AGREEMENT for the Promotion and Reciprocal Protection of Investments between the Kingdom of Spain and the Republic of Honduras

The Kingdom of Spain and the Republic of Honduras, hereinafter referred to as the "Contracting Parties",

Desiring to strengthen economic cooperation for the mutual benefit of the two countries,

Intending to create favourable conditions for investments made by investors of one Contracting Party in the territory of the other, and

Recognizing that the promotion and protection of investments under this Agreement will encourage initiatives in this field,

Have agreed as follows:

Article I. Definitions

For the purposes of this Agreement:

1 . The term "investor" means:

(a) In the case of the Kingdom of Spain, natural persons who are residents of Spain under Spanish law and, in the case of the Republic of Honduras, natural persons who derive their status as Honduran nationals from the law in force in the Republic of Honduras.

(b) Any legal person which is constituted or, in any event, duly organised under the law of a Contracting Party and has its registered address in the territory of the same Contracting Party.

2 . The term "investment" means any kind of asset, such as property and rights of every kind, acquired in accordance with the law of the host country of the investment and, in particular, though not exclusively, the following:

— Shares and other forms of participation in a company;

— Rights derived from any kind of contribution made with the intention of creating economic value, expressly including any loans granted for that purpose, whether or not capitalized;

— Movable and immovable property, and such other property rights as mortgages, pledges, usufructs and similar rights;

— All intellectual property rights, expressly including patents for inventions, trade marks, service marks, manufacturing licences, know-how and goodwill;

— Rights to engage in economic and commercial activities conferred by law or under a contract, especially concessions to search for, cultivate, extract or exploit natural resources.

Article II. Promotion and Acceptance

1 . Each Contracting Party shall, to the extent possible, promote investments made in its territory by investors of the other Contracting Party and shall accept such investments in accordance with its laws.

2 . This Agreement shall also apply to investments made before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws of the latter Contracting Party.

Article III. Protection

1 . Each Contracting Party shall protect within its territory the investments made in accordance with its laws by investors of the other Contracting Party and shall not obstruct by unreasonable or discriminatory measures the management, maintenance, development, use, enjoyment, extension, sale or, where appropriate, liquidation of such investments.

2 . Each Contracting Party shall grant the necessary permits in connection with such investments and, within the framework of its laws, shall permit the execution of contracts relating to employment, manufacturing licences and technical, commercial, financial and administrative assistance.

3 . Each Contracting Party shall also grant, as required, the necessary permits in connection with the activities of consultants or experts engaged by investors of the other Contracting Party.

Article IV. Treatment

1 . Each Contracting Party shall guarantee within its territory fair and equitable treatment for the investments made by the investors of the other Contracting Party.

2 . Such treatment shall be no less favourable than that accorded by each Contracting Party to the investments made within its territory by investors of a third country which enjoys most-favoured-nation status.

3 . The treatment shall not, however, extend to the privileges which a Contracting Party may grant to investors of a third State by virtue of its current or future association with or participation in a free-trade area, customs union or common market or under any other similar international arrangement.

4 . The treatment accorded under this article shall not extend to that deductions and exemptions or other similar privileges granted by either Contracting Party to investors of a third country under an agreement for the avoidance of double taxation or any other taxation agreement.

5 . In addition to applying the provisions of paragraph 2 of this article, each Contracting Party shall, in conformity with its national law, accord to the investments of investors of the other Contracting Party treatment no less favourable than that accorded to its own investors.

Article V. Nationalization and Expropriation

Nationalization, expropriation or any other measure having similar characteristics or effects that may be applied by the authorities of one Contracting Party against the investments in its territory of investors of the other Contracting Party must be effected exclusively for reasons of public interest, in accordance with the law, and shall in no case be discriminatory. The Contracting Party adopting such measure shall pay to the investor or his or its legal beneficiary, without undue delay, appropriate compensation, in convertible and freely transferable currency.

Article VI. Compensation for Losses

Investors of one Contracting Party whose investments or returns on investments in the territory of the other Contracting Party suffer losses owing to war, other armed conflict, a state of national emergency, rebellion, mutiny or other similar circumstance, including losses due to requisitioning, shall be accorded, by way of restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Any payment made under this article shall be prompt, adequate, effective and freely transferable.

