[TRANSLATION — TRADUCTION]

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

The Republic of Paraguay and the Portuguese Republic, hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic cooperation between the two States,

Wishing to create and maintain favourable conditions for investments by investors of either Contracting Party in the territory of the other Contracting Party on a basis of equality and mutual benefit,

Recognizing that the promotion and reciprocal protection of investments under this Agreement will help to stimulate private initiative and enhance the welfare of both peoples,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investments" shall include all kinds of assets and rights relating to economic activities undertaken by investors of either Contracting Party in the territory of the other Contracting Party within the meaning of the applicable legislation, including in particular, although not exclusively:

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

(b) Stocks, shares or other interests representing the capital of 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 or any other rights having an economic value, provided that they are directly linked to a specific investment;

(d) Intellectual property rights, such as copyrights, patents, utility models and industrial designs, trademarks, commercial trade names, technical processes, know-how and goodwill;

(e) Acquisition and use of concessions granted by law, including concessions to prospect for, investigate and exploit natural resources;

(f) Property that is made available to a lessee within the meaning of and in accordance with relevant legislation and the respective lease agreements in the territory of a Contracting Party in accordance with its laws and regulations.

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 laws and regulations of the Contracting Party in whose territory the investment has been made.

2. The term "returns" shall mean the amounts yielded or generated by or in connection with investments made during a specific period including, in particular, profits, dividends, interest, royalties, payments for technical or managerial assistance and other income related to investments.

3. The term "investors" shall mean:

(a) Natural persons who are nationals of either Contracting Party within the meaning of the applicable legislation; and

(b) Legal persons, including enterprises, commercial companies and other companies or associations that have their head office in the territory of one of the Contracting Parties and are constituted and operate in accordance with the laws of that Contracting Party.

4. The term "territory" shall comprise the territory of each Contracting Party as defined in its legislation, including the territorial sea and any other area over which the Contracting Party in question exercises sovereignty, sovereign rights or jurisdiction in accordance with international law.

Article 2. Scope of application

The present Agreement shall also apply to investments made prior to its entry into force by investors of one of the Contracting Parties in the territory of the other Contracting Party in accordance with its legal provisions. It shall not, however, be applicable to any disputes, claims or disagreements which arose prior to its entry into force.

Article 3. Promotion and protection of investments

1. Each Contracting Party shall, as far as possible, promote and encourage investments made in its territory by investors of the other Contracting Party and admit such investments in accordance with its applicable laws and regulations. In all cases, investments shall be accorded fair and equitable treatment.

2. Investments made by investors of either Contracting Party in the territory of the other Contracting Party in accordance with the legal provisions in force and applicable in that territory shall enjoy full protection and security in the territory of the other Contracting Party.

3. Neither Contracting Party shall subject the management, maintenance, use, usufruct or disposal of investments made in its territory by investors of the other Contracting Party to unjustified, arbitrary or discriminatory measures.

Article 4. National and most-favoured-nation treatment

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party and the related returns shall be accorded treatment which is fair and equitable and no less favourable than that accorded by the latter Contracting Party to its own investors or to investors of third States.

2. Each Contracting Party shall, in respect of the management, maintenance, use, usufruct or disposal of the investments made in its territory, accord investors of the other Con-

tracting Party treatment which is fair and equitable and no less favourable than that accorded to its own investors or to investors of third States.

3. The provisions of this article shall not imply the concession by a Contracting Party to investors of the other Contracting Party of the preferential or privileged treatment accorded by virtue of:

(a) Membership in free trade areas, customs unions, existing or future common markets or other similar international agreements, including other forms of economic cooperation to which either Contracting Party has acceded or will accede; and

(b) Bilateral and multilateral agreements, regional or otherwise, concerning taxation.

Article 5. Expropriation

Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be subject to expropriation, nationalization or any other equivalent measures (hereinafter referred to as expropriation), unless such measures are taken for reasons of public interest, including social interest, in accordance with the law, on a non-discriminatory basis and against prompt payment of fair and effective compensation. Such compensation shall be equivalent to the market value of the investment on the date immediately prior to the expropriation or immediately before the expropriation became public knowledge. In the event of an unjustified delay in the payment of compensation, the latter shall include interest payable at the regular commercial rate.

