AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CHILE AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Chile and the Government of the Federative Republic of Brazil, hereinafter referred to as "Contracting Parties",

Desiring to create favourable conditions for greater economic cooperation and in particular for reciprocal investments involving the transfer of capital from one country to the territory of the other;

Taking into account that the maintenance of a good climate for investment in accordance with the laws of the host country, is the best way to establish and maintain an appropriate international flow of capital; and

Recognizing that the conclusion of an agreement for the reciprocal promotion and protection of foreign investments against non-commercial risks can contribute to stimulate business initiatives to promote the prosperity of both countries;

Have agreed as follows:

Article I. Definitions

(1) For the purposes of this Agreement, it is understood that:

I. The term "investors" means:

a) Natural persons having the nationality of the Contracting Party where the investment originates in accordance with its domestic law;

b) Legal persons, including companies, corporations and other entities constituted under the laws of the Contracting Party where the investment originates and having their headquarters in the territory of that party.

II. The term "investment" means every kind of assets such as goods and rights of any kind, acquired or exercised in accordance with the legislation of the host Party of the Investment, in particular, though not exclusively, the following:

a) Shares and other forms of participation in companies;

b) Rights derived from any contribution made with the aim of creating economic value, including loans directly related to a specific investment, whether or not been capitalized;

c) movable and immovable assets as well as rights in rem such as mortgages, usufruct and similar rights;

d) Rights to undertake economic and commercial activities conferred by law or under contract, in particular those relating to prospecting, cultivate, extract or exploit natural resources;

e) Rights in the field of intellectual property, including express trademarks and patents and licensing of manufacture and "know how".

III. The term "income or profits" means of investment income deriving from an investment capital gains, including profits, dividends or interest;

IV. The term "territory means the Territory under the sovereignty of each of the Contracting Parties, such as defined in the respective domestic legislation and includes areas and land borders demarcated by island, including the territorial sea, the continental shelf and the exclusive economic zone, as well as any maritime area including the seabed and subsoil, over which the contracting party in those areas in accordance with international law and its respective internal rules, have rights with respect to the exploration and exploitation of natural resources.

(2) Any alteration of the form in which assets are invested or reinvested capital, and affect their qualification of investments in accordance with this Agreement.

Article II. Promotion and Admission

(1) Each Contracting Party shall promote as far as possible are investments made in its territory by investors of the other Contracting Party and shall admit such investments in accordance with the provisions of its legislation.

(2) Each Contracting Party, in accordance with its laws, grant the required authorisations for the realization of such investments and licensing contracts of manufacture, technical assistance, commercial, financial and administrative, and shall grant the required authorisations for professional activities or consultants hired by investors of the other Contracting Party.

Article III. Protection and Treatment

(1) Each Contracting Party shall protect within its territory investments made in accordance with its legislation by investors of the other Contracting Party and shall not create obstacles, unreasonable or discriminatory measures through the management, maintenance, use, enjoyment, extension and sale or, where appropriate, to the liquidation of such investments.

(2) Each Contracting Party shall accord non-discriminatory treatment, fair and equitable, in accordance with the principles of international law, to investments made by investors of the other contracting party in its territory, and shall not create obstacles to the exercise of the rights thus recognized.

(3) Each Contracting Party shall accord to investments of the other Contracting Party a treatment no less favourable than that accorded to investments of its nationals.

(4) The treatment referred to in paragraph 2 of this article shall not be less favourable than that accorded by one Contracting Party to investments of the same nature, made in its territory by investors of any third country.

(5) However, this treatment shall not extend to the concessions of a Contracting Party to investors of a third State by virtue of its participation in a free trade area, customs union or common market, regional integration agreement.

(6) The treatment referred to in this article shall not extend to reductions aliquots (bis), tax exemptions and other similar incentives granted by one Contracting Party to investors of third countries under an agreement for the avoidance of double taxation of income or any other agreement on taxation.

Article IV. Nationalisation, Expropriation and Compensation

(1) Neither Contracting Party shall take any measures depriving, directly or indirectly, the investor of the other contracting party of an investment.

(2) The expropriation or nationalization or any other measures having similar effects, shall not be made unless the following conditions are met:

i) Are determined by reason of public purpose or national interest, in accordance with the law;

ii) Are taken on a non-discriminatory basis, and

iii) They are accompanied by provisions for the payment of prompt, effective and adequate compensation.

(3) Such compensation shall be based on the market value of investments affected the immediately preceding the date on which to measure the nationalization or expropriation was publicly available. Any delay in payment of compensation shall be interests to keep updated value, from the date of expropriation or loss, until the date of payment. The legality of any such expropriation and nationalization or similar measures and the amount shall be subject to review by ordinary judicial procedure.

