AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ECUADOR AND THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Ecuador and the Government of the Republic of El Salvador referred to hereinafter as the "Contracting Parties".

Desiring to intensify economic cooperation between the two countries.

In order to create favourable conditions for investment by investors of one Contracting Party in the territory of the other party, involving transfers of capital; and

Recognizing that the promotion and protection of such investment based on an agreement will stimulate economic initiative individually and will increase prosperity in both States.

Have agreed as follows:

Article I. Definitions

For the purposes of this Agreement:

(1) The term "investment" means, in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made, every kind of assets or rights relating to an investment made by an investor of one Contracting Party in the territory of the other party, in accordance with the legislation of the latter,

Includes in particular, though not exclusively:

a) Ownership of movable and immovable property as well as any other rights in rem such as mortgages, bonds, and rights of usufruct pledge.

b) Shares and social quotas and any other kind of participation in companies.

c) Claims and rights to any other performance having an economic value. the appropriations will be entered only when they are contracted, regularly and documented according to the rules in force in the country where the investment made and is directly linked to a specific investment.

d) Intellectual property rights, including copyright and industrial property rights such as patents, industrial designs, trademarks, brands, or trade names, technical processes, goodwill and other similar rights; and

e) Economic concessions conferred by law or under contract and any licences and permits granted pursuant to law.

Any alteration of the form in which assets and rights have been invested or reinvested, affect their qualification of investments under this Agreement.

(2) The term "investor" refers to each of the Contracting Parties, the following subjects who have made or are making investments in the territory of the other party, in accordance with this Agreement:

a) Any natural person who is a national of one of the Contracting Parties, in accordance with its laws; and

b) Any legal person established in accordance with the laws and regulations of one Contracting Party and having their seat together with real economic activities in the territory of that Contracting Party, regardless of whether or not its activities are non-for-profit.

(3) The provisions of this Agreement shall not apply to investments by natural persons who are nationals of one Contracting Party in the territory of the other Party if such persons, at the date of the investment has been registered for more than five years in the latter party, unless it is proved that the investment was admitted in its territory from abroad.

(4) The term "proceeds" means all monetary values yielded by an investment interests, such as profits, dividends, royalties and any other income related to the investment.

(5) The term "territory" means the territory of each Contracting Party, including those maritime areas adjacent to the outer limit of the territorial sea of the national territory, over which the Contracting Party concerned may, in accordance with its legislation and international law, sovereign exercise sovereign rights or jurisdiction.

Article II. Scope

This Agreement shall apply to all investments made after the date of its entry into force.

Article III. Investment Promotion

Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote investments in its territory by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

Article IV. Protection of Investments

(1) Each Contracting Party shall at all times fair and equitable treatment to investments of investors of the other party, and not harm its management, maintenance, use, enjoyment, enjoyment, extension, liquidation or provision through unjustified or discriminatory measures.

(2) Each Contracting Party, once admitted investments of investors in its territory of the other Contracting Party, it shall accord to such investments full legal protection and they agree upon a treatment no less favourable than that accorded to its own of investments or investors to investors of third States.

(3) Without prejudice to the provisions of the preceding paragraph, the most-favoured-nation treatment shall not apply to privileges which either Contracting Party agrees to investors of a third State because of its association or participation in a free trade area, customs union, common market or regional agreement.

(4) The provisions of paragraph (2) of this Article shall not be construed as to oblige one contracting party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement for the avoidance of double taxation.

Article V. Expropriation and Compensation

(1) Neither of the Contracting Parties shall take measures of expropriation or nationalization or any other measures having the same effect against investments within its territory and belonging to investors of the other contracting party unless the measures are taken for a public purpose; on a non-discriminatory basis and under due process of law. The legality of expropriation, nationalization or any other measures having an equivalent effect and the amount of compensation may be claimed in ordinary judicial procedure.

Such measures shall be accompanied by provisions for the payment of prompt, effective and adequate compensation. the amount of such compensation shall correspond to the market value of the expropriated investment was immediately before the expropriation or before the impending expropriation became public, whichever is earlier, and shall include interest generated from the date of expropriation at a normal commercial rate.

(2) Investors of a Contracting Party, who suffer loss in their investments in the territory of the other Contracting Party, due to war or other armed conflict, state of national emergency, revolt, insurrection or mutiny, shall receive in respect of restitution, compensation, indemnification or another redress, treatment no less than the one agreed to for its own investors or for investors of a third party Status. Payments will be freely transferable.

