Agreement for the Promotion and Reciprocal Protection of Investments between the Republic of Colombia and the Kingdom of Spain

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

Desiring to intensify economic cooperation in the mutual benefit of both countries;

Aiming to create favourable conditions for investments by investors of either Contracting Party in the territory of the other party; and

Recognizing that the promotion and protection of investments under this Agreement stimulates initiatives in this area, have agreed as follows:

Article I. Definitions

For the purposes of this Agreement:

1. "investors" means:

a) Natural persons who are nationals of a Contracting Party according to its legislation and investments in the territory of the other Contracting Party;

b) Legal entities, including associations companies of subsidiaries; companies, corporations and other organizations, which are duly constituted or otherwise organized under the law of that Contracting Party and having their headquarters in the territory of that same Contracting Party.

2. "investment" shall mean every kind of asset and in particular, though not exclusively, the following:

- Shares and other forms of participation in companies.

- Rights to money or performance under contract having a financial value.

- Movable and immovable property as well as other rights in rem such as mortgages, pledge, usufructs and similar rights.

- Any rights in the field of intellectual property, including express patents and trademarks, trade and licensing of manufacture, know-how and goodwill or reputation.

- Similar figures or concessions conferred by law or under a contract for the exercise of an economic activity or commercial concessions including prospecting, exploration and exploitation of natural resources.

However, for the purpose of this Agreement, the loans shall not be considered as investments.

3. "Investment income" means income deriving from an investment in accordance with the definition contained in the preceding point and includes in particular, though not exclusively, profits, dividends, interests, capital gains, royalties and fees.

4. The term "territory "means the land territory of each Contracting Party as well as those maritime areas including the marine soil and subsoil adjacent to the territorial sea over which each Contracting Party exercises, in accordance with international law, the rights for the purposes of exploring and exploiting the natural resources of such areas.

Article II. Promotion, Admission

1. Each Contracting Party shall promote investments in its territory of investors of the other Contracting Party and shall

admit 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 accordance with the laws of the other Contracting Party in the territory of the latter. it shall not apply to disputes arising prior to the Entry into Force of the Agreement.

3. In order to promote investment flows between the Contracting Parties shall exchange information to facilitate the knowledge of the conditions and opportunities for investment in its territory.

Article III. Protection

1. Each Contracting Party shall grant, in accordance with international law, the full protection and security in its territory to investments made by investors of the other Contracting Party and shall not hinder unreasonable or discriminatory measures by the management, maintenance, use, enjoyment, extension and sale or, where appropriate, the liquidation of such investments.

2. The necessary authorizations and permits for the development of investments and enforcement of labour contracts, licence manufacture, technical assistance, commercial, financial and administrative and shall be granted in accordance with the legislation of each Contracting Party.

3. Each Contracting Party shall observe any obligation it has assumed with regard to investments by the other Contracting Party.

Article IV. Treatment

1. Returns of investments and investors of each Contracting Party shall at all times fair and equitable treatment.

2. This treatment shall not be less favourable than that granted by each Contracting Party in its territory to returns of investments and investors of any third State.

3. This treatment shall not apply, however, to privileges which either Contracting Party accords to investors of a third State by virtue of its participation or association with any existing or future, a customs union or common market under any other international agreement relating wholly or partially to taxation.

4. Each Contracting Party shall, subject to its domestic law, and returns to investments of investors of the other Contracting Party a treatment no less favourable than that accorded to its own investors.

Article V. Expropriation and Nationalization

1. Investments of investors of either Contracting Party shall not be subjected in the territory of the other Contracting Party to:

a) Nationalization or equivalent measures, by means of which one of the Contracting Parties to take control of certain strategic activities or services; or

b) Any other form of expropriation or measures having an equivalent effect, except that any such measures shall be carried out in accordance with the law on a non-discriminatory basis, for reasons of public purpose or social interest related to the internal needs of that Party and to a prompt, effective and adequate compensation.

2. In accordance with the Principles of International Law, compensation for the acts referred to in subparagraphs 1 (a) and (b) of this article shall amount to the actual value of the investment immediately before the measures taken or are before the impending measures became public knowledge, whichever occurs first. the compensation shall be paid without undue delay, be effectively realizable and be freely transferable.

3. The investor shall have the right under the law of the Contracting Party taking the measure relevant to a prompt review by a judicial or other independent authority of that party of its case and of the valuation of its investment in accordance with the principles set out in paragraphs 1 and 2 of this article. this right shall not preclude access to arbitration mechanisms provided for in article XI of this Agreement.

4. If a Contracting Party takes any of the measures referred to in paragraph 1 a) and b) of this Article in relation to the assets of a company incorporated or constituted under the law in force in any part of its territory in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraphs 1 to 3 of this Article are applied so as to ensure prompt, adequate and effective compensation in respect of the investment of such investors of the other

Contracting Party, owners of the shares.

5. Nothing in this Agreement shall oblige either Contracting Party to protect investments of persons involved in criminal activities.

Article VI. Compensation for Losses

1. Investors of one Contracting Party whose investments or returns of investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a national state of emergency, revolt or riot or other similar circumstances, including losses searches, shall be accorded to restitution, indemnification, compensation or other settlement, a treatment no less favourable than that which the latter Contracting Party accords to its own investors to investors or of any third State. any payments made under this article shall be made in a prompt, adequate, effective and freely transferable in accordance with Article VII of this Agreement.

