AGREEMENT BETWEEN THE BELGO-LUXEMBURG ECONOMIC UNION AND THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

THE GOVERNMENT OF THE KINGDOM OF BELGIUM, THE GOVERNMENT OF THE GRAND-DUCHY OF LUXEMBURG, The Walloon Government, The Flemish Government, and the Government of the Region of Brussels-Capital, on one hand,

And

THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA, on the other hand,

(hereinafter referred to as "the Contracting Parties"),

DESIRING to strengthen their economic cooperation by creating favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party,

HAVE AGREED as follows:

Article 1. Definitions

For the purpose of this Agreement,

1. The term "investors" shall mean:

a) The "nationals" i.e. any natural person who, according to the legislation of the Kingdom of Belgium, of the Grand-Duchy of Luxemburg or of the Republic of Guatemala, is considered as a (national) citizen of the Kingdom of Belgium, of the Grand-Duchy of Luxemburg or of the Republic of Guatemala respectively;

b) The "companies" i.e. any legal person constituted in accordance with the legislation of the Kingdom of Belgium, of the Grand-Duchy of Luxemburg or of the Republic of Guatemala and having its registered office in the territory of the Kingdom of Belgium, of the Grand-Duchy of Luxemburg or of the Republic of Guatemala respectively.

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

The following shall more particularly, though not exclusive, be considered as investments for the purpose of this Agreement:

a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufruct and similar rights;

b) Shares, corporate rights and any other kind of shareholdings, including minority or indirect ones, in companies constituted in the territory of one Contracting Party;

c) Bonds, claims to money and to any performance having an economic value; copyrights, industrial property rights, technical processes, trade names and goodwill;

d) Concessions granted under public law or under contract, including concessions to explore, develop, extract or exploit natural resources.

Changes in the legal form in which assets and capital have been invested or reinvested shall not affect their designation as "investments" for the purpose of this Agreement.

3. The term "returns" shall mean the proceeds of an investment and shall include in particular, though not exclusively, profits, interest, capital increases, dividends, royalties and fees.

4. The term "territory" shall apply:

a) To the territory of the Kingdom of Belgium and to the territory of the Grand-Duchy of Luxemburg, as well as to the maritime areas, i.e. the marine and underwater areas which extend beyond the territorial waters of the Kingdom of Belgium upon which it exercises, in accordance with international law, its sovereign rights and its jurisdiction for the purpose of exploring, exploiting and preserving natural resources;

b) To the territory of the Republic of Guatemala, as well as to the airspace, maritime areas, internal waters, the marine and underwater areas, which extend beyond the territorial water upon which the Republic of Guatemala exercises, in accordance with international law, sovereign rights and jurisdiction for the purposes of exploring, exploiting and preserving natural resources.

5. The term "environmental laws" shall mean any laws or regulations of the Contracting Parties, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

a) The prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants;

b) The control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto;

c) The protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas in the Contracting Party's territory.

6. The term "labor laws" shall mean laws and regulations of the Kingdom of Belgium, of the Grand-Duchy of Luxemburg or the Republic of Guatemala, or provisions thereof, that are directly related to the following internationally recognised labor rights:

a) The right of association;

b) The right to organise and bargain collectively;

c) A prohibition on the use of any form of forced or compulsory labor;

d) A minimum age for the employment of children;

e) Acceptable conditions of work with respect to minimum wages, hours work, and occupational safety and health.

7. The term "public purpose" shall mean:

a) To the Kingdom of Belgium and the Grand-Duchy of Luxemburg; public purpose, security or national interest;

b) To the Republic of Guatemala; collective utility, social benefit or public interest.

Article 2. Promotion of Investments

1. Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and shall accept such investment in accordance with its legislation.

2. In particular, each Contracting Party shall facilitate, in accordance with its laws and regulations, the conclusion and the fulfillment of license contracts and commercial, administrative or technical assistance agreements, as far as these activities are in connection with such investments.

Article 3. Promotion of Investments

1. All investments, whether direct or indirect, made by investors of one Contracting Party shall enjoy a fair and equitable treatment in the territory of the other Contracting Party. Except for measures required to maintain public order, such investments shall enjoy continuous protection and security, i.e. excluding any unjustified or discriminatory measure which could hinder, either in law or in practice, the management, maintenance, use, possession or liquidation thereof.

2. The treatment and protection referred to in paragraph 1 shall at least be equal to those enjoyed by investors of a third State and shall in no case be less favourable than those recognized under international law.paragraph 1 shall at least be equal to those enjoyed by investors of a third State and shall in no case be less favourable than those recognized under international law.

3. However, such treatment and protection shall not cover the privileges granted by one Contracting Party to the investors of a third State pursuant to its participation in or association with a free trade zone, a customs union, a common market or any other form of regional economic organization.

Article 4. National Treatment and Most Favoured Nation

1. In all matters relating to the treatment of investments the investors of each Contracting Party shall enjoy national treatment and most-favoured-nation treatment in the territory of the other Party.

