AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF ROMANIA ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the French Republic and the Government of Romania, hereinafter referred to as "the Contracting Parties",

Desiring to strengthen the economic cooperation between the two States and to create favorable conditions for French investments in Romania and Romanian investments in France,

Convinced that the encouragement and protection of such investments are likely to stimulate the transfer of capital and technology between the two countries, in the interest of their economic development,

Have agreed on the following provisions:

Article 1.

For the purposes of this Agreement:

1. The term "investment" means all assets, such as property, rights and interests of every kind and, more particularly but not exclusively:

a) movable and immovable property, as well as all other real rights such as mortgages, liens, usufructs, bonds and all other similar rights ;

b) Shares, share premiums and other forms of participation, even if minority or indirect, in companies incorporated in the territory of one of the Contracting Parties;

c) Bonds, debts and rights to any benefits of economic value;

d) copyrights, industrial property rights (such as patents, licenses, trademarks, industrial models and layouts), technical processes, registered names and goodwill

e) concessions granted by law or under contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources, including those in the maritime zone of the Contracting Parties.

Provided that such assets shall be or have been invested in accordance with the laws of the Contracting Party in whose territory or maritime area the investment is made, whether before or after the entry into force of this Agreement.

Any change in the form of investment of the assets shall not affect their characterization as an investment, provided that such change is not contrary to the laws of the Contracting Party in whose territory or maritime area the investment is made.

2. The term "nationals" means :

- with respect to the French Republic, natural persons possessing French nationality ;

- with respect to Romania, natural persons possessing Romanian citizenship.

3. The term "companies" means any legal person incorporated in the territory of one of the Contracting Parties, in accordance with the laws of that Party and having its registered office there, or controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal persons having their registered office in the territory of one of the Contracting Parties and incorporated in accordance with the laws of that Party.

4. The term "income" means all sums produced by an investment, such as profits, dividends, royalties or interest during a given period.

Income from the investment and, in the case of reinvestment, income from reinvestment shall enjoy the same protection as the investment.

5. This Agreement shall apply to the territory of each Contracting Party and to the maritime area of each Contracting Party, hereinafter defined as the economic zone and the continental shelf which extend beyond the limits of the territorial waters of each Contracting Party and over which they have, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploring, exploiting and preserving natural resources.

Article 2.

Each Contracting Party shall, within the framework of its legislation and the provisions of this Agreement, admit and encourage investments made by the nationals and companies of the other Party in its territory and in its maritime zone.

Article 3.

Each Contracting Party undertakes to ensure, in its territory and in its maritime zone, fair and equitable treatment, in accordance with the principles of international law, of investments of nationals and companies of the other Party and to ensure that the exercise of the right thus recognized to fair and equitable treatment is not hindered in law or in fact.

The Contracting Parties shall, within the framework of their domestic legislation, give sympathetic consideration to applications for entry and authorization to stay, work and travel submitted by nationals of a Contracting Party in connection with an investment made in the territory or maritime area of the other Contracting Party.

Article 4.

Each Contracting Party shall apply, in its territory and maritime zone, to the nationals or companies of the other Party, in respect of their investments and activities connected with such investments, treatment no less favourable than that accorded to its nationals or companies, or the treatment accorded to the nationals or companies of the most favoured nation, if the latter is more advantageous. In this connection, nationals authorized to work in the territory and maritime area of one of the Contracting Parties shall be given appropriate material facilities for the exercise of their professional activities.

This treatment does not, however, extend to the privileges which a Contracting Party grants to the nationals or companies of a third State by virtue of its participation in or association with a free trade area, a customs union, a common market or any other form of regional economic organization.

The provisions of this Article do not apply to tax matters.

Article 5.

1. Investments made by nationals or companies of either Contracting Party shall enjoy full protection and security in the territory and maritime area of the other Contracting Party, to be implemented in accordance with the principles of this Agreement.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is to dispossess nationals and companies of the other Party of investments belonging to them, in their territory and in their maritime zone, except in the public interest and provided that such measures are not discriminatory or contrary to any particular undertaking.

Any measures of dispossession which may be taken must give rise to the payment of prompt and adequate compensation, the amount of which, equal to the real value of the investments concerned, must be assessed in relation to a normal economic situation prior to any threat of dispossession.

This indemnity, its amount and the way it is to be paid shall be fixed at the latest on the date of dispossession. This compensation is effectively realizable, paid without delay and freely transferable. It produces, until the date of payment, interest calculated at the appropriate market interest rate.

