The decision of the arbitral tribunal shall be final and binding on both parties to the dispute and the award shall be enforced in accordance with the domestic law of the Contracting Party concerned.

6. Each party to the dispute shall bear the costs of its arbitrator 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 to the dispute.

Article 10. Consultations

Each Contracting Party may propose to the other Contracting Party to enter into consultations concerning all questions related to the implementation or interpretation of the present Agreement. The other Contracting Party shall make the necessary arrangements for holding these consultations.

Article 11. Applicability of the Agreement

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party after 1991.

Article 12. Entry Into Force Duration and Termination

1. This Agreement is subject to ratification and shall enter into force thirty days after the date of exchange of the instruments of ratification, it shall remain in force for a period of fifteen years.

2. Unless written notice of termination has been given by either Contracting Party at least twelve months before the date of expiry of the initial period of its validity, this Agreement shall be extended tacitly for successive periods of five years, each

Contracting Party reserving the right to terminate the Agreement upon written notice of at least twelve months before the date of expiry of the current period of validity.

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

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in Sofia on 27 April 1994. In two originals in Bulgarian, Albanian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Bulgaria

For the Government of the Republic of Albania