Agreement between the Belgo-Luxembourg Economic Union and the United Mexican States on Promotion and Reciprocal Protection of Investments

THE GOVERNMENT OF THE UNITED MEXICAN STATES, on the one hand and THE GOVERNMENT OF THE KINGDOM OF BELGIUM, acting both in its own name and in the name of the Government of the Grand-Duchy of Luxemburg, by virtue of existing agreements, the Wallon Government, the Flemish Government, and the Government of the Region of Brussels-Capital, on the other hand, (hereinafter referred to as "the Contracting Parties"),

DESIRING to strengthen their economic cooperation by creating favourable conditions for investments by nationals of one Contracting Party in the territory of the other Contracting Party,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement,

1. The term "investors" shall mean:

a) The "nationals", i.e. any natural person who, according to the legislation of the United Mexican States, of the Kingdom of Belgium or of the Grand-Duchy of Luxemburg, is considered as a citizen of the United Mexican States, of the Kingdom of Belgium or of the Grand Duchy of Luxemburg, respectively;

b) The "companies", i.e. any legal person constituted in accordance with the legislation of the United Mexican States, of the Kingdom of Belgium or of the Grand-Duchy of Luxemburg and having its registered office in the territory of the United Mexican States, of the Kingdom of Belgium or of the Grand-Duchy of Luxemburg, respectively.

2. The term "investments" shall mean any kind of asset acquired or used by an investor of one Contracting Party, in the order to achieve economic or management objectives in the territory of the other Contracting Party.

For greater clarity, the term investments shall only cover those investments which are created for the purpose of establishing lasting economic relations with an undertaking such as, in particular, investments which give the possibility of exercising an effective influence on the management thereof.

The following shall more particularly, though not exclusively, be considered as investments for the purpose of this Agreement:

a) Movable and immovable property, acquired in the expectation or used for the purpose of economic benefit or business purposes, as well as any other rights in rem, such as mortgages, liens, pledges, usufruct and similar rights;

b) Shares, corporate rights and any other kind of shareholdings, including minority ones, in companies constituted in the territory of one Contracting Party;

c) Claims to money, to other assets and to any performance having an economic value, except for:

i) Claims to money that arise solely from commercial contracts for the sale of goods or services;

ii) The extension of credit in connection with a commercial transaction, such as trade financing;

iii) Credits with a maturity of less than three years, by an investor in the territory of a Contracting Party to an investor in the territory of the other Contracting Party. However, the exception concerning credits with a maturity of less than three years, shall not apply to credits granted by an investor of a Contracting Party to a company of the other Contracting Party that is owned or controlled by the former investor;

d) Copyrights, industrial property rights, technical processes, trade names and goodwill;

e) Concessions granted under public law or under contract.

Changes in the legal form in which assets and capital have been invested or reinvested shall not affect their designation as "investments" for the purpose of this Agreement, provided that the result of such changes is included in the aforesaid definition.

3. A payment obligation from, or the granting of a credit to a Contracting State or a state enterprise is not considered an investment.

4. The term "returns" shall mean the proceeds of an investment and shall include in particular, though not exclusively, profits, interests, capital increases, dividends, royalties.

5. The term "territory" shall apply to the territory of the United Mexican States, to the territory of the Kingdom of Belgium and to the territory of the Grand-Duchy of Luxemburg, as well as to the maritime areas, i.e. the marine and underwater areas which extend beyond the territorial waters, of the States concerned and upon which the latter exercise, in accordance with international law, their sovereign rights and their jurisdiction for the purpose of exploring, exploiting and preserving natural resources.

Article 2. Promotion of Investments

Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and shall accept such investments in accordance with its legislation.

Article 3. Protection of Investments

1. All investments made by investors of one Contracting Party shall enjoy a fair and equitable treatment in the territory of the other Contracting Party.

2. Except for measures required to maintain public order or for national security, such investments shall enjoy continuous protection and security, i.e. excluding any arbitrary or discriminatory measure which could hinder, either in law or in practice, the management, maintenance, use, possession or liquidation thereof.

3. Nothing in this Agreement would prevent a Contracting Party to require a company in its territory, owned or controlled by an investor of the other Contracting Party, to provide routine information for statistical purposes concerning the investment. Each Contracting Party shall protect business information from any disclosure that would prejudice the competitive position of the investment.

Article 4. Most Favoured Nation

1. The treatment and protection referred to in this Agreement shall at least be equal to those enjoyed by investors of a third State and shall in no case be less favourable than those recognized under international law.

