AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ECUADOR AND THE GOVERNMENT OF ROMANIA FOR THE PROMOTION AND RECIPROCAL INVESTMENT PROTECTION

The Government of the Republic of Ecuador and the Government of Romania, hereinafter referred to as the "Contracting Parties",

Desiring to intensiflcar economic cooperation between the two countries.

In order to create favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party.

Recognizing that the promotion and protection of such investment based on an agreement will stimulate economic initiative individually and will increase prosperity in both States.

Aware of the need to establish an appropriate legal framework regulating and ensure the reciprocal promotion of investment between the two countries.

Have agreed as follows:

Article 1. Definitions

For the purposes of this Convention:

(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 rights in rem such as mortgages, bonds and rights of pledge.

b) Shares, quotas, and any other type of participation in companies.

c) Titles of credit and entitlements having an economic value: loans shall be included only when they are regularly contracted and documented according to the rules in force in the country where the investment made and is directly related to an investment specified.

d) Intellectual property rights, including copyrights, patents, designs, trademarks, Industrials Trade names, processes, technical know-how and rights of key.

e) Economic concessions conferred by law or under contract and any licences and permits granted pursuant to law.

f) Reinvestment of profits.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments under this Agreement.

(2) The term "investor" means:

a) (i) With respect to Romania: natural persons who, in accordance with its laws, are considered as its citizens.

(ii) With respect to the Republic of Ecuador: natural persons who, in accordance with its laws, are considered as their nationals.

b) Any legal person constituted in accordance with the laws and regulations of one Contracting Party and having their seat together with real economic activities in the territory of that Contracting Party.

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

(4) The term "territory" designates

(i) With respect to the Republic of Ecuador, the national territory, including the territorial sea and any maritime areas adjacent to the outer limit of the territorial sea over which, in accordance with its legislation and international law, sovereign, may exercise sovereign rights or jurisdiction.

(II) With respect to Romania, the territory, including the territorial sea, as well as the exclusive economic zone over which Romania may, in accordance with its legislation and international law, sovereign exercise sovereign rights or jurisdiction.

Article 2. Promotion of Investments

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

(2) If a Contracting Party has admitted an investment in its territory, it shall grant, in accordance with its laws and regulations the necessary permits in connection with such an investment including authorizations to engage managerial and technical personnel of their choice regardless of nationality and citizenship.

(3) Each Contracting Party shall accord advertising and dissemination of laws and regulations related to investments of investors of the other Contracting Party. Similarly, the exchange of information on investment in each Contracting Party.

Article 3. Protection of Investments

(1) Each Contracting Party shall at all times fair and equitable treatment to investments of investors of the other Contracting Party and shall not affect their management, maintenance, use, enjoyment or disposal through unjustified or discriminatory measures.

(2) Each of the Contracting Parties, once admitted investments of investors in its territory of the other Contracting Party shall accord to such investments full legal protection and they agree upon a treatment no less favourable than that accorded to the investments made by its own investors or by investors of third States.

(3) Without prejudice to the provisions of paragraph (2) of this Article, most-favoured-nation treatment shall not apply to privileges which either Contracting Party accords to investors of a third State because of its association or participation in a free trade area, customs union, common market or regional agreement.

(4) The provisions of paragraph (2) of this Article shall not be construed as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from a bilateral or multilateral international agreement relating wholly or partially to taxation matters.

Article 4. Expropriation and Compensation

(1) Neither of the Contracting Parties shall take measures of expropriation or nationalization or any other measures having the same effect against investments in its territory and belonging to investors of the other Contracting Party unless the measures are taken for a public purpose; on a non-discriminatory basis and under due process of law. the legality of the expropriation and the amount of compensation shall be reviewable by judicial proceedings. the measures shall be accompanied by provisions for the payment of prompt, effective and adequate compensation. The amount of such compensation shall correspond to the market value of the expropriated investment was immediately before the expropriation or before the impending expropriation becomes public. The compensation shall include interest at the prevailing commercial market rate, from the date of expropriation until the date of payment. the interest and compensation where appropriate, shall be paid without delay, be effectively realizable and freely transferable.

