（五）本协定第六条的规定不应影响任何一方作为国际货币基金组织成员国所享有的或可能享有的在汇兑限制方面的权利和义务。

（六）如果贷款协议已在相关的外汇管理部门登记，则第一款第四项将适用。

（七）如果上述手续根据中国法律的相关规定不再被要求，第六条可以不受限制地适用。

五、关于第九条

关于在中华人民共和国的投资，葡萄牙共和国的投资者仅在下列情况下可以把争议提交仲裁：

（一）投资者已经根据中国法律把争议提交行政复议程序，

（二）投资者把争议提交复议程序三个月后，争议仍然存在。

葡萄牙共和国　　中华人民共和国

代　表　　代　表

AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE PEOPLE'S REPUBLIC OF CHINA ON THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS.

The Portuguese Republic and the People's Republic of China (hereinafter referred to as the «Parties»):

Intending to create favorable conditions for investment by investors of one Party in the territory of the other Party;

Recognizing that the encouragement, promotion and protection of such investment will be conducive to stimulating business initiative of the investors and will increase prosperity in both States;

Desiring to intensify the economic cooperation of both States;

have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

1) The term «investment» means every kind of asset invested directly or indirectly by investors of one Party in the territory of the other Party, and in particular, though not exclusively, includes:

a) Movable and immovable property and other rights in rem such as mortgages and pledges;

b) Shares, debentures, stock and any other kind of interest in companies;

c) Claims to money or to any other performance having an economic value associated with an investment;

d) Intellectual property rights, in particular copyrights, patents and industrial designs, trade-marks, trade-names, technical processes, trade and business secrets, know-how and good-will;

e) Business concessions conferred by law, under contract permitted by law or by an administrative act of a competent state authority, including concessions to search for, cultivate, extract or exploit natural resources;

f) Goods that, under a leasing agreement, are placed at the disposal of a lessee in the territory of a Party in conformity with its laws and regulations.

Any change in the form in which assets are invested does not affect their character as investments, provided that such change is made in accordance with the laws and regulations of the Party in whose territory the investment has been made;

2) The term «investor» means:

a) In respect of the Portuguese Republic:

Natural persons having the nationality of Portugal, in accordance with its laws and regulations;

Legal entities, including companies, associations, partnerships and other organizations, incorporated or constituted under its laws and regulations and have their seats in Portugal;

b) In respect of the People's Republic of China:

Natural persons who have nationality of the People's Republic of China in accordance with its laws;

Economic entities, including companies, corporations, associations, partnerships and other organizations, incorporated and constituted under the laws and regulations of and with their seats in the People's Republic of China, irrespective of whether or not for profit and whether their liabilities are limited or not;

3) The term «return» means the amounts yielded from investments, including in particular, though not exclusively, profits, dividends, interests, capital gains, royalties, fees and other legitimate income.

In cases where the returns of investments, as defined above, are reinvested, the income resulting from the reinvestment shall also be considered as income related to the first investments;

4) The term «territory» means the territory in which the Parties have, in accordance with international law and their national laws, sovereign rights or jurisdiction, including

land territory, territorial sea and air space above them, as well as those maritime areas adjacent to the outer limit of the territorial sea, including seabed and subsoil thereof.

Article 2

Promotion and protection of investment

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

2 — Investments of the investors of either Party shall enjoy constant protection and security in the territory of the other Party.

3 — Neither Party shall take any arbitrary or discriminatory measures against the management, maintenance, use, enjoyment and disposal of the investments by the investors of the other Party.

4 — Subject to its laws and regulations, either Party shall give sympathetic consideration to applications for obtaining visas and working permits to nationals of the other Party engaging in activities associated with investments made in the territory of that Party.

Article 3

Treatment of investment

1 — Investments of investors of each Party shall all the time be accorded fair and equitable treatment in the territory of the other Party.

2 — Each Party shall accord to investments and activities associated with such investments by the investors of the other Party treatment no less favourable than that which it accords to the investments and associated activities by its own investors.

3 — Neither Party shall subject investments and activities associated with such investments by investors of the other Party to treatment less favourable than that accorded to the investments and associated activities by the investors of any third State.

4 — The provisions of paragraphs 2 and 3 of this article shall not be construed so as to oblige one Party to extend to the investors of the other Party and their investments the benefit of any treatment, preference or privilege by virtue of:

a) Any membership of or association with any existing or future customs union, free trade zone, economic union, monetary union and any international agreement resulting in such unions or similar institutions;

b) Any double taxation agreement or other agreement regarding matters of taxation;

c) Any arrangements for facilitating small scale frontier trade in border areas.

