

ACORD

INTRE

GUVERNUL ROMANIEI

SI GUVERNUL REPUBLICII ECUADOR

PRIVIND PROMOVAREA SI PROTEJAREA

RECIPROCA A INVESTITIILOR



Guvernul Romaniei si Guvernul Republicii Ecuador denumite in continuare "Partile Contractante",

Dorind sa intensifice cooperarea economica dintre cele doua tari,

Cu scopul de a crea conditii favorabile pentru investitiile investitorilor unei Parti Contractante pe teritoriul celeilalte Parti Contractante,

Recunoscand ca promovarea si protejarea unor astfel de investitii pe baza unui acord va contribui la stimularea initiativei economice individuale si va determina cresterea prosperitatii ambelor state,

Constiente de necesitatea stabilirii unui cadru juridic adecvat pentru reglementarea si garantarea promovarii si protejarii reciproce a investitiilor intre ambele tari,

Au convenit urmatoarele:



Articolul 1

Definitii

In sensul prezentului Acord:

(1) Termenul "investitie" inseamna, in conformitate cu legile si reglementarile Partii Contractante pe al carei teritoriu s-a realizat investitia, orice fel de active investite de investitorii unei Parti Contractante pe teritoriul celeilalte Parti Contractante. Acesta include in special, dar nu exclusiv:

a) drepturi de proprietate asupra bunurilor mobile si imobile, precum si alte drepturi reale cum ar fi ipoteci, gajuri si sechestre;

b) actiuni, parti sociale si oricare alt tip de participare la societati;

c) creante si orice drepturi privind prestatii care au valoare economica; imprumuturile sunt incluse numai daca sunt contractate in mod curent si conforme cu prevederile in vigoare in tara in care s-a facut investitia si direct legate de o investitie specifica;

d) drepturi de proprietate intelectuala incluzand, in special, drepturi de autor, brevete, design industrial, marci de comert, nume comerciale, procedee tehnice, know-how si drepturi de predare la cheie;

e) concesiuni economice conferite prin lege sau prin contract si orice licente si autorizatii conferite in conformitate cu legea;

f) venituri reinvestite.

Orice modificare a formei in care activele sunt investite sau reinvestite nu va afecta caracterul lor de investitie, in conformitate cu prezentul Acord.



(2) Termenul "investitor" desemneaza:

a) i) Cu privire la Romania: persoanele fizice care, in conformitate cu legislatia sa, sunt considerate a fi cetatenii sai;

ii) Cu privire la Republica Ecuador: persoanele fizice care, in conformitate cu legislatia sa, sunt considerate a fi nationalii sai;

b) Orice persoana juridica constituita conform legilor si reglementarilor unei Parti Contractante, avandu-si sediul, precum si activitatile sale economice efective, pe teritoriul acelei Parti Contractante.

(3) Termenul "venituri" desemneaza toate sumele produse de o investitie, cum sunt profituri, dividende, dobanzi si alte venituri curente.

(4) Termenul "teritoriu" desemneaza:

a) Cu privire la Romania, teritoriul national, incluzand marea teritoriala, precum si zona economica exclusiva asupra carora Romania poate exercita, in conformitate cu legislatia sa si dreptul international, suveranitate, drepturi suverane sau jurisdicție.

b) Cu privire la Republica Ecuador, teritoriul national, incluzand marea teritoriala si acele zone maritime adiacente limitei exterioare a respectivei mari teritoriale asupra carora poate exercita, in conformitate cu legislatia sa si dreptul international, suveranitate, drepturi suverane sau jurisdicție.

Articolul 2

Promovarea investitiilor

(1) Fiecare Parte Contractanta va promova pe teritoriul sau investitiile investitorilor celeilalte Parti Contractante si va admite astfel de investitii conform legilor si reglementarilor sale.



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(2) Daca o Parte Contractanta a admis o investitie pe teritoriul sau, ea va acorda, in conformitate cu legile si reglementarile sale, autorizarile necesare in legatura cu aceasta investitie, inclusiv autorizatiile de angajare a personalului de conducere si tehnic, la alegere, indiferent de nationalitatea sau cetatenia sa.

(3) Fiecare Parte Contractanta va promova si va difuza legile si reglementarile legate de investitiile investitorilor celeilalte Parti Contractante. De asemenea, acestea vor face schimb de informatii cu privire la investitiile din fiecare Parte Contractanta.

