AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF ECUADOR ON THE RECIPROCAL PROTECTION AND ENCOURAGEMENT OF INVESTMENTS

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

Desiring to develop economic cooperation between the two States and create favourable conditions for French investments in Ecuador and Ecuadorian investments in France;

Motivated by the desire to create favourable conditions to increase the investment;

Convinced that the encouragement and protection are specific to stimulate the transfer of capital and technology between the two countries in the interest of their economic development,

Have agreed as follows:

Article 1.

For the purposes of this Agreement:

1. The term "investment" means every asset directly or indirectly owned by nationals or companies of either Contracting Party, such as property rights and interests of all kinds, and particularly but not limited to:

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

b) Shares, stocks and other forms of participation, even minority ones, in companies incorporated in the territory of one of the Parties;

c) The obligations and rights, claims to any performance having economic value;

d) Intellectual property rights, commercial and industrial such as copyrights, patents, licences, trademarks, industrial designs or models, technical processes, trade names and goodwill;

e) Concessions granted by law or under contract, including concessions to search for, culture, extract or exploit natural resources.

It is understood that the assets shall be invested in accordance with the laws of the host State.

This Agreement shall apply to all investments made before or after the date of its entry into force.

Changes in the form of investment of assets shall not affect their classification as investment, provided they are not inconsistent with the laws of the host State.

2. The term "national", means natural persons having the nationality of one of the Contracting Parties.

3. The term "companies", means:

i) Any juridical person in the territory of one of the Contracting Parties in accordance with their legislation and having its registered office;

ii) Any legal person or controlled by nationals of either Contracting Parties, or by a juridical person with its head office in the territory of one of the Contracting Parties and in accordance with its law.

4. The term "returns" means all amounts yielded by an investment interests, such as profits, capital gains, royalties and fees for the provision of services, during a period of time.

Investment income and in case of reinvestment, income from their reinvestment shall enjoy the same protection as the investment.

Article 2.

The provisions of this Agreement cover investments of nationals or companies of France carried out in Ecuador and investments of nationals or companies of Ecuador carried out in France.

Article 3.

Each Contracting Party admits, encourage and facilitate within the framework of its laws and the provisions of this Agreement, all investments made by companies and nationals of the other Contracting Party.

Article 4.

Each Contracting Party shall ensure fair and equitable treatment in accordance with the principles of international law, to investments of nationals and companies of the other Contracting Party and to ensure the enjoyment of the right thus recognized is hampered in either law or in fact.

In particular, though not exclusively, shall be regarded as barriers of fact or law in fair and equitable treatment, any restriction to purchase and transport of raw materials and auxiliary materials, energy and fuel and means of production or operation of any kind, interference with the sale and transport of goods within the country and abroad, as well as any other measures having a similar effect.

Investments made by nationals or companies of either Contracting Party shall enjoy full protection and security by the other Contracting Party.

Neither of the Contracting Parties shall impair the management, maintenance, use, enjoyment or disposal of investments of nationals or companies of the other Contracting Party.

Article 5.

Each Contracting Party shall apply to nationals or companies of the other Contracting Party as regards their investments and activities associated with such investments, the treatment accorded to its own nationals or companies or the treatment accorded to nationals or companies of the most favoured nation, whichever is more favourable. In this connection, the nationals of one Contracting Party who are authorised to work in the other Contracting Party shall be entitled to the facilities necessary for the performance of their professional activities.

This treatment does not extend to the privileges which either Contracting Party accords to nationals or companies of any third State by virtue of its association or participation in a free trade area, customs union, Common Market or any other form of regional economic organization. This provision shall also apply in the case of participation or association with any other forms of regional economic organization referred to above, which may accede either Contracting Party, after the entry into force of this Agreement.

The Contracting Parties shall consider sympathetically, within the framework of their national legislation, applications for entry and residence permits, labour and movement of nationals of one Contracting Party in respect of an investment in the territory or maritime zones of the other Contracting Party.

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

Article 6.

1. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is, directly or indirectly dispossessing nationals and companies of the other party (hereinafter referred to as "expropriation") of their investments, except for a public purpose and provided that such measures are not discriminatory nor contrary to a specific commitment undertaken pursuant to the laws of the Contracting Party between those nationals or companies and the host State. The legality will be verifiable by judicial proceedings.

The expropriation of measures that could be taken shall be subject to the payment of fair and adequate compensation amounting to the real value of the investment and the concerned is assessed in relation to a normal economic situation and prior to any threat of dispossession.

Such compensation, its amount and has no later than the date of expropriation. The compensation shall be paid without delay, and effectively realisable freely transferable. It produces until the date of payment, shall include interest at the market rate of interest.

2. Nationals or companies of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or national revolt in the other Contracting Party benefit, on the part of this latter, from a treatment no less favourable than that accorded to its own investors or to those of the most favoured nation.

