AGREEMENT BETWEEN THE REPUBLIC OF CHILE AND THE PORTUGUESE REPUBLIC ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of Chile and the Portuguese Republic, hereinafter referred to as "the Contracting Parties";

Desiring to intensify economic cooperation in the mutual benefit of both States;

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other party, involving international movements of capital;

Recognizing the need to promote and protect foreign investment with a view to promoting the economic prosperity of both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investor "refers to each of the Contracting Parties to the following persons who has made investments in the territory of the other Contracting Party in accordance with this Agreement:

a) Natural persons who, according to the law of that Contracting Party, are considered to be a national of that Contracting Party;

b) Legal entities, including companies, corporations, associations or any other entity comercialeso constituted otherwise duly organized under the law of that Contracting Party, having their seat, as well as their effective economic activities in the territory of that Contracting Party.

2. The term investment means every kind of assets or rights related to an investment provided that this is done in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, and shall include in particular, though not exclusively:

a) Movable and immovable property as well as any other rights and interests of such goods, such as mortgages, liens, pledges and usufructs;

b) Shares and social quotas and any other kind of economic participation in companies;

c) Rights of claim or any other performance having economic value;

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

e) Concessions conferred by law or under contract, including concessions to prospect, cultivate, extract, explore and exploit natural resources.

3. The term "territory" means the land territory and the territorial sea of each of the Contracting Parties as well as the Exclusive Economic Zone and the Continental Shelf extending beyond the limit of the territorial sea of each of the Contracting Parties, over which the Contracting Parties exercise sovereignty, sovereign rights or jurisdiction in accordance with their respective legislation and international law.

4. The term "returns" shall mean the amounts generated by an investment in a given period, such as profits and dividends, interests and royalties or other proceeds related to investment, including those relating to technical assistance or

management.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote investments in its territory by investors of the other contracting party admitiéndolas, in accordance with its legislation.

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

Article 3. Treatment of Investments

1. Each Contracting Party shall ensure in its territory, fair, equitable and non-discriminatory treatment with respect to investments made by investors of the other contracting party.

2. In the fields covered by this Agreement, treatment referred to in paragraph 1 of this article shall not be less favourable than that accorded by one Contracting Party to investments made in its territory under similar conditions, by its own investors to investors or of any third State.

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

Article 4. Free Transfer

1. Each Contracting Party shall guarantee to investors of the other Contracting Party and the free transfer without delay, amounts relating to investment in a freely convertible currency, notably:

a) The capital and additional amounts for the maintenance or extension of the investment;

b) Returns as defined in article 1, number four, of this Agreement;

c) The amounts required for the repayment of loans and associated with an investment;

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

e) Compensation and other payments referred to in article 5 of this Agreement;

f) Any payment to be made by virtue of subrogation under article 6 of this Agreement;

2. Transfers shall be made in accordance with the rate of exchange prevailing on the date of transfer in the territory of the Contracting Party where the investment was made;

Article 5. Expropriation and Compensation

1. Neither Contracting Party shall take any measures depriving, directly or indirectly, to their investments of investors of the other Contracting Party unless the following conditions are met:

a) The measures are taken for a public purpose or national interest and in accordance with the law;

b) The measures are not discriminatory;

c) The measures are accompanied by provisions for the payment of prompt, effective and adequate compensation. Such compensation shall be based on the market value of investments affected the immediately preceding the date on which the measure becomes public knowledge. Any delay in payment of compensation shall accrue interest at a commercial rate established on the basis of the market value, from the date of expropriation or loss until the date of payment. The legality of expropriation, nationalization or any other measures having an equivalent effect and the amount of compensation may be claimed in ordinary judicial procedure.

2. Investors of either Contracting Party whose investments in the territory of the other Contracting Party are losses due to any armed conflict, including war, state of emergency, national civil disturbance or other similar events in the territory of the latter, shall receive, as regards restitution, indemnification, compensation or other settlement, a treatment no less

favourable than that which the latter Contracting Party accords to domestic investors or any third State.

Article 6. Subrogation

If a Contracting Party or an agency or body designated by it has provided any financial guarantee against non-commercial risks with regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor, when the first Contracting Party has made a payment under such security.

Article 7. Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes arising under this agreement between one Contracting Party and an investor of the other Contracting Party which has made investments in the territory of the first shall as far as possible, be settled through amicable consultations.

2. If consultations fail to produce an solution within six months from the date of request for settlement, the investor may submit the dispute.

a) The local court of the Contracting Party in whose territory the investment is made; or

b) 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 signed in Washington on 18 March 1965.

Once the investor has submitted the dispute to the competent court of the Contracting Party in whose territory the investment has been made or the arbitral tribunal, the choice of one or other of the procedure shall be final.

3. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the principles of international law in the general principles of law recognized by the Contracting Parties, under the law of the Contracting Party in whose territory the investment was made; and in the terms of any specific agreement which read connection with the investment.

