AGREEMENT BETWEEN THE REPUBLIC OF CHILE AND THE SOCIALIST REPUBLIC OF VIETNAM FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Chile and the Government of the Socialist Republic of Vietnam, hereinafter referred to as the "Contracting Parties".

Desiring to intensify economic cooperation to the mutual benefit of both Contracting Parties;

With the intention to create and maintain favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party, which imply the transfer of capital into the latter Contracting Party;

Recognizing the need to promote and protect foreign investments with a view to favor the economic prosperity of both Contracting Parties;

Have agreed as follows:

Article I. Definitions

For the purpose of this Agreement:

(1) The term "investor" shall mean the following subjects which have made investments in the territory of the other Contracting Party in accordance with the present Agreement:

(a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;

(b) Legal entities, including companies, corporations, business associations or any other entity constituted under the law of that Contracting Party, having their seat together with their effective economic activities in the territory of that Contracting Party.

(2) The term "investment" shall refer to every kind of asset or rights related to it, provided that it has been made in accordance with the laws and regulations of the Contracting Party in which territory it was carried out and shall include in particular, though not exclusively:

(a) Movable and immovable assets, the property rights over them as well as all other property rights such as mortgages and pledges;

(b) Shares, debentures and any other kinds of participation in companies;

(c) Claims to money or to any other performance having an economic value;

(d) Intellectual and industrial property rights, including copyright, patents, trademarks, trade names, technical processes, know-how and goodwill;

(e) Concessions conferred by law, by an administrative act or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any modification in the form in which assets are reinvested shall not affect their character as investment, provided that such modification is carried out pursuant to the legislation of the Contracting Party in which territory the investment has been made. (3) The term "territory" includes, in addition to the land, maritime and air territory under the sovereignty of each Contracting Party, the marine and submarine areas in which they exercise sovereign rights and jurisdiction in conformity with their respective legislations and International Law.

Article II. Scope of Application

The present Agreement shall apply to investments made, prior to or after its entry into force, by investors of one Contracting Party, in accordance with the legislation of the other Contracting Party, in the territory of the latter. It shall however not be applicable to differences or disputes which arose prior to its entry into force or to disputes directly related to events which occurred prior to its entry into force.

Article III. Promotion and Protection of Investments

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

(2) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment, extension, sale and liquidation of such investments by unreasonable or discriminatory measures.

Article IV. Treatment of Investments

(1) Each Contracting Party shall guarantee a fair and equitable treatment in its territory to investments made by investors of the other Contracting Party and shall ensure that the exercise of the right thus recognized shall not be hindered in practice.

(2) Each Contracting Party shall accord to the investments of investors of the other Contracting Party made in its territory a treatment which is no less favorable than that accorded to the investments of investors of any third country.

(3) If a Contracting Party accords special advantages to investors of any third country by virtue of an agreement establishing a free trade area, a customs union, a common market, an economic union or any other form of regional economic organization or any international agreement intended to facilitate frontier trade to which the Contracting Party belongs at the present time or may belong in the future or through the provisions of an agreement related wholly or mainly to taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article V. Transfer

(1) Each Contracting Party shall, subject to its laws and regulations, allow without delay the investors of the other Contracting Party the transfer of funds in connection with their investments in freely convertible currency, in particular but not exclusively:

(a) Interests, dividends, revenues, profits and other returns;

(b) Repayments of foreign loan agreements related to an investment;

(c) The capital or proceeds from the total or partial sale or liquidation of an investment; and

(d) The proceeds from the settlement of a dispute and compensations and indemnities in accordance with the present Agreement.

(2) The capital invested can only be transferred one year after it has entered the territory of the Contracting Party, unless its legislation provides for a more favorable treatment.

(3) Transfers shall be made at the exchange rate prevailing at the time of transfer, in accordance with the legislation of the Contracting Party which has admitted the investment.

(4) A transfer shall be deemed to have been made "without delay" if carried out within a period which is normally required for the completion of transfer formalities in the Contracting Party. Such period shall not impair the substance of the rights set forth in this Article.

Article VI. Expropriation and Indemnity

(1) Neither Contracting Party shall take any measures of expropriation, nationalization or any dispossession, having effect equivalent to nationalization or expropriation against the investment of investors of the other Contracting Party, except under the following conditions:

(a) The measures are taken for the public or national interest in accordance with its laws and regulations;

(b) The measures are not discriminatory;

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective indemnity.

(2) The compensation shall be equivalent to the market value of the expropriated investments inmediately before the expropriation occurred or the impending expropriation became public knowledge and shall be paid without undue delay. The compensation shall include interest calculated on the LIBOR basis from the date of expropriation. The compensation shall be effectively realizable and freely transferable.