Article 6. 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 or other events regarded as equivalent under international law shall be accorded treatment by the latter Contracting Party, as regards restitution, indemnification or other relevant measures, that is no less favourable than that accorded to its own investors or investors of third States, whichever is more favourable. The resulting compensation must be freely transferable and paid without delay in convertible currency.

Article 7. Transfers

1. Each Contracting Party shall, in accordance with its applicable legislation, guarantee to investors of the other Contracting Party the free transfer of amounts related to the investments, in particular:

(a) The capital and additional amounts required for the maintenance or expansion of the investments;

(b) The returns as defined in article 1, paragraph 2, of this Agreement;

(c) The amounts required for the servicing, reimbursement or repayment of loans;

(d) The proceeds from the sale or partial or total liquidation of the investments;

(e) Compensation or other payments contemplated in articles 5 and 6 of this Agreement;

(f) Any preliminary payment that may have been made on behalf of the investor in accordance with article 8 of this Agreement.

2. The transfers mentioned in this article shall be put through without delay in convertible currency on the basis of the exchange rate applicable on the date of the transfer, in accordance with the current foreign exchange regulations of the Contracting Party in whose territory the investment was made.

3. For the purposes of this article, a transfer shall be considered to have been made "without delay" if it has been put through within the period of time normally required for the completion of the necessary formalities, which may in no case exceed sixty (60) days from the date on which the transfer request was submitted.

4. Without prejudice to the provisions of the preceding paragraphs of this article, the Contracting Parties shall ensure compliance with legal procedures of a civil nature, including labour, trade, administrative and criminal law, through the application of their respective legislation in an equitable and non-discriminatory manner and in good faith.

Article 8. Subrogation

Where one of the Contracting Parties or an agency designated by it has made payments to one of its investors by virtue of a guarantee or insurance against non-commercial risks in respect of an investment made in the territory of the other Contracting Party, the first Contracting Party shall be subrogated in consequence to the rights and actions of that investor as recognized under the legislation of the Contracting Party in whose territory the investment was made and shall be entitled to exercise them under the same terms and conditions as the original owner.

Article 9. Disputes between the Contracting Parties

1. Any disputes which may arise between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by means of negotiation through the diplomatic channel.

2. If the Contracting Parties cannot reach an agreement within six (6) months after the beginning of the negotiations, the dispute shall be submitted to an arbitral tribunal upon request of either Contracting Party.

3. The arbitral tribunal shall be constituted ad hoc, as follows: each Contracting Party shall appoint one member, and these two members shall propose a national of a third State to serve as chairman, who shall be appointed by the two Contracting Parties. The members shall be appointed within two (2) months and the chairman within three (3) months from the date on which one of the Contracting Parties has notified the other of its intention to submit the dispute to an arbitral tribunal.

4. If the time limits stipulated in paragraph 3 of this article have not been met, either Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments. If the President is pre-

vented from doing so or is a national of either Contracting Party, the Vice-President shall make the appointments.

5. If the latter is also prevented from making the appointments or is a national of either Contracting Party, the appointments shall be made by the member of the Court next in seniority, provided that he or she is not a national of either Contracting Party.

6. The chairman of the arbitral tribunal must be a national of a State with which both Contracting Parties have diplomatic relations.

7. The arbitral tribunal shall reach its decisions by a majority of votes. Its decisions shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the cost of its arbitrator and its representation in the proceedings before the arbitral tribunal. The cost of the chairman and all remaining costs shall be borne in equal parts by the Contracting Parties. The Contracting Parties may make alternative arrangements in advance concerning costs. The arbitral tribunal shall define its own rules of procedure.

Article 10. Disputes between a Contracting Party and an investor of the other Contracting Party

1. Any disputes which arise between an investor of one Contracting Party and the other Contracting Party concerning an investment made by the said investor in the territory of the latter Contracting Party shall be settled amicably by negotiation between the parties to the dispute.

2. If the dispute cannot be settled in accordance with the provisions of paragraph 1 of this article within six (6) months from the date on which one of the parties to the dispute has requested it, either of the parties may submit the dispute to:

(a) The competent courts of the Contracting Party in whose territory the investment has been made;

(b) The International Centre for Settlement of Investment Disputes (ICSID), for conciliation or arbitration pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, concluded at Washington, D.C. on 18 March 1965;

(c) An ad hoc tribunal constituted in accordance with the 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) and (c) above, the choice shall be definitive.

4. Neither Contracting Party may resort to the diplomatic channel for the settlement of any issues relating to the arbitration, unless the proceedings have already been concluded and the Contracting Party has not complied with or implemented the decision.

5. The decision shall be binding on both Contracting Parties and shall not be subject to appeal except as provided for in the aforementioned conventions. The decision shall be enforceable in accordance with the domestic legislation of the Contracting Party in whose territory the investment in question was made.

Article 11. Applicability of other rules

1. If, aside from this Agreement, the provisions of the domestic legislation of either Contracting Party or obligations arising from existing or future international law governing both Contracting Parties provide for a general or specific regime granting more favourable treatment to investments made by investors of the other Contracting Party than that provided for in this Agreement, the more favourable regime shall prevail.

2. Each Contracting Party must fulfil its commitments concerning investments made in its territory by investors of the other Contracting Party.

Article 12. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold meetings on any matter relating to the application of this Agreement. Such consultations shall be held at the suggestion of either Contracting Party, which may, if necessary, propose holding a meeting at a place and time to be agreed through the diplomatic channel.

Article 13. Entry into force and duration

1. This Agreement shall enter into force thirty (30) days from the date of the last notification in which the Contracting Parties have notified each other in writing that they have fulfilled the domestic constitutional or legal requirements for its approval in their respective countries and shall remain in force for a period of ten (10) years.

2. If either Contracting Party decides to terminate this Agreement, it must notify the other Contracting Party of its decision in writing at least twelve (12) months prior to its current expiry date. Otherwise, this Agreement shall be renewed for an indefinite period and, at that stage, the Contracting Parties may notify one another of their decision to terminate it. The Agreement shall be terminated twelve (12) months after such written notification.

3. With respect to investments made before the date of termination of this Agreement, articles 1 to 12 thereof shall remain in force for a period of ten (10) years from that date.

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

Done at Lisbon on 25 November 1999, in two originals in the Spanish and Portuguese languages, both texts being equally authentic.

For the Republic of Paraguay:

JOSÉ FELIX FERNÁNDEZ ESTIGARRIBIA
Minister for Foreign Affairs

For the Portuguese Republic:

JAIME GAMA
Minister for Foreign Affairs

PROTOCOL

Upon signature of the Agreement between the Republic of Paraguay and the Portuguese Republic on the Promotion and Reciprocal Protection of Investments, the undersigned plenipotentiaries also agreed on the following provisions, which form an integral part of the Agreement:

1. With reference to article 3 of the Agreement:

The provisions of paragraph 1 shall apply when investors of either Contracting Party established in the territory of the other Contracting Party wish to expand their activities in sectors subject to specific regulations; or wish to make investments in other sectors which are also subject to specific regulations.

Such investments shall be made in accordance with the rules on admission of investments within the meaning of article 3, paragraph 1 of this Agreement.

2. With reference to article 4 of the Agreement:

The Contracting Parties consider that the provisions of article 4 of this Agreement shall not prejudice the right of either Contracting Party to apply the provisions of its tax law.

Done in duplicate at Lisbon on 25 November 1999, in two originals in the Spanish and Portuguese languages, both texts being equally authentic.

For the Republic of Paraguay:

JOSÉ FELIX FERNÁNDEZ ESTIGARRIBIA
Minister for Foreign Affairs

For the Portuguese Republic:

JAIME GAMA
Minister for Foreign Affairs