3. The nationals or companies of one of the Contracting Parties whose investments have suffered losses due to war or any other armed conflict, revolution, state of national emergency or revolt in the territory or maritime zone of the other Contracting Party shall receive from the latter treatment no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation.

Article 6.

Each Contracting Party shall, in the territory or maritime area of which investments have been made by nationals or companies of the other Contracting Party, accord to such nationals or companies the free transfer

a) interest, dividends, profits and other current income

b) royalties derived from the intangible rights referred to in paragraph 1(d) and (e) of Article 1;

c) Payments made for the repayment of loans regularly contracted;

d) Proceeds from the total or partial sale or liquidation of the investment, including capital gains on the investment;

e) The compensation for loss of possession or loss provided for in Article 5, paragraphs 2 and 3 above.

Nationals of each Contracting Party who have been authorized to work in the territory or maritime area of the other Contracting Party, in connection with an approved investment, shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

The transfers referred to in the preceding paragraphs shall be made without delay at the normal rate of exchange officially applicable on the date of transfer.

Article 7.

Any dispute relating to investments between one of the Contracting Parties and a national or a company of the other Contracting Party shall, as far as possible, be settled amicably between the two parties concerned.

If such a dispute has not been settled within six months from the time it was raised and if the investor so requests, it shall be submitted to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington on March 18, 1965.

Article 8.

1. To the extent that the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad

it may be granted, on a case-by-case basis, to investments made by nationals or companies of that Party in the territory or maritime zone of the other Party.

2. Investments by nationals and companies of one of the Contracting Parties in the territory or maritime area of the other Party may not obtain the guarantee referred to in the preceding paragraph unless they have first obtained the approval of the latter Party.

3. If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory or maritime zone of the other Party, makes payments to one of its nationals or to one of its companies, it is thereby subrogated to the rights and actions of that national or company.

4. Such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to the ICSID or to pursue the actions brought before it until the proceedings have been completed.

Article 9.

Investments which have been the subject of a special undertaking by one of the Contracting Parties in respect of the nationals and companies of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, by the terms of that undertaking insofar as it contains provisions more favourable than those provided for in this Agreement.

Article 10.

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.

2. If the dispute is not settled within six months of its being raised by either Contracting Party, it shall be submitted, at the request of either Contracting Party, to an arbitration tribunal.

3. The said tribunal shall be constituted for each particular case in the following manner: each Contracting Party shall appoint one member, and the two members shall appoint, by mutual agreement, a national of a third State who shall be nominated as chairman of the tribunal by both Contracting Parties. All members shall be appointed within two months of the date on which one Contracting Party has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits laid down in paragraph 3 above have not been observed, either Contracting Party shall, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or is otherwise unable to serve, the most senior Deputy Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

5. The arbitration tribunal shall take its decisions by a majority vote. These decisions shall be final and binding on the Contracting Parties.

The tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal decides otherwise, taking into account particular circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the Contracting Parties.

Article 11.

Each of the Parties shall notify the other of the completion of the internal procedures required for the entry into force of this agreement, which shall take effect one month after the day of receipt of the last notification.

The agreement is concluded for an initial period of ten years. It shall remain in force after that period unless either Party denounces it through diplomatic channels with one year's notice.

Upon the expiration of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of twenty years.

Article 12.

This Agreement cancels and replaces, as from its entry into force, the Agreement between the Government of the French Republic and the Government of the Socialist Republic of Romania on the reciprocal encouragement, protection and guarantee of investments signed in Paris on 16 December 1976.

Done in Paris on 21 March 1995 in two originals, each in the French and Romanian languages, both texts being equally authentic.

For the Government of the French Republic :

E. Alphandéry

For the Government of Romania :

F. Georgescu

PROTOCOL

At the time of the signature of the agreement this same day between the Government of the French Republic and the Government of Romania on the reciprocal encouragement and protection of investments, the Contracting Parties have also agreed on the following provisions, which form an integral part of the agreement:

With regard to Article 3:

Any restriction on the purchase and transport of raw and auxiliary materials, energy and fuels, as well as means of production and operation of any kind, any impediment to the sale and transport of products within the country and abroad,

shall be considered as legal or de facto impediments to fair and equitable treatment, as well as all other measures having a similar effect.

For the Government of the French Republic :

E. Alphandéry

For the Government of Romania :

F. Georgescu