# AGREEMENT BETWEEN THE REPUBLIC OF COSTA RICA Y THE REPUBLIC OF ECUADOR FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of Costa Rica and the Republic of Ecuador referred to hereinafter as the "Contracting Parties";

Desiring to intensify economic cooperation between the two countries;

In order to create and maintain favourable conditions for the flow of investments of investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion and protection of investments will contribute to the stimulation of individual business initiative and will increase prosperity in both Contracting Parties.

Aware of the need to establish an appropriate legal framework regulating and ensure the reciprocal promotion and protection of investments between the two countries;

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" designates in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made, every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party. Includes in particular, though not exclusively:

(a) Ownership of movable and immovable property as well as any other property rights, such as mortgage, lien usufructs, and similar rights;

(b) Stocks, shares, debentures and other securities and any other kind of participation in companies;

(c) Rights and obligations or loans directly related to a specific investment;

(d) Intellectual Property Rights, including, in particular, copyrights and related rights and industrial property rights, such as: patents, designs, trademarks, geographical indications, industrial designs, layout designs (topographies) of integrated circuits, know-how, right of breeders of plant varieties and other similar rights;

(e) Economic concessions conferred by law or under contract, including prospecting concessions to cultivate, extract or exploit natural resources; and

(f) Reinvestment of profits.

Any alteration of the form in which assets and capital have been invested or reinvested shall affect their qualification of investments under this Agreement.

(2) The term "investor" designates:

(a) Natural persons having the nationality of either Contracting Party, in accordance with its laws; or

(b) Legal entities, including companies, business corporations, business associations, companies, institutions or other entities established or constituted under the laws and regulations of one Contracting Party and having their registered office within either of the Contracting Parties regardless of whether or not its activities are non-profit-making.

(3) The term "proceeds" means all amounts resulting from an investment such as profits, dividends, interests and other

current income.

(4) The term "territory" means:

(a) In the case of Ecuador the land territory, airspace and territorial sea, including those maritime areas adjacent to the outer limit of the territorial sea, which may, in accordance with its legislation and international law, sovereign exercise sovereign rights or jurisdiction; and

(b) In the case of the Republic of Costa Rica, the land territory, airspace and territorial sea as well as the exclusive economic zone and the continental shelf extends beyond the limits of the territorial sea of Costa Rica on which they are or may be in accordance with international law, sovereign rights and jurisdiction for the purpose of exploration and exploitation and preservation of natural resources.

## Article II. Promotion and Protection of Investments

(1) Each Contracting Party shall promote in its territory and create favourable conditions for investments of investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

(2) Each Contracting Party in accordance with its laws, allow investors of the other Contracting Party to engage, managerial and technical expertise, at his choice regardless of nationality and citizenship.

(3) Furthermore, the Contracting Parties in accordance with its laws, shall allow investors of the other Contracting Party, the temporary entry and sojourn in its territory in order to implement and administer its investment.

(4) Similarly, with the aim of increasing the flow of investment, to exchange information on investment opportunities in each Contracting Party.

(5) If a Contracting Party has admitted an investment in its territory it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment as well as the required for the implementation of licensing contracts, technical assistance, commercial or administrative.

(6) Each Contracting Party, once it has admitted into its territory investments of investors of the other Contracting Party, shall accord full legal protection to such investments and shall accord them treatment no less favorable than that accorded to investments of its own national investors or to investments of investors of third States.

## Article III. Treatment of Investments

(1) Each Contracting Party shall at all times fair and equitable treatment to investments of investors of the other Contracting Party. Neither of the Contracting Parties with respect to such investments impede or harm its management, maintenance, use, enjoyment or disposal through unjustified or discriminatory measures.

(2) Between the national treatment and most favoured nation treatment each Contracting Party shall accord the treatment that is more favourable to the investment of the investor.

(3) The treatment granted under this Article shall not apply to privileges which either Contracting Party agrees to investors of third States as a result of its participation or association with any existing or future free trade area, customs union, common market or regional agreement, economic and monetary union or other similar regional economic integration.

