AGREEMENT FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE KINGDOM OF SPAIN AND THE GABONESE REPUBLIC

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

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

Intending to create favorable conditions for investments by investors of each Contracting Party in the territory of the other, and

Recognizing that an Agreement for the Promotion and Reciprocal Protection of Investments serves to stimulate economic initiative,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement,

1. The term "investor" means, in relation to each of the Contracting Parties:

(a) any natural person who is a national of one of the Contracting Parties under its laws relating to nationality ;

(b) any juridical person, including companies or associations of companies and any other business organization constituted under the law of one of the Contracting Parties and having its registered office in the territory of that Contracting Party ;

and which makes investments in the territory of the other Contracting Party.

2. The term "investment" means all types of assets, including property and rights of every kind, acquired or invested in the host country of the investment.

In particular, but not exclusively, the following are considered to be investments

(a) Shares and other forms of participation in companies ;

(b) Rights derived from all types of contributions made for the purpose of creating economic value, including all loans granted for this purpose ;

(c) Movable and immovable property, as well as other rights such as mortgages, pledges, usufructs, etc....

(d) Intellectual property rights, patents, trademarks, licenses and any other similar incorporeal rights;

(e) Rights to carry out economic or commercial activities granted by law or by virtue of a contract, in particular rights related to the prospecting, cultivation, extraction or exploitation of natural resources.

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

3. The term "income" refers to income derived from an investment in accordance with the definition contained in the preceding

The term "income" refers to income derived from an investment as defined above and includes, in particular, but not limited to, profits, dividends, interest, capital gains, royalties from intellectual property rights and remuneration for the provision of management or technical assistance services.

4. The term "territory" means the territory delimited by the land, air and maritime boundaries of each of the Contracting

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

Article 2. Promotion and Admission

1. Each Contracting Party undertakes to promote the making of investments in its territory by investors of the other Contracting Party. Such investments shall be admitted in accordance with the legislation in force.

2. With a view to increasing investment flows, both Contracting Parties shall, at the request of either Contracting Party, inform each other of investment opportunities in their respective territories.

3. Each Contracting Party shall grant the necessary authorizations in connection with such investments and shall permit, within the framework of its legislation, the execution of labor, manufacturing license, technical, commercial, financial and administrative assistance contracts.

4. Each Contracting Party shall grant, in accordance with its legislation, the required authorizations in connection with the activities of consultants or experts engaged by investors of the other Contracting Party.

5. This Agreement shall also apply to investments made prior to the entry into force of this Agreement by investors of one Contracting Party in the territory of the other Contracting Party.

Article 3. Protection

1. Each Contracting Party undertakes to protect in its territory the investment income and investments of investors of the other Contracting Party.

Neither Contracting Party shall hinder, by unjustified or discriminatory measures, the management, development, maintenance, utilization, extension, sale or, as the case may be, liquidation of such investments.

2. Each Contracting Party shall comply with any obligation incurred in connection with investments made by investors of the other Contracting Party.

Article 4. Most-favoured-nation Clause and National Treatment

1. Each Contracting Party shall ensure in its territory fair and equitable treatment of investments of investors of the other Contracting Party, in accordance with international law.

2. Such treatment shall be no less favorable than that accorded, in like circumstances, to investors of third countries.

3. The provisions relating to the Most-Favored-Nation clause shall in no way oblige the Contracting Parties to grant to investments of the other Contracting Party the advantages of any treatment, preference or privilege accorded by virtue of obligations incurred in connection with:

(a) Their participation or association in a free trade area, a customs union, a common market or any other international economic organization.

(b) A treaty for the avoidance of double taxation or any other tax treaty.

4. Subject to the exceptions specifically reserved, through legal provisions, for its domestic investors, each Contracting Party shall apply to investments of investors of the other Contracting Party treatment no less favorable than that accorded to its own investors.

Article 5. Compensation In Case of Nationalisation or Expropriation

1. Nationalization, expropriation or any other measure of the same nature (hereinafter "expropriation") which may be taken by the authorities of a Contracting Party against investments made in its territory by investors of the other Contracting Party shall be applied exclusively for reasons of public utility, in accordance with legal provisions, shall in no case be discriminatory and shall be accompanied by the payment to the investor or his successor in title of prompt, fair and effective compensation.

2. The compensation shall be equivalent to the commercial value of the investment immediately before the time of

expropriation or before the expropriation becomes public knowledge. The compensation shall be paid promptly, in convertible currency and shall be effectively realizable and freely transferable.

3. The affected investor shall be entitled, in accordance with the legislation in force of the Contracting Party carrying out the expropriation, to a prompt review of his case by the judicial or other competent authority of that Contracting Party, to determine whether the expropriation and the amount of compensation have been taken in accordance with the principles set forth in this Article.

4. If a Contracting Party expropriates the assets of an enterprise incorporated or created under the law in force in any part of its territory, in which there are participations or shares of investors of the other Contracting Party, it shall ensure that the provisions of this Article are applied in such a way as to secure to the investors of the other Contracting Party the payment of adequate and effective compensation in accordance with the principles of international law. The amount of compensation shall correspond to the actual value of the investments concerned on the day before the day on which the measures are taken or become public knowledge.