(2) 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, a national state of emergency, revolt, riot or insurrection shall be accorded, with respect to restitution, indemnification, compensation or other relief, a treatment no less favourable than that accorded to its own investors to investors or of any third State. such payments shall be freely transferable.

Article 5. Transfers

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party the unrestricted transfer of their investments and returns, provided that the capital is registered with the competent national body and upon payment of taxes, in particular, though not exclusively:

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

b) The benefits, profits, dividends, interests and other current income;

c) External amortisation of loans related to an investment as defined in Article 1, paragraph (1) (c);

d) Royalties;

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

f) Payments arising out of the settlement of a dispute under article 10 and the compensation provided for in Article 4.

(2) Transfers shall be effected without delay in a freely convertible currency at the market rate of exchange prevailing on the date of transfer pursuant to the laws and regulations of the Contracting Party in whose territory the investment was made, which shall not affect the substance of the rights under this article.

Article 6. Subrogation

(1) If a Contracting Party or any of its agencies made a payment to an investor by virtue of a guarantee or insurance that has engaged in connection with an investment, 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 to which the investor would have been entitled to exercise these rights, provided that remain in force or legally recognized by the other Contracting Party.

(2) In the case of subrogation as defined in paragraph (1) of this Article, the investor shall not pursue a claim unless this authorized to do so by the contracting party or its agency.

Article 7. Application of the Agreement

This Agreement shall apply to investments in the territory of a Contracting Party in accordance with its legislation made before or after the Entry into Force of this Convention, by investors of the other Contracting Party.

However, shall not apply to any dispute or difference claim, which arose before its Entry into Force.

Article 8. Implementation of other Rules

If the provisions of the law of either Contracting Party or obligations under international law existing or future between the Contracting Parties in addition to this Convention; or an agreement between an investor of one Contracting Party and the other Contracting Party contain rules whether general or specific to accord to investments by investors of the other Contracting Party to a more favourable treatment than is provided for by the present Agreement, such rules shall prevail over this agreement to the extent that they are more favourable.

Article 9. Settlement of Disputes between the Contracting Parties

(1) Any dispute arising between the Contracting Parties concerning the interpretation or application of this Agreement will, 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 for each individual case in the following way. within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. these two members shall select a national of a third State who on approval of the two Contracting Parties 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 proceed with the necessary appointments. if the President is a national of one of the Contracting Parties or, if for any reason, is prevented from discharging the función. The said 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 decision shall be 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 both 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, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 10. Dispute Settlement

(1) Any dispute concerning the provisions of this agreement between an investor of one Contracting Party and the other Contracting Party, it shall, as far as possible, be settled by amicable consultations.

(2) If the dispute cannot be settled within six months from the date on which it was raised by one or other party, it may be submitted at the request of the investor:

- Either 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 courts of the Contracting Party concerned or to international arbitration, the choice of one of these procedures is final.

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

- 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, when each State Party to this Agreement has acceded thereto. As long as this requirement is not fulfilled, each Contracting Party consents that the dispute be submitted to arbitration under the ISCID Additional Facility Rules for the administration of conciliation arbitration proceedings, or fact-finding.

- An ad hoc arbitral tribunal "" established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL)

(4) The arbitral tribunal shall decide on the basis of the provisions of this Convention on the Law of the Contracting Party which is a party to the dispute including its rules on the Conflict of Laws, to the terms of any specific agreement concluded in relation to the investment as well as the principles of international law.

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

Article 11. Consultations between the Contracting Parties

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

Article 12. 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 that they have completed their respective constitutional requirements for entry into force of this Agreement. it shall be valid for ten years. unless official notice of termination 12 months before the expiry of this period, this Agreement shall be considered on the same terms as renewed for further periods of ten years.

(2) With respect to investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of articles 1 to 11 shall remain in force for a period of ten years from that date.

In WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at the Quito twenty-one days of March 1996, in two originals in the English and Spanish languages, Romanian, each text being equally authentic. in case of difference of interpretation, the English text shall prevail.

BY THE GOVERNMENT OF THE REPUBLIC OF ECUADOR

GALO LEORO FRANCO

Minister of Foreign Affairs

FOR THE GOVERNMENT OF ROMANIA

VASILE ION

Ambassador of Romania