AGREEMENT BETWEEN THE REPUBLIC OF CHILE AND THE BELGIUM-LUXEMBOURG ECONOMIC UNION ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS AND PROTOCOL

The Government of the Republic of Chile and the Government of the Kingdom of Belgium, acting on its behalf and the Government of the Grand Duchy of Luxembourg, under existing agreements.

Desiring to strengthen their economic cooperation, create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party, involving transfers of capital,

Whereas the beneficial influence which may exercise this agreement to improve business contacts and reinforce confidence in the field of foreign investment,

Have agreed as follows:

Article 1. Definitions

1. The term "investor" means:

a) Any natural person who, according to the laws of Belgium or Luxemburg, Chile, be regarded as a national of the Republic of Chile, of the Kingdom of Belgium or of the Grand-Duchy of Luxembourg, respectively;

b) Any legal person constituted under the laws of Belgium, Chile, with or Luxemburg registered offices and effective activity in the territory of the Republic of Chile, of the Kingdom of Belgium or of the Grand-Duchy of Luxembourg respectively.

2. The term "investment" means any element of any assets and any direct or indirect contribution in cash or in kind or in services, invested or reinvested in a sector of economic activity.

In particular are considered, though not exclusively, as investments within the meaning of this Agreement:

a) Movable and immovable property as well as other rights in rem such as mortgages, liens, bonds, usufructs and similar rights;

b) Shares, stocks and other forms of participation, including minority or indirect, in companies formed in the territory of one of the Contracting Parties;

c) The claims to rights, obligations and any provision with economic value;

d) Copyrights, industrial property rights, such as patents, licences, trade marks, industrial designs or models, technical processes, know-how, registered names and goodwill;

e) Concessions under public law or contract, including those for the exploration, cultivate, extract or exploit natural resources.

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

3. The term "income" means the amounts produced by an investment and in particular, though not exclusively, interests, capital gains, profits, dividends, royalties or inventions (royalties) or compensation.

Article 2. Investment Promotion

1. Each Contracting Party shall promote investments of investors of the other Contracting Party shall admit in its territory and investments in accordance with its legislation.

2. In particular, each Contracting Party shall permit the conclusion and implementation of licensing agreements and contracts for commercial, administrative or technical assistance in both these activities associated with investments.

3. This Agreement shall apply to investments made even before its Entry into Force on the territory of each Contracting Party to the investors of the other contracting party. However, this Agreement shall not apply to any dispute that arose before its Entry into Force.

Article 3. Protection of Investments

1. All existing and future investments made by investors of one Contracting Party, shall be accorded in the territory of the other Contracting Party fair and equitable treatment.

2. Subject to the measures necessary for the maintenance of public order, such investments shall be accorded constant protection and security, excluding any unjustified or discriminatory measure which would impede its management, maintenance, use, use or liquidation.

3. All the rights contained in the present Agreement and the treatment and protection referred to in paragraphs 1 and 2 shall be at least equal to those enjoyed by investors of the State or a third State if and when this latter is more favourable treatment and shall in no case less favourable than those accorded by International Law.

4. If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area or a customs union, a common market or by virtue of an agreement for the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article 4. Protection of Property

1. Each Contracting Party undertakes not directly or indirectly take any measure of expropriation or nationalization or any other measures having similar effects, with regard to investments of investors in its territory of the other contracting party.

2. If the requirements of public purpose national interest or justify derogation from paragraph 1, the following conditions shall be complied with:

a) The measures shall be in accordance with the procedure laid down by law:

b) These measures shall not be discriminatory nor contrary to a specific commitment in accordance with the provisions of article 7 of this Agreement:

c) These measures shall be adjusted by provisions for the payment of adequate and effective compensation.

3. The amount of compensation shall correspond to the real value of the investment concerned, the day before the date on which the measures have been taken or made public.

The compensation shall be paid in a freely convertible currency agreed by the investor. It shall include an interest in normal commercial rate from the date of establishment until the date of payment. It shall be paid without time freely transferable and regardless of the place of residence or of the right holder.

4. Investors of one Contracting Party in which the investments were suffered losses due to a war or any other armed conflict, revolution, state of emergency or national revolt in the territory of the other Contracting Party benefit, on the part of this latter, from a treatment not less than that accorded to the investors of the State or as regards the most-favoured-nation treatment, restitution, indemnification, compensation or other relief.

