AGREEMENT CONCERNING THE PROTECTION AND RECIPROCAL ENCOURAGEMENT OF INVESTMENTS BETWEEN THE KINGDOM OF SPAIN AND THE CZECH AND SLOVAK FEDERAL REPUBLIC

The Kingdom of Spain and the Czech and Slovak Federal Republic, hereafter called "the Parties",

Desiring to intensify economic cooperation for the benefit of both countries,

Intending to create favourable conditions for investments by investors from both Parties in the other's territory, and

Recognizing that encouragement and protection of such investments in accordance with this Agreement stimulate initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investments" shall apply to all types of assets acquired in accordance with the laws of the country in which such investment is made and particularly, but not exclusively, to:

(a) Movable and immovable property and all other real rights such as mortgages, sureties, beneficial interests and similar rights as regards any type of assets;

(b) Rights deriving from shares, bonds, and other types of participation in private or public companies, whether having a fixed or variable income, commercial financial loans and whether capitalized or not;

(c) Monetary assets, claims and cash, other assets and any other benefit having an economic value;

(d) Industrial property rights, trade marks and other rights derived from intellectual property including business assets and technical know-how;

(e) Concessions accorded by law or by virtue of a contract, including concessions for prospecting, cultivating, mining or developing natural resources.

2. The term "investors" shall apply to:

(a) Natural persons who,

(a.a) In the case of Spanish investors, are resident in Spain according to Spanish law;

(a.b) In the case of Czech investors, those persons who are citizens of the Czech and Slovak Federal Republic.

(b) Artificial persons, including companies and other entities duly established according to the law of one of the Parties and located in the territory of that Party.

3. The term "investment income" shall mean the return on an investment, particularly, but not exclusively, profits, interest, capital income, dividends, fees and royalties.

4. The term "territory" shall mean the land territory of each Party and the exclusive economic zone and continental shelf extending beyond the territorial sea of each Party over which they have, or might have, jurisdiction and sovereign rights in respect of prospecting for, and the exploration and preservation of, natural resources, in accordance with international law.

Article 2. Promotion

Each Party shall, to the best of its abilities, promote investments in its territory by investors of the other Party and shall permit those investments in accordance with its laws.

Article 3. Protection

1. Each Party shall protect within its territory investments made in accordance with its laws by investors of the other Party and shall not impair, by unjustified or discriminatory measures, the management, maintenance, use, enjoyment, extension, sale and, should it so happen, liquidation of such investments.

2. Each Party shall grant the necessary permits in connection with such investments and the services and activities resulting therefrom and shall permit, within the framework of its legislation, execution of licensing contracts and of technical or any other type of assistance.

3. Each Contracting Party shall, within the framework of its laws, grant the entry, residence, work and travel permits requested by nationals of one of the Contracting Parties in connection with an investment in the territory or maritime zone of the other Party.

Article 4. Treatment

1. Each Party shall ensure fair and equitable treatment within its territory for the investments of nationals of the other Party.

2. This treatment shall be no less favourable than that granted by each Party in respect of the investments made within its territory by nationals of a third State.

3. The aforementioned treatment shall not apply to privileges which either Contracting Party accords to investors of a third State by virtue of:

(a) Membership of one Party in an economic union, customs union, free trade area or international economic bloc;

(b) Signature of an agreement for the avoidance of double taxation or any other tax agreement.

4. In addition to the provisions of paragraph 2 above, each Party shall, in accordance with its national laws, apply to the investments of nationals of the other Party treatment no less favourable than that granted to its own nationals.paragraph 2 above, each Party shall, in accordance with its national laws, apply to the investments of nationals of the other Party treatment no less favourable than that granted to its own nationals.

Article 5. Nationalization and Expropriation

Any nationalization, expropriation or any other measure of this nature taken by the authorities of one Party against the investments of investors of the other Party in its territory, shall be taken only for reasons of public use and in accordance with the law and shall in no case be discriminatory. The Party adopting those measures shall pay the investor or his beneficiary, without undue delay, adequate compensation in convertible currency.