Article 4

Expropriation and compensation

1 — Neither Party shall expropriate, nationalize or take other similar measures having equivalent effect to nationalization or expropriation (hereinafter referred to as «expropriation») against the investments of the investors of the other Party in its territory, unless the following conditions are met:

a) For the public interest;
b) Under domestic legal procedure;
c) Without discrimination; and
d) Against compensation.

2 — The compensation mentioned in paragraph 1 of this article shall be equivalent to the market value of the expropriated investments immediately before the expropriation is taken or the impending expropriation becomes public knowledge, whichever is earlier. The market value shall be determined in accordance with generally recognized principles of valuation. The compensation shall include interest at a normal commercial rate from the date of expropriation until the date of payment. The compensation shall be paid without delay, be effectively realizable and freely transferable.

3 — The investor affected shall have the right, under the law of the Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of its case, including the valuation of its investment and the payment of compensation, in accordance with the principles set out in this article.

Article 5

Compensation for damages and losses

Investors of either Party whose investments suffer losses in the territory of the other Party owing to war or other armed conflict, revolution, a state of national emergency or revolt shall be accorded treatment by such other Party not less favourable than that which the latter Party accords to its own investors or to investors of any third State as regards restitution, indemnification, compensation or other valuable consideration.

Article 6

Repatriation of investments and returns

1 — Each Party shall guarantee to the investors of the other Party the transfer of their investments and returns held in its territory, including:

a) The initial capital and additional amounts to maintain or increase the investment;
b) Returns;
c) Proceeds obtained from the total or partial sale or liquidation of investments or amounts obtained from the reduction of investment capital;
d) Payments pursuant to a loan agreement in connection with investments;
e) Payments in connection with contracting projects;
f) The compensation or other payments referred to in articles 4 and 5 of this Agreement;
g) Earnings of nationals of the other Party who work in connection with an investment in the territory of the other Party.

2 — The transfer mentioned above shall be made without delay in a freely convertible currency and at the prevailing market rate of exchange applicable within the Party accepting the investments and on the date of transfer. In the event that the market rate of exchange does not exist, the rate of exchange shall correspond to the cross rate obtained from those rates, which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into special drawing rights.

Article 7

Subrogation

If one Party or its designated agency makes a payment to its investor under a guarantee given in respect of an in-

vestment made in the territory of the other Party, the latter Party shall recognize the assignment of all the rights and claims of the indemnified investor to the former Party or its designated agency, by law or by legal transactions, and the right of the former Party or its designated agency to exercise by virtue of subrogation any such right to same extent as the investor. As regards the transfer of payments made by virtue of such assigned claims, article 6 shall apply mutatis mutandis.

Article 8

Settlement of disputes between Parties

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

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

3 — Such tribunal comprises of three arbitrators. Within two months of the receipt of the written notice requesting arbitration, each Party shall appoint one arbitrator. Those two arbitrators shall, within further two months, together select a national of a third State having diplomatic relations with both Parties to be appointed as chairman of the arbitral tribunal by both Parties.

4 — If the arbitral tribunal has not been constituted within four months from the receipt of the written notice requesting arbitration, either 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 Party or is otherwise prevented from discharging the said functions, the member of the International Court of Justice next in seniority who is not a national of either Party or is not otherwise prevented from discharging the said functions shall be invited to make such necessary appointments.

5 — The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its award in accordance with the provisions of this Agreement and the applicable principles of international law.

6 — The arbitral tribunal shall reach its award by a majority of votes. Such award shall be final and binding upon both Parties. The arbitral tribunal, upon the request of either Party, shall explain the reasons of its award.

7 — Each Party shall bear the costs of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the chairman and tribunal shall be borne in equal parts by the Parties.

Article 9

Settlement of disputes between investors and one Party

1 — Any dispute concerning investments between a Party and an investor of the other Party should as far as possible be settled amicably between the parties in dispute.

2 — If the dispute cannot be settled within six months of the date when it has been raised by one of the parties in dispute, it shall, at the request of the investor of the other State, be submitted at the choice of the investor to:

a) The competent court of the Party that is a party to the dispute;

b) Arbitration under the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID);

c) An ad-hoc arbitral tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) or other arbitration rules.

3 — The decision to submit the dispute to one of the above mentioned procedures shall be final.

