

[ ENGLISH TEXT — TEXTE ANGLAIS ]

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FINLAND AND THE GOVERNMENT OF THE REPUBLIC OF ECUADOR ON THE PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair, equitable and favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognising that the promotion and protection of investments on the basis of this Agreement will contribute to the stimulation of individual economic initiative and will be conducive to increasing the prosperity of both Contracting Parties,

Have agreed as follows:

*Article 1. Definitions*

For the purpose of this Agreement:

1. The term "Investment" means every kind of asset including, in particular, though not exclusively:

- (a) movable and immovable property or any property rights such as mortgages, pledges, leases, usufruct and similar rights;
- (b) shares, stocks, debentures or other form of participation in a company;
- (c) titles or claims to money or rights to performance having an economic value,
- (d) intellectual or industrial property rights, such as patents, copyrights, technical processes, trade marks, industrial designs, business names, know how and goodwill;
- (e) concessions conferred by law, by administrative act or under a contract by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

Any alteration of the form in which assets are invested or reinvested does not affect their character as investments.

2. The term "Returns" means the amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interest, royalties, capital gains or any payments in kind related to an investment. Reinvested returns shall enjoy the same treatment as the original investment.

3. The term "Investor" means:

- (a) any natural person who is a national of either Contracting Party in accordance with its laws; or

(b) any legal person such as company, corporation, firm, business association, institution or other entity constituted in accordance with the laws and regulations of the Contracting Party and having its seat within the jurisdiction of that Contracting Party.

4. The term "Territory" means in respect of Finland and Ecuador the territory which constitutes the Republic of Finland and the Republic of Ecuador respectively.

*Article 2. Promotion and Protection of Investments*

1. Each Contracting Party shall encourage and create favourable conditions in its territory for investments by investors of the other Contracting Party and in exercise of powers conferred by its laws shall admit such investments.

2. Each Contracting Party shall at all times accord in its territory to investments of investors of the other Contracting Party fair and equitable treatment and full and constant protection and security.

3. Each Contracting Party shall not impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment, acquisition or disposal of investments in its territory of investors of the other Contracting Party.

4. Each Contracting Party shall not impose mandatory measures on investments by investors of the other Contracting Party concerning purchase of materials, means of production, operation, transport, marketing of its products or similar orders having unreasonable or discriminatory effects.

5. Each Contracting Party shall, within the framework of its legislation, give a sympathetic consideration to applications for necessary permits in connection with the investments in its territory, including authorisations for engaging top managerial and technical personnel of their choice, regardless of nationality.

6. Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which may affect the investments of investors of one Contracting Party in the territory of the other Contracting Party.

*Article 3. Treatment of Investments*

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, or returns related thereto, shall be accorded treatment which is not less favourable than the host Party accords to the investments and returns made by its own investors or by investors of the most favoured nation, whichever is the more favourable to the investor.

2. Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which is not less favourable than the latter Contracting Party accords its own investors or to investors of the most favoured nation, whichever is the more favourable to the investor.

*Article 4. Exceptions*

The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:

- (a) any existing or future free trade area, customs union or common market to which one of the Contracting Parties is or may become a party,
- (b) any international agreement relating wholly or mainly to taxation, or
- (c) any multilateral convention or treaty related to investments, of which one of the Contracting Parties is or may become a party.

*Article 5. Expropriation*

1. Neither Contracting Party shall take any measures of nationalisation or expropriation or any other measure having the same effect against investments in its territory belonging to investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law.

2. These measures shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. The amount of such compensation shall correspond to the fair market value of the expropriated investment immediately before the expropriation took place or before the imminent expropriation became public knowledge. Such fair market value shall be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency at that moment. The compensation shall bear interest at the commercial market rate in force from the date of the expropriation until the date of actual payment.

3. The investor whose investments are expropriated, shall have the right to prompt review by a judicial or other competent authority of that Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

*Article 6. Compensation for Losses*

1. Investors of one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, state of national emergency, revolt, insurrection or mutiny

shall be accorded treatment as regards restitution, indemnification, compensation or other settlement, no less favourable than that accorded to its own investors or to investors of the most favoured nation, whichever is more favourable to the investor.

2. Without prejudice to paragraph (1) of this Article, if an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Contracting Party resulting from:

- (a) requisitioning of its investment or a part thereof by the latter's authorities, or

(b) destruction of its investment or a part thereof by the latter's authorities, which was not required by the necessity of the situation, shall be accorded prompt, adequate and effective restitution or compensation.

