Agreement between the Government of the Republic of El Salvador and the Government of the Republic of Peru for the reciprocal promotion and protection of investments

The Government of the Republic of El Salvador and the Government of the Republic of Peru, hereinafter referred to as "the Parties".

With the desire to intensify economic cooperation for the mutual benefit of both States;

Intending to create and maintain favorable conditions for investments by investors of one Party in the territory of the other Party; and

Recognizing the need to promote and protect such investments with a view to furthering the economic prosperity of both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "Investor" designates, for each Party, the following subjects who have made investments in the territory of the other Party pursuant to this Agreement:

a. natural persons who, in accordance with the legislation of that Party, are considered nationals of that Party;

b. legal entities, including partnerships, corporations, business associations or any other entity incorporated or otherwise duly organized under the laws of that Party.

c. legal persons constituted under the legislation of any country, which were controlled, directly or indirectly, by natural persons of that Party or by legal persons whose headquarters are located in the territory of that same Party, where the legal person carries out its principal economic activity, in accordance with paragraphs a and b respectively.

2. The term "Investment" refers to any kind of goods or rights related to an investment, provided that the investment has been made in accordance with the laws and regulations of the Party in whose territory it was made, and shall include, in particular, but not limited to:

a. movable and immovable property, as well as all other rights in rem such as easements, mortgages, usufructs and pledges;

b. shares, quotas and any other type of economic participation in companies;

c. credit rights or any other benefit that has economic value;

d. intellectual property rights, such as copyrights and industrial property rights, including patents, technical processes, trademarks or commercial brands, commercial names, industrial designs, know-how, corporate name and key rights;

e. concessions granted by law or by virtue of a contract, including concessions to explore, cultivate, extract or exploit natural resources.

3. "Territory" includes the land, maritime and air space under the sovereignty of each Party, in accordance with their respective legislation and international law.

Article 2. Scope

1. This Agreement applies to measures adopted or maintained by a Party relating to:

a. investors of the other Party, in all matters relating to their investment; and

b. investments of investors of a Party made in the territory of the other Party before or after the entry into force of this Agreement.

c. The Agreement does not apply to investment disputes arising out of or relating directly to events occurring before its entry into force.

Article 3. Promotion and Protection of Investments

1. Each Party shall, subject to its general laws and policies in the field of foreign investment, promote in its territory investments of investors of the other Party.

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

Article 4. Treatment of Investments

1. Each Party shall ensure fair and equitable treatment within its territory of investments of investors of the other Party and shall provide effective means to ensure that the exercise of the rights recognized herein is not hindered in practice.

2. Each Party shall accord to investments of investors of the other Party made in its territory treatment no less favorable than that accorded to investments of its own investors, or to investors of a third country, if the latter treatment is more favorable.

3. If one of the Parties has granted special treatment to investments from a third country by virtue of agreements establishing provisions for the avoidance of double taxation, free trade zones, customs unions, common markets, economic or monetary unions and similar institutional arrangements, such Party shall not be obliged to grant the treatment in question to investors or investments of the other Party.

Article 5. Performance Requirements

1. Neither Party may impose or compel compliance with the following requirements or commitments in connection with any investment in its territory:

a. export a certain type, level or percentage of goods or services, in general terms or to a specific market;

b. to achieve a certain degree or percentage of domestic content;

c. acquire, use or give preference to goods or services of national origin or of any domestic origin;

d. relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

e. restrict sales in its territory of the goods or services that such investment produces or renders by relating such sales in any way to the volume or value of its production, its exports, or the foreign exchange earnings it generates; or

f. transfer to a person, natural or juridical, in its territory, technology, production process or other proprietary knowledge, except where the requirement is imposed by a judicial or administrative tribunal or competent authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement.

2. A measure requiring an investment to employ a technology to comply generally with applicable health, safety or environmental regulations shall not be considered inconsistent with paragraph 1(f).