(4) The treatment granted under this Article shall not be construed as to oblige one Contracting Party to extend to investors of the other Contracting Party, deductions and tax exemptions or other treatment of any benefit or privilege, preference resulting from any international agreement for the avoidance of double taxation or any other arrangement relating to taxation.

## Article IV. Expropriation and Compensation

(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 of public interest, on a non-discriminatory basis and under due process of law.

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 in the same was announced or became public knowledge, 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 a passive commercial rate, which shall be:

(a) In the case of Ecuador from the date of expropriation until the date of payment; and

(b) In the case of Costa Rica from the date of dispossession of the expropriated property until the date of actual payment.

(2) The investor whose investments are expropriated shall have the right to prompt review by a judicial or other competent authorities of the contracting party of its case and of the evaluation of the compensation in accordance with the principles set out in this article.

(3) Nothing in this article shall affect the powers of the Contracting Parties to provide, in accordance with its legislation, limits the production or export of goods and services subject to quotas on the international market and by taking into account the principle of National Treatment.

## Article V. Compensation for Losses

Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, riot, state of emergency, national revolt or riot, insurrection or any other similar event of internal disturbance, shall be as regards restitution, indemnification, compensation or other relief, a treatment no less favourable than that accorded to investments of its own to investors or investments of investors of any third State, whichever is more favourable to the investor concerned. Resulting payments shall be freely transferable.

## Article VI. Transfers

(1) Each Contracting Party shall, in accordance with its laws, to investors of the other Contracting Party the free transfer of investments and returns, in particular, though not exclusively:

(a) The principal and additional amounts necessary for the maintenance and expansion of the development and investment;

(b) The benefits, profits, interest, dividends, royalties and other current income;

(c) The necessary funds in repayment of loans related to an investment;

(d) The proceeds of the total or partial sale and / or liquidation of all or part of an investment, as appropriate; and

(e) Payments arising out of the settlement of a dispute under article X and compensation and compensation provided for in article IV and V.

(2) The Contracting Parties undertake to facilitate the completion of formalities necessary for the transfer without delay and in a freely convertible currency according to commercial rate of exchange prevailing on the date of transfer.

(3) Notwithstanding the provisions of paragraph 1 of this article, each Contracting Party shall be entitled in circumstances of exceptional difficulties or serious balance of payments to temporarily restrict transfers, in an equitable and non-discriminatory basis in accordance with internationally accepted standards. Restrictions adopted or maintained by a Contracting Party in accordance with this paragraph, as well as their elimination, shall be notified promptly to the other Contracting Party.

## Article VII. Subrogation

If a Contracting Party or any of its agencies made a payment to an investor under an insurance or guarantee given against non-commercial risks it has engaged in relation to an investment of any of its investors in the territory of the other Contracting Party, the other Contracting Party shall recognize the validity of the subrogation in favour of the Contracting Party or any of its agencies in respect of any right or title of the investor. The Contracting Party or any of its agencies shall be authorized, within the limits of subrogation to exercise the rights which the investor would have been entitled to exercise these rights, provided that remain in force or legally recognized by the other Contracting Party.

## Article VIII. Implementation of other Rules

If the provisions of law of either Contracting Party or as agreed by the Contracting Parties, beyond the agreed in this Agreement is of a general or special rules under which must be accorded to investments of investors of the other Contracting Party to a more favourable treatment than that provided for by the present Agreement, such rules shall prevail

over the same, as is more favourable.

## Article IX. Settlement of Disputes between the Contracting Parties

(1) Any dispute arising between the Contracting Parties concerning the interpretation or application of this Agreement, as far as possible, be settled through diplomatic channels.

