AGREEMENT ON THE PROMOTION AND THE RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN BOSNIA AND HERZEGOVINA AND SPAIN

Spain and Bosnia and Herzegovina, hereinafter referred to as "the Contracting Parties", Desiring to intensify their economic cooperation for the mutual benefit of both countries, Intending to create favourable conditions for investments made by investors of each Contracting Party in the territory of the other Contracting Party,

And

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

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement,

1 . The term "investor" means any national or any company of either Contracting Party who makes investments in the territory of the other Contracting Party: . The term "investor" means any national or any company of either Contracting Party who makes investments in the territory of the other Contracting Party:

a) In respect of Spain:

(i) The term "national" means physical persons who, according to the law of Spain, are considered to be its nationals;

(ii) The term "company" means legal persons established in accordance with the laws in force in Spain, which have their registered seat, central management or main place of business on the territory of Spain.

b) In respect of Bosnia and Herzegovina:

(i) The term "national" means physical persons deriving their status as Bosnia and Herzegovina nationals from the law in force in Bosnia and Herzegovina if they have permanent residence or main place of business in Bosnia and Herzegovina;

(ii) The term "company" means legal persons established in accordance with the laws in force in Bosnia and Herzegovina, which have their registered seat, central management or main place of business on the territory of Bosnia and Herzegovina.

2 . The term "investment" means every kind of asset and in particular, although not exclusively, the following:

a) Movable and immovable property and any other property rights such as mortgages, liens, pledges and similar rights;

b) A company or business enterprise or shares in and stocks and debentures of a company or any other form of participation in a company or business enterprise;

c) Claims to money or to any performance under contract having economic value and associated with an investment;

d) Industrial and intellectual property rights, technical processes, know-how and goodwill;

e) Rights to undertake economic and commercial activities conferred by law or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources. Investments made in the territory of one Contracting Party by any legal entity of that same Contracting Party but actually owned or controlled by investors of the other Contracting Party shall likewise be considered as investments of investors of the latter Contracting Party if they have been made in accordance with the laws and regulations of the former Contracting Party.

Any change in the form in which assets are invested or reinvested does not affect their character as investments provided that such a change has been made in accordance with the laws and regulations of the host Contracting Party.

3 . The term "returns" means the amounts yielded by an investment and includes, in particular although not exclusively, profit, dividends, interest, capital gains, royalties, fees and other compensations.

4 . The term "territory" designates the land territory, internal waters, territorial sea and air space above of each of the Contracting Parties, as well as the exclusive economic zone and the continental shelf that extend outside the limits of the territorial sea of each of the Contracting Parties over which they have or may have jurisdiction and/or sovereign rights pursuant to international law.

Article 2. Promotion and Admission

1 . Each Contracting Party shall in its territory promote, as far as possible, investments of investors of the other Contracting Party. Each Contracting Party shall admit such investments in accordance with its laws and regulations.

2 . When a Contracting Party shall have admitted an investment in its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons, regardless of their nationality.

Article 3. 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. In no case shall a Contracting Party accord to such investments treatment less favourable than that required by international law.

2 . Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments. Each Contracting Party shall observe any obligation it may have entered into in writing with regard to investments of investors of the other Contracting Party and which is clearly according to the internal applicable law.

Article 4. National Treatment and Most Favoured Nation Treatment

1 . Each Contracting Party shall accord, in its territory, to investments made by investors of the other Contracting Party treatment no less favourable than that which it accords to the investments made by its own investors or by investors of any third State whichever is more favourable to the investor concerned.

2 . Each Contracting Party shall accord, in its territory, to investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment, treatment no less favourable than that which it accords to its own investors or to investors of any third State whichever is more favourable to the investor concerned.

3 . The treatment granted under paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the benefit of any treatment, preference or privilege resulting from its membership of or association with any existing or future customs union, economic union, monetary union or any other regional economic integration organisation.

4 . Measures that have to be taken for reasons of public security and order or public health shall not be deemed treatment less favourable within the meaning of this Article.

Article 5. Expropriation

1 . Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having equivalent effect to nationalization or expropriation (hereinafter referred to as "expropriation") except for public interest, in accordance with due process of law, on a non discriminatory basis and against the payment of prompt, adequate and effective compensation.

2 . Such compensation shall amount to the fair market value of the expropriated investment immediately before the expropriation or impending expropriation became publicly known, whichever is the earlier (hereinafter referred to as the "valuation date").

3 . Such market value shall be calculated in a freely convertible currency at the market rate of exchange prevailing for that currency on the valuation date. Compensation shall include interest at a commercial rate established on a market basis for

the currency of valuation from the date of expropriation until the date of payment. Compensation shall be paid without delay, be effectively realizable and freely transferable.

4 . The investor affected shall have the right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial authority or other competent and independent authority of that Contracting Party, of its case, including the valuation of its investment and the payment of compensation, in accordance with the principles set out in this Article.

5 . Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of this Article are applied so as to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

Article 6. Compensation for Losses

1 . Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or to other armed conflict, state of national emergency, revolution, insurrection, civil disturbance or any other similar event, shall be accorded by the latter Contracting Party, as regards 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 whichever is more favourable to the investor concerned. Resulting payments shall be freely transferable.