2. However, such treatment and protection shall not cover the privileges granted by one Contracting Party to the investors of a third State pursuant to its participation in or association with a free trade zone, a customs union, a common market or any other form of regional economic organization, or by virtue of an agreement on the avoidance of double taxation or any other agreement in tax matters.

Article 5. Expropriation and Compensation

1. Each Contracting Party undertakes not to adopt any measure of expropriation or nationalization or any other measure tantamount to nationalization or expropriation of an investment belonging to investors of the other Contracting Party.

2. If reasons of public purpose, security or national interest require a derogation from the provisions of paragraph 1, the following conditions shall apply:paragraph 1, the following conditions shall apply:

a) The measures shall be taken under due process of law;

b) The measures shall not be discriminatory;

c) Compensations shall be paid, in accordance to paragraph 3.

3. Compensation shall be equivalent to the fair market value or, in the absence of such a value, to the genuine value of the expropriated investment immediately before the expropriation took place and shall not reflect any change in value occurring because the intented expropriation had become known earlier. Valuation criteria shall include the going concern value, asset value, including declared tax value of tangible property, and other criteria, as appropriate, to determine the fair market value.

Compensation shall be paid without delay and shall be freely transferable and fully realisable. It shall bear interest at the normal commercial rate from the date of the determination of its amount until the date of its payment.

4. Investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency or revolt in the territory of the other Contracting Party shall be granted by the latter Contracting Party a treatment, as regards restitution, indemnification, compensation or other settlement, at least equal to that which the latter Contracting Party grants to the investors of the most favoured nation.

5. In respect of matters dealt with in this Article, each Contracting Party shall grant to the investors of the other Contracting Party a treatment which shall at least be equal to that granted in its territory to the investors of the most favoured nation.

Article 6. Transfers

1. Each Contracting Party shall guarantee that all payments relating to an investment made by an investor of the other Contracting Party may be freely transferred, including more particularly:

a) Amounts necessary for establishing, maintaining or expanding the investment;

b) Amounts necessary for payments under a contract, including amounts necessary for repayment of loans, royalties and other payments resulting from licenses, franchises, concessions and other similar rights, as well as salaries of expatriate personnel;

c) Returns;

d) Proceeds from the total or partial liquidation of investments, including gains or increases in the invested capital;

e) Compensation paid pursuant to Article 5

2. The nationals of each Contracting Party who have been authorized to work in the territory of the other Contracting Party in connection with an investment shall also be permitted to transfer an appropriate portion of their earnings to their country of origin.

3. Transfers may be made in a freely convertible currency at the market rate of exchange prevailing on the date of transfer in the territory of the Contracting Party from which the transfer is made.

4. Each Contracting Party shall issue the authorizations required to ensure that the transfers can be made without undue delay and with no other expenses than the usual taxes and costs.

5. Notwithstanding paragraphs 1 to 4 of this Article, a Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of measures:

a) To protect the rights of creditors,

b) Relating to or ensuring compliance with laws and regulations

i) On the issuing, trading and dealing in securities, futures and derivatives,

ii) Concerning reports or records of transfers, or

c) In connection with criminal offences and orders or judgements in administrative and adjudicatory proceedings;

Provided that such measures and their application shall not be used as a means of avoiding the Contracting Party's commitments or obligations under the Agreement.

6. In case of serious balance of payments difficulties or the threat thereof, each Contracting Party may temporarily, but only for a period not exceeding twelve months, restrict transfers of proceeds from the total or partial liquidation of investments, including gains or increases in the invested capital. These restrictions would be imposed on an equitable, non-discriminatory and in good faith basis.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance against non-commercial risks given in respect of an investment by an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or claim of such investor to the former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to excersise by virtue of subrogation any such right or claim to the same extent as its predecessor in title.

However, in case of a dispute, only the investor or a privately owned legal person to which the Contracting Party or its designated agency has assigned its rights may initiate, or participate in proceedings before a national tribunal or submit the case to international arbitration in accordance with the provisions of Article 10 of this Agreement.

Article 8. Applicable Regulations

If an issue relating to investments is covered both by this Agreement and by the national legislation of one Contracting Party or by international conventions, existing or subscribed to by the Parties in the future, the investors of the other Contracting Party shall be entitled to avail themselves of the provisions that are the most favourable to them.

Article 9. Specific Agreements

Each Contracting Party shall observe any other obligations it has assumed in writing, with regard to investments in its territory by investors of the other Contracting Party. Disputes arising from such obligations shall be settled under the terms of the specific agreement underlying the obligations.