(2) If a dispute between the Contracting Parties cannot be settled in this way within six months after the beginning of negotiations, the dispute shall be submitted, at the request of either Contracting Party to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted in the following way. Within three months of the receipt of a written, by a Contracting Party of the request by the other Contracting Party to submit the dispute to an arbitration tribunal, each Contracting Party shall appoint one member of the Tribunal. These two members shall select a national of a third State who shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this article shall not make the necessary appointments, either Contracting Party may, in the absence of any other agreement, 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 one of the Contracting Parties or, if for any reason, is prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either of the Contracting Parties or if he is found also prevented from discharging the function, the said member of the International Court of Justice who is next in order of precedence and is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such a decision shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member of the Tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in principle in equal parts by the Contracting Parties. However, the arbitral tribunal shall determine its decision that a higher proportion of costs be borne by one of the two Contracting Parties. The award shall be final and binding on both Contracting Parties. The tribunal shall determine its own procedure unless the Contracting Parties decide otherwise.

(6) The arbitration tribunal shall deliver its opinion on the basis of the rules contained in this Agreement or in other agreements in force on this matter between the Contracting Parties, and on the universally recognized principles of International Law.

## Article X. Settlement of Disputes between an Investor and the Host Contracting Party of the Investment

(1) Any dispute concerning an investment which may arise between an investor of one Contracting Party and the other Contracting Party with respect to matters governed by this Agreement shall, as far as possible, be settled by amicable consultations. Any such disputes shall be notified in writing - including detallada- investor information by the Contracting Party to the recipient of the investment.

(2) If the dispute cannot be settled within six months from the date of the written notification mentioned above, the investor may submit the dispute to:

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

- To international arbitration under the conditions described in paragraph (3).

Once the investor has submitted the dispute to the competent courts of the Contracting Party concerned or to international arbitration, the choice of one or another forum shall be definitive and exclusive.

(3) In the event of recourse to international arbitration, the dispute may be brought, at the choice of the investor:

• 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 the Convention;

• If one of the Contracting Parties is not a Contracting State ICSID, the dispute shall be settled under the additional facility for the administration of conciliation or arbitration proceedings and fact-finding by ICSID of the Secretariat;

• An "ad hoc" arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International

Trade Law (UNCITRAL) when any of the Contracting Parties is a party of ICSID.

(4) The arbitral tribunal shall decide on the basis of the provisions of this Agreement and other agreements concluded between the Contracting Parties, the national law of the Contracting Party which is a party to the dispute including the rules relating to conflicts of law, as well as of the generally accepted principles and rules of international law.

(5) The arbitral awards shall be final and binding and irrevocable and binding for the parties to the dispute. Each Contracting Party shall execute the In accordance with its legislation.

(6) The Contracting Parties may not interfere through diplomatic channels matters related to disputes submitted to court proceedings or international arbitration in accordance with the provisions of this article, until the relevant processes have been completed. After the judicial process or international arbitration, as appropriate, a Contracting Party shall not take any diplomatic management in relation to the dispute, except where the opposing side has not complied with the court decision or the decision of the arbitral tribunal.

## Article XI. Scope

This Agreement shall apply to investments in the territory of a Contracting Party in accordance with its legislation made before or after the date of Entry into Force of this Convention, by investors of the other Contracting Party. However, it shall not apply to disputes or differences arising prior to its entry into force.

## Article XII. Consultations

The Contracting Parties shall, at the request of either party, shall hold consultations on any matter relating to the application or interpretation of this Agreement.

## Article XIII. Final Provisions : Entry Into Force , Duration and Termination

(1) This Agreement shall enter into force thirty days after the date of the last notification by the Contracting Parties shall notify in writing the fulfilment of their constitutional requirements for the Entry into Force of this Convention, which shall be valid for a period of ten years. It shall remain in force for an initial period of ten years and shall be extended indefinitely unless one of the Contracting Parties denounces it in accordance with this article.

(2) Each Contracting Party may denounce this Agreement by a written notification, nine months before the date of expiry.

(3) With respect to investments made prior to the date of termination of this Agreement, the provisions of articles I to XII to this Agreement shall remain in force for a further period of ten years from that date.

In WITNESS WHEREOF, the respective Plenipotentiaries have signed this Agreement.

Done at San José, Costa Rica six day of December two thousand one in two originals in the Spanish language, both texts being equally authentic.

For the Republic of Costa Rica

Tomás F. Dueñas

Minister of Foreign Trade

For the Republic of Ecuador

Heinz Moeller Freile

Minister of Foreign Affairs