Article VI. Transfers

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party without delay the transfer of payments related to investments and in particular, though not exclusively:

a) The principal and additional amounts necessary for the maintenance and development of the investment.

b) The benefits, profits, dividends, interests and other current income.

c) The funds in repayment of loans as defined in article 1 (1) (c).

d) Royalties.

e) The proceeds of the total or partial sale or liquidation of an investment.

f) The compensation referred to in Article IV.

g) The payments due under subrogation by virtue of Article VII of this Agreement.

(2) For the purposes of this article, a transfer shall be deemed to be made without delay if effected within the period normally necessary for the completion of formalities. the period shall run from the day on which the request was submitted, accompanied by the documents necessary in any case, may not exceed 60 days.

(3) Transfers shall be made in freely convertible currency and at the rate of exchange prevailing on the market, from the date at which are undertaken.

Article VII. Subrogation

(1) If a Contracting Party or any of its agencies made a payment to an investor by virtue of a guarantee or insurance that has undertaken in connection with an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of the Contracting Party or any of its agencies in respect of any right or title of the investor. The Contracting Party or any of its agencies shall be authorized, within the limits of subrogation to exercise the rights which the investor would have been entitled to exercise.

(2) In the case of subrogation, as defined in this Article, the investor shall not pursue a claim unless he is authorized to do so by the Contracting Party or its agency.

Article VIII. Implementation of other Rules

If the provisions of the law of either Contracting Party or obligations under international law existing or future between the Contracting Parties in addition to this Convention or an agreement between an investor of one Contracting Party and the other Contracting Party contain rules whether general or specific to accord to investments by investors of the other Contracting Party to a more favourable treatment than is provided for by the present Agreement, such rules on the latter shall prevail to the extent that it is more favourable.

Article IX. Settlement of Disputes between the Contracting Parties

(1) Any dispute arising between the Contracting Parties concerning the interpretation or application of this Agreement, as far as possible, be settled through diplomatic channels.

(2) If a dispute between the contracting parties cannot be settled in this way within six months of the date of the notification of the dispute shall be submitted at the request of either contracting party to an arbitral tribunal.

(3) Such an arbitral tribunal shall be as 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 who shall select a national of a third State who shall be Chairman of the Tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in subparagraph immediately preceding the 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 the necessary appointments. If the President is a national of one of the contracting parties or, if for any reason, is 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 of the contracting parties or if he is also prevented from discharging the function, the said member of the International Court of Justice who is next in seniority and is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. such decision shall be final and binding on both contracting parties. Each Contracting Party shall bear the costs of the 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. However, the arbitral tribunal shall determine its decision that a higher proportion of costs be borne by one of the two contracting parties. the tribunal shall determine its own procedure.

Article X. Settlement of Disputes between an Investor and the Host Contracting Party of the Investment

(1) Any dispute concerning the provisions of this agreement between an investor of one Contracting Party and the other Party shall, as far as possible, be settled through amicable consultations.

(2) If the dispute has not been settled within six months from the date on which it was raised by one or other party, it may be submitted at the request of the investor.

- Either to the competent courts of the Contracting Party in whose territory the investment was made;

- Or international arbitration under the conditions described in paragraph (3).

Once the investor has submitted the dispute to the courts of the Contracting Party concerned or to international arbitration, the choice of one of these procedures is final.

(3) In the event of recourse to international arbitration, the dispute shall be submitted to the International Centre for Settlement of Investment Disputes established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965.

(4) The arbitral tribunal shall decide on the basis of the provisions of this Convention on the Law of the Contracting Party involved in the dispute, including the rules relating to conflicts of law, the terms of any specific agreements concluídos with respect to investment and the principles of international law applicable.

(5) The arbitral awards shall be final and binding on the parties to the dispute. each Contracting Party shall execute the In accordance with its legislation.

Article XI. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force 45 days from the date of the exchange of their respective instruments of ratification and for a period of ten years. thereafter it shall remain in force until the expiration of twelve months from the date on which either Contracting Party notifies in writing the other contracting party of its decision to terminate this Agreement.

(2) With respect to investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of articles 1 to 10 shall remain in force for a period of ten years from that date.

Done at the city of Quito, Ecuador, at the 16th day of May nineteen ninety-four in two originals in the Spanish language, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF ECUADOR

Diego Paredes Peña.

MINISTER OF FOREIGN AFFAIRS

FOR THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR

Miguel A. Salaverría A.

MINISTER OF FOREIGN AFFAIRS