5. For the matters determined by this article, each Contracting Party shall accord to investors of the other party treatment at least equal to that which is reserved in its territory to investors of the most favoured nation. This treatment shall in no case less favourable than that recognised by international law.

Article 5. Transfers

1. Each Contracting Party in which territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of their liquid assets and particularly:

a) Revenue from investments including interests, capital gains, profits, dividends, copyright or inventor's rights (royalties);

b) The amounts required for the repayment of loans regularly:

c) The product of recoveries, total or partial liquidation of investments, including capital gains or increases in the capital invested;

d) The compensation paid pursuant to article 4;

e) Royalties and other payments resulting from the licence fees and commercial, administrative or technical assistance.

2. The nationals of either Contracting Party allowed to work in connection with an investment in the territory of the other Contracting Party, being equally authorized to transfer to their country of origin quota an appropriate remuneration.

3. Each Contracting Party shall act in accordance with the required authorisations to ensure the execution of transfer without delay and without further charges rates and standard costs.

4. The transfers mentioned in article 4 and this Article shall be made at the rate of exchange applicable on the day on which are undertaken pursuant to the exchange regulations in force in the State in which the investment has been made. In all cases the applicable rates shall be fair and equitable.

5. The guarantees provided for by this article shall be at least equal to those agreed in similar cases to investors of the most favoured nation.

Article 6. Subrogation

1. If a Contracting Party or an agency of this pays compensation to its own investors under a guarantee given by an investment, the other Contracting Party acknowledges that the rights of the investor compensation has been transferred to the contracting party or to the public body concerned, as the insurer.

2. The investors, and within the limits of the rights so transferred, the insurer may, by way of subrogation to exercise the rights and enforce the claims of those respective and investors.

The rights of subrogation shall also apply to the transfer of rights and arbitration referred to in Articles 5 and 9.

These rights may be exercised by the insurer within the limits of the Party of risk covered by the contract guarantee, by the investor and the collateral taker, within the limits of the assessment of risk is not covered by the contract.

3. In relation to the rights transferred, the other Contracting Party may assert, with respect to the insurer, the obligations by law or contract to investors compensated.

Article 7. Applicable Rules

1. Where a matter concerning investment simultaneously is governed by this Agreement and by the national legislation of a Contracting Party or in international conventions or agreements in the future by the parties, investors of the other Contracting Party may make the provisions that are more favourable.

2. Investments that are the subject of a special agreement between a Contracting Party and investors of the other Contracting Party, shall be governed by the provisions of this Agreement and in particular those of the Agreement.

3. Each Contracting Party shall at all times ensure respect for the commitments it has entered into with the investors of the other Contracting Party.

Article 8. Differences Interpretation or Application

1. Any dispute between the contracting parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

2. In the absence of settlement through diplomatic channels, the dispute shall be submitted to a joint commission composed of the representatives of the two parties, which shall meet at the request of the Party concerned and without undue delay.

3. If the Joint Commission cannot settle the dispute shall be submitted, at the request of either contracting party to arbitration, for each individual case in the following manner:

Each Contracting Party shall appoint an arbitrator within three months from the date one Contracting Party has informed the other of its intention to submit the dispute to arbitration. Within two months of such appointment of the two arbitrators shall designate by common agreement, a national of a third State, who shall be the Chair of the arbitral tribunal.

If the time limits have not been observed, as both a the other Contracting Party shall invite the President of the International Court of Justice to make the appointment of the arbitrator or arbitrators not appointed.

If the President of the International Court of Justice is natural of either Contracting Party or of a State with which either Contracting Party does not maintain diplomatic relations, or for any other reason, is prevented from exercising this function, the Vice-President of the Court shall be invited to make the appointment, and if the latter is prevented or if he is a national of either Contracting Party or of any third State with which does not maintain diplomatic relations, the most senior judge of the Court shall be invited to make the appointments.

4. The Court thus constituted shall determine its own rules of procedure. Decisions shall be taken by a majority of votes and shall be final and binding on the Contracting Parties.

5. Each Contracting Party shall bear the costs of its appointed arbitrator. Payments arising from the appointment of the third arbitrator and operating costs of the Tribunal shall be borne in equal parts by the Contracting Parties.