2. With respect to the operation, management, maintenance, use, enjoyment and sale or other disposal of investments, each Contracting Party shall accord, on its territory, to investors of the other Contracting Party, treatment no less favourable than that granted to its own investors or to investors of any other State if the latter is more favourable.

3. This treatment shall not include the privileges granted by one Contracting Party to investors of a third State by virtue of its participation or association in a free trade zone, customs union, common market or any other form of regional economic organization.

The provisions of this article do not apply to tax matters.

Article 5. Expropriation and Compensation

1. Each Contracting Party undertakes not to adopt any measure of expropriation or nationalization or any other measure having the effect of directly or indirectly dispossessing the investors of the other Contracting Party of their investments in its territory.

2. If for reasons of public purpose, it is required a derogation from the provisions of paragraph 1, the following conditions shall be complied with:

a) The measures shall be taken under due process of law;

b) The measures shall be neither discriminatory, nor contrary to any specific commitments;

c) The measures shall be accompanied by provisions for the payment of an adequate and effective compensation.

3. Such compensation shall amount to the actual value of the investments on the day before the measures were taken or became public.

Such compensation shall be paid in any convertible currency. It shall be paid without delay and shall be freely transferable. It shall bear interest at the normal commercial rate from the date of the determination of its amount until the date of its payment.

4. Investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency or revolt in the territory of the other Contracting Party shall be granted by the latter Contracting Party a treatment, as regards restitution, indemnification, compensation or other settlement, at least equal to that which the latter Contracting Party grants to its own national investors.

5. In respect of matters dealt with in this Article, each Contracting Party shall grant to the investors of the other Contracting Party a treatment which shall at least be equal to the one granted in its territory to the investors of the most favoured nation.

Article 6. Transfers

1. Each Contracting Party shall grant to investors of the other Contracting Party the free transfer of all payments relating to an investment, including more particularly:

a) Amounts necessary for establishing, maintaining or expanding the investment;

b) Amounts necessary for payments under a contract, including amounts necessary for repayment of loans, royalties and other payments resulting from licenses, franchises, concessions and other similar rights, as well as salaries of expatriate personnel;

c) Proceeds from investments;

d) Proceeds from the total or partial liquidation of investments, including capital gains or increases in the invested capital;

e) Compensation paid pursuant to Article 5.

2. The nationals of each Contracting Party who have been authorized to work in the territory of the other Contracting Party in connection with an investment shall also be permitted to transfer an appropriate portion of their earnings to their countryof origin.

3. Transfers shall be made in a freely convertible currency at the rate applicable on the day transfers are made to spot transactions in the currency used.

4. Each Contracting Party shall issue the authorizations required to ensure that the transfers can be made without undue delay, with no other expenses than the usual taxes and costs.

5. The guarantees referred to in this Article shall at least be equal to those granted to the investors of the most favoured nation.

Article 7. Subrogation

1. If one Contracting Party or any public institution of this Party pays compensation to its own investors pursuant to a guarantee against non commercial risks providing coverage for an investment, the other Contracting Party shall recognize that the former Contracting Party or the public institution concerned is subrogated into the rights of the investors.

2. As far as the transferred rights are concerned, the other Contracting Party shall be entitled to invoke against the insurer who is subrogated into the rights of the indemnified investors the obligations of the latter under law or contract.

Article 8. Applicable Regulations

If an issue relating to investments is covered both by this Agreement and by the national legislation of one Contracting Party or by international conventions, existing or to be subscribed to by the Parties in the future, the investors of the other Contracting Party shall be entitled to avail themselves of the provisions that are the most favourable to them.

Article 9. Specific Agreements

1. Investments made pursuant to a specific agreement concluded between one Contracting Party and investors of the other Party shall be covered by the provisions of this Agreement and by those of the specific agreement.

2. Each Contracting Party undertakes to ensure at all times that the commitments it has entered into vis-à-vis investors of the other Contracting Party shall be observed.

Article 10. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any investment dispute between an investor of one Contracting Party and the other Contracting Party shall be notified in writing by the first party to take action. The notification shall be accompanied by a sufficiently detailed memorandum.

For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party consultations will take place between the parties concerned.

2. If that dispute cannot be settled within a six months period from the notification, each Contracting Party hereby consents to submit that dispute, at the option of the investor, to an arbitral proceeding, in the following fora:

- An ad hoc arbitral tribunal set up according to the arbitration rules laid down by the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.);

- The International Centre for the Settlement of Investment Disputes (I.C.S.I.D.) set up by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965, when each State party to this Agreement has become a party to the said Convention. As long as this requirement is not met, each Contracting Party agrees that the dispute shall be submitted to arbitration pursuant to the Rules of the Additional Facility of the I.C.S.I.D.:

- The Arbitral Court of the International Chamber of Commerce in Paris;

- The Arbitration Institute of the Chamber of Commerce in Stockholm.

The choice of one dispute settlement mechanism will exclude any other, including the dispute settlement by competent jurisdiction of the State where the investment was made.