(4) Investors of one Contracting Party whose investments in the territory of the other contracting party are losses due to any armed conflict, including a state of war, a national emergency, civil disturbance or other similar events in the territory of the other Contracting Party, shall be accorded by the other contracting party, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than that which that Contracting Party accords to domestic investors or any third country.

Article V. Transfers

(1) Each Contracting Party shall allow the free transfer of payments related to investments made in its territory by investors of the other contracting party, in particular, though not exclusively:

a) The initial capital and any additional capital for the maintenance or extension of the investment;

b) The income or profits of the investment as defined in Article I;

c) The compensation referred to in article IV and payments made pursuant to Article VIII;

d) The proceeds of the total or partial sale or liquidation;

e) The repayment of loans;

f) The salaries of personnel engaged liquid income from abroad in connection with the investment.

(2) Transfers shall be made without delay, once completed by the investor, the relevant procedures laws and regulations in force in the territory of the Contracting Party in which the investment was made.

(3) Transfers shall be permitted in the currency in which the investment has been made or, when requested by the investor in a freely convertible currency.

Article VI. Principle of Subrogation

(1) Where a Contracting Party or an authorised entity has granted financial security to cover non-commercial risks in respect of an investment made by its investor in the territory of the other Contracting Party, the latter shall recognise the subrogation of the former to the rights of the investor provided that the former has made a disbursement corresponding to the guarantee cover granted. Under no circumstances shall subrogation to property rights in real estate be allowed without prior authorisation, in accordance with the legislation in force in the territory of the Contracting Party where the investment.

(2) The investor shall be entitled to sue or take part in actions already undertaken for the purpose of protecting the rights provided that they can claim and that have not been subrogated in which case it shall apply the provisions of article VIII.

Article VII. Settlement of Disputes between the Contracting Parties

(1) Disputes and disputes arising between the contracting parties relating to the application or interpretation of this Agreement shall be settled amicably.

(2) If the dispute cannot be settled in this way within six months after the beginning of negotiations, be submitted to an arbitral tribunal by any of the Contracting Parties.

(3) Such an arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall elect a national of a third State as Chairman. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either Contracting Party has informed the other of its intention to submit the dispute to an arbitration tribunal.

(4) If one of the Contracting Parties has not appointed its arbitrator within the specified period, the other Contracting Party may request the President of the International Court of Justice. If the two arbitrators appointed by the contracting parties fail to reach agreement within the time period established in relation to the designation of the third arbitrator, either Contracting Party may request the President of the International Court of Justice to make the appointment. If the President of the International Court of Justice is a national of either Contracting Party or is prevented from any other reason, shall be made by the Vice-President of the Court to make such appointments. If the Vice-President is also a national of either Contracting Party or also is prevented, the member of the Court next in order of precedence to make such appointments.

(5) The arbitral tribunal shall issue its award on the law in the provisions contained in this Agreement or in other agreements in force between the contracting parties and in the universally recognized principles of international law.

(6) Unless the Contracting Parties decide otherwise, the arbitral tribunal shall determine its own procedures.

(7) The arbitration tribunal shall take its decisions by a majority of votes and the Contracting Parties shall be obliged to them.

(8) Each Contracting Party shall bear the costs of the arbitrator appointed by it and those relating to its representation in the arbitral proceedings. The other costs, including those related to the Chairman of the arbitral tribunal shall be shared equally between the contracting parties.

(9) (a) The Contracting Parties agree to subject the decision of the Arbitral Tribunal and shall take all necessary measures to give full effect to the award.

Article VIII. Settlement of Disputes between the Host State of Investment and the Investor

(1) Differences and disputes arising under this agreement between one Contracting Party and an investor of the other Contracting Party shall as far as possible, be settled amicably through consultations between the parties.

(2) If the dispute cannot be settled amicably within six months after the beginning of such consultations shall be submitted, at the choice of the investor:

i) The competent courts of the Contracting Party in whose territory the investment was made; or

(ii) To international arbitration under the conditions described in paragraph 4 of this article.

(3) The choice of one of these two ways shall be final and irreversible.

(4) In the case of option by recourse to international arbitration the dispute may be submitted to one of the following bodies of arbitration, at the choice of the investor:

i) 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, when each State Party to this Agreement has acceded to it. As long as this requirement is not fulfilled, each Contracting Party consents that the dispute be submitted to arbitration under the ICSID Additional Facility;

ii) To an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), adopted by Resolution 31/98 of the General Assembly on 15 December 1976. The arbitration tribunal shall be composed of three arbitrators, one appointed by the Contracting Party in whose territory the investment was made, one appointed by the other party to the proceedings and a third arbitrator who shall chair the tribunal appointed by the two arbitrators so chosen. If the third arbitrator is not appointed within 30 days after the appointment of the other two arbitrators, their appointment shall be allocated to the President of the Court of Arbitration of the International Chamber of Commerce in Paris.

