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

The Government of the Republic of Paraguay and the Government of the Republic of Cuba, hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim of fostering the economic prosperity of both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means any kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party pursuant to the legislation in force in the latter.

In particular, although not exclusively, the term shall include:

(a) Movable and immovable property and other property rights, such as mortgages, liens, pledges and other security rights;

(b) Stock or shares in companies or any other forms of equity in companies or joint enterprises as well as the economic interests arising from the business activity;

(c) Claims to sums of money and rights to any performance having an economic value; loans shall be included only when they are directly linked to specific foreign direct investments;

(d) Industrial and intellectual property rights, rights to intangible assets, including, in particular, copyrights, patents, industrial designs, trademarks, commercial trade names, technical and technological processes, know-how and goodwill;

(e) Economic concessions conferred by law or by contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any change in the form in which investments are made shall not affect their status as investments, provided that such changes are made in accordance with the applicable legislation of the Contracting Party in whose territory the investment has been made.

2. The term "investor" means:

2.1 In respect of the Republic of Paraguay:

(a)

Any natural person who is a national of the Contracting Party in question pursuant to its legislation. The provisions of this Agreement shall not apply to investments made by natural persons who are nationals of a Contracting Party in the territory of the said Contracting Party if, at the time of the investment, those persons are permanently residing or domiciles in the latter, unless it can be shown that the resources involved in the investment originated outside the Contracting Party;

(b) Any legal person constituted pursuant to the applicable legislation of a Contracting Party and having its head office in the territory of the said Contracting Party;

(c) Legal persons constituted in the territory where the investment is made which are under the effective control, directly or indirectly, of natural or legal persons as defined in paragraph 2.1 (a) and (b).

2.2. In respect of the Republic of Cuba:

(a) Natural persons: any natural person with Cuban citizenship and permanently residing in the territory of the Republic of Cuba, pursuant to its applicable legislation;

(b) Legal persons: legal persons constituted pursuant to its applicable legislation having their head office in the territory of the Contracting Party in question.

3. The term "returns" means the amounts yielded by an investment made in accordance with this Agreement, such as profits, earnings, dividends, interest, royalties, other regular income and any other profits from operating surplus.

4. The term "territory" means:

(a) In respect of the Republic of Paraguay, the land area over which the State exercises sovereignty or jurisdiction in accordance with international law and the national Constitution;

(b) In respect of the Republic of Cuba, in addition to the areas falling within land boundaries, marine and submarine areas over which the Cuban State has sovereignty or exercises sovereign rights or jurisdiction in accordance with international law.

Article 2. Scope of Application

The present Agreement shall apply to investments in the territory of one of the Contracting Parties made in accordance with its legislation before or after the entry into force of this Agreement. It shall not, however, be applicable to any disputes, claims or disagreements which arose prior to its entry into force.

Article 3. Promotion of Investments

Each Contracting Party shall, within its territory, promote, as far as possible, investments by investors of the other Contracting Party and shall admit such projects in accordance with its applicable legislation.

Article 4. Protection of Investments, National and Most-favoured-nation Treatment

1. Each Contracting Party shall, within its territory, protect investments made in accordance with its applicable legislation by investors of the other Contracting Party and shall not hinder by unjustified or discriminatory measures the management, maintenance, use, enjoyment, development, sale and, where appropriate, liquidation of such investments.

2. Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments made by investors of the other Contracting Party. This treatment shall not be less favourable than that accorded in similar circumstances by each Contracting Party to investments made within its territory by its own investors or than that granted by each Contracting Party to the investments made within its territory by investors of the most favoured nation, provided that the latter treatment is more favourable.

3.

Most-favoured-nation treatment shall not include privileges granted by a Contracting Party to investors of a third State by virtue of its present or future membership in or association with a free trade area, customs union, common market or similar regional agreement.

4. The treatment accorded under this article shall not refer to privileges granted by either Contracting Party to investors of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation.

5. By way of clarification, the provisions of paragraphs 1 and 2 of this article shall apply only to investments admitted by the Contracting Parties in accordance with their legislation on investments. The treatment referred to in paragraphs 1 and 2 is applicable to articles 1 to 11 of this Agreement.

6. Measures of a general nature adopted for reasons of public order, safety or public health shall not be regarded as less

favourable treatment within the meaning of this article.

Article 5. Transfer

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall guarantee those investors the free transfer of the payments relating to the investments, including in particular but not limited to:

(a) Returns;

(b) Repayments of loans in connection with an investment;

(c) Amounts allocated to cover expenses relating to the management of the investments;

(d) Additional contributions of capital necessary for the maintenance or development of the investments;

(e) Proceeds from the sale or the partial or total liquidation of an investment;

(f) Compensation and indemnification as provided for under articles 6 and 7;

(g) Any preliminary payment that may have been made on behalf of investors in accordance with article 8 of this Agreement;

(h) Supplementary reinvestments.

2. The aforementioned transfers shall be put through without delay, once the related tax liability has been met, in the freely convertible currency used for the initial investment or in any other currency agreed upon by the parties at the official exchange rate applicable to the market on the date of transfer, in accordance with the legislation on exchange controls in force in the territory of the Contracting Party in which the investment was made.

3.

Without prejudice to the provisions of paragraphs 1 and 2, each Contracting Party may prevent a transfer in order to protect the rights of creditors or to ensure compliance with official rulings handed down in administrative, legal or arbitration proceedings through the application, in an equitable and non-discriminatory manner and in good faith, of its laws and regulations, relating in particular but not exclusively to:

(a) Bankruptcy or insolvency;

(b) Criminal offences;

(c) Guarantee of compliance with judicial orders or decisions;

(d) Failure to comply with labour obligations;

(e) Social rights;

(f) Failure to comply with tax obligations.