3. Provided that such measures are not applied in an arbitrary or unjustified manner or do not constitute a disguised restriction on international trade or investment, nothing in paragraph 1(b) or (c) shall be construed to prevent a Party from adopting or maintaining measures, including measures of an environmental nature necessary to:

a. ensure compliance with laws and regulations not inconsistent with the provisions of this Agreement;

b. protect human, animal or plant life or health; or

c. preserve natural resources.

Article 6. Migratory Status of Investors

1. Subject to its laws relating to the entry and stay of aliens, each Party shall permit the entry into and stay in its territory of investors of the other Party and persons employed by them for the purpose of establishing, developing, managing or advising on the operation of the investment, in which such investors have committed or are about to commit capital or other resources.

2. In authorizing entry under paragraph 1, neither Party shall require proof of labor certification, academic certifications or other procedures of similar effect.

This shall not be understood as a limitation on domestic rules relating to the granting of resident nonimmigrant status.

Article 7. Senior Management and Administrative or Operational Bodies

1. Each Party shall allow the investments of the other Party to appoint the individuals they wish to occupy senior management positions or to form the administrative or operating bodies of the same, regardless of the nationality of such individuals, without prejudice to the labor provisions of each Party.

Article 8. Transfers

1. Each Party shall permit all transfers relating to the investment of an investor of the other Party in the territory of the Party to be made freely and without delay to or from the territory of the Party.

Such transfers include in particular, but are not limited to:

a. profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance, profits in kind and other amounts derived from the investment.

b. Proceeds from the sale or liquidation, in whole or in part, of the investment;

c. Payments made under a contract to which an investor or its investment is a party, including payments made under a loan agreement;

d. payments arising from compensation for expropriation; or

e. payments arising from the application of the dispute settlement provisions of this Agreement.

2. Each Party shall permit transfers to be made in freely convertible currency at the market rate of exchange prevailing on the date of transfer.

3. Notwithstanding the provisions of paragraphs 1 and 2, a Party may prevent transfers by the equitable and non-discriminatory application of its law in the following cases:

a. bankruptcy, insolvency or protection of creditors' rights;

b. criminal or administrative offenses;

c. enforcement of judgments in a contentious proceeding.

d. failure to comply with tax obligations; or

e. noncompliance with labor obligations.

4. Notwithstanding the provisions of this Article, a Party may generally establish temporary controls on foreign exchange transactions, provided that the balance of payments of the Party in question is in serious disequilibrium.

Article 9. Expropriation and Compensation

1. Neither Party shall take any measure that deprives, directly or indirectly, an investor of the other Party of its investment, unless the following conditions are met:

a. the measures are taken in the public interest or in the social interest and in accordance with law;

b. the measures are non-discriminatory; and

c. the measures are accompanied by provisions for the payment of timely, adequate and effective compensation in accordance with the respective constitutional requirements.

2. Compensation shall be based on the market value of the affected investments on a date immediately prior to that on which the measure becomes public knowledge in accordance with the domestic law of the Indemnifying Party. In the event of any delay in the payment of compensation, interest shall accrue at the usual bank interest rate from the date of expropriation or loss until the date of payment.

3. The legality of the nationalization, expropriation or any other measure having an equivalent effect and the amount of compensation may be claimed in the appropriate judicial proceeding.

4. Investors of each Party whose investments in the territory of the other Party suffer losses due to war or any other armed conflict; a state of national emergency; civil disturbances and other similar events in the territory of the other Party, shall receive from the latter, in respect of redress, compensation or other settlement, treatment no less favorable than that accorded by the other Party to investors of its own or of any third state.

Article 10. Subrogation

1. Where a Party or an authorized agency has provided an insurance contract or other financial guarantee against non-commercial risks in respect of an investment of one of the investors in the territory of the other Party, the latter Party shall recognize the rights of the former Party to subrogate itself to the rights of the investor where it has made a payment under such contract or guarantee.

2. Where a Party has paid its investor and by virtue thereof has assumed its rights and benefits, such investor may not claim such rights and benefits from the other Party, unless expressly authorized by the first Party.