4 — Any award by an ad-hoc tribunal shall be final and binding. Any award under the procedures of the Convention mentioned in 2, *b*), above shall be binding and subject only to those appeals or remedies provided for in this Convention. The awards shall be enforced in accordance with domestic law.

Article 10

Other obligations

1 — If the legislation of either Parties or obligations under international law existing at present or established hereafter between the Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Party to a treatment more favourable than is provided for by this Agreement, such regulation shall to the extent that it is more favourable prevail over this Agreement.

2 — Each Party shall observe any other obligation it has entered into with regard to investments in its territory by investors of the other Party.

Article 11

Application

This Agreement shall apply to investment, which are made prior to or after its entry into force by investors of either Party in accordance with the laws and regulations of the other Party in the territory of the latter, but shall not apply to any dispute concerning investments which has arisen before its entry into force.

Article 12

Relations between Parties

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Parties.

Article 13

Consultations

Either Party may propose to the other Party that consultations be held on any matter concerning interpretation, application and implementation of the Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

Article 14

Protocol

The attached Protocol shall form an integral part of this Agreement.

Article 15

Entry into force

1 — The present Agreement shall enter into force on the thirtieth day following the receipt of the last notification in writing and through diplomatic channels, stating that all the internal procedures of both Parties have been fulfilled.

2 — Upon the entry into force of the present Agreement, the Agreement between the Portuguese Republic and the People's Republic of China on the Promotion and Reciprocal Protection of Investments, signed in Lisbon, on February 3rd, 1992 shall be terminated.

Article 16

Duration and termination

1 — The present Agreement shall remain in force for a period of ten years.

2 — Unless either Party notifies the other, in writing and through diplomatic channels, of its intention to terminate the present Agreement at least one year before the end of the initial period of ten years, the present Agreement shall remain in force for indeterminate periods of five years.

3 — After the initial period of ten years, either Party may terminate at any time the present Agreement by giving at least one year's written notice to the other Party. The notice shall be sent through diplomatic channels.

4 — In respect of investments made prior to the date of termination of present Agreement, the provisions of articles 1 to 13 shall remain in force for a further period of ten years from the date of termination.

Done at Lisbon on 10th December 2005 in duplicate in the Portuguese, Chinese and English languages, all texts being authentic. In case of divergent interpretation of texts, the English text shall prevail.

For the Portuguese Republic:

For the People's Republic of China:

PROTOCOL TO THE AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE PEOPLE'S REPUBLIC OF CHINA ON THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS.

On signing the Agreement between the Portuguese Republic and the People's Republic of China on the Encouragement and Reciprocal Protection of Investments, the plenipotentiaries, being duly authorized, have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the said Agreement:

Ad Article 1

Returns from the investment and from reinvestments shall enjoy the same protection as the investment.

Ad Articles 2 and 3

With regard to the People's Republic of China, paragraph 3 of article 2 and paragraph 2 of article 3 do not apply to:

a) Any existing non-conforming measures maintained within its territory;

b) The continuation of any such non-conforming measure;

c) Any amendment to any such non-conforming measure to the extent that the amendment does not increase the non-conformity of these measures.

The People's Republic of China will take all appropriate steps in order to progressively remove the non-conforming measures.

Ad Article 3

1 — The following shall more particularly, though not exclusively, be deemed «activity» within the meaning of article 3, 2, the management, maintenance, use, enjoyment and disposal of an investment. The following shall, in particular, though not exclusively, be deemed «treatment less favourable» within the meaning of article 3 unequal treatment in the case of restrictions on the purchase of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind as well as any other measures having similar effects. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed «treatment less favourable» within the meaning of article 3.

2 — The provisions of article 3 do not oblige a Party to extend to investors resident in the territory of the other Party tax privileges, tax exemptions and tax reductions which according to its tax laws are granted only to investors resident in its territory.

Ad Article 6

With regard to the People's Republic of China:

1 — Article 6, paragraph 1, *c*), will apply provided that the transfer shall comply with the relevant formalities stipulated by the present Chinese laws and regulations relating to exchange control.

2 — A transfer shall be deemed to have been made «without delay» within the meaning of article 6, 3, if effected within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted to the relevant foreign exchange administration with full and authentic documentation and information and may on no account exceed two months.

3 — In this respect, the People's Republic of China shall accord to investors of the Portuguese Republic treatment not less favourable than that accorded to the investors of any third State.

4 — These formalities shall not be construed as a means of avoiding the Party's commitments or obligations under this Agreement.

