AGREEMENT ON THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN THE REPUBLIC OF ECUADOR AND THE KINGDOM OF THE NETHERLANDS

The Kingdom of the Netherlands

And

The Republic of Ecuador, hereinafter referred to as the Contracting Parties,

Desiring to strengthen their traditional ties of friendship and to extend and intensify the economic relations between them, particularly with respect to investments by the investors of one Contracting Party in the territory of the other Contracting Party,

Recognising that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investment is desirable,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

a) The term "investment" means every kind of asset including, in particular, though not exclusively:

i. Property of movable and immovable goods, as well as any other rights in rem, such as mortgages, liens and pledges;

ii. Rights derived from shares, bonds and other kinds of interests in companies and joint ventures;

iii. Claims specifically related to money, to other assets or to any performance having an economic value;

iv. Rights in the field of intellectual property, technical processes, goodwill and know-how; these rights include i.a.: copyrights, industrial design, trademarks and trade names;

v. Rights, such as economic concessions, granted under public law or under contract, including rights to prospect, explore, extract and win natural resources.

Any change in the legal form in which assets or capital are invested or reinvested does not affect their character as investment pursuant to this Agreement.

b) The term "investors" shall comprise with regard to either Contracting Party:

i. Natural persons having the nationality of that Contracting Party;

ii. Legal persons constituted under the law of that Contracting Party;

iii. Legal persons not constituted under the law of that Contracting Party but controlled, directly or indirectly, by natural persons as defined in (i) or by legal persons as defined in (ii) .(i) or by legal persons as defined in (ii) .

c) The term "territory" means:

With respect to the Kingdom of the Netherlands: the territory of the Kingdom of the Netherlands and any area adjacent to the territorial sea which, under the laws applicable in the Kingdom of the Netherlands, and in accordance with international law, is the exclusive economic zone or continental shelf of the Kingdom of the Netherlands, in which the Kingdom of the

Netherlands exercises jurisdiction or sovereign rights.

With respect to the Republic of Ecuador: the territory in which the Republic of Ecuador exercises sovereign rights and jurisdiction, in accordance with the prescriptions of the Constitution of the Republic of Ecuador and pursuant to relevant international law.

d) The term "earnings" means all the amounts generated by an investment, such as profits, dividends, interests, royalties and other current income.

Article 2. Promotion of Investments

Either Contracting Party shall, within the framework of its laws and regulations, promote economic cooperation through the protection in its territory of investments of investors of the other Contracting Party. Subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit such investments.

Article 3. General Treatment

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors. Each Contracting Party shall accord to such investments full physical security and protection.

2. More particularly, each Contracting Party shall accord to such investments treatment which in any case shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.

3. If a Contracting Party has accorded special advantages to investors of any third State by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

4. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

5. If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall, to the extent that it is more favourable, prevail over the present Agreement.

Article 4. Treatment In Fiscal Matters

With respect to taxes, fees, charges and to fiscal deductions and exemptions, each Contracting Party shall accord to investors of the other Contracting Party who are engaged in any economic activity in its territory, treatment no less favourable than that accorded to its own investors or to those of any third State who are in the same circumstances, whichever is more favourable to the investors concerned. For this purpose, however, there shall not be taken into account any special fiscal advantages accorded by that Party:

a) Under an agreement for the avoidance of double taxation; or

b) By virtue of its participation in a customs union, economic union or similar institution; or

c) On the basis of reciprocity with a third State.

Article 5. Transfers

The Contracting Parties shall guarantee that payments relating to an investment may be transferred. The transfers shall be made in a freely convertible currency, without restriction or delay.

The provisions of the preceding paragraph do not limit the right of the Contracting Parties to require the registration of the investment.

These transfers include, in particular, though not exclusively:

a) Profits, interests, dividends and other current income;

b) Funds necessary:

i. For the acquisition of raw or auxiliary materials, semi-fabricated or finished products or

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

c) Capital and additional funds necessary for the development of an investment;

d) Funds in repayment of loans;

e) Royalties or fees;

f) Remunerations of personnel;

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

h) Payments arising under Articles 6 and 7.Articles 6 and 7.