Article VII. Transfers

1 . Each Contracting Party shall guarantee to investors of the other Contracting Party in respect of investments made in its territory the unrestricted transfer of returns on those investments and of other related payments, including in particular, though not exclusively, the following:

— Returns on an investment as defined in article I;

— Indemnities as provided for in article V;

— Compensation as provided for in article VI;

— Proceeds from the sale or liquidation, in full or in part, of an investment;

— Amounts necessary for the reimbursement of loans and the payment of interest thereon;

— Amounts necessary for the purchase of raw or other materials, semi-manufactured or finished products or for the replacement of capital goods, or any other amount necessary for the maintenance and development of an investment;

— Salaries, wages and other remuneration received by nationals of one Contracting Party who have obtained in the other Contracting Party the necessary work permits in connection with an investment.

Article VIII. More Favourable Terms

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

Article IX. Principle of Subrogation

Where one Contracting Party has provided a financial guarantee against non-commercial risks in respect of an investment made by one of its investors in the territory of the other Contracting Party, the latter Contracting Party shall, one the former Contracting Party had made a first payment in connection with the financial guarantee, recognize the transfer to the former Contracting Party of the economic rights of the investor. Such transfer shall enable the former Contracting Party to be the direct beneficiary of any payments in compensation to which the investor might be entitled.

Subrogation shall apply in respect of rights of ownership, use or enjoyment or any other property right only if the relevant authorizations required under the laws in force in the Contracting Party in which the investments was made have first been obtained.

Article X. Disputes between the Contracting Parties

1 . Any dispute between the Contracting Parties relating to the interpretation or application of this Agreement shall, to the extent possible, be settled by the Governments of the two Contracting Parties through the diplomatic channel.

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

3 . The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall select a national of a third State as president. The arbitrators shall be appointed within three months and the president within five months from the date on which either of the two Contracting Parties informs the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4 . If either Contracting Party fails to appoint its arbitrator within the period specified, the other Contracting Party may invite the President of the International Court of Justice to make the necessary appointment. Where the two arbitrators are unable to agree on the appointment of a third arbitrator within the designated period, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointment.

5 . If, in the cases provided for in paragraph 4 of this article, the President of the International Court of Justice is prevented from acting or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from acting or is a national of either Contracting Party, the appointments shall be made by the most senior member of the Court who is not a national of either Contracting Party.

6 . The arbitral tribunal shall issue its ruling in accordance with the law, the provisions of the present Agreement or of other Agreements in force between the Contracting Parties and the universally recognized principles of international law.

7 . Unless the Contracting Parties decide otherwise, the tribunal shall determine its one procedures.

8 . The tribunal shall take its decision by a majority of votes, and such decision shall be final and binding on both Contracting Parties.

9 . Each Contracting Party shall defray the expenses of the arbitrator appointed by it and of its representation in the arbitral proceedings. The remaining expenses, including those of the President, shall be shared equitably by the two Contracting Parties.

Article XI. Disputes between a Contracting Party and Investors of the other Contracting Party

1 . Any investment-related dispute which may arise between a Contracting Party and an investor of the other Contracting Party with respect to issues regulated by this Agreement shall be notified in writing by the investor, together with a detailed report, to the host Contracting Party of the investment. The parties to the dispute shall, as far as possible, endeavour to settle such differences amicably.

2 . If the dispute cannot be thus settled within six months from the date of the written notification mentioned in paragraph 1, it shall be submitted at the choice of the investor, to:

— The competent courts of the Contracting Party is whose territory the investment was made;

— An ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law;2

— The International Centre for the Settlement of Investment Disputes (ICSID) established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which was opened for signature at Washington, D.C., on 18 March 1965,3 provided that both Parties to the present Agreement have acceded to that Convention; or

— The International Court of Arbitration of the International Chamber of Commerce in Paris.

Article XII. Entry Into Force, Extension and Termination

1 . This Agreement shall enter into force on the date on which the Contracting Parties notify each other that their respective constitutional formalities for the entry into force of international agreements have been completed. It shall remain in force for an initial period of ten years and thereafter shall be renewed automatically for consecutive periods of two years.

Either Contracting Party may terminate this Agreement by giving written notice six months before the date of expiry.

2 . In the event of termination, the provisions of articles I to XI of this Agreement shall continue to apply for a period of ten years to investments made before the official notice of termination.

For the Kingdom of Spain:

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Javier Gómez-Navarro Navarrette

Minister of Trade and Tourism

For the Republic of Honduras:

Ernesto Paz Aguilar

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