[TRANSLATION — TRADUCTION]

AGREEMENT[1] ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN THE KINGDOM OF SPAIN AND THE UNITED MEXICAN STATES

The Kingdom of Spain and the United Mexican States, 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 stimulates initiatives in this field,

Have agreed as follows:

Article I

DEFINITIONS

For the purposes of this Agreement,

1. The term "investors" shall mean:

(*a*) Any individual who is a national of one of the Contracting Parties in accordance with its legislation and who makes investments in the territory of the other Contracting Party;

(*b*) Any enterprise, meaning any legal entity — including companies, associations of companies, trading corporate entities, branch offices and other organizations — which is incorporated or, in any case, properly organized in accordance with the law of that Contracting Party and which has its head office in the territory of that same Contracting Party.

2. The term "investments" means any type of assets, such as property and rights of all kinds and, in particular but not exclusively, the following:

(*a*) Shares, titles, bonds and other forms of participation in companies;

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

(*c*) Moveable and immoveable property, real estate, mortgages, pledges, usufructs or other tangible or intangible property, acquired or used for economic activities or for other business purposes;

(*d*) Intellectual or industrial property rights including, amongst others: patents, utility models, industrial designs, trademarks or service marks, trade names, copyrights, industrial secrets and business assets;

[1] Came into force on 18 December 1996 by notification, in accordance with article XII.

(*e*) Interests or rights derived from the contribution of capital or other resources in the territory of one Contracting Party for the development of an economic activity in the territory of the other Contracting Party, as a result of the granting of a contract or a concession.

Investments made in the territory of one Contracting Party by enterprises of that same Contracting Party which are in fact controlled by investors of the other Contracting Party shall also be considered investments for the purposes of this Agreement.

Without prejudice to any related rights and obligations, the following shall be excluded from this definition: any payment liability of, or any granting of credit to, the State or a State enterprise, as well as any monetary claims arising exclusively from:

(i) Commercial contracts for the sale of property or services by a national or enterprise in the territory of a Contracting Party to an enterprise in the territory of the other Contracting Party; or

(ii) The granting of credit in relation to a commercial transaction, the term of which is less than three years, such as the financing of trade.

3. The term "investment income" means the return on an investment and includes in particular, but not exclusively, profits, capital gains, dividends, interest, royalties and fees.

4. The term "territory" means the land territory and territorial sea of each of the Contracting Parties, as well as the exclusive economic zone and the continental shelf that extends outside the limits of the territorial sea of each of the Contracting Parties, over which they have or may have jurisdiction and sovereign rights under international law for the purposes of exploiting, exploring and conserving natural resources.

Article II

PROMOTION AND ACCEPTANCE

1. Each Contracting Party shall facilitate access to its territory for investments by investors of the other Contracting Party and shall accept them in accordance with its existing legislation.

2. This Agreement shall also apply to investments made before its entry into force by investors of one Contracting Party in accordance with the legislation of the other Contracting Party, in the territory of the latter.

3. With a view to significantly increasing reciprocal investment flows, the Contracting Parties shall prepare documents to encourage investment and shall make available detailed information on:

(*a*) Investment opportunities;

(*b*) The laws, regulations or provisions which directly or indirectly affect foreign investment including, amongst others, foreign exchange and taxation regulations; and

(*c*) The performance of foreign investments in their respective territories.

Article III

PROTECTION

1. Each Contracting Party shall grant full protection and security to investments made by investors of the other Contracting Party, in accordance with international law, and shall not hamper, by means of illegal or discriminatory measures, the management, maintenance, development, use, enjoyment, expansion, sale or, as the case may be, liquidation of such investments.

2. Each Contracting Party, within the framework of its law, shall grant the necessary permits relating to these investments and shall allow the execution of employment contracts, manufacturing licences, and technical, commercial, financial and administrative assistance.

3. Each Contracting Party shall grant, within the framework of its law, and whenever necessary, the permits required in connection with the activities of consultants or experts engaged by investors of the other Contracting Party.

Article IV

TREATMENT

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

2. This treatment shall be no less favourable than that which is extended in similar circumstances by each Contracting Party to the investments made in its territory by investors of a third State.

3. This treatment shall not, however, extend to the privileges that one Contracting Party may grant to investors of a third State by virtue of its association with or current or future participation in a free trade area, a customs union, a common market, economic and monetary unions, or by virtue of any other international agreement having similar characteristics.

4. The treatment given pursuant to this article shall not extend to tax deductions and exemptions or other similar privileges granted by either of the Contracting Parties to investors of third States by virtue of an agreement for the avoidance of double taxation or any other taxation agreement.

5. Subject to the limits and conditions set out in its national law, each Contracting Party shall apply to the investments of investors of the other Contracting Party treatment no less favourable than that which is granted to its own investors.

Article V

NATIONALIZATION AND EXPROPRIATION

1. The nationalization, expropriation or any other measure of similar characteristics or effects (hereinafter referred to as "expropriation") that may be applied by the authorities of one Contracting Party against the investments in its territory of investors of the other Contracting Party must be applied exclusively for reasons of public interest pursuant to the law, shall in no case be discriminatory and shall

require the payment of compensation to the investor or his assign or legal successor in accordance with paragraphs 2 and 3 of this article.

2. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the expropriation occurred or before it was announced or made public, whichever occurs first. The criteria for calculating that value shall be determined in accordance with the applicable legislation in force in the territory of the Contracting Party in which the investment has been made.

3. Such compensation shall be paid without delay, in convertible and freely transferable currency.

Article VI

LOSSES

Investors of one Contracting Party whose investments or returns in the territory of the other Contracting Party suffer losses owing to war, other armed conflicts, a state of national emergency, rebellion or mutiny, or other similar circumstances, shall be accorded, by way of restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter grants to its own investors and to investors of any third State. Any payment made pursuant to this article shall be made without delay, in convertible and freely transferable currency.

Article VII

TRANSFERS

1. With regard to the investments made in its territory: each Contracting Party shall, in accordance with its legislation, guarantee to investors of the other Contracting Party free transfer of payments relating to those investments including, in particular, but not exclusively, the following:

(*a*) Investment returns as defined in article I;

(*b*) The indemnities provided for in article V;

(*c*) The compensations provided for in article VI;

(*d*) The proceeds of the sale or liquidation, total or partial, of investments;

(*e*) The sums necessary for the repayment of loans relating to an investment;

(*f*) The sums necessary for the maintenance and development of the investments;

(*g*) The salaries, wages and other compensation received by the nationals of a Contracting Party for their work or for services provided in the other Contracting Party in relation to an investment.

2. The Contracting Party of the investment shall allow the investor of the other Contracting Party to have access to the foreign exchange market in a non-discriminatory manner in order to purchase the foreign currencies necessary to make the transfers pursuant to this article.

3. The transfers referred to in this Agreement shall be made in currencies freely convertible at the rate of exchange in effect on the day of the transfer and in

accordance with the tax obligations set out in the existing legislation of the Contracting Party receiving the investment.

4. The Contracting Parties undertake to facilitate the procedures needed to make such transfers without delay or restrictions, in accordance with the practices of international financial centres. In particular, no more than three months shall elapse between the date on which the investor duly submits the necessary application for the transfer and the time the transfer is effectively made. Accordingly, each Contracting Party undertakes to carry out the necessary formalities both for the purchase of foreign currency and for its effective transfer abroad before the end of the above-mentioned period.

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

6. In the event of a fundamental imbalance in its balance of payments, a Contracting Party may impose temporary controls on foreign exchange operations, provided that whatever measures or programme it implements are in accordance with generally accepted international criteria. Such restrictions shall be imposed for a limited time, in an equitable and non-discriminatory fashion and in good faith.

Article VIII

MORE FAVOURABLE TERMS

1. In the event that any legal provision of either Contracting Party, or any current or future obligation arising out of international law outside of this Agreement between the Contracting Parties results in general or special regulations that would require that the investments of investors of the other Contracting Party be accorded treatment more favourable than that provided for under this Agreement, such regnlations shall prevail over this Agreement, to the extent that they are more favourable.

2. More favourable terms than those of this Agreement which may 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

SUBROGATION

In the event that a Contracting Party or an agency designated by it has given a financial guarantee in respect of non-commercial risks connected with an investment made by its investors in the territory of the other Contracting Party, once it makes any payment under that guarantee, the first Contracting Party or its designated agency shall be the direct beneficiary of whatever payments to which the investor might have claim. Should there be any dispute, only the investor may initiate or participate in proceedings before national courts or submit that dispute to the international arbitral tribunals in accordance with the provisions of article 11 of this Agreement.

Article X

DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Any dispute between the Contracting Parties relative to the interpretation or application of this Agreement shall be settled as far as possible by friendly agreement.

2. If the dispute cannot be settled in this way within six months from the start of the negotiations, it shall be submitted, at the request of either Contracting Party, to a court of arbitration.

3. The court of arbitration shall be set up in the following way: each Contracting Party shall appoint an arbitrator and these two arbitrators shall elect a citizen of a third State as president. The arbitrators shall be appointed within three months and the president within five months from the date on which either Contracting Party informed the other Contracting Party of its intention to submit the dispute to a court of arbitration.

4. If one of the Contracting Parties does not appoint its arbitrator before the established deadline, the other Contracting Party may request the President of the International Court of Justice to make such appointment. In the event that the two arbitrators do not reach an agreement on the appointment of the third arbitrator before the established deadline, either of the Contracting Parties may call on the President of the International Court of Justice to make the appropriate appointment.

5. If, in the cases described in paragraph 4 above, the President of the International Court of Justice is unable to carry out the said function, or is a national of either of the Contracting Parties, the Vice-President shall be requested to make the necessary appointments. If the Vice-President is also unable to carry out the said function or is a national of either of the Contracting Parties, the appointments shall be made by the most senior member of the court who is not a national of either Contracting Party.

6. The court of arbitration shall issue its decision on the basis of respect for the law, of the rules contained in this Agreement or other agreements in force between the Contracting Parties, as well as of the universally recognized principles of international law.

