BILATERAL AGREEMENT FOR THE PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

PREAMBLE

The Government of the Republic of Colombia and the Government of the People's Republic of China hereinafter referred to as the "Contracting Parties";

Desiring to intensify the economic cooperation to the mutual benefit of both Contracting Parties,

Intending to create and maintain favorable conditions for the investments of investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the reciprocal encouragement, promotion and protection of such investment will be conducive to stimulating business initiative of the investors and will increase prosperity in both States;

Have agreed as follows:

ARTICLE 1
DEFINITIONS

For the purposes of this Agreement:

1. Investment

1.1 The term Investment means every kind of economic asset that has been invested by investors of a Contracting Party in the territory of the other Contracting Party in accordance with the law[1] of the latter including in particular, but not exclusively, the following:

a. Movable and immovable property, and other property rights such as mortgages, pledges and similar rights;
b. Shares, stock and any other kind of economic participation in corporations;
c. Claims to money or to any other performance, including debentures, having an economic value associated with an investment;
d. Intellectual property rights, including, in particular, copyrights and related rights, and industrial property rights such as patents, technical processes, manufacturers' brands and trademarks, trade names, industrial designs, know-how and goodwill;
e. Concessions conferred by law or administrative act, or under contract permitted by law, including concessions to search for, cultivate, extract or exploit natural resources.

[1] With respect to this Agreement, the term "law" refers to the respective legal system of the Contracting Parties.

f. All operations of foreign loan with maturity over three years, as established by the law of each Contracting Party, related to an investment.

Investment does not include:

i. public debt operations;

ii. claims to money arising solely from:

a. Commercial contracts for the sale of goods and services by a national or legal entity in the territory of a Contracting Party to a national or a legal entity in the territory of the other Contracting Party, or

b. Credits granted in relation with a commercial transaction.

1.2 Any change in the form in which assets are invested or re-invested does not affect their character as investment, provided that such change is in accordance with the law of the Contracting Party in whose territory the investment has been admitted.

1.3 In accordance with paragraph 1 of this Article, the minimum characteristics of an investment shall be:

a. The commitment of capital or other resources,
b. The expectation of gain or profit
c. The assumption of risk for the investor.

2. Investor

2.1 The term "Investor" means:

a. Natural persons who, have nationality of either Contracting party in accordance with the law of that Contracting Party;
b. Legal entities including companies, associations, partnerships and other organizations, incorporated or constituted under the law of either Contracting Party and have their seat, as well as substantial business activities in the territory of the same Contracting Party;
c. Legal entities not established under the law of that Party but effectively controlled, by natural persons, as defined in paragraph 2.1.a or by legal entities as defined in paragraph 2.1.b.

2.2. This Agreement shall not apply to investments made by natural persons who have nationality of both Contracting Parties.

3. Returns

The term "returns" means the amounts yielded from an investment, including profits, dividends, interests, capital gains, royalties, fees and other legitimate income.

4. Territory

The term "territory" means the territory of either Contracting Party , including the land territory, internal waters , the territorial sea and the airspace above them , as

well as any maritime area beyond the territorial sea that , in accordance with international law and its domestic law , either Contracting Party exercises sovereign rights or jurisdiction with respect to the waters , seabed and subsoil and natural resources thereof.

ARTICLE 2
PROMOTION, ADMISSION AND PROTECTION OF INVESTMENTS

1. Each Contracting Party shall promote in its territory investments of investors of the other Contracting Party and shall admit them in accordance with its law.

2. Without prejudice to its law neither Contracting Party shall take unreasonable or discriminatory measures against the management, maintenance, use, enjoyment, disposal and liquidation of said investments.

3. Each Party shall accord fair and equitable treatment in accordance with customary international law, and full protection and security in its territory to investment of investors of the other Contracting Party.

4. For greater certainty,

a) The concepts of "fair and equitable treatment" and "full protection and security" do not require additional treatment to that required under the minimum standard of treatment of aliens in accordance with the standard of customary international law.

b) A determination that there has been a breach of another provision of this Agreement or another international agreement does not imply that the minimum standard of treatment of aliens has been breached.

c) "Fair and equitable treatment" includes the prohibition against denial of justice in criminal, civil, or administrative proceedings in accordance with the general accepted principles of customary international law .

d) The "Full protection and security" standard does not imply, in any case, a better treatment to that accorded to nationals of the Contracting Party where the investment has been made.