Article 6. Expropriations and Compensations

Neither Contracting Party shall take any measures to nationalize or expropriate, or any other measures having the same effect, that deprive, directly or indirectly, investors of the other Contracting Party of their investments 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 not discriminatory or contrary to any undertaking which the Contracting Party which takes such measures may have given;

c) The measures are taken against just compensation. Such compensation shall represent the genuine value of the investments affected, shall include interest at a normal commercial rate until the date of payment and shall, in order to be effective for the claimants, be paid and made transferable, without delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are investors or in any freely convertible currency accepted by the claimants.

Article 7. Compensation for Losses

Investors of one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

Article 8. Subrogation

If the investments of an investor of one Contracting Party are insured against non-commercial risks or otherwise give rise to payment of indemnification in respect of such investments under a system established by law, regulation or government contract, any subrogation of the insurer or re-insurer or Agency designated by one Contracting Party to the rights of the said investor pursuant to the terms of such insurance or under any other indemnity given shall be recognised by the other Contracting Party.

Article 9. Application

The provisions of this Agreement shall apply, from the date of entry into force thereof, to investments which have been made before as well as after that date, but they shall not be applicable to disputes arisen before its entry into force.

Article 10. Consultations between the Parties

Either Contracting Party may propose to the other Party that consultations be held on any matter concerning the

interpretation or application of the Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

Article 11. Settlement of Legal Disputes between an Investor and a Contracting Party

1. Any legal dispute between an investor of one Contracting Party and the other Contracting Party concerning an investment in the territory of the latter Contracting Party shall, if possible, be settled amicably.

2. If the legal dispute cannot by settled amicably within six months from the date of request for amicable settlement, each party to the dispute shall be entitled to submit the case either to the competent tribunals of the Contracting Party in whose territory the investment was made or to international arbitration. In the latter event the investor has the choice of submitting the case either to:

a) The International Centre for settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965, or

b) An ad hoc arbitration tribunal, which unless otherwise agreed upon by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Each Contracting Party hereby consents to submit any legal dispute arising between that Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party to ICSID.

4. A legal person which is an investor of one Contracting Party and which before such a dispute arises is controlled by investors of the other

Contracting Party shall, in accordance with Article 25 (2) (b) of the Convention, for the purpose of the Convention be treated as a national of the other Contracting Party.

5. The award shall be final and binding on the parties to the dispute and shall be executed under national law.

Article 12. Settlement of Legal Disputes between Contracting Parties

1. Any legal dispute between the Contracting Parties concerning the interpretation or application of the present Agreement, which cannot be settled within a reasonable lapse of time by means of diplomatic negotiations, shall, unless the Parties have otherwise agreed, be submitted, at the request of either Party, to an arbitral tribunal, composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Party.

2. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such appointment, the latter Party may invite the President of the International Court of Justice to make the necessary appointment.

3. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment.

4. If, in the cases provided for in the paragraphs 2) and 3) of this Article, the President of the International Court of Justice is prevented from discharging the said function 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 Party, the most senior member of the Court available, who is not a national of either Party, shall be invited to make the necessary appointments.

5. The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice settlement of the dispute ex aequo et bono if the Parties so agree.

6. Unless the Parties decide otherwise, the tribunal shall determine its own procedure.

7. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.

Article 13. Territorial Application

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, to the Netherlands Antilles and to Aruba, unless the notification provided for in Article 14, paragraph 1) provides otherwise.

Article 14. Entry Into Force and Termination

1. The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other in writing that their constitutionally required procedures have been complied with, and shall remain in force for a period of ten years.

2. Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of ten years, whereby each Contracting Party reserves the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3. In respect of investments made before the date of the termination of the present Agreement, the foregoing Articles shall continue to be effective for a further period of fifteen years from that date.

4. Subject to the period mentioned in paragraph 2) of this Article, the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom.

DONE in two originals at Rio de Janeiro on 27 June 1999, in the Netherlands, Spanish and English languages, the three texts being authentic. In case of difference of interpretation the English text will prevail.

For the Kingdom of the Netherlands:

For the Republic of Ecuador :

Protocol

On signing the Agreement on the Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Republic of Ecuador, the undersigned Plenipotentiaries have, in addition, agreed on the following provision which shall be regarded as an integral part of the said Agreement.

With respect to Article 1 sub c concerning the definition of the term "territory", the Kingdom of the Netherlands takes note that the Republic of Ecuador is not a Contracting Party to the Convention on the International Law of the Sea.

For the Kingdom of the Netherlands

For the Republic of Ecuador