(3) Regarding the legality of the nationalization, expropriation or any other measure having an equivalent effect and the amount of the indemnity a claim may be raised by the affected investor before the ordinary courts of justice of the Contracting Party which adopted the measure.

Article VII. Compensation for Losses

The investors of each Contracting Party whose investments in the territory of the other Contracting Party suffer damages or losses due to a war, an armed conflict, a state of national emergency, civil commotion or other similar events in the territory of the other Contracting Party shall be accorded by the latter, as regards restitution, indemnity, compensation or other arrangement, a treatment no less favorable than that accorded to investors of any third State.

Article VIII. Subrogation

(1) Where a Contracting Party or an agency authorized by it has granted a contract of insurance or any other form of financial guarantee against non-commercial risks with regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party to subrogate for the rights of the investor, when it has made payment under such contract or financial guarantee.

(2) Where a Contracting Party has made a payment to its investor and by virtue of this, has assumed its rights and claims, that investor shall not pursue those rights and claims against the other Contracting Party, unless under express authorization of the first Contracting Party.

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

(1) The disputes which arise within the terms of this Agreement, between a Contracting Party and an investor of the other Contracting Party who has made investments in the territory of the first, shall, to the extent possible, be settled through consultations.

(2) If these consultations do not result in a solution within four months from the date of request for settlement, the investor may submit the dispute, at his choice, for settlement to:

(a) The competent tribunal of the Contracting Party in the territory of which the investment has been made; or

(b) The International Centre for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of the other States opened for signature at Washington D.C. on March 18, 1965, in the event Contracting Parties shall have become a party to this Convention; or

(c) An ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) Each Contracting Party hereby gives its irrevocable consent for any dispute of this kind to be submitted to any of the arbitration tribunals mentioned under literal (b) and (c) of the foregoing numeral.

(4) Once the investor has submitted the dispute to the competent tribunal of the Contracting Party in whose territory the investment has been made or to any of the above mentioned arbitration tribunals, the choice of either procedure shall be final.

(5) The arbitration awards shall be final and binding on both parties and shall be enforced in accordance with the law of the Contracting Party in whose territory the investment was made.

(6) The Contracting Parties shall refrain from treating through diplomatic channels matters related to the disputes referred to local tribunal or international arbitration in accordance with this Article until the proceedings have been concluded, except where the Contracting Party to the dispute has failed to abide or comply with the court decision or arbitratin award

in the terms established by the respective decision or award.

Article X. Settlement of Disputes between Contracting Parties

(1) The differences that may arise between the Contracting Parties regarding the interpretation or application of the present Agreement, shall be settled through diplomatic channels.

(2) If no agreement could be reached within six months following the date of notification of the difference, either Contracting Party may submit it to an ad-hoc arbitral tribunal established in accordance with the provisions of this Article.

(3) The Arbitral Tribunal shall be formed by three members and shall be constituted as follows: within the term of two months form the date of notification of the arbitration request, each Contracting Party shall appoint one arbitrator. These two arbitrators, within the term of two months from the appointment of the last one, shall agree upon a third member who shall be a national of a third country, who will chair the Tribunal. The appointment of the Chairman shall be approved by the Contracting Parties within the term of two months from that person's nomination.

(4) If, within the time limits provided for in paragraph (3) of this Article, the necessary appointments have not been made or the required approval has not been given, either Contracting Party may request the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointments shall be made by the Vice-President, and if the latter is prevented or if he is a national of either Contracting Party, the most senior Judge of the Court who is not a national of either Contracting Party shall make the necessary appointments.

(5) The Chairman of the Tribunal shall be a national of a third country which has diplomatic relations with both Contracting Parties.

(6) The Arbitral Tribunal shall reach its decisions on the basis of the provisions of this Agreement, the principles of International Law on this subject and the General Principles of Law as recognized by the Contracting Parties. The Tribunal shall reach its decisions by a majority vote and shall determine its own proceeding rules.

(7) Each Contracting Party shall bear the cost of the respective arbitrator and those of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs of the process shall be borne in equal parts by the Contracting Parties unless agreed otherwise.

(8) The decisions of the Arbitral Tribunal shall be final and binding on both Contracting Parties.

Article XI. Consultations

The Contracting Parties shall consult on matters concerning the interpretation or application of this Agreement.

Article XII. Final Provisions

(1) The Contracting Parties shall notify each other when the constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force sixty days after the date of the latter notification.

(2) This Agreement shall remain in force for a period of ten (10) years, and shall continue in force, unless terminated in accordance with paragraph (3) of this Article.

(3) Either Contracting Party may, by giving one (1) year's written notice to the other Contracting Party, terminate this agreement at the end of the initial ten (10) year period or anytime thereafter.

(4) Whit respect to investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from such date of termination.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement. Done at Santiago, this sixteenth day of september one thousand nine hundred ninety nine, in duplicate in the Spanish, Vietnamese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.