5 — The provisions of article 6 of this Agreement shall not affect the rights and obligations with respect to exchange restrictions that either Party has or may have as a member to the International Monetary Fund.

6 — Paragraph 1, *d*), will apply provided that a loan-agreement has been registered with the relevant foreign exchange administration authority.

7 — To the extent that the formalities mentioned above are no longer required according to the relevant provisions of Chinese law, article 6 shall apply without restrictions.

Ad Article 9

With respect to investments in the People's Republic of China an investor of Portuguese Republic may submit a dispute for arbitration under the following conditions only:

a) The investor has referred the issue to an administrative review procedure according to Chinese law;,

b) The dispute still exists three months after he has brought the issue to the review procedure.

For the Portuguese Republic:

For the People's Republic of China:

Decreto n.º 18/2008

de 26 de Junho

Considerando a assinatura em Lisboa, no dia 8 de Março de 2007, do Acordo entre a República Portuguesa e o Reino de Espanha Relativo à Manutenção Recíproca de Reservas de Petróleo Bruto e de Produtos de Petróleo;

Considerando que ambos os Estados são membros da União Europeia;

Reconhecendo a obrigação de âmbito comunitário no sentido de os Estados membros constituírem e manterem reservas de petróleo que podem ser localizadas no território de outro Estado membro:

Assim:

Nos termos da alínea c) do n.º 1 do artigo 197.º da Constituição, o Governo aprova o Acordo entre a República Portuguesa e o Reino de Espanha sobre a Manutenção Recíproca de Reservas de Petróleo Bruto e de Produtos de Petróleo, assinado em Lisboa em 8 de Março de 2007, bem como a rectificação da versão autêntica na língua portuguesa, levada a efeito por troca de notas diplomáticas datadas de 2 de Maio e de 21 de Setembro de 2007, cujo texto, nas versões autenticadas nas línguas portuguesa e espanhola, se publica em anexo.

Visto e aprovado em Conselho de Ministros de 24 de Abril de 2008. — *José Sócrates Carvalho Pinto de Sousa — Luís Filipe Marques Amado — Manuel António Gomes de Almeida de Pinho*.

Assinado em 6 de Junho de 2008.

Publique-se.

O Presidente da República, Aníbal Cavaco Silva.

Referendado em 11 de Junho de 2008.

O Primeiro-Ministro, *José Sócrates Carvalho Pinto de Sousa.*

ACORDO ENTRE A REPÚBLICA PORTUGUESA E O REINO DE ESPANHA SOBRE A MANUTENÇÃO RECÍPROCA DE RESERVAS DE PETRÓLEO BRUTO E PRODUTOS DO PETRÓLEO

A República Portuguesa e o Reino de Espanha, adiante denominados «Partes»:

Considerando a Directiva do Conselho n.º 2006/67/CE, de 24 de Julho, a qual obriga os Estados membros a manter um nível mínimo de reservas de petróleo bruto e ou produtos petrolíferos (seguidamente referida como «a directiva»);

Considerando o artigo 7.º da directiva, que prevê a possibilidade de constituição das ditas reservas, mediante acordos entre Governos, no território de um Estado membro por conta de empresas ou organismos ou entidades estabelecidas em outro Estado membro, com o fim de facilitar a distribuição racional de reservas na Comunidade Europeia e de garantir um correcto funcionamento do mercado interno;

Considerando as legislações nacionais relativas a obrigações de manutenção de reservas;

acordam o seguinte:

Artigo 1.º

Definições

Para efeitos deste Acordo:

a) «Autoridade competente» significa a autoridade administrativa de cada uma das Partes com competência na regulação e cumprimento das obrigações de reservas por parte dos sujeitos obrigados:

Em Espanha: Direcção-Geral de Política Energética e Minas do Ministério da Indústria, Turismo e Comércio;

Em Portugal: Direcção-Geral de Geologia e Energia, do Ministério da Economia e da Inovação;

b) «Reservas» significa qualquer quantidade de petróleo bruto ou produtos do petróleo (incluindo os produtos intermédios e finais) contabilizável para o cumprimento da obrigação de manutenção de reservas de petróleo bruto e ou produtos petrolíferos, segundo as legislações nacionais das Partes;

c) «Obrigação de reservas» significa a quantidade total de reservas que cada uma das Partes tem de manter de acordo com a sua legislação nacional;

d) «Sujeito obrigado» significa qualquer empresa, organismo ou entidade, com sede no território de uma Parte,