Article VII. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, with regard to investments in its territory, the free transfer of payments relating to the same and in particular, though not exclusively, the following:

- The investment income as defined in Article I;

- The compensation referred to in Article V;

- The compensation referred to in Article VI;

- The proceeds from the sale or the total or partial liquidation of investments;

- The amounts required for the repayment of payments related to an investment;

- The amounts necessary for the maintenance and development of the investment.

2. The host Contracting Party shall not establish an investment of discriminatory measures for access to the exchange market or for the acquisition of required for currency transfers under this article.

3. The transfers referred to in the present Agreement shall be made in a freely convertible currency, without prejudice of tax obligations laid down by the legislation in force in the host Contracting Party of the investment. unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

4. Transfers shall be made without delay or restrictions in accordance with the practices of commercial banks internationally accepted. Each Contracting Party undertakes to facilitate the expeditious completion of the necessary formalities for which they are responsible for the effective implementation of transfers.

5. Contracting Parties shall accord to the transfers referred to in this article a treatment no less favourable than that accorded to transfers originating by investors of any third State.

6. In exceptional circumstances balance of payments difficulties, each Contracting Party shall have the right, for a limited period of time, to engage in an equitable and non-discriminatory and in good faith, the powers conferred by its laws and procedures for the free transfer of investments and returns.

7. In the case of compensation under article V, provided it shall guarantee the free transfer of at least thirty three and a third.

Article VIII. More Favourable Terms

1. If the provisions of law of either Contracting Party or obligations under international law than this agreement, current or future between the Contracting Parties result in a general or special rules under which must be accorded to investments of investors of the other Contracting Party to a more favourable treatment than that provided for by the present Agreement, such rules shall prevail over the present Agreement, as is more favourable.

2. More favourable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agreement.

Article IX. Principle of Subrogation

1. If a Contracting Party or an entity designated by it has granted on non-commercial risk any guarantee in connection with an investment made by its investors in the territory of the other Contracting Party, the latter shall accept the subrogation of the first Contracting Party or its Entities in the economic rights of the investor, from the first time that the Contracting Party or its Agency has made a payment under the guarantee granted. The subrogation will ensure that the first Contracting Party or its entities are direct beneficiaries of any payments of compensation to the investor might be secured.

2. As regards property rights, use, enjoyment or any other right, the subrogation shall take place only after obtaining the relevant authorisations in accordance with the legislation of the Contracting Party where the investment was made.

Article X. Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels.

2. If the dispute cannot be settled in this way within six months from the beginning of negotiations, the dispute shall be submitted, at the request of either of the two Contracting Parties to an arbitral tribunal.

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

4. If one of the Contracting Parties has not appointed its arbitrator within the deadline, the other Contracting Party may invite the President of the International Court of Justice to make the appointment. where two arbitrators fail to agree on the appointment of the third arbitrator within the prescribed period, either Contracting Party may invite the President of the International Court of Justice to make the appointment.

5. If in the cases referred to in paragraph 4 of this Article, the President of the International Court of Justice cannot discharge the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President cannot discharge the said function or is a national of either Contracting Party the appointment shall be made by the most senior member of the Court who is not a national of either of the Contracting Parties.

6. The arbitration tribunal shall deliver its opinion on the basis of respect for the rules contained in this Agreement or in other agreements in force between the Contracting Parties, and on the universally recognized principles of International Law.

7. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

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

9. Each Contracting Party shall bear the costs of the arbitrator appointed by it and its representation in the arbitral proceedings. the other expenses, including the President shall be borne in equal parts by both Contracting Parties.

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

1. Any dispute concerning an investment which may arise between a Contracting Party and an investor of the other Contracting Party with respect to matters governed by this Agreement shall be notified in writing, including detailed information by the investor Contracting Party to the recipient of the investment. to the extent possible, the parties to the dispute seek to settle the dispute by means of a friendly settlement.

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

- The competent courts of the Contracting Party in whose territory the investment was made;

- The ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law;

- The International Centre International Centre for Settlement of Investment Disputes (ICSID) 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, when each State Party to this Agreement has acceded to it;

- Or the ICSID Additional Facility for the administration of conciliation or arbitration proceedings and fact-finding if one of the Contracting Parties has not acceded to the Convention.

3. The arbitration shall be based on:

- The provisions of this Agreement and any other agreements concluded between the Contracting Parties.

- The rules and the universally accepted principles of International Law.

- The national law of the Contracting Party in whose territory the investment was made, including the rules relating to conflicts of law.

4. The arbitration awards shall be final and binding on the parties to the dispute. each Contracting Party undertakes to execute the decisions in accordance with its national legislation.

Article XII. Entry Into Force , Extension and Termination

1. This Agreement shall enter into force on the day on which the Contracting Parties have notified each other that their respective constitutional formalities required for the Entry into Force of international agreements have been completed. it shall remain in force for an initial period of ten years and shall be extended by tacit renewal, for periods of two consecutive years.

Each Contracting Party may denounce this Agreement by a written notification, six months before the date of expiry.

2. In the event of denunciation, the provisions of Articles I to XI of this Agreement shall continue to apply for a period of ten years to investments made prior to the denunciation.

Done in Santafé de Bogota, D.C., nine (9) days of June 1995 (2), in two originals in Spanish, both being equally authentic.

For the Republic of Colombia,

For the Kingdom of Spain