2 . Notwithstanding paragraph 1, an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Contracting Party resulting from:

a) Requisitioning of its investment or part thereof by the latter's forces or authorities; or

b) Destruction of its investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation, shall be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective. Resulting payments shall be made without delay and be freely transferable.

Article 7. Transfers

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

a) The initial capital and additional amounts to maintain or increase the investment;

b) Investment returns, as defined in Article 1;

c) Funds in repayment of loans related to an investment;

d) Compensations provided for under Articles 5 and 6;

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

f) Earnings and other remuneration of personnel engaged from abroad in connection with an investment;

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

2 . Transfers under the present Agreement shall be made without delay in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.

3 . The Contracting Parties undertake to accord to such transfers a treatment no less favourable than that accorded to transfers originating from investments made by investors of any third State.

Article 8. Application of other Provisions

1 . If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than that provided for by this Agreement, such regulation shall, to the extent that it is more favourable, prevail over this Agreement.

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.

3 . Nothing in this Agreement shall derogate from the provisions established by international Agreements relating to the industrial and intellectual property rights to which either of the Contracting Parties is or may become a party.

Article 9. Subrogation

If one Contracting Party or its designated Agency makes a payment under an indemnity, guarantee or contract of insurance against non commercial risks given in respect of an investment made by any of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of any right or claim of such investor to the former Contracting Party or its designated Agency and the right of the former Contracting Party or its designated Agency to exercise, by virtue of subrogation, any such right and claim to the same extent as its predecessor in title. This subrogation will make it possible for the former Contracting Party or its designated Agency to be the direct beneficiary of any payment for indemnification or other compensation to which the investor could be entitled.

Article 10. Settlement of Disputes between the Contracting Parties

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

2 . If it were not possible to settle the dispute in this way within six months from the start of the negotiations, it shall be submitted, at the request of either of the two Contracting Parties, to an arbitral tribunal.

3 . Such an arbitral tribunal shall be constituted for each individual case in the following way: Within the two months from the date of receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State as Chairman of the tribunal. The Chairman shall be appointed within the 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 not been made, 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 is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointments. If the Vice President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5 . The arbitral tribunal shall issue its decision on the basis of respect for the law, the provisions contained in this Agreement or in other agreements in force between the Contracting Parties, as well as the generally accepted principles of international law.

6 . Unless the Contracting Parties decide otherwise, the arbitral tribunal shall lay down its own procedure.

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

8 . Each Contracting Party shall bear the expenses of its own arbitrator and those connected with representing it in the arbitration proceedings. The other expenses, including those of the Chairman, shall be borne in equal parts by the two Contracting Parties.

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

1 . Disputes that may arise between one of the Contracting Parties and an investor of the other Contracting Party with regard to an investment in the sense of the present Agreement, shall be notified in writing, including a detailed information, by the investor to the former Contracting Party. As far as possible, the parties concerned shall endeavour to settle these disputes amicably.

2 . If these disputes cannot be settled amicably within six months from the date of the written notification mentioned in paragraph 1, the dispute may be submitted, at the choice of the investor, to:

The competent court of the Contracting Party in whose territory the investment was made; or

An ad hoc tribunal of arbitration established under the Arbitration Rules of the United Nations Commission on International

Trade Law; or

The International Centre for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", opened for signature at Washington on 18th March 1965.

3 . Neither Contracting Party shall pursue through the diplomatic channels any dispute referred to the Centre unless:

a) The Secretary General of the Centre, or a conciliation commission or an arbitral tribunal constituted by the Centre, decides that the dispute is not within the jurisdiction of the Centre; or

b) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

4 . The arbitration shall be based on:

The provisions of this Agreement;

The rules and the universally accepted principles of international law; and

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

5 . A Contracting Party shall not assert as a defence that indemnification or other compensation for all or part of the alleged damages has been received or will be received by the investor pursuant to a guarantee or insurance contract.

6 . The arbitration decisions shall be final and binding on the parties in the dispute. Each Contracting Party undertakes to execute the decisions in accordance with its national law.

Article 12. Scope of Application

1 . This Agreement shall be applicable to investments made before or after its entry into force by investors of either Contracting Party in the territory of the other Contracting Party. However, this Agreement shall not apply to events or disputes that have arisen before its entry into force.

2 . The treatment granted under this Agreement shall not apply to tax matters.

Article 13. Entry Into Force. Duration and Termination

1 . This Agreement shall enter into force on the date on which the Contracting Parties shall 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 often years and, by tacit renewal, for consecutive periods of two years.

2 . Either Contracting Party may terminate this Agreement by prior notification in writing, 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 of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period often years from such date of termination.

4 . This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force under the same procedure required for entering in force of the present Agreement.

5 . This Agreement shall be applied irrespective of whether or not the Contracting Parties have diplomatic or consular relations.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement.

Done in duplicate in Spanish, Bosnian, Croatian, Serbian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail, in Madrid, on the 25th day of April, 2002.

For Spain:

JOSEP PIQUE I CAMPS

Minister of Foreign Affairs

For Bosnia and Herzegovina:

ZLATKO LAGUMDZIJA

Minister of Foreign Affairs