AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF PERU AND THE GOVERNMENT OF THE REPUBLIC OF CUBA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Peru and the Government of the Republic of Cuba, hereinafter referred to as the Contracting Parties;

Desiring to intensify economic cooperation for mutual benefit of both Contracting Parties;

In order to create and maintain a fair, just and favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the conclusion of an agreement for the promotion and reciprocal protection of investments can stimulate economic initiative and consequently can contribute to enhance the well-being of the peoples of both countries;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means every kind of asset owned by an investor of one Contracting Party in the territory of the other party that includes in particular, though not exclusively:

(a) Rights of participation or shares in companies and any other kind of community risk sharing;

(b) Ownership of movable and immovable property and other property rights acquired or used for the purpose of economic benefit or other business purposes;

(c) Claims to money, securities, rights and any other performance having an economic value directly linked to a specific investment;

(d) Intellectual Property Rights, such as copyrights and related rights, trademarks, geographical indications, industrial designs, patents, layout designs (topographies) of integrated circuits and rights in plant-breeders plant varieties;

(e) Concessions conferred by law or under a contract for the exercise of an economic activity, including concessions prospecting, exploration and exploitation of natural resources; and

(f) Reinvestment of profits, provided such as investment in the company that generates.

Any alteration of the form of investment does not affect their character as investment.

Investment does not mean:

(a) A payment obligation or a credit granted by the State or a state enterprise;

(b) Loans to an enterprise where the original maturity of the loan is less than three years.

(c) Monetary claims derived exclusively from: commercial contracts for the sale of goods or services by a national or enterprise in the territory of a party to an enterprise in the territory of the other party; or any form of financing of trade.

The term "investor" designates:

(a) Natural persons:

- with respect to Cuba: natural persons who are nationals of that State in accordance with its laws, and has permanent

residence in the national territory;

- with respect to Peru: natural persons having the quality of Peruvian under Peruvian law on nationality.

(b) Legal entities, including companies, business corporations, business associations and other entities established or constituted under the laws and regulations of one Contracting Party.

2. The term "proceeds" means the amounts obtained or produced by an investment made in accordance with this Agreement, such as profits, dividends, royalties, interests.

3. The term "territory" means, in the areas within the land boundary, the maritime and airspace adjacent areas over which the Contracting Party exercises sovereignty and jurisdiction, in accordance with their respective laws and in accordance with applicable rules of international law and recognized by the parties.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote within its territory investments of investors of the other Contracting Party and shall admit them in accordance with its laws and regulations.

2. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with its laws and regulations, shall enjoy the full protection and legal security of this Convention, in accordance with the principles of international law.

3. Each Contracting Party shall publicize and disseminate the laws and regulations relating to investments of investors of the other Contracting Party. Likewise, with a view to increasing investment flows, they shall exchange information on investment opportunities in each Contracting Party.

Article 3. Treatment of Investments

1. Each Contracting Party shall ensure fair and equitable treatment for investments of investors of the other Contracting Party made in accordance with this Convention and shall not prevent, by arbitrary or discriminatory measures, the free management, use, enjoyment or disposition of investments of investors of that Contracting Party.

2. Each Contracting Party shall specifically accord to such investments treatment no less favorable than that accorded to investments of its own investors or to investments of investors of a third State, whichever is more favorable to investments of investors of the other Contracting Party.

3. If the legal provisions of one of the Contracting Parties or the agreement of the Contracting Parties, beyond what is agreed in this Convention, result in a general or special regulation under which investments of investors of the other Contracting Party are to be accorded treatment more favorable than that provided for in this Convention, such regulation shall prevail over this Convention, to the extent that it is more favorable.

4. The treatment agreed upon by this Article shall not extend to the benefits and advantages which one of the Contracting Parties grants to nationals or companies of third States as a result of the conclusion of double taxation or other tax treaties.

5. Nor shall such treatment extend to privileges granted by one of the Contracting Parties to nationals or companies of third States as a result of their being part of a customs or economic union, a common market or a free trade area, or similar international agreements or partnerships concluded with third States, including border integration and development agreements.