Articolul 3

Protejarea investitiilor

(1) Fiecare Parte Contractanta va asigura, in orice moment, un tratament just si echitabil investitiilor investitorilor celeilalte Parti Contractante si nu va prejudicia conducerea, intretinerea, folosinta sau dreptul de a dispune de acestea, prin masuri nejustificate sau discriminatorii.

(2) Fiecare Parte Contractanta, odata ce a acceptat pe teritoriul sau investitii ale investitorilor celeilalte Parti Contractante, va acorda deplina protectie legala acestor investitii si le va acorda un tratament nu mai putin favorabil decat cel acordat investitiilor efectuate de proprii sai investitori sau de investitorii unor state terte.

(3) Fara a prejudicia dispozitiile paragrafului (2) al acestui Articol, tratamentul natiunii celei mai favorizate nu se va aplica privilegiilor pe care fiecare Parte Contractanta le acorda investitorilor unui stat tert, drept consecinta a participarii sau asocierii sale la o zona de comerț liber, uniune vamala, piata comuna sau acord regional.

(4) Prevederile paragrafului (2) al acestui Articol nu vor fi interpretate in sensul de a obliga o Parte Contractanta sa extinda asupra investitorilor celeilalte Parti Contractante beneficiile oricarui tratament, preferinta sau privilegiu rezultand dintr-un acord international bilateral sau multilateral care se refera in totalitate sau partial la impozitare.



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Articolul 4

Expropriere si despagubire

(1) Niciuna dintre Partile Contractante nu va lua masuri de nationalizare sau expropriere si orice alta masura avand acelasi efect impotriva investitiilor de pe teritoriul sau care apartin investitorilor celeilalte Parti Contractante decat daca masurile sunt luate in interes public, pe o baza nediscriminatorie si printr-o procedura legala raspunzatoare.

Legalitatea exproprierei si quantumul despagubirii vor fi revazute prin procedura juridica.

Masurile sunt insotite de prevederi pentru plata unei despagubiri prompte, adecvate si efective. Quantumul acestei despagubiri va corespunde valorii de piata a investitiei expropriate imediat inainte ca exproprierea sa fi avut loc sau inainte ca exproprierea iminenta sa devina cunoscuta public. Despagubirea va include dobanzile la rata comerciala de piata in vigoare de la data exproprierei pana la data platii. Despagubirea si dobanzile, ori de cate ori apar, vor fi platite fara intarziere, vor fi efectiv realizabile si liber transferabile.

(2) Investitorilor oricarei Parti Contractante, care sufera pierderi in legatura cu investitiile lor de pe teritoriul celeilalte Parti Contractante, datorita razboiului sau altui conflict armat, starii de necesitate nationala, revoltei, insurectiei ori rascoalei, li se va acorda in privinta restituirii, indemnizatiei, despagubirii sau altei reglementari, un tratament nu mai putin favorabil decat cel acordat investitorilor proprii sau investitorilor unui stat tert. Platile vor fi liber transferabile.



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Articolul 5

Transferuri

(1) Fiecare Parte Contractanta va garanta investitorilor celeilalte Parti Contractante transferul fara restrictii al investitiilor si beneficiilor in cazul in care capitalul a fost inregistrat la o entitate nationala competenta si precedat de plata taxelor datorate , in special, dar nu exclusiv, al:

a) capitalului si sumelor aditionale necesare pentru intretinerea si dezvoltarea investitiilor;

b) castigurilor, profiturilor, dobanzilor, dividendelor si altor venituri curente;

c) fondurilor pentru rambursarea imprumuturilor externe legate de o investitie asa cum sunt definite in Articolul 1, paragraful (1), (c);

d) redeventelor;

e) sumelor obtinute din vanzarea totala sau partiala ori lichidarea unei investitii;

f) platilor rezultand din reglementarea diferendelor prevazute la Articolul 10 si despagubirilor prevazute la Articolul 4.

(2) Transferurile se vor efectua fara intarziere, in valuta liber convertibila, la cursul de schimb in vigoare pe piata comerciala la data transferului, conform legilor si reglementarilor stabilite de catre Partea Contractanta pe teritoriul careia s-a facut investitia, care nu vor putea afecta fondul drepturilor prevazute in acest Articol.