Chapter Two: Dispute Settlement

Section I Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

Article 10. Scope and Standing

1. This Section applies to disputes between a Contracting Party and an investor of the other Contracting Party arising from the date the Agreement enters into force, concerning an alleged breach of an obligation of the former under this Agreement which causes loss or damage to the investor or its investment. A company that is an investment in the territory of a Contracting Party made by an investor of the other Contracting Party, may not submit a claim to arbitration under this Section.

2. If an investor of a Contracting Party or his investment that is a company in the territory of the other Contracting Party initiates proceedings before a national tribunal with respect to a measure that is alleged to be a breach of this Agreement, the dispute may only be submitted to arbitration under this Section if the competent national tribunal has not rendered judgement in the first instance on the merits of the case. The foregoing does not apply to administrative proceedings before the administrative authorities executing the measure that is alleged to be a breach.

3. In case an investor of a Contracting Party submits a claim to arbitration, neither the investor nor his company that is an investment in the territory of the other Contracting Party, may initiate or continue proceedings before a national tribunal.

Article 11. Means of Settlement, Time Periods

1. Such a dispute should, if possible, be settled by negotiation or consultation. If it is not so settled, the investor may choose to submit it for resolution:

a) To the competent courts or tribunals of the Contracting Party to the dispute;

b) In accordance with any applicable previously agreed dispute settlement procedure, or

c) In accordance with this Article to:

i) The International Centre for Settlement of Investment Disputes ("the Centre"), established pursuant to the Convention of the Settlement of Investment Disputes between States and nationals of other States ("the ICSID Convention"), if the Contracting Party of the investor and the Contracting Party to the dispute are both parties to the ICSID Convention;

ii) The Centre under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of

the Centre, if the Contracting Party of the investor or the Contracting Party to the dispute, but not both, is a party to the ICSID Convention;

iii) An ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL");

iv) The International Chamber of Commerce, by an ad hoc tribunal under its rules of arbitration.

2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

3. A dispute may be submitted for resolution pursuant to paragraph (1) c), provided that six months have elapsed since the events giving rise to the claim occurred and provided that the investor has delivered to the Contracting Party, party to the dispute, written notice of his intention to submit a claim to arbitration at least 60 days in advance, but not later than 3 years from the date the investor first acquired or should have acquired knowledge of the events which gave rise to the dispute.

Article 12. Contracting Party Consent

Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with this Section.

Article 13. Formation of the Arbitral Tribunal

1. Unless the parties to the dispute agree otherwise, the arbitral tribunal shall comprise three members. Each Party to the dispute shall appoint one member and these two members shall agree upon a third member as their chairman.

2. Members of arbitral tribunals shall have experience in international law and investment matters.

3. If an arbitral tribunal has not been constituted within 90 days from the date the claim was submitted to arbitration, either because a party to the dispute failed to appoint a member or the elected members failed to agree upon a chairman, the Secretary General of ICSID, on the request of any of the parties to the dispute, shall be invited to appoint, in his discretion, the member or members not yet appointed. Nevertheless, the Secretary General of ICSID, when appointing a chairman, shall assure that the chairman is a national of neither of the Contracting Parties.

Article 14. Consolidation

1. A tribunal of consolidation established under this Article shall be installed under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.

2. Proceedings will be consolidated in the following cases:

a) When an investor submits a claim on behalf of a company that he owns or controls and, simultaneously, another investor or other investors participating in the same company, but not controlling it, submit claims on their own behalf as a consequence of the same breaches of this Agreement; or

b) When two or more claims are submitted to arbitration arising from common legal and factual issues.

3. The tribunal of consolidation will decide the jurisdiction of the claims and will jointly review such claims, unless it determines that the interests of any party to the dispute are harmed.

Article 15. Place of Arbitration

Any arbitration under this Section shall, at the request of any party to the dispute, be held in a State that is party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Claims submitted to arbitration under this Schedule shall be considered to arise out of a commercial relationship or transaction for purpose of Article 1 of the New York Convention.

Article 16. Indemnification

A Contracting Party shall not assert as a defence, counter-claim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged losses or damages has been received or will be received pursuant to an indemnity, guarantee or insurance contract.

Article 17. Applicable Law

A tribunal established under this Section shall decide the dispute in accordance with this Agreement and applicable rules and principles of international law.

Article 18. Awards and Enforcement

1. Arbitration awards may provide the following forms of relief:

a) A declaration that the Contracting Party has failed to comply with its obligations under this Agreement;

b) Pecuniary compensation, which shall include interest from the time the loss or damage was incurred until the time of payment;

c) Restitution in kind in appropriate cases, provided that the Contracting Party may pay pecuniary compensation in lieu thereof where restitution is not practicable; and

d) With the agreement of the parties to the dispute, any other form of relief.