4. For the purposes of this article, any legal person which is constituted in accordance with the legislation of one Contracting Party whose social capital and prior to the dispute, is mostly by investors of the other Contracting Party, shall be treated in accordance with article 25 (2) (b) Washington of the said Convention, as a juridical person of the other Contracting Party.

5. The arbitral awards shall be final and binding on the parties to the dispute and shall be executed in accordance with the domestic law of the Contracting Party in whose territory the investment has been made.

6. The Contracting Parties shall seek, through diplomatic channels matters related to disputes submitted to international arbitration or court proceedings until the relevant processes are concluídos, except in the case where a party to the dispute has failed to comply with the court decision or the decision of the arbitral tribunal, under the terms established in the respective decision or award.

Article 8. Disputes between the Contracting Parties

1. Any dispute arising between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled as far as possible through diplomatic channels.

2. If an agreement cannot be achieved within a period of six months from the date of notification of the dispute, either Contracting Party may submit it to an ad hoc arbitral tribunal in accordance with the provisions of this article.

3. The arbitral tribunal shall consist of three members and shall be constituted in the following manner: within two months after the date of receipt of the request for arbitration, each Contracting Party shall appoint an arbitrator. These two arbitrators shall elect a president is a national of a third State. The Chairman shall be appointed within three months from the date of appointment of the other two arbitrators.

4. The Chairman of the arbitral tribunal shall be a national of a State with which both Contracting Parties maintain diplomatic relations.

5. If one of the Contracting Parties has not appointed its arbitrator and has not accepted the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

6. If both arbitrators cannot reach an agreement about the choice of the Chairman within three months after their appointment the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

7. If in the cases referred to in paragraphs 5 and 6 of this article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the Vice-President shall make the appointment, and if the latter is prevented or is a national of either of the Contracting Parties, the judge of the Court who in seniority who is not a national of one of the Contracting Parties shall make the appointment.

8. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the principles of international law and the general principles of law recognized by the Contracting Parties. The arbitral tribunal shall be decided by majority vote and its decisions shall be final and binding on both Contracting Parties. The arbitral tribunal shall determine its own procedural rules.

9. Each Contracting Party shall bear the costs of the arbitrator, as well as those relating to its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be removed in equal parts by the Contracting Parties.

Article 9. Consultations

The representatives of the Contracting Parties shall, where necessary, undertake meetings on any matter relating to the implementation of this Agreement. These meetings shall be carried out on the proposal of one of the Contracting Parties, in the place and date to be agreed through diplomatic channels.

Article 10. More Favourable Terms

If the provisions of another international agreement to which they are party or to join the two Contracting Parties, or domestic regulation of either party establishes a more favourable treatment than is provided for by this Agreement, the more favourable prevail.

Article 11. Scope

This Agreement shall apply to all investments made before or after the entry into force of the Agreement, by investors of one Contracting Party, in accordance with the laws of the other Contracting Party in the territory of the latter. However, it shall not apply to any dispute which have arisen prior to its entry into force.

Article 12. Duration , Extension and Termination

1. The Contracting Parties shall notify between if its domestic legal requirements for the entry into force of this Agreement shall enter into force thirty days after the date of the last notification.

2. This Agreement shall remain in force for a period of ten years and shall be automatically extended for successive periods of five years. After the first ten years, the Agreement may be terminated by either Contracting Party at any time with a notice of twelve months.

3. With respect to investments made prior to the date that was made effective notice of denunciation of the Agreement, the provisions of Articles 1 to 11 shall remain in force for a further period of ten years from that date.

Done at Lisbon on 28 April 1995 in two originals in the English and Portuguese languages, both texts being equally authentic.

For the Government of the Republic of Chile

For the Government of the Portuguese Republic

Protocol

Upon signature of the agreement on reciprocal promotion and protection of investments between the Republic of Chile and

the Portuguese Republic, the undersigned Plenipotentiaries have agreed in the following provisions, which constitute an integral part of this Agreement:

1. Ad Article 2

The provisions of this Article shall apply to investors of the Contracting Parties already established in the territory of the other Contracting Party intending to expand their activities and established in other sectors.

Such investments shall be considered as new, and as such, should be carried out in accordance with the rules governing the admission of investment, within the meaning of Article 2 of this Agreement.

2. Ad Article 3

The Contracting Parties consider that the provisions of this Article shall not affect the right of each of the Contracting Parties to implement their tax rules.

3. Ad Article 4

a) The invested capital may be transferred only after one year after its entry into the territory of the Contracting Party, unless the law of that Contracting Party provides for more favourable treatment.

b) Transfers related to investments made in accordance with the schedule of Chile to the conversion of external debt, are governed by special rules that it establishes.

c) A transfer shall be deemed to have been made "without delay" when it has been effected within the period normally required for the completion of the transfer formalities. The period, which in no case may exceed two months, shall be counted from the time of delivery of the corresponding request, duly submitted.

Done at Lisbon on 28 April 1995 in two originals in the English and Portuguese languages, both texts being equally authentic.

For the Government of the Republic of Chile

For the Government of the Portuguese Republic.