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Articolul 6

Subrogare

(1) Daca o Parte Contractanta sau oricare din agentiile sale va efectua o plata catre un investitor in virtutea unei garantii sau asigurari contractata in legatura cu o investitie, cealalta Parte Contractanta va recunoaste valabilitatea subrogarii in favoarea acelei Parti Contractante sau a uneia din agentiile sale, cu privire la orice drept sau titlu detinut de investitor. Partea Contractanta sau una din agentiile sale va fi autorizata, in limitele subrogarii, sa exercite aceleasi drepturi pe care ar fi indreptatit sa le exercite investitorul, cu conditia ca acele drepturi sa fie in vigoare sau legal recunoscute de catre cealalta Parte Contractanta.

(2) In cazul unei subrogari de natura celei definite in paragraful (1) al acestui Articol, investitorul nu va urmari nici o pretentie decat daca este autorizat sa o faca de catre Partea Contractanta sau agentia ei.

Articolul 7

Aplicarea acestui Acord

Acest Acord se va aplica investitiilor de pe teritoriul unei Parti Contractante efectuate in conformitate cu legislatia sa, inainte sau dupa intrarea in vigoare a Acordului, de catre investitori ai celeilalte Parti Contractante. Totusi, el nu va fi aplicabil diferendelor care au aparut inaintea intrarii sale in vigoare sau diferendelor legate in mod direct de evenimente care au avut loc inaintea intrarii sale in vigoare.



Articolul 8

Aplicarea altor norme

Daca prevederile legale ale oricarei Parti Contractante sau obligatiile dreptului international, existente in prezent ori stabilite in viitor intre Partile Contractante, in plus fata de prezentul Acord, sau daca o intelegere intre un investitor al unei Parti Contractante si cealalta Parte Contractanta contine norme, fie generale fie specifice, care sa confere investitiilor realizate de investitorii celeilalte Parti Contractante un tratament mai favorabil decat cel prevazut in prezentul Acord, acele norme vor prevala asupra prezentului Acord, in masura in care vor fi mai favorabile.

Articolul 9

Reglementarea diferendelor intre
Partile Contractante

(1) Diferendele care apar intre Partile Contractante referitoare la interpretarea sau aplicarea acestui Acord vor fi solutionate, pe cat posibil, pe canale diplomatice.

(2) Daca un diferend intre Partile Contractante nu va putea fi solutionat astfel intr-un termen de sase luni de la inceperea negocierilor, acesta va fi supus, la cererea oricareia dintre Partile Contractante, unui tribunal arbitral.

(3) Acest tribunal arbitral se va constitui, pentru fiecare caz in parte, in amatorul mod. In termen de doua luni de la primirea cererii de arbitraj, fiecare Parte Contractanta va desemna un membru al tribunalului. Acesti doi membri vor alege un national al unui stat tert, care, cu aprobarea ambelor Parti Contractante, va fi numit presedinte al tribunalului. Presedintele va fi numit intr-un termen de doua luni de la data desemnarii celorlalti doi membri.



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(4) Daca in cadrul termenelor prevazute in paragraful (3) al acestui Articol nu se vor face desemnarile necesare, oricare dintre Partile Contractante va putea, in absenta oricaror alte norme, sa-l invite pe Presedintele Curtii Internationale de Justitie sa procedeze la numirile necesare. Daca Presedintele este nationalul unei Parti Contractante sau daca, din oricare alt motiv, este impiedicat sa indeplineasca functia mentionata, Vicepresedintele va fi invitat sa faca numirile necesare. Daca Vicepresedintele este nationalul unei Parti Contractante sau daca este, de asemenea, impiedicat sa-si indeplineasca functia mentionata, membrul Curtii Internationale de Justitie care urmeaza imediat in functie si care nu este nationalul unei Parti Contractante, va fi invitat sa faca numirile necesare.

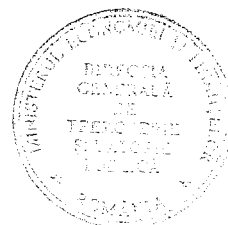
(5) Tribunalul arbitral va adopta hotararile sale cu majoritate de voturi. Aceste hotarari vor fi obligatorii pentru ambele Parti Contractante. Fiecare Parte Contractanta va suporta cheltuielile pentru membrul sau si ale reprezentarii sale in procedura de arbitraj. Cheltuielile presedintelui, ca si celelalte cheltuieli, vor fi suportate, in principiu, in parti egale de catre Partile Contractante. Cu toate acestea, tribunalul arbitral va putea stabili prin hotararea sa ca o parte mai mare a cheltuielilor sa fie suportata de catre una din cele doua Parti Contractante. Tribunalul isi va stabili propria procedura.