Article 9. Investment Disputes

1. Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall be the subject of a sufficiently detailed written notification. As far as possible the difference shall be settled amicably between the parties or by conciliation between the Contracting Parties through the diplomatic channel.

2. If no such settlement means to resolve the dispute within a period of six months from the date of the request for the settlement of the dispute, the investor may either submit the dispute to the national jurisdiction of the Contracting Party in whose territory the investment was made or to international arbitration of the International Centre for Settlement of Investment Disputes (ICSID), 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.

To this end, each Contracting Party consents to advance and irrevocably any differences may be submitted to arbitration. For this purpose, the Parties waive the right to require the exhaustion of domestic judicial remedies.

3. In the event of recourse to national jurisdiction the investor may not have recourse to international arbitration except in the event that after a period of 18 months has not a final judgment of the Court.

4. Neither of the contracting parties involved in a dispute shall make an objection at any stage of the arbitration proceedings or enforcement of an arbitration award by the fact that the investor, opposing party in the dispute has received an indemnification covering the whole or a part of its losses in pursuance of an insurance policy or to the guarantee provided for in article 6 of this Agreement.

5. The arbitral tribunal shall decide on the basis of the national law of the Contracting Party in which the investment was made, including the rules relating to conflicts of law, the provisions of this Agreement, the terms of any specific agreements on investment as well as the principles of international law.

6. The arbitration awards shall be final and binding for the parties in dispute. each Contracting Party undertakes to execute the decisions in accordance with its national law.

7. Neither Contracting Party may submit a claim regarding a difference of one of its investors except if, at the end of the arbitration procedure provided for by this article, the other Contracting Party fails or refuses the judgment in the dispute.

Article 10. Entry Into Force and Duration

1. This Agreement shall enter into force one month has elapsed from the date on which the contracting parties inte have changed their instruments of ratification.

It shall remain in force for a period of ten years.

It shall then be renewed tacitly renewed for further periods of ten years. Each Contracting Party shall at all times the right to denounce it in writing with six months notice before the expiry of the current period of validity.

2. Investments made prior to the date of termination of this Agreement shall be subject to the same for a period of ten years from that date.

Done at Brussels on 15 July 1992 in two originals each in French, Spanish, and Dutch, all texts being equally valid.

For the Belgian-Luxembourg Economic Union :

W. CLAES.

Minister for Foreign Affairs

For the Government of the Republic of Chile :

Enrique SILVA CIMMA.

Minister of Foreign Affairs.

Protocol

At the time of the signature of the Agreement between the Republic of Chile and the Belgo-Luxembourg Economic Union on the reciprocal promotion and protection of investments, the undersigned Plenipotentiaries have furthermore adopted the following provisions, which shall be considered to be an integral part of the Agreement

Ad Article 5.

a) Without prejudice to the provisions of Article 5, the Republic of Chile retains the right to allow the repatriation of capital after three years have elapsed since the investor's admission.

b) While the Chilean foreign debt conversion program remains in force, the Republic of Chile shall grant the right to repatriate investments made by investors from the Belgium-Luxembourg Economic Union under that program after ten years have elapsed since their admission, as well as the transfer of profits after four years. The profits of the first four years will be transferable as from the fifth year in annual instalments of 25% respectively. The above is without prejudice to the option to benefit from the reduction of these terms in accordance with the regulations established by the Central Bank of Chile.

c) In no case shall an investor from the Belgium-Luxembourg Economic Union be treated less favourably in matters of transfer than any investor from a third State.

Ad Article 9.

Nationals or companies of one of the Contracting Parties having an interest in a foreign company, other than Chile, Belgium or Luxembourg, which has an interest in a company of the other Contracting Party, shall not have the right to submit disputes to ICSID, in accordance with Article 9 of this Agreement, unless it can be established that at the time of the facts which gave rise to the dispute, their participation is decisive in the capital or confers on them a decisive voting position in the executive bodies or an effective influence by other means on their activity.

Signed at Brussels on 15 July 1992 in two originals, each in the Spanish, French and Dutch languages, all three texts being equally valid.

For the Belgian-Luxembourg Economic Union :

W. CLAES.

Minister for Foreign Affairs

For the Government of the Republic of Chile :

Enrique SILVA CIMMA.

Minister of Foreign Affairs.