[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA AND THE GOVERNMENT OF THE REPUBLIC OF CHILE ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

PREAMBLE

The Republic of Venezuela and the Republic of Chile, hereinafter referred to as "the Contracting Parties";

Desiring to intensify their economic cooperation for the mutual benefit of both countries;

Seeking to create and maintain favourable conditions for investments made by investors of each Party in the territory of the other Party which involve transfers of capital;

Recognizing the need to promote and protect foreign investments in order to favour the economic prosperity of both States;

Have agreed as follows:

Article 1

DEFINITIONS

For the purposes of this Agreement:

1. The term "investor" means, for each of the Contracting Parties, one of the following persons that has invested in the territory of the other Contracting Party pursuant to this Agreement:

(*a*) A natural person who is considered a national of one Contracting Party under the laws of that Party;

(*b*) A juridical person, including companies, corporations, commercial associations or any other entity which is incorporated or otherwise duly organized under the laws of that Contracting Party, having its headquarters and actual economic activities in the territory of that Contracting Party;

(*c*) A juridical person, incorporated under the laws of any country, which is effectively controlled by investors listed under (*a*) and (*b*) above.

2. The term "investments" includes every type of asset, and in particular:

(*a*) Movable and immovable property and any other rights *in rem*, such as easements, mortgages, usufructs and pledges;

(*b*) Shares and other forms of participation in companies;

(*c*) Debt-claims, securities and rights arising from every type of contribution;

[1] Came into force on 25 May 1995 by notification, in accordance with article 10.

(*d*) Copyrights, industrial property rights (such as patents, industrial designs or models, trade marks, service marks, trade names or appellations of origin), know-how and goodwill;

(*e*) Rights granted under public law, including concessions to prospect for, extract and exploit natural resources, and any other right conferred by law or by lawful administrative decision.

3. The term "territory" includes the exclusive economic zone and the continental shelf, to the extent to which a Contracting Party exercises sovereign rights or jurisdiction in those areas under international law.

Article 2

SCOPE OF THE AGREEMENT

This Agreement shall apply to investments made before or after its entry into force in the territory of one Contracting Party, in accordance with its laws and regulations, by investors of the other Contracting Party. It shall in no case apply to disagreements or disputes concerning events which occurred before its entry into force.

Article 3

PROMOTION AND ACCEPTANCE

1. Each Contracting Party shall, insofar as possible, promote investments made in its territory by investors of the other Contracting Party and shall permit such investments in accordance with its laws and regulations.

2. The Contracting Party which has permitted an investment in its territory shall, in accordance with its laws and regulations, facilitate the granting of the permits required in connection with that investment, including those required for the performance of contracts relating to manufacturing licences and to technical, commercial or administrative assistance, and for the activities of consultants or other qualified persons of foreign nationality.

Article 4

PROTECTION AND TREATMENT

1. Each Contracting Party shall protect investments made in its territory in accordance with its laws and regulations by investors of the other Contracting Party and shall not impede, by arbitrary or discriminatory measures, the management, maintenance, use, enjoyment, expansion, sale or, where appropriate, liquidation of such investments.

2. Each Contracting Party shall ensure fair and equitable treatment in its territory, in accordance with international law, of investments by investors of the other Contracting Party. This treatment shall be no less favourable than that accorded by each Contracting Party to investments made in its territory by its own investors or that accorded by each Contracting Party to investments made in its territory by the most favoured nation, whichever is more favourable.

3. If a Contracting Party extends special advantages to investors of a third State by virtue of an agreement establishing a free-trade area, customs union, common market or similar institution, or by virtue of an agreement to avoid double taxation, it shall not be obliged to extend the same advantages to investors of the other Contracting Party.

Article 5

FREE TRANSFER

1. Each Contracting Party shall ensure that investors of the other Contracting Party are able to transfer, without delay and in freely convertible currency, payments relating to an investment, in particular:

(*a*) Interest, dividends, profits and other income;

(*b*) Loan repayments;

(*c*) Amounts to be used for covering costs relating to the management of investments;

(*d*) Royalties and other payments arising from the rights listed in article 1, paragraph 2, of this Agreement;

(*e*) Additional funds necessary for the maintenance or development of an investment;

(*f*) Proceeds from the total or partial sale or liquidation of an investment, including any value added;

(*g*) Compensation as provided for in article 6.

2. If there are any formalities for transfers, they shall be considered to have been completed without delay if they are carried out within the period normally required for their completion. That period, which in no case is to exceed two months, shall commence on the date of submission of the relevant application, duly completed.

Article 6

EXPROPRIATION AND COMPENSATION

1. Neither Contracting Party shall take any measures to expropriate or nationalize investments of investors of the other Contracting Party or take measures having an effect equivalent to nationalization or expropriation, unless such measures are not discriminatory, are in compliance with the law, and give rise to effective and sufficient compensation. The amount of such compensation, including interest if appropriate, shall be paid to the claimant without delay in freely convertible currency. The legality of the expropriation, nationalization or equivalent measure and the amount of the compensation shall be subject to review in an ordinary judicial proceeding.

2. Investors of one Contracting Party wbo suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall receive from the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that which

that Contracting Party accords to its own nationals or to investors of any third State, whichever is more favourable to the investors concerned.

Article 7

SUBROGATION

Where a Contracting Party has given some form of financial guarantee in respect of non-commercial risks connected with an investment made by an investor of that Contracting Party in the territory of the other Contracting Party, the latter shall recoguize the subrogation of the first Contracting Party to the rights of the investor, provided that the first Contracting Party has made a payment under that guarantee.

Article 8

DIPUSTES BETWEEN ONE CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

1. Should a dispute arise between one Contracting Party and an investor of the other Contracting Party concerning an investment under this Agreement, the investor and the Contracting Party concerned shall hold consultations in order to arrive at an amicable solution.