Articolul 10

Reglementarea diferendelor intre un investitor si Partea Contractanta gazda a investitiei

(1) Orice diferend legat de prevederile prezentului Acord intre un investitor al unei Parti Contractante si cealalta Parte Contractanta va fi solutionat, pe cat posibil, prin consultari amiabile.

(2) Daca diferendul nu poate fi astfel solutionat in termen de sase luni de la data la care a fost declansat de catre una sau cealalta parte, el poate fi supus, la cererea investitorului:



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- fie instantei judecatoresti competente a Partii Contractante pe al carei teritoriu s-a realizat investitia;

- fie arbitrajului international conform prevederilor paragrafului (3).

Daca un investitor a supus diferendul jurisdicției Partii Contractante implicate sau arbitrajului international, alegerea uneia sau alteia din aceste proceduri va fi definitiva.

(3) In cazul recurgerii la arbitrajul international, diferendul va putea fi supus, la alegerea investitorului:

- Centrului International pentru Reglementarea Diferendelor privind Investitiile (I.C.S.I.D.), creat de "Conventia pentru Reglementarea Diferendelor privind Investitiile intre State si Persoane ale altor State", incheiata la Washington la 18 martie 1965, atunci cand fiecare stat parte la prezentul Acord a aderat la aceasta. Atata timp cat aceasta conditie nu va fi indeplinita, fiecare Parte Contractanta consimte ca diferendul sa fie supus arbitrajului, conform regulilor mecanismului complementar I.C.S.I.D. referitoare la administrarea procedurilor de conciliere, arbitraj sau investigare.

- Unui tribunal arbitral ad-hoc, constituit potrivit regulilor de arbitraj ale Comisiei Natiunilor Unite pentru Dreptul Comercial International (UNCITRAL).

(4) Organul arbitral va hotari pe baza prevederilor prezentului Acord, a legislatiei Partii Contractante implicate in diferend, inclusiv a normelor privitoare la conflictul de legi, a conditiilor oricarei intelegeri speciale incheiata cu privire la o investitie, precum si a principiilor dreptului international in materie.

(5) Hotararile arbitrare vor fi definitive si obligatorii pentru partile in diferend. Fiecare Parte Contractanta le va executa in conformitate cu legislatia sa.



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Articolul 11

Consultari

Partile Contractante se vor consulta, la cererea oricareia din ele, in probleme privind interpretarea sau aplicarea prezentului Acord.

Articolul 12

Intrarea in vigoare, durata si expirarea

(1) Prezentul Acord va intra in vigoare la treizeci de zile de la data ultimei notificari prin care Partile Contractante isi vor comunica, una alteia, in scris, ca au indeplinit respectivele cerinte constitutionale pentru intrarea in vigoare a acestui Acord. Valabilitatea sa va fi pentru o perioada de zece ani. Daca notificarea oficiala de denuntare nu este transmisa cu douasprezece luni inainte de expirarea acestei perioade, Acordul va fi considerat ca reinnoit in aceleasi conditii pentru perioade ulterioare de zece ani.

(2) Cu privire la acele investitii efectuate anterior datei la care notificarea expirarii acestui Acord va deveni efectiva, prevederile Articolelor de la 1 pana la 11 vor ramane in vigoare pe o perioada de zece ani de la aceasta data.

Drept pentru care, subsemnatii, pe deplin autorizati de guvernele respective, au semnat acest Acord.

Incheiat la Quito la data de 21.03.1996 in doua originale, in limbile romana, spaniola si engleza, fiecare text fiind egal autentic. In caz de diferente de interpretare, textul in limba engleza va prevala.

PENTRU GUVERNUL
ROMANIEI

VASILE ION

AMBASADORUL ROMANIEI IN ECUADOR



PENTRU GUVERNUL
REPUBLICII ECUADOR

Conferat cu originalul

DIRECTOR GEN. ASJ.

LURA GERANU

GALO LEORO F.

MINISTRUL RELATIILOR EXTERNE

AGREEMENT

BETWEEN

THE GOVERNMENT OF ROMANIA

AND THE GOVERNMENT OF THE REPUBLIC OF

ECUADOR

ON THE PROMOTION AND RECIPROCAL

PROTECTION OF INVESTMENTS

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

Desiring to intensify economic cooperation between both countries,

Aiming at creating favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and protection of these investments on the basis of an agreement will contribute to the stimulation of individual economic initiative and will determine the increasing of the economic prosperity of both States,

Aware of the need to establish an adequate juridical framework to regulate and guarantee the promotion and reciprocal protection of investments between both countries,

Have agreed as follows:

Article 1

Definitions

For the purpose of the present Agreement:

(1) The term "investment" means, in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made, every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party. It includes in particular, but not exclusively:

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

b) Shares, parts and any other kind of participation in companies;

c) Claims to money and to any rights to any performance having an economic value; loans are included only when they are regularly contracted and well-informed under the provisions in force in the country in which the investment is made and directly related to a specific investment;

d) Intellectual property rights including, in particular, copyrights, patents, industrial designs, trademarks, trade names, technical processes, know-how and key-handing rights;

e) Economic concessions conferred by law or by contract and any licences and permits conferred in accordance with the law;

f) Reinvested returns.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment, in accordance with the present Agreement.