(5) The arbitral tribunal shall decide on the basis of the provisions of this agreement, under the law of the Contracting Party in whose territory the investment was made, including the rules relating to conflicts of law - and the terms of any specific agreements relating to the investment as well as the principles of international law.

(6) The arbitral awards shall be final and binding on the parties to the dispute and shall be executed according to national law.

(7) The Contracting Parties shall seek, through diplomatic channels matters related to disputes submitted to international arbitration or court proceedings until the relevant procedures have been completed, except in the case where a party to the dispute has failed to comply with the court decision or award of the arbitral tribunal, under the terms established in the respective decision or award.

Article IX. Scope

This Agreement shall apply to all investments made before or after its entry into force by investors of one Contracting Party, in accordance with the laws of the other Contracting Party in the territory of the latter. However, this Agreement shall not apply to differences or disputes which have arisen prior to its entry into force.

Article X. Consultations

The representatives of the Contracting Parties shall, where necessary, to conduct consultations on any matter relating to the implementation of this Agreement. These meetings shall be held on the proposal of one of the Contracting Parties at the place and date which permits through diplomatic channels.

Article XI. Entry Into Force , Extension and Termination

(1) Each Contracting Party shall notify the other on compliance with the respective domestic legal requirements for the Entry into Force of this Agreement, which shall be effective thirty days after the date of receipt of the latter notification.

(2) This Agreement shall remain in force for an initial period of ten years and shall be tacitly for extended periods of five years. After the expiry of the initial period of ten years, this Agreement may be denounced in writing through diplomatic channels at any time by either party with a notice of twelve months.

(3) In the event of a complaint, the provisions of Articles I to X of this Agreement shall continue to apply for a period of ten years, to all investments made before its notification.

Done at Brasilia on 22 March 1994, in two originals in the English and Portuguese languages, both texts being equally authentic.

For the Government of the Federative Republic of Brazil

For the Republic of Chile

Protocol

The signing of the Agreement for the reciprocal promotion and protection of investments the Government of the Federative Republic of Brazil and the Government of the Republic of Chile, agreed on the following provisions which constitute an integral part of this Agreement.

Ad Article Iii, Paragraph 3

(1) The Government of the Federative Republic of Brazil reserves the right:

a) Grant preferential treatment to Brazilian companies of national capital in the procurement of goods and services by a public authority in accordance with paragraph 2 of article 171 of the Constitution of the Federative Republic of Brazil.

b) Granted only to Brazilians or Brazilian companies of national capital, authorisations for research and exploitation of mineral and water resources Hydro Power in accordance with article 176 of the Constitution of the Federative Republic of Brazil.

c) Prohibit the direct or indirect involvement of companies or foreign capital in the health or assistance in the country in accordance with article 119 of the Constitution of the Federative Republic of Brazil.

d) Granted only to natural or naturalized Brazilians more than ten years, ownership of press company and radiodifucion (bis) and aural of sounds, images and in accordance with article 222 of the Constitution of the Federative Republic of Brazil.

e) Subject to special leave and limit the acquisition or rental of rural owned by natural or juridical person or foreign, in accordance with article 190 of the Constitution of the Federative Republic of Brazil.

f) Establish conditions for the participation of foreign capital in the institutions of the National Financial System (financial institutions, insurance companies, forecasting and capital), in accordance with the artitulo (bis) 192 of the Constitution of the Federative Republic of Brazil.

The above provisions shall cease to be valid in case of articles of the Constitution of the Federative Republic of Brazil to which they relate, were repealed by an amendment or constitutional reform.

(2) The Government of the Republic of Chile declares that in accordance with article 19 No 24 of the Political Constitution of the Republic of Chile and articles 7 and 8 of the Mining Code, the exploration and exploitation of liquid and gaseous hydrocarbons, it can only be applied directly by the State or its companies or administrative concessions or special contracts of operation, with the requirements and under such conditions that the President of the Republic set for each case by the supreme decree.

Ad Article V

(1) A transfer shall be deemed to be made without delay, where "is normally made within the period necessary for the fulfilment by investors of the respective legal requirements and regulations. The said period shall not exceed six months, it shall begin on the implementation of such requirements.

(2) Transfers related to investments made under the Special Programme for conversion of external debt of Chile and Brazil are subject to special regulations.

(3) Without prejudice to paragraph 1 of Article V, the Government of the Republic of Chile reserves the right to enable the repatriation of capital within the time period established in its legislation, which in no case shall exceed one year has elapsed since the investment has been made.