2. If no amicable solution is arrived at, the investor may submit the dispute to the national jurisdiction of the Contracting Party in the territory of which the investment was made, or to international arbitration. In the latter case the dispute shall be submitted to 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 (Washington, 18 March 1965).[1]

3. Once the investor has submitted the dispute to the competent court of the Contracting Party in the territory of which the investment was made or to international arbitration, the choice of one or other means of settlement shall be final.

4. The Contracting Parties consent to the submission to international arbitration, as referred to in paragraph 2 above, of disputes concerning investments under this Agreement.

5. The Contracting Party involved in the dispute may not at any stage in the proceedings argue in its own defence that the investor has received full or partial compensation through an insurance contract for the damage or loss suffered.

6. Neither of the Contracting Parties shall seek through the diplomatic channel the settlement of a dispute submitted to international arbitration, unless the other Contracting Party fails to abide by or comply with the award of the arbitral tribunal.

7. The arbitral tribunal shall base its decision on the provisions of this Agreement and other relevant agreements between the Contracting Parties, the terms of any special agreements relating to the investment, the law of the Contracting Party involved in the dispute including rules relating to the conflict of laws, and such principles and rules of international law as may be applicable.

[1] United Nations, *Treaty Series*, vol. 575, p. 159.

8. The arbitral award shall be limited to determining whether there is a breach by the Contracting Party of its obligations under this Agreement, whether such breach has caused harm to the investor concerned and, if such is the case, the amount of compensation.

Article 9

DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Any dispute between the Contracting Parties concerning the interpretation or application of the provisions of this Agreement shall be settled through the diplomatic channel.

2. If the Contracting Parties do not arrive at an agreement within the twelve months following the commencement of a dispute, the latter shall be submitted, at the request of either Contracting Party, to an arbitral tribunal composed of three members. Each Contracting Party shall appoint one arbitrator and the two arbitrators thus appointed shall appoint the presiding arbitrator of the tribunal, who shall be a national of a third State.

3. If one of the Contracting Parties fails to appoint its arbitrator and has not responded to an invitation from the other Contracting Party to do so within two months, the arbitrator shall be appointed, at the latter's request, by the President of the International Court of Justice.

4. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the presiding arbitrator, the latter shall be appointed, at the request of either Contracting Party, by the President of the International Court of Justice.

5. If, in the cases provided for in paragraphs 3 and 4 of this article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is likewise prevented or is a national of either Contracting Party, the appointment shall be made by the most senior member of the Court who is not a national of either Contracting Party.

6. Unless otherwise agreed by the Contracting Parties, the tribunal shall determine its own procedure. Each Contracting Party shall bear the cost of its own arbitrator and of its representatives in the arbitral proceedings. The cost of the presiding arbitrator and the remaining costs shall be borne equally by the Contracting Parties, unless they decide otherwise.

7. The decisions of the tribunal shall be final and binding upon the Contracting Parties.

Article 10

FINAL PROVISIONS

1. This Agreement shall enter into force on the day on which the two States notify each other that they have fulfilled the constitutional requirements for the adoption and implementation of international agreements. It shall remain valid for ten years and thereafter shall be extended indefinitely. After ten years have elapsed,

the Agreement may be terminated by either Contracting Party at any time, with twelve months' advance notice.

2. If official notice of termination of this Agreement is given, the provisions of articles 1 to 9 shall continue to apply for a period of fifteen years to investments made before the date of such notice.

3. This Agreement shall apply regardless of whether or not diplomatic or consular relations exist between the Contracting Parties.

DONE at Santiago, Chile, on 2 April 1993, in duplicate in the Spanish language, both texts being equally authentic.

For the Government
of the Republic of Venezuela:

FERNANDO OCHOA ANTICH
Minister for Foreign Affairs

Ambassador MIGUEL RODRÍGUEZ MENDOZA
President of the Institute
of Foreign Trade

For the Government
of the Republic of Chile:

ENRIQUE SILVA CIMMA
Minister for Foreign Affairs

JORGE MARSHALL RIVERA
Minister of Economic Affairs,
Development and Reconstruction

PROTOCOL

On signing the Agreement between the Republic of Venezuela and the Republic of Chile on the reciprocal promotion and protection of investments, the Contracting Parties also adopted the following provisions, which shall be considered an integral part of the Agreement:

Re article 5

(*a*) Notwithstanding the provisions of article 5, the Contracting Parties retain the right to permit the repatriation of capital within the established periods, as provided for in their respective legislation, which shall in no case exceed one year from the date on which the investment was made by the investor.

(*b*) While external debt conversion programmes remain in force, the Contracting Parties shall apply the rules concerning repatriation periods contained in their respective legislation to investments made within the framework of those programmes.

Re article 8

Until such time as the Republic of Venezuela accedes to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 1965, any disputes which may arise shall be submitted for arbitration to the International Centre for Settlement of Investment Disputes under the rules governing the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings, by the Secretariat of the Centre. Should that facility be unavailable for any reason, the dispute will be submitted to an *ad hoc* arbitration tribunal established in accordance with the arbitration rules of the United Nations Commission on International Trade Law.

DONE at Santiago, Chile, on 2 April 1993, in duplicate in the Spanish language, both texts being equally authentic.

For the Government
of the Republic of Venezuela:

FERNANDO OCHOA ANTICH
Minister for Foreign Affairs

Ambassador MIGUEL RODRÍGUEZ MENDOZA
President of the Institute
of Foreign Trade

For the Government
of the Republic of Chile:

ENRIQUE SILVA CIMMA
Minister for Foreign Affairs

JORGE MARSHALL RIVERA
Minister of Economic Affairs,
Development and Reconstruction