3. At any stage of the arbitration proceedings or of the execution of an arbitral award, none of the Contracting Parties involved in a dispute shall be entitled to raise as an objection the fact that the investor who is the opposing party in the dispute has received compensation totally or partly covering his losses pursuant to an insurance policy or to the guarantee provided for in Article 7 of this Agreement.

4. The arbitral tribunal shall decide on the basis of the national law, including the rules relating to conflicts of law, of the Contracting Party involved in the dispute in whose territory the investment has been made, as well as on the basis of the provisions of this Agreement, of the terms of the specific agreement which may have been entered into regarding the investment, and of the principles of international law.

5. The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the awards in accordance with its national legislation.

Article 11. Disputes between the Contracting Parties Relating to the Interpretation or Application of this Agreement

1. Any dispute relating to the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels.

2. In the absence of settlement by diplomatic way, the dispute shall be submitted to a Mixed Commission, compound by representants of the two Parties; to meet without undue delay at the request of the first party to take action.

3. If the joint commission cannot settle the dispute, the latter shall be submitted, at the request of either Contracting Party, to an arbitration court set up as follows for each individual case:

Each Contracting Party shall appoint one arbitrator within a period of two months from the date on which either Contracting Party has informed the other Party of its intention to submit the dispute to arbitration. Within a period of two months following their appointment, these two arbitrators shall appoint by mutual agreement a national of a third State as chairman of the arbitration court.

If these time limits have not been complied with, either Contracting Party shall request the President of the International Court of Justice to make the necessary appointments.

If the President of the International Court of Justice is a national of either Contracting Party or of a State with which one of the Contracting Parties has no diplomatic relations or if, for any other reason, he cannot exercise this function, the Vice-President of the International Court of Justice shall be requested to make the appointments. If the Vice-president is a national of any Contracting Party or he cannot exercise this function, the oldest member of the International Court of Justice, that is not a national of the one Contracting Party, should be invited to execute the necessary appointments.

4. The court thus constituted shall determine its own rules of procedure. Its decisions shall be taken by a majority of the votes; they shall be final and binding on the Contracting Parties.

5. Each Contracting Party shall bear the costs resulting from the appointment of its arbitrator. The expenses in connection with the appointment of the third arbitrator and the administrative costs of the court shall be borne equally by the Contracting Parties.

Article 12. Scope of Application

This Agreement shall also apply to investments made before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and regulations, but it shall not apply to investment disputes which arose before its entry into force.

Article 13. Environmental Measures

1. The Contracting Parties recognise the right of each one to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws. Each Contracting Party shall strive to ensure that its laws provide for high levels of environmental protection and shall strive to continue to improve those laws.

2. The Contracting Parties recognise that it is inappropriate to encourage investment by relaxing domestic environmental laws. Accordingly, each Contracting Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for the establishment, maintenance or expansion in its territory of an investment.

3. The Contracting Parties reaffirm their commitments under the international environmental agreements, which they have accepted. They shall strive to ensure that such commitments are fully recognised and implemented by their domestic laws.

4. The Contracting Parties recognise that co-operation between them provides enhanced opportunities to improve environmental protection standards. Upon request by either contracting Party, the other Contracting Party shall accept to hold expert consultations on any matter falling under the purpose of this article.

Article 14. Labor Measures

1. The Contracting Parties recognise the right of each one to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws. Each Contracting Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in paragraph 6 of Article 1 and shall strive to improve those standards in that light.paragraph 6 of Article 1 and shall strive to improve those standards in that light.

2. The Contracting Parties recognise that it is inappropriate to encourage investment by relaxing domestic labor laws. Accordingly, each Contracting Party Shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from such laws as an encouragement for the establishment, maintenance or expansion in it territory of an investment.

3. The Contracting Parties reaffirm their obligations as members of the International Labor Organisation and their commitments under the International Labor Organisation Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Contracting Parties shall strive to ensure that such labor principles and the internationally recognised labor rights set forth in paragraph 6 of Article 1 are recognised and protected by domestic law.

4. The Contracting Parties recognise that co-operation between them provides enhanced opportunities to improve labor standards. Upon request by either Contracting Party, the other Contracting Party shall accept to hold expert consultations on any matter falling under the purpose of this Article.

Article 15. Entry Into Force and Duration

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. The Agreement shall remain in force for a period of ten years.

Unless notice of termination is given by either Contracting Party at least six months before the expiry of its period of validity, this Agreement shall be tacitly extended each time for a further period of ten years, it being understood that each Contracting Party reserves the right to terminate the Agreement by notification given at least six months before the date of expiry of the current period of validity.

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

In witness whereof the undersigned,' duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at Brussels, on the 14th day of April 2005, in two original copies, each in the Dutch, French, Spanish and English languages, all texts being equally authentic. The text in the English language shall prevail in case of difference of interpretation.

FOR THE BELGIAN-LUXEMBOURG ECONOMIC UNION: For the Government of the Kingdom of Belgium:

For the Government of the Grand-Duchy of Luxembourg :

For the Walloon Government:

For the Flemish Government:

For the Government of the Region of Brussels-Capital:

FOR THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA :