Agreement on the reciprocal promotion and protection of investments between the Kingdom of Spain and the Republic of Costa Rica

The Kingdom of Spain and the Republic of Costa Rica, 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 field,

Have agreed as follows:

Article I. Definitions

For the purposes of this Agreement:

1. "Investors" means with regard to either Contracting Party:

a) Natural persons having the nationality of a Contracting Party according to its legislation.

b) Companies, legal entities, including companies, associations of companies, corporations, corporate entities and other organization which is constituted or otherwise duly organized under the law of that Contracting Party and having its registered office or headquarters in the territory of that Contracting Party regardless of whether or not its activities are non-profit-making.

2. "Investment" shall mean every kind of asset that an investor of a Contracting Party invests in the territory of the other Contracting Party and, in particular, though not exclusively, the following:

a) Shares, stocks, bonds, debentures and any other form of participation in companies;

b) Obligations, and any other right to contractual performance having an economic value. loans shall always connected to an investment;

c) Movable and immovable property as well as other rights in rem such as mortgages, pledge, usufructs and similar rights;

d) Intellectual property rights, including copyrights, related rights; industrial property rights, such as trademarks, appellations of origin or geographical indications, drawings, industrial models, patents and goodwill or rights to keys;

e) Rights to undertake economic and commercial activities conferred by law or under contract, including concessions to prospecting, cultivate, extract or exploit natural resources.

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

Similarly be considered as investments in the territory of a Contracting Party by companies of that same Contracting Party which are effectively controlled by investors of the other contracting party. for greater certainty shall be considered as a company of a Party effectively controlled by investors of the other contracting party if they have the power to name a majority of its directors or otherwise legally direct its operations.

3. The term "investment income" refers to income derived from an investment and includes, in particular but not limited to, profits, dividends, interest, capital gains, royalties and royalties.

4. The term "territory" means the land territory, airspace and territorial sea of each of the Contracting Parties as well as the

exclusive economic zone and the continental shelf extending beyond the territorial sea of each of the Contracting Parties over which they have or may have, in accordance with international law, jurisdiction and sovereign rights for the purpose of exploitation, exploration and preservation of natural resources.

Article II. Promotion and Admission

1. Each Contracting Party shall promote and create favourable conditions for investments in its territory by investors of the other Contracting Party and shall admit such investments in accordance with its laws.

2. With the aim of increasing investment flows, each Contracting Party shall, at the request of the other Contracting Party, inform the latter of investment opportunities in its territory.

3. When a Contracting Party has admitted an investment in its territory, it shall grant, in accordance with its laws and regulations, the necessary permits in connection with such investment as well as those required for the execution of licensing, technical, commercial or administrative assistance contracts. Each Contracting Party shall grant, in accordance with its laws and regulations, whenever necessary, the authorizations required in connection with the activities of consultants or of qualified or skilled personnel, whatever their nationality.

4. This Agreement shall apply, on the basis of its validity, also to investments made before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party.

Article III. Protection

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security. Neither Contracting Party shall in no case accord to such investments treatment less favourable than that required by international law.

2. Neither Contracting Party shall in any way hinder, by arbitrary or discriminatory measures, the operation, management, maintenance, use, enjoyment, sale or, as the case may be, liquidation of such investments. Each Contracting Party shall comply with any obligations it may have entered into with respect to investments of investors of the other Contracting Party.

Article IV. National Treatment and Most-favoured-nation Clause

1. Once admitted investment, each Contracting Party shall accord to investments in its territory or returns of investments of investors of the other Contracting Party treatment no less favourable than that accorded to investments or of its own returns of investments or investors to investments or investors of returns of investments of any third State, whichever is more favourable to the investor.

2. This treatment shall not extend to the privileges which one Contracting Party to extend to the investors of a third State by virtue of its participation or association, present or future, in a free trade area, customs union, common market, economic and monetary union or other similar regional economic integration.

3. The treatment granted under the present article shall not extend the benefit of any treatment, preference or privilege which either of the Contracting Parties of its own accord to investments or investors to investors of any third State by virtue of an international agreement relating wholly or partially to taxation, including agreements to avoid double taxation or any domestic legislation relating wholly or mainly to taxation.

Article V. Expropriation and Nationalization

1. Returns of investments or investors of one Contracting Party in the territory of the other Contracting Party shall not be subject to any expropriation or nationalization or any other measures having equivalent effect (hereinafter referred to as expropriation) except that any such measures are taken for reasons of public interest or public purpose in accordance with the laws, on a non-discriminatory basis and shall be accompanied by the payment of prompt, effective and adequate compensation.

2. The compensation shall be equivalent to the fair market value that the expropriated investment had immediately before the expropriation measure is taken or before the imminence of the expropriation becomes public knowledge, whichever is earlier (hereinafter "valuation date"). The compensation shall be paid without delay, shall be effectively realizable and freely transferable.

3. The fair market value shall be calculated in a freely convertible currency at the rate of exchange prevailing for that

currency on the valuation date. The compensation shall include at a commercial interest rate according to criteria established for that currency market until the date of payment.

4. The Investor affected shall have a right under the law of the Contracting Party making the expropriation, to prompt review by a judicial authority or another competent and independent authority of that Contracting Party of its case to determine whether such expropriation and the valuation of its investment have been adopted in accordance with the principles set out in this Article.

5. If a Contracting Party expropriates the assets of a company which is constituted in its territory in accordance with its applicable laws and in which there is a participation of investors of the other Contracting Party, the first Contracting Party shall ensure that the provisions of this Article are applied so as to guarantee such investors to prompt, effective and adequate compensation.