Article 6. Expropriation and Compensation

1. Neither Contracting Party shall take, either directly or indirectly, expropriation or nationalization measures or any other similar legal measures against investments of investors of the other Contracting Party, unless they are taken for the public benefit or in the social interest and provided that they are non-discriminatory and make provision for the payment of fair compensation, in accordance with the legislation in force.

2. Compensation must correspond to the market value of the expropriated investment immediately prior to the date on which the expropriation, nationalization or similar measure became public knowledge. Compensation must be paid immediately in the freely convertible currency in which the investment was made or in any other currency agreed upon by the parties.

3. The investor concerned shall be entitled to have fair compensation determined by a decision of the competent judicial authority of the expropriating State, without prejudice to any decisions taken by the parties by mutual agreement.

Article 7. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, rebellion, insurrection or riot in the territory of the other Contracting Party shall be accorded treatment by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, that is no less favourable than that which the latter Contracting Party accords to its own investors or investors of other States in similar circumstances.

Article 8. Subrogation

When a Contracting Party or one of its authorized agencies has granted a guarantee or insurance against non-commercial risks in respect of an investment made by one of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognize the right of the first Contracting Party or its authorized agencies to be subrogated to the rights of the investor as recognized under the legislation of the Contracting Party receiving the investment, provided that the first Contracting Party has made a payment under that guarantee and that the other Contracting Party expresses its consent.

Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any disputes relating to the provisions of this Agreement with respect to an investment between an investor of one Contracting Party and the other Contracting Party shall, as far as possible, be settled through amicable consultations.

2. If these consultations do not result in a solution within six months from the date of the written notification, either of the parties may submit the dispute to:

(a) The national jurisdiction of the Contracting Party in whose territory the investment has been made; or

(b) International arbitration. In the latter event, the parties shall have the choice between:

(b I) 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, D.C, on 18 March 1965, provided that both Contracting Parties are parties to the Convention;

(b II) An ad hoc tribunal constituted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Once the other party has expressly accepted the choice and the dispute has been submitted to one of the procedures described in paragraph 2 (a), (b) (i) and (b) (ii) above, the choice shall be definitive.

4. A Contracting Party that is a party to a dispute may not, at any time during the procedures, assert as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.

5. The arbitral tribunal shall decide on the basis of the present Agreement and other relevant agreements between the Contracting Parties; the terms of any particular agreement that may have been concluded with respect to the investment; the law of the Contracting Party that is a party to the dispute, including its rules on the conflict of laws; and such principles and rules of international law as may be applicable.

6. The decisions of the tribunal shall be final and binding on the parties to the dispute. Each Contracting Party shall implement them in accordance with its legislation.

Article 10. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties relating to the interpretation or application of the provisions of this Agreement shall be settled through the diplomatic channel by negotiation.

2. If the Contracting Parties cannot reach an agreement within six months after the beginning of the dispute, the matter shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal composed of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman, who shall be a national of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and has not responded to 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.

4. If the two arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the chairman shall be appointed, upon the request of either Contracting Party, by the President of the International Court of Justice.

5. If, in the cases specified in paragraphs 3 and 4 of this article, the President of the International Court of Justice is prevented from carrying out the said function or if he or she is a national of either Contracting Party, the appointments shall be made by the Vice-President, and if the latter is prevented from doing so or if he or she is a national of either Contracting Party, the appointments shall be made by the most senior judge of the Court who is not a national of either Contracting Party.

6. The arbitral tribunal shall reach its decision by a majority of votes. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the chairman and the remaining costs shall, in principle, be borne in equal parts by the Contracting Parties.

7. The tribunal shall determine its own procedures.

8. The decisions of the tribunal shall be final and binding on the Contracting Parties.

Article 11. Additional Provisions

Each Contracting Party shall observe at all times all the commitments it has entered into with respect to the investments of investors of the other Contracting Party.

If, either now or in the future, the legislation of either Contracting Party or the mutual obligations of the two Contracting Parties arising from international law apart from this Agreement contain a general or specific rule under which investments of investors of the other Contracting Party are granted more favourable treatment than the treatment provided for in this Agreement, such a rule shall prevail over this Agreement.

Any terms not defined in this Agreement shall have the meanings used in the applicable legislation of each Contracting Party.

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

This Agreement shall enter into force thirty days from the date of receipt of the last notification by which the Contracting Parties have notified each other, in writing and through the diplomatic channel, that they have fulfilled the constitutional requirements for the approval of the Agreement in their respective countries and shall remain in force for a period of 10 years.

In the event that either Contracting Party decides to terminate this Agreement, it must notify the other Contracting Party in writing through the diplomatic channel of its decision at least twelve (12) months prior to its current expiry date. Otherwise, this Agreement shall be renewed for an indefinite period and, at that stage, the Contracting Parties may notify each other at any time, in writing and through the diplomatic channel, of their decision to terminate it. The Agreement shall be terminated twelve (12) months after the receipt of such written notification.

With respect to investments made before the date of termination of this Agreement, articles 1 to 11 thereof shall remain in force for a period of 10 years from that date.

In witness whereof, the undersigned, being duly authorized for this purpose by their respective Governments, have signed this Agreement.

Done at Havana on 21 November 2000, in duplicate in the Spanish language, both texts being equally authentic.

For the Government of the Republic of Paraguay:

Juan Esteban Aguirre Martinez Minister for Foreign Affairs

For the Government of the Republic of Cuba:

Marta Lomas Morales

Minister for Foreign Investment and Economic Cooperation