(2) The term "investor" means:

a) i) In respect of Romania: the natural persons who, in accordance with its legislation, are considered to be its citizens.

ii) In respect of the Republic of Ecuador: the natural persons who, in accordance with its legislation, are considered to be its nationals.

b) Any legal person constituted in accordance with the laws and regulations of one Contracting Party and having its seat as well as its real economic activities in the territory of that Contracting Party.

(3) The term "returns" means all amounts yielded by an investment, such as profits, dividends, interests and other current incomes.

(4) The term "territory" means:

a) In respect of Romania, the national territory, including the territorial sea as well as the economic exclusive zone over which Romania may, in accordance with its legislation and international law, exercise sovereignty, sovereign rights or jurisdiction.

b) In respect of the Republic of Ecuador, the national territory, including the territorial sea and those maritime areas adjacent to the outside limit of the mentioned territorial sea over which it may, in accordance with its legislation and international law, exercise sovereignty, sovereign rights or jurisdiction.

Article 2

Promotion of Investments

(1) Each Contracting Party shall promote, in its territory, investments of investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

(2) When a Contracting Party shall have admitted an investment in its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment, including authorizations for engaging top managerial and technical personnel of their choice, regardless of its nationality or citizenship.

(3) Each Contracting Party shall promote and disseminate the laws and regulations related to investments by investors of the other Contracting Party. Also, they shall exchange information concerning investments in each Contracting Party.

Article 3

Protection of Investments

(1) Each Contracting Party shall at all times ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair the management, maintenance, use or disposal thereof through unjustified or discriminatory measures. X

(2) Each Contracting Party shall, once it has admitted in its territory investments of investors of the other Contracting Party, grant full legal protection to such investments and shall accord them treatment no less favourable than that accorded to investments made by its own investors or by investors of third States

(3) Notwithstanding the provisions of paragraph (2) of this Article, the most favoured nation treatment shall not apply to privileges which either Contracting Party accords to investors of a third State because of its membership in, or association with a free trade area, customs union, common market or regional agreement.

(4) The provisions of paragraph (2) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefits of any treatment, preference or privilege resulting from an international bilateral or multilateral agreement relating wholly or mainly to taxation.

Article 4

Expropriation and compensation

(1) Neither of the Contracting Parties shall take any measure of nationalization or expropriation and 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. The legality of the expropriation and the amount of the compensation shall be revised by juridical procedure.

The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. The amount of this compensation shall correspond to the market value of the expropriated investment immediately before the expropriation took place or before the imminent expropriation became public knowledge. The compensation shall include interests at the commercial market rate in force from the date of expropriation until the date of payment. The compensation and interests whenever arising shall be paid without delay, shall be effectively realizable and freely transferable.

(2) Investors of either Contracting Party who suffer losses in connection with their investments in the territory of the other Contracting Party, due to a war or other armed conflict, a state of national emergency, revolt, insurrection or riot, shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State. The payments shall be freely transferable.

Article 5

Transfers

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party the unrestricted transfer of the investments and benefits, in the circumstances in which the capital has been registered before the competent national entity and preceded by the payment of due taxes, in particular, but not exclusively, of:

a) the capital and additional sums necessary for the maintenance and development of the investments;

b) gains, profits, interests, dividends and other current income;

c) funds in repayment of foreign loans related to an investment, as defined in Article 1, paragraph (1), (c);

d) royalties;

e) the proceeds from the total or partial sale or liquidation of an investment;

f) payments arising from the settlement of disputes provided for in Article 10 and compensations provided for in Article 4.

(2) The transfers shall be made without delay, in freely convertible currency, at the commercial market exchange rate in force on the date of transfer, according to the laws and regulations established by the Contracting Party in whose territory the investment was made, which shall not impair the substance of the rights set forth in this Article.