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 another armed conflict, revolution, a national state of emergency, revolt, riot or any other similar event, shall be accorded to restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Contracting Party accords to its own investors to investors or of any third State, whichever is more favourable to the investor concerned. Resulting payments shall be freely transferable.

2. Without prejudice to the provisions of paragraph (1) of this Article, investors of a Contracting Party who suffer losses in the territory of the other Contracting Party as a result of any of the situations referred to in that paragraph:

a) The requisitioning of its investment or part of their investment by its forces or authorities of the latter Contracting Party; or

b) The destruction not required by the necessity of the situation of their investments, or part of their investment by its forces or authorities of the latter Contracting Party,

They shall be accorded by the latter Contracting Party or adequate compensation, restitution effective in freely convertible currency and freely transferable.

Article VII. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments relating to their investments and in particular, though not exclusively, the following:

a) The initial capital and additional amounts needed for the maintenance, expansion and development of the investment;

b) The investment income as defined in Article I;

c) The necessary funds in repayment of loans related to an investment;

d) Compensation and compensation provided for in Articles V and VI;

e) The proceeds from the sale or the total or partial liquidation of an investment;

f) Wages and remuneration of other personnel engaged in connection with an investment;

g) Payments arising from the settlement of disputes.

2. The transfers referred to in the present Agreement shall be made without delay in freely convertible currency at the market exchange rate prevailing on the date of transfer.

3. Without prejudice to the provisions of this article, the Contracting Parties shall take measures, in a fair, non-discriminatory and in good faith under its legislation relating to prevent fraud and ensure the implementation of tax obligations. Such measures shall not affect the substance of the principles set out in this Article.

4. Contracting Parties shall accord to the transfers referred to in this article a treatment no less favourable than that accorded to the transfer of payments related to investments of investors of any third State.

5. Notwithstanding the provisions of the first paragraph of this Article, each Contracting Party may, in circumstances of exceptional balance of payments difficulties, establish temporary transfer controls provided that measures or a program are

implemented in accordance with internationally accepted criteria. Such limitations shall be established for a limited period, on an equitable, non-discriminatory and bona fide basis.

Article VIII. More Favourable Terms

1. If the provisions of the 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

If a Contracting Party or the agency designated by it makes a payment under a contract of insurance or guarantee provided against non-commercial risks in connection with an investment of any of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognize the principle of subrogation of any right or title of such investor in favor of the first Contracting Party or its designated agency and the right of the first Contracting Party or its designated agency to exercise, by virtue of subrogation, any such right or title to the same extent as its former holder. Such subrogation shall make it possible for the first Contracting Party or its designated agency to be the direct beneficiary of any indemnity or compensation payments to which the original investor may be entitled.

Article X. Settlement of 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 arbitration 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 within the periods specified in paragraph 3 of this Article have not been completed the necessary appointments, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If 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 member of the International Court of Justice next in seniority who is not a national of any of the Contracting Parties.

5. The arbitration tribunal shall deliver its opinion on the basis of 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.

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

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

8. 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 investment dispute arising between a Contracting Party and an investor of the other Contracting Party concerning matters governed by this Agreement shall be notified in writing, including detailed information, by the investor to the Contracting Party receiving the investment. To the extent possible, the Parties to the dispute shall attempt to settle such disputes by amicable agreement.

2. If the dispute cannot be settled in this way within six months from the date of the written notification referred to in paragraph 1, the investor may refer the dispute

(a) to the competent courts of the Contracting Party in whose territory the investment was made;

(b) to one of the following international arbitration tribunals:

(i) to the 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 March 18, 1965, when each State Party to this Agreement has acceded to that Convention;

(ii) in the event that one of the Contracting Parties is not a Contracting State to ICSID, the dispute shall be resolved under the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings by the ICSID Secretariat;

(iii) to an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), where none of the Contracting Parties is a party to ICSID.

3. Once the investor has referred the dispute to an arbitral tribunal, this decision shall be final. If the investor has submitted the dispute to the competent court of the Contracting Party in whose territory the investment was made, the investor may also have recourse to the arbitration tribunals referred to in this Article, provided that such national court has not rendered a decision. In the latter case, the investor shall take such measures as may be required to withdraw definitively from the legal proceedings in progress.

4. The arbitration shall be based on:

a) the provisions of this Agreement and those of other Agreements concluded between the Contracting Parties;

b) the national law of the Contracting Party in whose territory the investment has been made, including the rules relating to conflicts of law; and

c) the generally recognized rules and principles of international law;

5. The Contracting Party which is a party to the dispute may not invoke in its defense the fact that the investor, by virtue of a contract of insurance or guarantee, has received or will receive indemnification or other compensation for all or part of the losses suffered.

6. Arbitral decisions shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce the awards in accordance with its national law.

Article XII. Entry Into Force , Extension and Termination

1. This Agreement shall enter into force on the date 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 fulfilled. It shall remain in force for an initial period of ten years and shall be extended indefinitely unless one of the Contracting Parties denounces it in accordance with subparagraph 2 of this Article.

2. Each Contracting Party may denounce this Agreement by prior written notice, six months before the date of its expiration.

3. With respect to investments made prior to the date of termination of this Agreement, the provisions contained in the other articles of this Agreement shall remain in force for a further period of ten years from the date of denunciation.

In witness whereof, the respective plenipotentiaries have signed this Agreement.

Done in two originals in the Spanish language, which are equally authentic, in San José, on July 8, 1997.

For the Kingdom of Spain,

Ignacio Aguirre Borrell,

For the Republic of Costa Rica

José Manuel Salazar Xirinachs

Minister for Foreign Trade