Article 11. Settlement of Disputes between an Investor and a Party of the other Party

1. Disputes arising within the scope of this Agreement between a Party and an investor of the other Party who has made investments in the territory of the first Party shall, as far as possible, be settled amicably between the parties to the dispute.

2. If such consultations or negotiations fail to bring about a settlement within three months from the date of the request for settlement, the investor may refer the dispute to the competent courts of the Party in dispute.

a. to the competent courts of the Party in whose territory the investment was made;

b. to the International Centre for Settlement of Investment Disputes (ICSID) for the purpose of settling the dispute by conciliation or arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention), opened for signature at Washington, D.C. on March 18, 1965. A juridical person that is an investor of a Party and that is controlled by investors of the other Party before a dispute arises shall be treated as an investor of the other Party, in accordance with Article 25(2) of the ICSID Convention, for purposes of the ICSID Convention; or

c. to an ad hoc arbitral tribunal established in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Once the investor has referred the dispute to the competent court of the Party in whose territory the investment was made or to an arbitral tribunal, the choice of one or the other procedure shall be final.

4. Arbitral awards shall be final and binding on the disputing Parties and shall be enforced in accordance with the domestic law of the Party in whose territory the investment was made.

Article 12. Settlement of Disputes between the Parties

1. Disputes arising between the Parties concerning the interpretation and application of this Agreement shall, to the extent possible, be settled through diplomatic channels.

2. If an understanding is not reached within six months from the date of notification of the dispute, either party may submit the dispute to an Arbitral Tribunal in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be composed of three members and shall be composed as follows: within two months from the

date of notification of the request for arbitration, each Party shall appoint one arbitrator. These two arbitrators shall elect, within thirty days of the appointment of the last of them, a third member, who shall be a national of a third State and shall preside over the Tribunal. The appointment of the President must be approved by the Parties within thirty days from the date of his nomination.

4. If within the time limits set forth in paragraph 2 of this Article the nomination has not been made, or the required approval has not been given, either Party may request the President of the International Court of Justice to make the nomination. If the President of the International Court of Justice is unable to perform this function or if he is a national of one of the Parties, the designation shall be made by the Vice-President. And if the latter is unable to do so or is a national of one of the Parties, the designation shall be made by the Judge of the Court next in seniority and who is not a national of one of the Parties.

5. The President of the Tribunal must be a national of a State with which both Parties maintain diplomatic relations.

6. The Arbitral Tribunal shall decide on the basis of the provisions of this Agreement, the principles of international law on the subject and the general principles of law recognized by the Parties. The Tribunal shall decide by majority vote and shall determine its own rules of procedure.

7. Each of the Parties shall bear the expenses of the respective arbitrator, as well as those related to his representation in the arbitration proceedings. The expenses of the Chairman and the(bis) other costs(bis) of the proceedings shall be borne in equal parts by the Parties, unless they agree otherwise.

8. The decisions of the Tribunal shall be final and binding on both Parties.

Article 13. Interruption of Diplomatic or Consular Relations

1. The provisions of this Convention shall continue to be fully applicable whether or not diplomatic or consular relations exist between the Contracting Parties.

Article 14. Final Provisions

1. This Agreement shall enter into force thirty days after the exchange of their respective instruments of ratification. It shall remain in force for a period of ten years, after which time this Agreement shall be automatically extended for an indefinite period unless terminated by either Party in accordance with the provisions of paragraph 2.

2. After ten years, either Party may terminate this Agreement at any time upon six months' notice communicated through diplomatic channels.

3. In the event of denunciation, the provisions of Articles 1 to 12 of this Agreement shall continue to apply for a period of ten years to investments made prior to the notice of termination of the Agreement.

Done at the city of Lima, on the thirteenth day of June of the year one thousand nine hundred and sixty-six, in duplicate in the Spanish language, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR,

RAMON GONZALEZ GINER,

MINISTER OF FOREIGN AFFAIRS

FOR THE GOVERNMENT OF THE REPUBLIC OF PERU,

FRANCISCO TUDELA,

MINISTER OF FOREIGN AFFAIRS