Article 6. Compensation for Losses

Investors of a Contracting Party whose investments or investment income in the territory of the other Contracting Party suffer losses due to war or other armed conflict, state of national emergency, riot, insurrection or other similar circumstance, including losses occasioned by requisition, shall be accorded, by way of restitution, indemnification, compensation or other arrangement, treatment no less favorable than that accorded by the latter Contracting Party to its own investors or to investors of any third State. Any payment made pursuant to this Article shall be fair, effective and freely transferable.

Article 7. Transfer

1. With respect to investments made in its territory, each Contracting Party shall guarantee to the investors of the other Contracting Party the free transfer of payments related to their investments and investment income and in particular, but not exclusively, the following:

(a) investment income as defined in Article 1 ;

(b) indemnities provided for in Articles 5 and 6 ;

(c) proceeds from the sale or liquidation, in whole or in part, of investments ;

(d) sums necessary for the repayment of loans linked to an investment ;

(e) funds relating to the maintenance or development of the investment, such as funds required for the purchase of raw and auxiliary materials, manufactured or semi-manufactured products or for the replacement of fixed assets;

(f) wages and other remuneration received by nationals of either Contracting Party for work or services performed in the other Contracting Party in connection with an investment.

2. The Contracting Party receiving the investment shall guarantee to the investor of the other Contracting Party, or to the company in which he participates, access to the foreign exchange market on a non-discriminatory basis, for the purpose of acquiring the foreign exchange necessary to make any transfers in accordance with this Article.

3. The transfers referred to in this Article shall be made in freely convertible currency and in accordance with the tax legislation in force in the territory of the Contracting Party receiving the investment.

4. The Contracting Parties undertake to facilitate the necessary procedures to effect such transfers without delay, in accordance with the practices of international financial centers.

5. The Contracting Parties agree to accord to the transfers referred to in this Article treatment no less favorable than that accorded to transfers relating to investments of investors of any third State.

Article 8. More Favourable Conditions

1. Where obligations under international law existing or about to be concluded by one of the Contracting Parties, outside this Agreement, contain a clause of a general or specific nature enabling investments of investors of the other Contracting Party to benefit from more favorable treatment than that provided for in this Agreement, such clause shall, to the extent that it is more advantageous, prevail over this Agreement.

2. Terms more favorable than those of this Agreement which have been agreed between one Contracting Party and investors of the other Contracting Party shall not be affected in any way by this Agreement.

Article 9. Subrogation

1. Where an investor of one of the Contracting Parties receives from his home State or from one of its insuring agencies indemnities paid under a previously contracted insurance policy, the other Contracting Party shall recognize the subrogation of the insurer in the rights of the indemnified investor.

2. The rights and shares thus transferred shall be limited to the amount of indemnities paid to the investor by his country of origin and shall cover non-commercial risks.

3. As regards rights of ownership, use or any other right in rem, subrogation shall take place in accordance with the law in force in the Contracting Party where the investment was made.

Article 10. Settlement of Disputes between the Contracting Parties

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

2. If the Contracting Parties fail to reach an amicable agreement within six months of the commencement of negotiations, the dispute shall, at the request of either Contracting Party, 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 choose a national of a third State as Chairman. The two arbitrators shall be appointed within three months and the Chairman within five months from the date on which one of the Contracting Parties has notified the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If, within the time limits provided for in paragraph 3 of this Article, the members of the arbitral tribunal have not been appointed, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the appointments. If the President of the International Court of Justice is unable to perform such function or is a national of any of the Contracting Parties, the Vice-President of the International Court of Justice shall be invited to make the relevant appointments. If the Vice-President is unable to perform this function or is a national of any of the Contracting Parties, the appointments 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 arbitral tribunal shall render its decision on the basis of respect for the law, for the rules contained in this Agreement or in other Agreements in force between the Contracting Parties, and for the universally recognized principles of international law.

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

7. The tribunal shall reach its decision by majority vote and its decision shall be final and binding on both Contracting Parties.

8. Each Contracting Party shall bear the expenses of the arbitrator appointed by it and those related to its representation in the arbitral proceedings. All other expenses, including those of the Chairman, shall be borne equally by both Contracting Parties.

Article 11. Disputes between a Contracting Party and Investors of the other Contracting Party

1. Any investment dispute arising between a Contracting Party and an investor of the other Contracting Party shall be notified in writing, including detailed information, by the investor to the Contracting Party receiving the investment. To the extent possible, such disputes shall be settled by amicable agreement.

2. If the dispute cannot be settled in this way within six months from the date of its written notification referred to in paragraph 1, it shall be submitted at the option of the investor to

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

(b) to an "ad hoc" tribunal established in accordance with the Arbitration Rules of the United Nations Commission on

International Trade Law ;

(c) 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 thereto.

3. The arbitration shall be based on:

The provisions of this Agreement and those of other specific agreements concluded between the Contracting Parties ;

The universally recognized rules and principles of international law ;

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

4. 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 12. Final Provisions

1. This Agreement shall enter into force on the day on which the Contracting Parties have notified each other of the completion of the internal constitutional procedures required for its entry into force.

It shall remain in force for an initial period of ten years after which it shall be renewed, by tacit renewal, for consecutive periods of two years.

Either Contracting Party may denounce this Agreement through diplomatic channels, in writing, six months before the date of its expiration.

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

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

Done in two copies in the Spanish and French languages, which are equally authentic, in Madrid on March 2, 1995.

For the Kingdom of Spain,

Javier Solana Madariaga,

Minister of Foreign Affairs

For the Gabonese Republic,

Casimir Oye Mba,

Minister of Foreign Affairs