*Article 7. Free Transfer*

1. Each Contracting Party shall ensure to investors of the other Contracting Party the free transfer, into and out of its territory, of their investments. Such transfers shall include in particular, though not exclusively:

- (a) the principal and additional amounts to maintain, develop or increase the investment;
- (b) returns;
- (c) proceeds obtained from the total or partial sale or liquidation of an investment;
- (d) the amounts required for payment of expenses which arise from the operation of the investment, such as loans repayments, payment of royalties and licence fees or other similar expenses;
- (e) compensation payable pursuant to Articles 5 and 6;
- (f) payments arising out of the settlement of a dispute;
- (g) unspent earnings and other remuneration of personnel engaged from abroad and working in connection with an investment.

2. The Contracting Parties shall further ensure that transfers referred to in paragraph (1) of this Article shall be made without any restriction or delay, in a freely convertible currency and at the prevailing market rate of exchange applicable on the date of transfer with respect to spot transactions in the currency to be transferred and shall be effectively realisable and immediately transferable. If a market rate is unavailable, the applicable rate of exchange shall correspond to the cross rate obtained from those rates most recently applied by the International Monetary Fund on conversions of the currencies concerned into Special Drawing Rights.

*Article 8. Subrogation*

1. If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance given in respect of an investment of an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or claim of such investor to the former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title.

2. In the case of a subrogation as defined in paragraph (1) of this Article, the investor shall not pursue a claim unless authorised to do so by the Contracting Party or its agency.

*Article 9. Consultations*

The Contracting Parties shall consult promptly at the request of either Party on any issue relating to the interpretation or application of this Agreement.

*Article 10. Disputes between an Investor and a Contracting Party*

1. Any dispute between an investor of one Contracting Party and the other Contracting Party concerning an investment in the territory of the latter Contracting Party shall, if possible, be settled amicably.

2. If the dispute cannot be settled amicably within six months from the date of request for amicable settlement, the investor shall be entitled to submit the case either to the competent courts of the Contracting Party in whose territory the investment was made or to international arbitration. In the latter event the investor has the choice of submitting the case either to:

(a) The International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965, or

(b) any ad hoc arbitration tribunal, which unless otherwise agreed upon by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

Both parties to the dispute give their irrevocable consent in respect of the fact that all disputes relating to investments are submitted to the above mentioned national court or to the alternative international arbitration procedures.

3. An investor who has submitted the dispute to national jurisdiction may nevertheless have recourse to one of the arbitral tribunals mentioned in paragraph (2) of this Article if, before judgement has been delivered on the subject matters by a national court, the investor renounces to pursue the case any longer through national proceedings.

4. Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitration sentence, on account of the fact that the investor, which is the opposing party of the dispute, had received an indemnification covering the whole or a part of its losses by virtue of an insurance.

5. The award shall be final and binding for the parties to the dispute and shall be executed according to national law.

*Article 11. Disputes between the Contracting Parties*

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled through diplomatic channels.

2. If the dispute cannot thus be settled within six (6) months, following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to an Arbitral Tribunal.

3. Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two (2) months from the date of appointment of the other two members.

4. If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party or is otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. The decisions of the Tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party and of its representation at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the cost of the Chairman, as well as any other costs. The Tribunal may make a different decision regarding the sharing of the costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.

#### *Article 12. Application of other Rules*

If the provisions of law of either Contracting Party or obligations under international law existing at present or that may be established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable to the investor, prevail over this Agreement.

#### *Article 13. Application of the Agreement*

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment which arose or any claim, which was settled before its entry into force.

#### *Article 14. Entry into Force, Duration and Termination*

1. This Agreement shall enter into force on the thirtieth day following the date of the latter notification where the Contracting Parties communicate each other in writing that the relevant constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall remain in force for a period of ten years. Unless official notice of termination is given twelve months before the expiry of its period of validity, this Agreement shall be tacitly extended on the same terms for further periods of ten years.

2. In respect of such investments made prior to the date when the notice of expiration of this Agreement becomes effective, the provisions of Articles 1 to 13 shall remain in force for a period of ten years from the date of termination.

Done at Helsinki on the 18th of April 2001 in two originals, in the Finnish, Spanish and English languages, all texts being equally authoritative. In case of divergence, the English text shall prevail.

For the Government of the Republic of Finland:

KIMMO SASI

For the Government of the Republic of Ecuador:

JUAN DIEGO STACEY MORENO