5. Subject to its laws, one Contracting Party shall provide assistance in and facilities for entry and obtaining working permit to nationals of the other Contracting Party engaging in activities associated with investments made in the territory of that Contracting Party.

ARTICLE 3
TREATMENT OF INVESTMENT

1. Without prejudice to its law at the time the investment is made, each Contracting Party shall accord to investments of the investors of the other Contracting Party treatment not less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the operation, management, use, enjoyment or disposal of investments.

2. Each Contracting Party shall accord to investments of the investors of the other Contracting Party treatment no less favorable than that it accords, in like circumstances, to investments of the investors of any third party with respect to the operation, management, use, enjoyment or disposal of investments.

3. The most favorable treatment to be granted in like circumstances referred to in this Agreement does not encompass mechanisms for the settlement of investment disputes, such as those contained in Articles 3 and 9 of this Agreement, which are provided for in treaties or international investment agreements.

4. The provisions of this Agreement concerning the granting of a no less favorable treatment than that accorded to investments of investors of each Contracting Party or of any third party shall not be construed so as to oblige a Contracting Party to extend to investments of investors of the other Contracting Party the benefits of any treatment, preference or privilege resulting from: Any existing or future free trade area, customs union, common market, economic union and any international agreement resulting in similar institutions; any international agreement or arrangement relating wholly or mainly to taxation or any international agreement to facilitate frontier trade in border areas, which a Contracting Party is or becomes a Party to.

ARTICLE 4
EXPROPRIATION AND COMPENSATION

1. Neither Contracting Party shall expropriate, directly or indirectly, nationalize or take other similar measures (hereinafter referred to as "expropriation") against the investments of the investors of the other Contracting Party in its territory, unless the following conditions are met:

a) for the public interests, public purpose or social interest;
b) under domestic legal procedure and respecting due process;
c) without discrimination; and
d) against compensation.

2. It is understood that:

a) Indirect expropriation results from a measure or series of measures of a Contracting Party having an equivalent effect to direct expropriation without formal transfer of title or outright seizure;

b) The determination of whether a measure or series of measures of a Contracting Party constitute indirect expropriation requires a case-by-case, fact-based inquiry considering:

i) The economic impact of the measure or series of measures; however, the sole fact of a measure or series of measures having adverse effects on the economic value of an investment does not imply that an indirect expropriation has occurred;

ii) The scope of the measure or series of measures and their interference on the reasonable and distinguishable expectations concerning the investment;

c) Non-discriminatory measures of a Contracting Party designed and applied for public purposes or social interest or with objectives such as public health, safety

and environment protection, do not constitute indirect expropriation. Except in rare circumstances, such as a measure or series of measures being so severe in light of their purpose that they cannot be reasonably viewed as having been adopted and applied in good faith.

3. The compensation mentioned in paragraph 1 of this Article shall be adequate. In this regard, the compensation shall be equivalent to the fair market value of the expropriated investments immediately before the expropriation is taken or the impending expropriation becomes public knowledge, whichever is earlier, (hereinafter the "date of valuation"). The compensation shall also be made without delay, and be effectively realizable and freely transferable.

4. The fair market value will be calculated in a freely convertible currency, per the exchange rate on the date of valuation. The compensation shall include interests at a commercially rate fixed in accordance with the market criteria for that currency, accrued from the date of expropriation until the date of payment. The compensation shall be paid without unjustified delay, be fully realizable and freely transferable.

5. Subject to the present Article, the Contracting Parties may establish state monopolies provided that it is for public purposes or social interest. In this event, the investor shall receive a prompt, adequate and effective compensation, considering the conditions prescribed in the present Article.

6. The Contracting Parties confirm that issuance of compulsory licenses granted in accordance with Article 30 and Article 31 of the TRIPS Agreement of the WTO, may not be challenged under the provisions set out in this Article.

