Agreement between the Republic of Panama and Ukraine on the Reciprocal Promotion and Protection of Investments

The Republic of Panama and Ukraine (hereinafter referred to as the contracting parties).

Desiring to create favourable conditions for greater economic co-operation between the contracting parties and in particular for investments made by investors of one Contracting Party in the territory of the other contracting party based on the principles of equality and mutual benefit;

Recognizing that the reciprocal promotion and protection of investments based on this agreement will stimulate the individual business initiative and will increase prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term investments means every kind of assets or rights invested in connection with economic activities made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party and, in particular, though not exclusively, includes:
(a) ownership of movable and immovable property and any other property rights such as mortgages, leases, pledges and usufructs, and other similar rights;
(b) shares, bonds, obligations and rights of participation in a company or business enterprise and any rights or interest derived from the same;
(c) claims and claims to money or any other action under contract having an economic value;
(d) Intellectual Property Rights including rights with respect to patents, copyrights, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how and good will; and
(e) rights obtained under the law, by an administrative act or under contract, including concessions to search for, cultivate, extract or exploit resources naturals.

Any change in the form in which assets are invested or reinvested or rights shall not affect their character as an investment.

2. The term "proceeds" or "returns" means the amounts obtained by an investment and in particular, though not exclusively, includes interests, capital gains, profits, dividends, royalties and all kinds of fees.

3. The term "investor" means any natural or legal person of one Contracting Party who invest in the territory of the other Contracting Party;
(a) the term "Natural Persons" means natural persons having the nationality of that Contracting Party in accordance with its laws; and
(b) the term "legal entity" means any person such as companies, public institutions, foundations, companies, firms, establishments, organizations, corporations or associations incorporated or constituted in accordance with the laws and regulations of that Contracting Party;
(c) the term "territory" means the Territory of the Republic of Panama, as well as those maritime areas including the seabed and subsoil adjacent to the outer limit of the territorial sea over which the State concerned exercises, in accordance with international law and with their respective legislation, sovereign rights or jurisdiction for the purpose of the exploration and exploitation of natural resources of the term such areas.

In the case of Ukraine: the land territory, airspace and territorial sea, including those maritime areas adjacent to the outer limit of the territorial sea, which may, under the law and international law, sovereign exercise sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other contracting party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investments made by investors of each Contracting Party shall be accorded at all times fair and equitable treatment and shall enjoy full protection and security in the territory of the other contracting party. neither Contracting Party shall in any way by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other contracting party.

Article 3. Treatment of Investments

1. Each Contracting Party shall accord in its territory to returns of investments and investors of the other Contracting Party which is a fair and equitable treatment and not less favourable than that which it accords to its own and returns of investments or investors to returns of investments and investors of any third State, whichever is more favourable to investors.

2. Each Contracting Party shall accord to investors in its territory of the other contracting party as regards the operation, management, maintenance, use, enjoyment or disposal of their investments, which is fair and equitable treatment and not less favourable than that which it accords to its own investors to investors or of any third State, whichever is more favourable to investors.

3. The local remedies that are subject to the laws of a Contracting Party in whose territory the investment will be made available to the other Contracting Party in a manner that is not less favourable correlation with respect to that which has been shown to its own of investments or investors to investors of any third State whichever is more favourable to investors.

4. The provisions of paragraphs (1), (2) and (3) of this article shall not be construed so as to oblige one contracting party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by means of:

a) Any customs union, free trade area, economic, monetary union or union similar international agreements leading to such unions or institutions or other forms of regional cooperation to which either of the contracting parties is or may become a party; or

b) Any international agreement or arrangement relating wholly or mainly to taxation.

Article 4. Compensation for Losses

1. Investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, a national state of emergency, revolt or riot, insurrection or other similar situations in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party as regards treatment, restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors to investors or of any third State. resulting payments shall be freely transfer without undue delay.

2. Without prejudice to paragraph (1) of this article, investors of one Contracting Party who in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

a) Requisitioning of their property by its forces or authorities; or

b) Destruction of their property by the authorities or forces of the other contracting party was not caused in combat action or was not required by the necessity of the situation, shall be accorded adequate restitution or compensation not less favourable than that granted under the same circumstances to an investor of the other contracting party or to an investor of any other State. resulting payments shall be freely transfer without undue delay.

Article 5. Expropiacion

1. Investments of investors of one Contracting Party shall not be nationalised, expropriated or otherwise subjected to any other measures having an effect equivalent to nationalization or expropriation (hereinafter "subsequent expropriation) in the territory of the other contracting party except for reasons of public purpose or social interest and provided that a prompt, effective and adequate compensation. the expropriation shall be carried out under due process of law without discrimination and in accordance with the legal procedures.

2. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the

expropriation or before the impending expropriation was publicly known, whichever occurs first, shall include at the applicable commercial interest rate from the date of expropriation until the date of payment and shall be made without undue delay, be effectively realizable and freely convertible and transferable.

3. Investors of one contracting party affected by expropriation shall have a right to a prompt review by a judicial or other independent authority of the other contracting party of its case and of the evaluation of their investments in accordance with the principles set out in this article.

4. Where a contracting party expropriates the assets of a company which is incorporated or constituted under its laws and regulations, and in which investors of the other contracting party own shares, bonds or any other form of participation, shall apply the provisions of this article.

Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of the other contracting party after payment of taxes, duties and other compulsory payments, the free transfer of funds related to their investments and returns in its territory. such transfers shall include in particular, though not exclusively:

a) Net profits, capital gains, dividends, interests, royalties, fees and any other current income accruing from investments;

b) Proceeds accruing from the sale or the total or partial liquidation of investments;

c) Funds repago loans in connection with investments;

d) Earnings of nationals of the other Contracting Party who are allowed to work in connection with investments in the territory of each Contracting Party;

e) Additional funds necessary for the maintenance or development of the existing investments; and

f) Compensation pursuant to articles 4 and 5.

g) Payments arising out of the settlement of a dispute.

2. All transfers under this Agreement shall be made in a freely convertible currency, without any restriction or undue delay, at the official rate of exchange prevailing on the date of transfer.

Article 7. Subrogacion

1. If a Contracting Party or its designated agency makes a payment to its own investors under given an indemnity in respect of investments 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 that State, of any rights or claims from investors to the former Contracting Party or its designated agency; and

b) The former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of those investors.

2. The spouse claims or rights shall not exceed the original rights or claims of the investor.

Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute between a Contracting Party and an investor of the other Contracting Party, arising out of an alleged breach of an obligation under this Agreement shall, as far as possible, be settled by the parties to the dispute in an amicable way.

2. If the dispute cannot be settled within six (6) months following the date on which it was initiated by either party, it shall upon the request of the investor of the other Contracting Party:

a) The International Centre for Settlement of Investment Disputes (ICSID) established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States.

b) To an ad hoc arbitral tribunal which unless the parties to the dispute so agree otherwise, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL.

3. The award made by ICSID shall be final and binding on the parties to the dispute. each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant ieyes and regulations.

4. The contracting parties may not interfere by means of diplomatic actions in court proceedings or disputes submitted to international arbitration in accordance with this article, until the relevant processes are completed, except where the other party in the dispute has not complied with the judgment or obligations according to the decision of the arbitral tribunal, under the terms established in the respective decision or award.

Article 9. Settlement of Disputes between the Contracting Parties

1. Disputes between the contracting parties concerning the interpretation or application of this Agreement shall, if possible, be settled by consultations through diplomatic channels.

2. If a dispute cannot be settled within six months (6) It shall upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal in accordance with the provisions of this article.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way: within two (2) months from the date of receipt of the request de-arbitraje, each Contracting Party shall appoint one member of the Tribunal. those two members shall then select a national of a third State who on approval of 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 periods specified in paragraph (3) of this article the necessary appointments have been made, a request may be made by either contracting party to the President of the International Court of Justice to make such appointments. if the President is a national of either Contracting Party or is otherwise prevented from exercising the function expressed, the Vice-President shall be invited to make the appointments. if the Vice-President is also a national of either Contracting Party or is prevented from exercising the function is expressed, invite the member of the International Court of Justice next in seniority who is not a national of either of the Contracting Parties to the appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. such decision shall be binding on both contracting parties.

6. Each Contracting Party shall bear the costs of its own arbitrator and its representation in the arbitral proceedings. the costs of the Chairman and the remaining costs shall be be in equal parts by both contracting parties. the Tribunal may, however, in its decision to determine that a higher proportion of the costs be paid by one of the Contracting Parties.

7. The arbitral tribunal shall determine its own procedure.

Article 10. Implementation of other Rules

1. Where a matter is governed by this Agreement and simultaneously both by another international agreement to which both parties are contracting parties, or by general principles of International Law, nothing in this Agreement shall prevent any Contracting Party or any of its investors who possesses investments in the territory of the other Contracting Party from taking advantage of those rules which are more favourable to his case.

2. If the treatment to be accorded by investors of one Contracting Party to the other contracting party, in accordance with its laws and regulations or other specific provisions or contracts is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

3. Either Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other contracting party.

Article 11. Implementation of this Agreement

The Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which have been established before its entry into force.

Article 12. Entry Into Force , Duration and Termination

1. This Agreement shall enter into force thirty (30) days after the date on which the Contracting Parties notify each other that all the legal and constitutional requirements for its entry into force have been fulfilled.

2. This Agreement shall remain in force for a period of ten (10) years and shall continue in force indefinitely unless thereafter either contracting party notifies the other Contracting Party in writing one (1) year in advance of its intention to terminate this Agreement.

3. With respect to investments made prior to the termination of this Agreement, the provisions of articles 1 to 11 of this Agreement shall remain in force for a further period of ten (10) years from such date of termination.

4. This Agreement may be altered by written agreement between the contracting parties. any alteration shall enter into force by means of the same procedure that is required for the Entry into Force of this Agreement.

5. This Agreement may be amended by mutual consent. any amendment or termination of this Agreement shall be made without prejudice to any rights or obligations incurred under this Agreement or accrued prior to the effective date of such amendment or termination.

In WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

Done in duplicate at Panama City, four (4) days of November 2003, in two originals in the English and Ukrainian languages both texts being equally authentic.

For the Republic of Panama

(signed) Fidel Castro Ruz "

Cerjack Harmodio Arias

Minister of Foreign Affairs

Ukraine

(signed) Fidel Castro Ruz "

Vitalii gaiduk

Vice-primer Minister