2. Arbitration awards shall be final and binding only upon the parties to the dispute and only with respect to the particular case.

3. The final award will only be published if there is written agreement by both parties to the dispute.

4. An arbitral tribunal shall not order a Contracting Party to pay punitive damages.

5. Each Contracting Party shall, in its territory, make provision for the effective enforcement of awards made pursuant to this Article and shall carry out without delay any such award issued in a proceeding to which it is party.

6. An investor may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention.

Article 19. Exclusions

The dispute settlement provisions of this Section shall not apply to the resolutions adopted by a Contracting Party which, in accordance with its legislation, and for national security reasons, prohibit or restrict the acquisition by investors of the other Contracting Party of an investment in the territory of the former Contracting Party, owned or controlled by its nationals.

Section II Dispute Settlement between the Contracting Parties Relating to the Interpretation or Application of this Agreement

Article 20.

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably or through consultations, mediation or conciliation. Should the Contracting Parties agree on a controversial issue, a written understanding shall be drafted and approved by the Contracting Parties.

2. At the request of either Contracting Party, a dispute concerning the interpretation or application of this Agreement may be submitted to an arbitral tribunal for decision not earlier than four months after such request has been notified to the other Contracting Party.

3. A Contracting Party shall not initiate proceedings under this Article for a dispute regarding the infringement of rights of an investor which that investor has submitted to proceedings under Section I, unless the other Contracting Party has failed to abide by or comply with the award rendered in that dispute. In this case, the arbitral tribunal established under this article, on delivery of a request by a Contracting Party whose investor was a Party to the dispute, may award:

a) A declaration that the failure to abide by or comply with the final award is in contravention of the obligations of the other Contracting Party under this Agreement; and

b) A recommendation that the other Contracting Party abide by or comply with the final award.

4. Such arbitral tribunal shall be constituted ad-hoc as follows: each Contracting Party shall appoint one member and these two members shall agree upon a national of a third State as their chairman. Such members shall be appointed within two months from the date one Contracting Party has informed the other Contracting Party, that it intends to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two further months.

5. If the periods specified in paragraph 4) are not observed, either Contracting Party may, in the abscence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said funtion, the Vice-President or, in case of his inability, the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

6. Members of an arbitral tribunal shall be independent and impartial.

7. The arbitral tribunal will decide disputes in accordance with this Agreement and the applicable rules and principles of international law.

8. The arbitral tribunal shall determine its own procedures, including recourse to the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes, unless the Contracting Parties agree otherwise. The arbitral tribunal shall reach its decision by a majority of votes.Permanent Court of Arbitration Optional Rules for Arbitrating Disputes, unless the Contracting Parties agree otherwise. The arbitral tribunal shall reach its decision by a majority of votes.

9. The arbitral tribunal, in its award, shall set out its findings of law and fact, together with the reasons therefore, and may, at the request of a Contracting Party, award the following forms of relief:

a) A declaration that an action of a Contracting Party is in contravention of its obligations under this Agreement;

b) A recommendation that a Contracting Party brings its actions in to comformity with its obligations under this Agreement; or

c) Any other form of relief to which the Contracting Party against whom the award is made, consents.

10. The arbitration award shall be final and binding upon the Parties to the dispute.

11. Each Contracting Party shall pay the cost of its representation in the proceedings. The cost of the arbitral tribunal shall be paid for equally by the Contracting Parties, unless the tribunal directs that they be shared differently.

Chapter Three: Final Provisions

Article 21. Previous Investments

This Agreement shall also apply to investments made before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the letter's laws and regulations.

Article 22. Entry Into Force and Duration

1. This Agreement shall enter into force one month after the date of exchange of the instruments of ratification by the Contracting Parties. The Agreement shall remain in force for a period of ten years.

Unless notice of termination is given by either Contracting Party al least six months before the expiry of its period of validity, this Agreement shall be tacitly extended each time for a further period of ten years, it being understood that each Contracting Party reserves the right to terminate the Agreement by notification given al least six months before the day of expiry of the current period of validity.

2. Investments made prior to the date of termination of this Agreement shall be covered by this Agreement for a period of ten years from the date of termination.

In witness whereof, the undersigned representatives duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE at Mexico City, on 27 th august of 1998, in two original copies, each in the Spanish, French, Dutch and English languages, all texts being equally authentic. The text in the English language shall prevail in case of difference of interpretation.

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES

FOR THE BELGO-LUXEMBURG ECONOMIC UNION

For the Government of the Kingdom of Blegium acting both in its own name and in the name of the Government of the Grand-Duchy of Luxemburg, For the Wallon Government, For the Flemish Government, and For the Government of the Region of Brussels-Capital