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

The Government of the Republic of Paraguay and the Government of the Republic of Bolivia, 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 of 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 similar rights;

(b) Stock, traded securities, certificates or shares in companies or any other forms of equity in companies 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) Intellectual property rights; copyrights and associated rights, industrial property rights such as distinctive marks, patents, industrial designs and drawings and rights to plan varieties;

(e) Economic concessions conferred by law or by contract by the Contracting Parties for the exercise of an economic activity, including concessions to prospect 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:

(a) Any natural person who is a national of either Contracting Party pursuant to its legislation. The provisions of this Agreement shall not apply to investments made by natural persons who are nationals of one Contracting Party in the territory of the other Contracting Party if, at the time of the investment, those persons are permanently residing or domiciled 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 laws and regulations of a Contracting Party and having its head office in the territory of that 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 paragraphs 2 (a) and (b).

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 the land area over which each Contracting Party exercises sovereignty or jurisdiction in accordance with international law and its national constitution.

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 investments in accordance with its legislation.

When a Contracting Party has admitted an investment into its territory, it shall grant the necessary permits in connection with such an investment, including the execution of licensing agreements and contracts for technical, commercial or administrative assistance.

Each Contracting Party shall, when necessary, facilitate the issuance of the necessary authorizations for the activities of consultants or other qualified persons of foreign nationality in accordance with the relevant legislation and provisions concerning their entry and stay, including the necessary authorizations for the entry and stay of their family members.

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 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 to investments made by its own investors or to investments made by investors of third States.

3. Most-favoured-nation treatment shall not include privileges granted by either 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. 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. Transfers

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall guarantee those investors, in accordance with the relevant provisions of international law, 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 of the sale of 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 the investor in accordance with article 8 of this Agreement; and

(h) Supplementary reinvestments.

2. The aforementioned transfers shall be made without delay in freely convertible currency at the exchange rate applicable on the date of the transfer, in accordance with the current legislation of the Contracting Party in whose territory the investment was made.

3. Without prejudice to the provisions of paragraphs I 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 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) Guarantees of compliance with judicial orders or decisions;

(d) Failure to comply with labour obligations;

(e) Social rights; and

(f) Failure to comply with tax obligations.

Article 6. Expropiacion and Compensation

1. Neither Contracting Party shall take direct expropriation or nationalization measures or any other measures of a similar nature or having a similar effect 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 such measures are non-discriminatory and make provision for the payment of fair compensation, in accordance with the legislation in force and with due process of law.

2. Compensation must correspond to the market value of the expropriated investment immediately prior to the expropriation or immediately before the expropriation became public knowledge. Compensation must be paid in advance in freely convertible currency.

3. The investor concerned shall be entitled to have fair compensation determined by a decision of the competent judicial authority of the expropriating State.

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, revolution, a state of national emergency, rebellion, insurrection or riot in the territory of the other Contracting Party shall be accorded treatment, as regards restitution, indemnification, compensation or other redress, no less favourable than that accorded to its own investors.

Article 8. Subrogation

If 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 this case, the parties shall have the choice between:

(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;

(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 paragraphs 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 by negotiation through the diplomatic channel.

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 contains 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 (30) days from the date of the last written notification in 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 ten (10) years.

In the event that either Contracting Party decides to terminate this Agreement, it must notify the other Contracting Party of its decision in writing through the diplomatic channel at least twelve (12) months prior to its current expiry date. Otherwise, this Agreement shall be renewed for an indefinite period. 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 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 Asunción on 4 May 2001, in the Spanish language, both texts being equally authentic.

For the Government of the Republic of Paraguay,

José Antonio MORENO RUFFINELLI,

Foreign Minister.

For the Government of the Republic of Bolivia,

Javier Murillo de la Rocha,

Minister of Foreign Affairs and Culture.