ARTICLE 5
COMPENSATION FOR DAMAGES OR LOSSES

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses due to war, armed conflict, revolution, a state of national emergency; insurrection, riot or other similar events, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation and other settlements no less favorable than that accorded to the investors of its own or any third party, whichever is more favorable to the investor concerned.

ARTICLE 6 TRANSFERS

1. Each Contracting Party, prior fulfillment of the requirements under its law and without unjustified delay, shall allow investors of the other Contracting Party to effect, in a freely convertible currency, transfers of:

a) The principal amount and additional sums necessary for maintaining, increasing and developing the investment;
b) Returns as defined in Article 1 ;
c) Payments made pursuant to a loan agreement in connection with investments;
d) Nothing in Paragraph 1 of this Article shall affect the free transfer of compensation paid under Article 4 and 5 of this Agreement;
e) Proceeds obtained from the total or partial sale or liquidation of investments;
f) Earnings of nationals of the other Contracting Party who work in connection

with an investment in its territory.

2. The transfers mentioned above shall be made in, a freely convertible currency and at the prevailing market rate of exchange applicable within the Contracting Party accepting the investments and on the date of transfer.

3. The provisions in the paragraphs above of the present Article shall not preclude either Contracting Party from imposing exchange restrictions in accordance with its applicable laws and regulations.

ARTICLE 7
SUBROGATION

If one Contracting Party or its designated agency makes a payment to its investors under a guarantee or a contract of insurance against non-commercial risks it has accorded in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize

a) the assignment, whether under the law or pursuant to a legal transaction in the former Contracting Party, of any rights or claims by the investors to the former Contracting Party or to its designated agency, as well as,
b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights, enforce the claims of that investor and assume the obligations related to the investment to the same extent as the investor.

ARTICLE 8
SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Disputes arising between the Contracting Parties regarding the interpretation and application of this Agreement, including a claim alleging that the other Contracting Party has breached an obligation of the present Agreement and has consequently generated damages to an investor, shall be settled, as far as possible, with consultation through diplomatic channel.

2. If a dispute cannot be settled within six (6) months it shall, upon the request of either Contracting Party be submitted to an ad-hoc Arbitration Tribunal, in accordance with the provisions of this Article.

3. The Arbitration Tribunal shall be comprised of three members and, unless otherwise agreed between the Parties, shall be established as follows: within two (2) months from the date of notification of the arbitration request, each Contracting Party shall appoint an arbitrator. Those two arbitrators shall then, within three (3) months from the date of the last appointment, agree upon a third member who shall be a national of a third State with which both Contracting Parties maintain diplomatic relations, and who shall preside over the tribunal.

4. If the Arbitration Tribunal has not been constituted within five months from the receipt of the written notice requesting arbitration, 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 a national of either Contracting Party or is otherwise prevented from discharging the said functions, the member of the International Court of Justice next in seniority who is not a national of either Contracting or is not otherwise prevented from discharging

the said functions shall be requested to make such necessary appointments.

5. The Arbitration tribunal shall rule based on the provisions of this Agreement and principles of International Law applicable to the subject matter. The Tribunal shall reach its decisions by a majority of votes and shall determine its own procedural rules. Such award shall be final and binding upon both Contracting Parties. The arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

6. Each of the Contracting Parties shall bear the costs of its appointed arbitrator and of its representation in the arbitral proceedings. The relevant costs of the Chairman and tribunal shall be borne in equal parts by the Contracting Parties.

ARTICLE 9
SETTLEMENT OF DISPUTES BETWEEN ONE CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

1. With regard to acts of a governmental authority, in order to submit a claim to arbitration under this article or to domestic court, domestic administrative remedies shall be exhausted, should it be required by the law of the Contracting Party. Such procedure shall in no case exceed six months from the date of its initiation by the investor and shall not prevent the investor from requesting consultations as referred to in paragraph 3 of the present Article.

2. Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall be settled, as far as possible, amicably. Any dispute shall be notified by submitting a notice of intent in writing, including detailed information of the facts and legal basis, by the investor to the Contracting Party receiving the investment.

3. Nothing in this Article shall be construed as to prevent the parties of a dispute from referring their dispute, by mutual agreement, to ad hoc or institutional mediation or conciliation before or during the arbitral proceeding.

