AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF NORWAY AND THE GOVERNMENT OF THE REPUBLIC OF CHILE ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Chile and the Government of the Kingdom of Norway, hereinafter referred to as the "Contracting Parties",

desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

recognizing that the promotion and reciprocal protection of such foreign investments favour the economic prosperity of both countries,

have agreed as follows.

Article 1. Definitions

For the purpose of this Agreement,

(1) "investor" means:

(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 and other organisations, which are incorporated or constituted in accordance with the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that. same Contracting Party,

(2) "investment" means any kind of asset, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

(a) movable and immovable property and any other property rights such as mortgages, liens or pledges;

(b) shares, debentures or any other kinds of participation in companies;

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

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

(e) concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

(3) "returns" means the amounts yielded by an investment such as profits, interests, royalties, fees, dividends, capital gains and other income derived from investments.

(4) "territory" includes the area of the continental shelf insofar as international law permits the Contracting Party concerned to exercise sovereign rights or jurisdiction in these areas..

Article 2. Scope of Application

The present Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its legislation, prior to or after the entry into force of the Agreement, by investors of the other Contracting Party. It shall however not be applicable to divergencies or disputes which have arisen prior to its entry into force.

Article 3. Promotion and Protection of Investments

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

(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 by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and liquidation of such investments.

(3) Goods that under a leasing agreement are placed at the disposal of a lessee in the territory of one Contracting Party by a lessor being a national of the other Contracting Party or a legal person having its seat in the territory of that Contracting Party, shall be treated not less favourably than an investment.

Article 4. Treatment of Investments

(1) Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made within its territory to the investments by investors of the most favoured nation.

(2)The treatment granted under this article shall not apply to any advantage accorded t.o investors of a third state by the other Contracting Party based on any existing or future customs or economic union or free trade agreement to which either of the Contracting Parties is or becomes a party. Neither shall such treatment relate to any advantage which either Contracting Party accords to investors of a third state by virtue of a double taxation agreement or other agreements regarding matters of taxation or any domestic legislation relating to taxation.

Article 5. Free Transfer

(1) Each Contracting Party shall allow without delay the investors of the other Contracting Party the transfer of payments in connection with an investment in a freely convertsoble currency, particularly of:

a) interests, dividends, profits and other returns;

b) repayments of loans related to the investment;

c) payments derived from rights enumerated in Article 1, paragraph (2), letter (d) of this Agreement;

d) the proceeds of the partial or total sale of the investment;

e) compensation for dispossession or loss described in Article 6 of this Agreement;

f) The earnings of foreign employees working in relation to an investment, once the legal requirements have been fulfilled.

(2) A transfer shall be deemed to have been made without delay if carried out within such period as is normally required for the completion of transfer formalities. The said period shall start on the day on which the relevant request has been submitted in due form and may in no case exceed two months. Transfers shall be made at the prevailing rate of exchange on the date of transfer.

(3) Transfers concerning investments made under the Chilean Special Program of Foreign Debt Equity Swaps are subject to special regulations.

(4) Equity capital can only be transferred after it has entered the territory Contracting Party unless its legislation for a more favourable treatment.

Article 6. Expropriation and Compensation

(1) Neither Contracting Party shall take any measure depriving, directly or indirectly, an investor of the other Contracting Party of an investment unless the following conditions are complied with:

(a) the measure is taken in the public or national interest and under due process of law;

(b) the measure is not discriminatory;

(c) the measure is accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall be based on the market value of the investments affected immediately before the measure became public knowledge. This compensation shall carry interest at a commercial rate established on a market basis from the date

of expropriation until the date of payment. There shall be legal provision giving an investor concerned a right to prompt review of the legality of the measure taken against the investment and of their valuation in accordance with the principles set out in this paragraph by due process of law in the territory of the Contracting Party making the expropriation.

(2) The investor of one Contracting Party whose investment have suffered losses due to a war or any other armed conflict, revolution. state of emergency or rebellion, which took place in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment as regard restitution. indemnification. compensation or other valuable consideration. no less favourable than that which that Contracting Party accords to investors of any third State.

Article 7. Principle of Subrogation

Where one Contracting Party or its designated agency has granted any financial guarantee against non-commercial risks which regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights at the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party.

Article 8. Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) With a view to an amicable solution of disputes between a Contracting Party and an investor of the other Contracting Party consultations will take place between the parties concerned.

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

- either to the competent tribunal of the Contracting party in whose territory the investment was made: or

- to international arbitration of the International Centre for the Settlement of Investment Disputes (ICSID), created by the Convention for the Settlement of Disputes in respect of Investments occurring between States and Nationals of other States, signed 1n Washington on March 18, 1965.

Once the investor has submitted the dispute to the competent tribunal of the Contracting Party in whose territory the investment was made or to international arb iteration, the election of one or the other procedure will be final.

(3) for the purpose of this Article, any legal person which is constituted in accordance with the legislation of one Contracting Party, and in which, before a dispute arises, the majority of shares are owned by investors of the other Contracting Party, shall be treated, in accordance with Article 25 (2) (b) of the said Washington Convention, as a legal person of the other Contracting Party.

(4) The arbitration decision shall be final and binding on both parties.

Article 9. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If a dispute between the Contracting Parties cannot thus be settled within six months after the beginning of negotiations, it shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall appoint a chairman who shall be a national of a third State.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

(4) If the appointment of a chairman has not been made within two months after the appointment of the two arbitrators, either Contracting Party may invite the President of the International Court of Justice to make the appointment of a chairman.

(5) If, in the cases specified under paragraphs (3) and (4) of t his Article, the President of the International Court of Justice is prevented from carrying out the said function or if is a national of either Contracting Party, the appointment shall be made by the Vice-President. and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be

made by the most senior Judge of the Court who is not a national of either Contracting Party.

(6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure. The tribunal reaches its decision on the basis of the provisions of the present agreement and of the general principles and rules of international law. Furthermore each Contracting Party shall bear the cost of the arbitrator it has appointed 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 unless agreed otherwise.

(7) The decisions of ·the tribunal are final and binding for each Contracting Party.

Article 10. Consultations

The representatives of the Contracting Parties shall, whenever needed hold meetings in order to review the implementation of the present Agreement. These meetings shall be held at the request of one Contracting Party, at a place and at a t.ime a greed upon through diplomatic channels.

Article 11. 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 thirty days after that last notification.

(2) This Agreement shall remain in force for a period of fifteen years. It shall remain in force thereafter until twelve months from the date on which either Contracting Party notifies the other Contracting Party in writing of the termination of the Agreement.

(3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 9 shall remain 1n force a further period of fifteen years from that date.

(4) The present Agreement shall be applicable irrespective of whether diplomatic or consular relations exist between the Contracting Parties.

Done at Oslo, this first day of June 1993, in duplicate in the Spanish, Norwegian and English languages, all the texts being equally authentic. In case of divergencies the English text shall prevail.

For the Government of the Republic of Chile

For the Government of the Kingdom of Norway