6. For the avoidance of doubt, it is confirmed that the investments of nationals or companies referred to in paragraphs (1) through (3) above are those governed by the national legislation covering the foreign investment and that the treatment provided for in paragraphs (1) and (3) above is applicable to the provisions of Articles 1 through 12 of this Agreement.

Article 4. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments related to an investment registered with the competent national agency, subject to compliance with the corresponding tax obligations, and in particular, but not exclusively:

(a) The capital of the investment and reinvestments made in accordance with the laws and regulations of that Contracting Party;

(b) The total net profits;

(c) The amortization of credits and other benefits as defined in paragraph 1 (c) of Article 1 of this Agreement;

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

(e) The indemnities and compensations provided for in Articles 5 and 6 of this Agreement, respectively;

(f) Payments resulting from the settlement of disputes provided for in Articles 8 and 9.

2. The transfer shall be made in a freely convertible currency, without restriction or delay.

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

(a) Bankruptcy, insolvency or protection of creditors' rights;

(b) Issuance, trading, and dealing in securities;

(c) Criminal or administrative offenses;

(d) Guarantee of compliance with judgments in a contentious proceeding;

(e) Failure to comply with obligations under current tax legislation; or,

(f) Failure to comply with obligations under current labor legislation.

4. The provisions of paragraphs 1 and 2 are subject to such reasonable measures as may be adopted or maintained by a Party for prudential reasons to ensure the integrity and stability of its financial system.

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, each Contracting Party shall have the right, in situations of exceptional or serious balance of payments difficulties, to limit transfers temporarily, on an equitable and non-discriminatory basis, in accordance with internationally accepted criteria.

Article 5. Expropriation

1. Investments of investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subjected to any other measures having an effect equivalent to expropriation or nationalization (hereinafter referred to as "expropriation") except for reasons expressly stipulated in the constitutional rules of both parties, on a non-discriminatory basis and under due process of law.

2. Such measures shall be accompanied by provisions for the payment of prompt, effective and adequate compensation. The amount of such compensation shall correspond to the fair value of the expropriated investment at the time immediately before the expropriation or that the same was announced, which comes first. The fair value shall be expressed in a currency conversion of free on the basis of the market rate of exchange for that currency existing at that time. The compensation shall also include interest at the prevailing commercial rate market from the date of expropriation until the date of actual payment

3. The investor whose investments are expropriated shall have the right to prompt review by a judicial or other competent authority of the Contracting Party of the evaluation or equity compensation in accordance with the principles set out in this article.

Article 6. Compensation for Losses

Investors of one Contracting Party who suffer losses of their investments due to war or other armed conflict, a national state of emergency, a state of siege, insurrection or other similar events in the territory of the other Contracting Party, shall be treated by the latter no less favourably than to its own investors as regards restitution, indemnification, and compensation.

Article 7. Subrogation

1. If one Contracting Party or its authorized agent, makes its investors to payment under a guarantee given by an investment against non-commercial risks in the territory of the other Contracting Party, the latter, without prejudice to the rights that under Article 9 correspond to the first Contracting Party shall recognize the subrogation of the rights of such investors to the former Contracting Party or its authorized agent or agency or designated, either by law or by a legal transaction.

2. Furthermore, the other Contracting Party shall recognize the case and scope of the first subrogation of the Contracting Party or its authorized agent or agency or designated in each of the previous holder conferred rights pursuant to this Agreement.

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

1. Any dispute arising between an investor and a Contracting Party of the other Contracting Party in connection with investments made in accordance with this Agreement shall, if possible, be settled amicably between the parties to the dispute.

2. If a dispute within the meaning of paragraph (1) cannot be settled within six months after the date on which either party to the dispute has been notified to the other, shall be submitted, at the request of one of them:

(a) The competent court of the Contracting Party in whose territory the investment has been made;

(b) To an ad hoc arbitral tribunal appointed in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Once it has submitted the dispute to the competent court of the Contracting Party in whose territory the investment has been made or to arbitration under one of the international fora, referred to the choice of the procedure shall be final.