4. If the dispute has not been settled within nine (9) months from the date of the written notification mentioned in paragraph 2 of this Article, it may be submitted, by the choice of the investor to:

a) The competent court of the Contracting Party that is a party to the dispute;

b) The International Centre for Settlement of Investment Disputes (ICSID), under the rules of the Convention on Settlement of Disputes between States and Nationals of other States, open for signature in Washington D.C. on March 18, 1965.

   In the event that one of the Contracting Parties is not a party of the mentioned Convention, the dispute may be resolved in accordance with the ICSID Rules Governing the Additional Facility for the Administration of Procedures for Conciliation, Arbitration and Fact-Finding; or

c) An arbitral tribunal under any other arbitration institution or any other arbitration rules, agreed by the Contracting Parties.

5. The disputing investor may only submit a claim to arbitration if the term established in paragraph 4 of the present Article has elapsed, and the disputing investor has notified, in writing and ninety (90) days in advance, the Contracting Party of his intention to submit a claim to arbitration. Such a notice shall indicate the name and address of the disputing investor, the provisions of the Agreement which he deems to be breached, the facts which the dispute is based on, the estimated value of the damages and the compensation sought.

6. Each Contracting Party hereby gives in advance its irrevocable consent to the submission of a dispute of this nature to any of the arbitral proceedings established in paragraph 4. b. and c. of this Article.

7. Once the investor has submitted the dispute to the competent domestic court of the Contracting party concerned or to the ICSID or any of the arbitration mechanisms stated above, the choice of one of the two procedures shall be final. Notwithstanding, the investor may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the investor's rights and interests during the pendency of the arbitration. The initiation or continuation of such an action shall not be deemed a final choice of one of the two procedures stated under this paragraph.

8. The Arbitration awards shall be final and binding upon both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the award.

9. The Contracting Parties shall refrain from pursuing through diplomatic channels matters related to disputes between a Contracting Party and an investor of the other Contracting Party submitted to court proceedings or international arbitration, in accordance with the provisions of this article, unless one of the parties to the dispute has failed to comply with the court decision or arbitral award, under the terms established in the respective decision or arbitral award.

10. An investor may not submit a complaint if more than three (3) years have elapsed since the date the investor had knowledge or should have had knowledge of the alleged violation to this Agreement, as well as of the alleged losses and damages.

11. The dispute settlement mechanisms provided in this Agreement will be based on the provisions of the present Agreement, on the domestic law of the Contracting Party in whose territory the investment has been made, including the rules related to conflict of laws, on the general principles of law, and on the principles evidenced by general state practice and accepted as law and *opinio juris*.

12. Before ruling on the merits, the tribunal shall rule on the preliminary questions of competence and admissibility.
When deciding about the objection of the respondent, the tribunal shall rule on the costs and fees of attorneys incurred during the proceedings, considering whether or not the objection prevailed.
The tribunal shall consider whether either the claim of the claimant or the objection of the respondent is frivolous or not, and shall provide the disputing parties a reasonable opportunity for comments. Following the applicable rules of arbitration, in the event of a frivolous claim the tribunal shall award costs against the claimant.

13. A tribunal ruling a final award against a respondent may declare a breach of a provision established in this Agreement, and award monetary damages and any applicable interests as a result of the above mentioned breach, and may award costs and fees of attorneys in accordance with this Article and applicable arbitration rules. The tribunal shall not be competent to rule on the legality of the measure under domestic law. [2] This provision shall not affect the application of Paragraph 11 of the present Article.

ARTICLE 10
OTHER PROVISIONS

1. If, from legal provisions of a Contracting Party or from current or future obligations derived from international law different from those contained in this Agreement, a general or particular regulation results between the Contracting Parties thereby providing a more favorable treatment to the investment of investors than that foreseen in the present Agreement, the aforementioned regulation shall prevail over this Agreement, to the extent that it is more favorable.

2. The presentation of the notice of intent and other documents related to the dispute settlement mechanisms will be done in the place designated by the Contracting Parties in Annex I.