In the event of a declaration of a national state of emergency, these companies or nationals receive fair and adequate compensation for the loss allegedly suffered as a result of the events referred to above.

Article 7.

1. Each Contracting Party shall accord to nationals or companies of the other Contracting Party the free transfer of:

a) Profits, dividends, interests and other income;

b) Royalties arising out of intangible rights referred to in paragraph 1 (d) and (e) of Article 1;

c) Payments made for the reimbursement of loans contracted regularly;

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

e) The amounts paid to the measures of expropriation or for losses referred to in Article 6 (1) and (2) above.

Transfers shall be made without delay at the normal rate of exchange applicable on the date of transfer.

2. The nationals of either Contracting Party who have been authorised to work in the other Contracting Party in respect of an approved investment shall also be authorised to transfer their country of origin in a proportion appropriate remuneration.

Article 8.

If the legislation of either Contracting Party provides a guarantee for investments abroad, it may be granted within the framework of a case-by-case review, to investments made by companies or nationals of that Party in the other Contracting Party.

Investments of nationals and companies of one Contracting Party in the other party may request the Security referred to in the preceding paragraph only if they have previously obtained the approval of the latter Contracting Party.

Article 9.

Each Contracting Party consents to hereby submit to the International Centre for Settlement of Investment Disputes (hereinafter referred to as the Centre) for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965 (if both parties are members), any legal dispute arising between that Contracting Party and a national or company of the other Contracting Party in connection with an investment of the latter in the former.

A corporation incorporated under the laws in force in either of the Contracting Parties and which the majority of shares, before a dispute arises, was to nationals or companies of the other Contracting Party, in accordance with article 25 (2) (b) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party.

If such a dispute arises and if no agreement is reached between the parties within a period of six months, through judicial remedies at the national level or otherwise, even if the national or company concerned consents in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention, either party may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre in accordance with the provisions of articles 28 and 36 of the Convention. In the event of disagreement as to which of the two methods, conciliation or arbitration is the more appropriate method, the national or company affected shall have the right to choose.

The Contracting Party which is a party to the dispute, can raise an objection at any stage of the proceedings or the execution of an arbitral judgement of the fact that the national or company which is the other party to the dispute has received pursuant to an indemnity, compensation for all or part of its losses.

Article 10.

If one Contracting Party or an agency designated by it by virtue of a guarantee given in respect of an investment covered by this Agreement shall make payments to one of its nationals or companies, its itself or the agency is thereby entered into the rights and claims of the national or company.

The provisions of the preceding paragraph shall not preclude the continuation of amicable negotiations which were initiated.

Article 11.

Investments covered by a specific commitment undertaken pursuant to the laws of either Contracting Party in respect of nationals or companies of the other Contracting Party shall be governed by the terms of that commitment to the extent that it is more favourable provisions than those laid down in this Agreement.

Article 12.

1. Disputes concerning the interpretation or application of this agreement should, if possible, be settled through direct negotiations between the Contracting Parties.

2. If, within one year from the date on which it was raised by either Contracting Party, the dispute is not settled, it shall be submitted, at the request of either Contracting Party to an arbitral tribunal. Failure to submit the dispute to arbitration shall not exclude the continuation of direct negotiations between the two Contracting Parties with a view to reaching an amicable settlement.

3. The Tribunal shall be constituted for each individual case in the following way:

Each Contracting Party shall appoint one member of the Tribunal within two months from the date one Contracting Party has informed the other Contracting Party of its intention to submit the dispute to arbitration. The two Members shall designate by common agreement, a national of a third State who shall be appointed Chairman in agreement with the two Contracting Parties. The Chairman shall be appointed within three months from the date of appointment of the last of the two members.

4. If the periods specified in paragraph 3 above have not been made, either Contracting Party, in the absence of any other agreement, invite the Secretary General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the Under-Secretary-General, the oldest and who is not a national of either Contracting Party, shall make the necessary appointments.

5. The tribunal shall determine its own rules of procedure. The tribunal may interpret the award at the request of either Contracting Party. Unless the Tribunal provides otherwise, in light of the particular circumstances, the expenses of the arbitral proceedings, including the business of the arbitrators shall be shared equally between the parties.

Article 13.

Each Contracting Party shall notify in writing to the other of the completion of the constitutional procedures required for the entry into force of this Agreement. This Agreement shall enter into force thirty days after the date of receipt of the last notification.

Article 14.

The duration of this Agreement is to ten years from the date of its entry into force. On expiry of this period, the Agreement shall remain in force indefinitely unless it is denounced at the request of either party, with notice through diplomatic channels of at least one year.

On expiry of the period of validity of the present Agreement investments over which it was in force will continue to benefit from the protection of its provisions for a further period of fifteen years.

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

For the Government of the French Republic:

Edmond Alphandery

For the Government of the Republic of Ecuador:

Diego Paredes