Article 6

Subrogation

(1) If a Contracting Party or any of its agencies makes a payment to an investor by virtue of a guarantee or insurance contracted in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of that Contracting Party or an agency thereof, with regard to any right or title held by the investor. The Contracting Party or one of its agencies shall, within the limits of the subrogation, be authorized to exercise the same rights which the investor would have been entitled to exercise, provided those rights are still in force or are legally recognized by the other Contracting Party.

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

Article 7

Application of this Agreement

This Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its legislation prior to or after the entry into force of the Agreement by investors of the other Contracting Party. It shall however not be applicable to disputes which arose prior to its entry into force or to disputes directly related to events which occurred prior to its entry into force.

Article 8

Application of other rules

If the provisions of law of either Contracting Party or obligations of the international law existing at present or established hereafter between the Contracting Parties, in addition to the present Agreement, or if an agreement between an investor of one Contracting Party and the other Contracting Party contain rules, whether general or specific, ensuring to investments made by investors of the other Contracting Party a treatment more favourable than that provided for in the present Agreement, such rules shall, to the extent that they are more favourable, prevail over the present Agreement.

Article 9

Settlement of disputes between the Contracting Parties

(1) The disputes which arise between the Contracting Parties regarding the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

(2) If a dispute between the Contracting Parties cannot thus be settled within six months from the beginning of the negotiations, it shall, upon 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 months of the receipt of the request of arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall select a national of a third State who, upon approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the period specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other rules, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is, for any other reason, prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he is also prevented from discharging the said function, the member of the International Court of Justice next in seniority and who is not a national of either Contracting Party, shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall take its decisions by a majority of votes. Such decisions shall be binding for both Contracting Parties. Each Contracting Party shall bear the cost of its own member and of its representation in the arbitral proceedings. The cost of the Chairman as well as the remaining costs shall, in principle, be borne in equal parts by the Contracting Parties. However, the arbitral tribunal may determine by its decision that a higher proportion of costs shall be borne by one of the two Contracting Parties. The tribunal shall determine its own procedure.

Article 10

Settlement of disputes between an investor

and the host Contracting Party

(1) Any dispute related to the provisions of the present Agreement between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled through amicable consultation.

(2) If the dispute cannot thus be settled within six months following the date on which the dispute was raised by one or other party, it may be submitted, upon request of the investor, either to:

- the competent tribunal of the Contracting Party in whose territory the investment was made; or
- the international arbitration according to the provisions of paragraph (3);

Where an investor has submitted the dispute to the jurisdiction of the involved Contracting Party or to the international arbitration, the choice of one or other of these procedures shall be final.

(3) In case of international arbitration, the dispute shall be submitted, at the investor's choice, to:

- The International Centre for the Settlement of Investment Disputes Related to Investments (ICSID), created by the "Convention on the Settlement of Investment Disputes between States and Nationals of other States", done in Washington on March 18, 1965, when each State Party of the present Agreement has acceded thereto. As far as this provision is not fulfilled, each Contracting Party consents that the dispute be submitted to arbitration, under the complementary mechanism rules of ICSID concerning the administration of conciliation, arbitration or investigation procedures.

- An ad-hoc arbitral tribunal established under the rules of arbitration of the United Nations Commission for the International Commercial Law (UNCITRAL).

(4) The arbitral body shall take its decisions under the provisions of the present Agreement, the laws of the Contracting Party involved in the dispute, including the rules on conflict of law, the terms of any specific agreement concluded in relation to an investment as well as the principles of concerned international law.

(5) The arbitral decisions shall be final and binding for the parties in the dispute. Each Contracting Party shall execute them in accordance with its legislation.

Article 11

Consultations

The Contracting Parties shall consult at the request of either of them on matters concerning the interpretation or application of the present Agreement.

Article 12

Entry into force, duration and expiration

(1) The present Agreement shall enter into force thirty days after the date of the latter notification in which the Contracting Parties communicate each other in writing that the concerned constitutional requirements for the entry into force of this Agreement have been fulfilled. Its validity shall be for a period of ten years. Unless official notice of denunciation is given twelve months before the expiration of this period, the Agreement shall be considered as renewed 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 11 shall remain in force for a period of ten years from that date.

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

Done at Quito on....., in two originals, in the Romanian, Spanish and English languages, each text being equally authentic. In case of difference of interpretation, the English text shall prevail.

FOR THE GOVERNMENT
OF ROMANIA

FOR THE GOVERNMENT
OF THE REPUBLIC OF ECUADOR