ARTICLE 11
SCOPE OF APPLICATION

1. This Agreement is applicable to existing investments at the time of its entry into force, as well as to investments made thereafter in the territory of a Contracting Party in accordance with the law of the latter by investors of the other Contracting Party. However, this Agreement only applies to disputes arisen after the Agreement enters into force.

2. Nothing contained in this Agreement shall bind either Contracting Party to protect investments made with capital or assets derived from criminal activities.

ARTICLE 12
Exceptions

1. Nothing contained in this Agreement shall be construed so as to prevent a Party from adopting or maintaining measures intended to preserve public order including measures to protect the essential security interests of the State, provided that such measures:

a) are only applied where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society;
b) are not applied in a manner constituting arbitrary discrimination;[3]
c) do not constitute a disguised restriction on investment;
d) are proportional to the objective they seek to achieve;
e) are necessary and are applied and maintained only while necessary; and
f) are applied in a transparent manner and in accordance with the respective

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[2] For greater clarity, this shall not preclude any disputing party from submitting, as a matter of fact, evidence related to the legality of a measure under domestic law.
[3] For greater clarity, this Article shall not be construed as an exception to the obligations set out in Article 4 (Expropriation and Compensation) concerning compensation.

national legislation.

For greater clarity, nothing under this Paragraph shall be construed to limit the review by an arbitral tribunal of a matter where such exception is invoked.

ARTICLE 13
Prudential Measures in the Financial Sector

Notwithstanding any other provision of this Agreement a Party shall not be prevented from adopting or maintaining measures relating to financial services for prudential reasons[4], including for the protection of investors, depositors, policy holders, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions, in particular those obligations under Articles 4 (Expropriation and Compensation) and 6 (Transfers).

ARTICLE 14
Taxation Measures

1. Except as provided in this Article nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of the contracting Parties under any tax convention. In the event of any inconsistency between the provisions of this Agreement and those of any such convention, the provisions of that convention shall apply to the extent of the inconsistency.

3. The provisions of Article 4 shall apply to taxation measures alleged to be expropriatory.

4. The dispute settlement provisions of this Agreement apply with respect to paragraph 3 of this Article.

5. If an investor invokes Article 4 (Expropriation and Compensation), as the basis of a claim to arbitration according to Article 9 (Settlement of Disputes Between one Contracting Party and an Investor of the other Contracting Party) the following procedure shall apply:

The investor must first refer to the competent tax authorities of the host Party the issue of whether the tax measure concerned involves an expropriation. In case of such referral, the competent tax authorities of both Contracting Parties shall consult. Only if, within six months of the referral, they do not reach an agreement that the measure does not involve an expropriation, or in case the competent tax authorities of the Contracting Parties fail to consult with each other, the investor may submit its claim to arbitration under Article 9.

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[4] It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

ARTICLE 15
CONSULTATIONS

The Contracting Parties shall consult with each other concerning any matter related to the application or interpretation of this Agreement.

ARTICLE 16
FINAL PROVISIONS

1. Both Contracting Parties shall notify each other through diplomatic channels that they have completed the internal legal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the sixtieth (60th) day upon the receipt of the latter notification.

2. This Agreement shall remain in force for a ten years period and shall be automatically prolonged for another ten years period thereafter. After the initial ten years, this Agreement may be denounced at any time by any of the Contracting Parties, by serving a twelve-month prior notice, sent through diplomatic channels.

3. With respect to investments made prior to the date on which the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall remain in force for an additional term of ten (10) years from such a date.

4. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedures required for entry into force of the present Agreement.

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

Done in duplicate, at Lima, Peru, on 22 November 2008, in the Chinese, Spanish and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Colombia

For the People's Republic of China

ANNEX I

Presentation of Documents to a Party Regarding Article 9

China

The place of presentation of the notice of intent and other documents concerning settlement of disputes regarding article 9, in China is:

Ministry of Commerce
2, East Chang An Ave.
Beijing, China
Postcode: 100731

Colombia

The place of presentation of the notice of intent and other documents concerning settlement of disputes regarding article 9, in Colombia is:

Dirección de Inversión Extranjera y Servicios
Ministerio de Comercio, Industria y Turismo
Calle 28 # 13 A – 15
Bogotá D.C. – Colombia