Article 6. Transfers

1. Each Party shall grant investors of the other Party, with respect to investments made in its territory, the possibility of freely transferring income from those investments, and other payments related thereto, and, in particular, but not exclusively:

— Investment as defined in article 1 of this Agreement;

— Compensation provided for in article 5 of this Agreement;

— The proceeds from the complete or partial sale or liquidation of an investment;

— Wages, salaries and other compensation received by the nationals of one Party who have secured from the other Party the necessary work permits in connection with an investment.

Article 7. More Favourable Conditions

Where one Party has agreed with investors of the other Party to conditions more favourable than those of this Agreement, those conditions shall not be affected by this Agreement.

Article 8. Principle of Subrogation

Where one Party has granted financial security against non-commercial risks in respect of an investment by one of its investors in the territory of the other Party, the latter shall recognize application of the principle of subrogation of the first Party in respect of the investor's rights provided that that Party has made a first payment in connection with the financial security granted, without prejudice to the laws on foreign investments in effect in the territory of the Party where the investment was made.

Article 9. Disputes between Parties

1. Disputes between the Parties concerning the interpretation or application of this Agreement shall, as far as possible, be resolved amicably.

2. If a dispute cannot be settled thus within six months from the start of negotiations, it shall be submitted to an arbitral tribunal, at the request of either Party.

3. The arbitral tribunal shall be composed as follows: each Party shall appoint an arbitrator and those two arbitrators shall choose a national of a third State as chairman. The arbitrators shall be appointed within three months, and the chairman within five months, of the date on which one of the two Parties informs the other Party of its intention to submit the dispute to arbitration.

4. If one Party does not appoint an arbitrator within the time limit specified, the other Party may request the Secretary-General of the United Nations to make the appointment. If the two arbitrators cannot agree on the choice of the third arbitrator within the prescribed time-frame, either Party may invite the Secretary-General of the United Nations to make the relevant appointment.

5. The arbitral tribunal shall reach its decision in conformity with the law, the provisions contained in this Agreement or in other Agreements in force between the Parties, and in accordance with the universally recognized principles of international law.

The tribunal shall establish its own rules of procedure prior to the commencement of the arbitral proceedings.

The tribunal shall make its decision by a majority of votes; its decision shall be final and binding on both Parties.

6. Each Party shall defray the expenses incurred by the arbitrator appointed by it and those related to its representation in the arbitral proceedings. Other expenses, including those of the chairman, shall be shared equally by the two Parties.

Article 10. Disputes between One Party and Investors of the other Party

1. Disputes between one Party and an investor of the other Party shall be communicated in writing, together with a detailed report, by the investor to the Party in whose territory the investment was made. As far as possible, the Parties shall endeavour to settle those differences amicably.

2. If the disputes cannot be settled thus within six months of the date of the written notification referred to in paragraph 1, they shall be referred to one of the following, the choice being left to the investor:

— An arbitral tribunal in accordance with the regulations of the Institute of Arbitration of the Chamber of Commerce in Stockholm;

— The court of arbitration of the International Chamber of Commerce in Paris;

— The ad hoc arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law;

— The International Centre for Settlement of Investment Disputes established by the Convention on the settlement of investment disputes between States and nationals of other States, opened for signature at Washington on 18 March 1965, if each Party to the present Agreement has acceded to it.

Article 11. Retroactivity

1. This Agreement shall also apply to investments made prior to its entry into force by investors of one Party in accordance with the legal provisions of the other Party in the territory of the latter after 1 January 1950.

Article 12. Entry Into Force

The Parties shall notify one another of the completion of the constitutional formalities required in their respective territories for the entry into force of this Agreement. The latter shall enter into force the day of the second such notification.

Article 13. Period of Validity and Extension

This Agreement shall remain in force for an initial period of 10 years and shall be automatically renewed for consecutive two-year periods.

Article 14. Denunciation

1. Each Contracting Party may denounce this Agreement by notifying [the other], in writing, six months before the date of its expiration.

2. In case of denunciation, the provisions of this Agreement shall continue to apply, for a period of 10 years, to investments made before the date of the notification, in writing, of termination.

DONE at Madrid, on 12 December 1990 in two originals, in Spanish and Czech, both texts being equally authentic.

For the Kingdom of Spain:

[Signed]

Francisco Fernández Ordóñez

Minister for Foreign Affairs

For the Czech and Slovak Federal Republic:

[Signed]

Jiŕi Dienstbier

Vice-Prime Minister of the Government and Minister for Foreign Affairs