Agreement between the Government of the Kingdom of Sweden and the Government of the Republic of Ecuador on the Promotion and Reciprocal Protection of Investments

The Government of the Kingdom of Sweden and the Government of the Republic of Ecuador,

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,

Conscious of the need to establish an adequate legal framework regulating and ensuring the promotion and reciprocal protection of investments between the two Contracting Parties,

Recognizing that the promotion and reciprocal protection of such investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) "Investment" shall mean any kind of asset owned or controlled, directly or indirectly, by an investor of one Contracting Party in the territory of the other Contracting Party, 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 as well as any other property rights, such as mortgage, pledge, usufruct and similar rights;

(b) Shares, stock, participation in companies and any other kind of shared risk in an enterprise;

(c) Title to money or any performance having an economic value related to a specific investment;

(d) Intellectual property rights, technical processes, trade names, know-how, goodwill, rights of breeders of new plant varieties and other similar rights;

(e) Any right conferred by law or contract or by virtue licences or permits including economic concessions to search for, develop, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments.

(2) "investor" shall mean:

(a) Any natural person who is a national of a Contracting Party in accordance with its laws; and

(b) Any legal person, such as a company, corporation, firm, business association, institution or other entity, constituted in accordance with the laws and regulations of a Contracting Party and having its seat in the territory of that Contracting Party; and

(c) Any legal person not organized under the laws and regulations of a Contracting Party but controlled, directly or indirectly, by a national or a legal person of that Contracting Party, as defined under (a) or under (b).

(3) "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, include profit, interest, capital gains, dividends, royalties or any payment in kind related to an investment.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall, subject to its laws and regulations, promote and admit in its territory investments by investors of the other Contracting Party.

(2) Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

(3) Each Contracting Party shall, at all times, ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof nor the acquisition of goods and services or the sale of their production, through unreasonable or discriminatory measures.

(4) The investments, made in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, shall enjoy the full protection of this Agreement and in no case shall a Contracting Party award treatment less favourable than that required by international law. Each Contracting Party shall observe any obligation it has entered into with an investor of the other Contracting Party with regard to this investment.

(5) Returns yielded from an investment shall be given the same treatment and protection as an investment.

(6) 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 an investor of the other Contracting Party, shall be treated not less favourably than an investment.

(7) Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which may affect the investments of investors of one Contracting Party in the territory of the other Contracting Party.

Article 3. National and Most Favoured Nation Treatment of Investment

(1) Each Contracting Party shall apply to investments made in its territory by investors of the other Contracting Party a treatment which is no less favourable than that accorded to investments made by its own investors or by investors of third States, whichever is the more favourable.

(2) Notwithstanding the provisions of Paragraph (1) of this Article, the most favoured nation treatment shall not apply to the privileges that either Contracting Party accords to the investors of third States by virtue of any existing or future free trade area, customs union common market to which one of the Contracting Parties is or may become a party.

(3) The provisions of Paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. Expropriation and Compensation

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

(a) The measures are taken in the public interest and under due process of law;

(b) The measures are distinct and not discriminatory; and

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be transferable without delay in a freely convertible currency.

(2) Such compensation shall amount to the fair market value of the investment expropriated at the time immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the investment (hereinafter referred to as the "Valuation Date").

Such fair market value shall at the request of the investor be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency on the Valuation Date. Compensation shall also include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

(3) The provisions of Paragraph (1) and (2) of this Article shall also apply to the returns from an investment as well as, in the

event of liquidation, to the proceeds from the liquidation.

(4) Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State. Resulting payments shall be transfereable without delay in a freely convertible currency.

Article 5. Transfers

(1) Each Contracting Party shall guarantee that all payments relating to an investment in its territory of investors of the other Contracting Party may be transferred into and out of its territory without restrictions or delays. Such transfers shall include, in particular, though not exclusively:

(a) The initial capital and any additional funds necessary for the development of an investment;

(b) Funds necessary:

(i) For the acquisition of raw and auxiliary materials, semi-fabricated or finished products, or

(ii) To replace capital assets in order to safeguard the continuity of an investment;

(c) Returns;

(d) The proceeds from a total or partial sale or liquidation of an investment;

(e) Funds in repayment of loans;

(f) Payments arising under Article 4;

(g) Earnings of individuals, not being its nationals, who are allowed to work in connection with an investment in its territory.

(2) Transfers shall be effected in a freely convertible currency at the market rate of exchange existing on the day of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the most favourable to the investor.

Article 6. Subrogation

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 9, recognize the transfer of any right or title of such an investor to the former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or title to the same extent as its predecessor in title.

Article 7. Consultations

The Contracting Parties shall consult promptly at the request of either Party on any issue relating to the interpretation or application of this Agreement.

Article 8. Disputes between an Investor and a Contracting Party

(1) Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.

(2) If any such dispute cannot be settled within six months following the date on which the dispute has been raised by the investor through written notification to the Contracting Party, each Contracting Party hereby consents to the submission of the dispute, at the investor's choice, for resolution by international arbitration to one of the following fora:

i) The International Centre for Settlement of Investment Disputes (ICSID) fore settlement by conciliation or arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, or

ii) An ad hoc tribunal set up under Arbitration Rules of the United Nations commission on International Trade Law (UNCI-TRAL). The appointing authority under the said rules shall be the Secretary-General of ICSID.

If the parties to such a dispute have different opinions as to whether concilation or arbitration is the more appropriate method of settlement, the investor shall have the right to choose.

(3) For the purpose of this Article and Article 25 (2) (b) of the said Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting Party and in which, before a dispute arises, an investor of the other Contracting Party held a predominant interest shall be treated as a legal person of the other Contracting Party.

(4) Any arbitration shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

(5) The consent given by each Contracting Party in paragraph (2) and the submission of the dispute by an investor under the said paragraphs shall constitute the written consent and written agreement of the parties to the dispute to its submission for settlement for the purposes of Chapter II of the Washington Convention (Jurisdiction of the Centre), Article 1 of the UNCITRAL Arbitration Rules and Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

(6) In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received pursuant to an insurance or guarantee contract, but the Contracting Party may require evidence that the compensating party agrees to that the investor exercises the right to claim compensation.

(7) Any arbitral award rendered pursuant to this article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.

Article 9. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, it possible, be settled by negotiations between the Governments of the two Contracting Parties.

(2) If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be set up from case to case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State as their chairman, to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting Party, has advised the other Contracting Party of its wish to submit the dispute to an arbitration tribunal.

(4) If the time limits referred to in Paragraph (3) of this Article have not been complied with, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

(5) If the President of the International Court of Justice is prevented from discharging the function provided for in Paragraph (4) of this Article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

(6) The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties. each Contracting Party shall bear the cost of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings; the cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 10. Application of the Agreement

(1) This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to

any dispute concerning an investment which arose, or any claim concerning an investment which was settled, before its entry into force.

(2) This Agreement shall in no way restrict the rights and benefits which an investor of one Contracting Party enjoys under national or international law in the territory of the other Contracting Party.

Article 11. Entry Into Force, Duration and Termination

(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 on the first day of the second month following the date of receipt of the last notification.

(2) This Agreement shall remain in force for a period often years. Thereafter it shall remain in force until the expiration of twelwe months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this 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 10 shall remain in force for a further period of fifteen years from that date.

In witness whereof the undersigned, duly authorized to this effect, have signed this Agreement.

Done at Stockholm on 31 May 2001 in two originals, in the Swedish, Spanish and English languages, the three texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of Kingdom of Sweden

Lotta Fogde

For the Government of the Republic of Ecuador

Diego Stacey Morello