4. The arbitral award shall be final and binding, and each Party shall meet in accordance with its legislation.

Article 9. Settlement of Disputes between the Contracting Parties

1. Any dispute arising between the Contracting Parties concerning the interpretation or application of this agreement should, if possible, be settled by the Contracting Parties through diplomatic channels.

2. If a dispute cannot be settled in this way within six months after the date on which either party to the dispute has been notified to the other party, be submitted to an arbitral tribunal at the request of one of the Contracting Parties.

3. The arbitral tribunal shall be constituted ad hoc manner. Each Contracting Party shall appoint one member and these two members shall agree to choose as president is a national of a third State who shall be appointed by the Contracting Parties. The members shall be appointed within two months and the Chairman within three months after a Contracting Party has notified the other that it wishes to submit the dispute to an arbitral tribunal.

4. If the periods specified in paragraph (3) are not observed, and in the absence of any other agreement, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or otherwise prevented is found to make such appointments shall be made by the Vice-President make them. If the Vice-President is also a national of one of the Contracting Parties or if he is found also prevented from carrying out the said appointments shall do so, the member of the Court next in seniority and is not a national of one of the Contracting Parties.

5. The arbitral tribunal shall reach its decisions by a majority of votes. such decisions shall be final and binding. Each Contracting Party shall bear the costs incurred in the exercise of its arbitrator, as well as the costs for 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. The arbitral tribunal shall determine its own procedure.

Article 10. Interruption of Diplomatic or Consular Relations

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

Article 11. Implementation of the Convention

1. This Agreement shall apply to existing investments in the territories of the Contracting Parties on the date of its entry into force, as well as those that are made after that date. However, this Agreement shall apply to disputes regarding acts which have arisen after its entry into force.

2. This Agreement shall not apply to disputes regarding acts that occurred prior to its entry into force, even if its effects continue in operation after.

Article 12. Entry Into Force, Duration and Termination of the Agreement

1. The Contracting Parties shall notify each other that the requirements of their national legislation for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall enter into force thirty days after the date of the second notification. The period of ten years and thereafter shall be extended indefinitely unless either Contracting Party notifies in writing the other Contracting Party of its intention to terminate six months before its expiration.

3. After ten years, the Agreement may be denounced at any time with a notice of 6 six months' notice.

4. For investments made prior to the date of termination of this Agreement, it shall continue to apply for a period of ten years after that date.

This Agreement is signed in two copies, in the Spanish language, both texts being equally authentic.

In witness whereof, the undersigned, being duly authorized to that effect by their respective Governments, have signed this Agreement.

Done in the city of Lima, on October 10, 2000,

FOR THE GOVERNMENT OF THE REPUBLIC OF PERU

FOR THE GOVERNMENT OF THE REPUBLIC OF CUBA

PROTOCOL TO THE BILATERAL AGREEMENT FOR THE PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE REPUBLIC OF PERU AND THE REPUBLIC OF CUBA

In the act of signing the Agreement between the Government of the Republic of Peru and the Government of the Republic of Cuba on Reciprocal Promotion and Protection of Investments, the undersigned have further agreed upon the following provisions, which constitute an integral part thereof:

Ad Article 4 (2)

With respect to investments made in the Republic of Cuba, transfers of payments related to an investment shall be made in the freely convertible currency in which the investment was channeled.

Ad Article 8 (2.b)

Disputes arising between one of the Contracting Parties and an investor of the other Contracting Party, in connection with investments made in accordance with this Convention, may be submitted to the international arbitration of the International Centre for Settlement of Investment Disputes (ICSID), created by the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States", signed in Washington on March 18, 1965, provided that both Parties are members of said Convention.

FOR THE GOVERNMENT OF THE REPUBLIC OF PERU

FOR THE GOVERNMENT OF THE REPUBLIC OF CUBA