7. Unless the Contracting Parties decide otherwise, the court shall lay down its own procedure.

8. The court shall take its decision by majority vote and that decision shall be final and binding for both Parties.

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

Article XI

DISPUTES BETWEEN ONE CONTRACTING PARTY AND INVESTORS OF THE OTHER CONTRACTING PARTY

1. Any investment-related dispute which may arise between one of the Contracting Parties and an investor of the other Contracting Party with respect to the provisions of this Agreement shall be notified in writing by the investor, together with a detailed account, to the Contracting Party receiving the investment. As far as possible, the parties to the dispute shall endeavour to settle these differences by means of a friendly agreement.

2. If the dispute cannot be settled in this way within six months from the date of the written notification mentioned in paragraph 1, it shall be submitted to the dispute settlement mechanism stipulated in the Appendix to this Agreement.

Article XII

ENTRY INTO FORCE, EXTENSION, 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 of 10 years and, by tacit renewal, for consecutive two-year periods.

2. Either Contracting Party may terminate this Agreement by prior notification, in writing, six months before the date of its expiration.

3. In case of termination, this Agreement shall continue to apply to investments made before such termination, for a period of 10 years.

DONE at Mexico City on 23 June 1995 in duplicate in the Spanish language, both texts being equally authentic.

For the Kingdom of Spain:

"a.r."

APOLONIO RUIZ LIGERO
Secretary of State
for Foreigu Trade

For the United Mexican States:

HERMINIO BLANCO MENDOZA
Secretary for Trade
and Industrial Development

APPENDIX

SETTLEMENT OF DISPUTES BETWEEN A CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

TITLE ONE

DEFINITIONS

For the purposes of this Appendix:

— Arbitration means the international arbitration mechanism contained in this appendix;

— ICSID means the International Centre for Settlement of Investment Disputes;

— ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, on 18 March 1965;[1]

— New York Convention means the United Nations New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, opened for signature at New York, on 10 June 1958;[2]

— Disputing investor party means an investor making a claim in accordance with the provisions of this Agreement;

— Disputing party means the disputing investor or the Contracting Party;

— Disputing parties means the disputing investor and the Contracting Party;

— Arbitration Rules of UNCITRAL means the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), approved by the General Assembly of the United Nations on 15 December 1976;

— NAFTA arbitration rules means the applicable rules of the dispute settlement mechanism provided for in Chapter 11, subchapter B, of the North American Free Trade Agreement;

— Tribunal means an arbitral tribunal established pursuant to Title Three of this Appendix;

— Consolidation tribunal means an arbitral tribunal established pursuant to Title Five of this Appendix.

TITLE TWO

SETTLEMENT OF DISPUTES BETWEEN A CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

1. This Appendix establishes a mechanism for the settlement of disputes relating to investments arising between a Contracting Party and an investor of the other Contracting Party, as of the entry into force of this Agreement, and gnarantees not only equal treatment for investors of the Contracting Parties in accordance with the principle of international reciprocity but also due exercise of the right to a hearing and to defend oneself within the framework of a legal proceeding before an impartial tribunal.

2. An investor who initiates proceedings before any judicial or administrative tribunal in connection with a measure alleged to be in violation of this Agreement, may not make any claim pursuant to this Appendix. Nor shall an investor be able to make a claim pursuant to this Appendix as a representative of an enterprise, if the latter has instituted proceedings before any judicial or administrative tribunal with respect to the alleged violation. The preceding shall not apply to the exercise of administrative remedies before the authorities re-

[1] United Nations, *Treaty Series*, vol. 575, p. 159.
[2] *Ibid.*, vol. 330, p. 3.

3. An enterprise constituted in accordance with the legislation of a Contracting Party may not make any claim for arbitration against that same Contracting Party pursuant to this Appendix.

4. An investor of a Contracting Party may make a claim for arbitration in his own right, or as a representative of an enterprise which he owns or which is under his direct or indirect control, alleging that the other Contracting Party has violated a commitment established in this Agreement, provided that the investor or his investment has suffered losses or damages by virtue of the violation or as a consequence thereof.

5. The investor may not make any claim pursuant to this Agreement, if more than three years have elapsed since the date when the investor became aware of or should have become aware of the alleged violation, as well as of any losses or damages suffered.

6. An investor who makes a claim pursuant to this Appendix, or the enterprise in whose name an investor makes a claim, may not institute proceedings before any judicial or administrative tribunal with respect to the measure which is alleged to be a violation.

TITLE THREE

REFERRAL TO ARBITRATION

1. Provided that six months have elapsed since the actions giving rise to the claim occurred, and that the disputing investor has provided written notification to the Contracting Party 90 days in advance of his intention to submit the claim to arbitration, he may submit that claim to arbitration in accordance with:

(*a*) The ICSID Convention, provided that both Contracting Parties are States party thereto;

(*b*) The rules of the ICSID Additional Facility Rules if one but not both of the Contracting Parties is a State party to the ICSID Convention;

(*c*) The UNCITRAL Arbitration Rules; or

(*d*) The NAFTA arbitration rules, with the exception of the provisions relating to the appointment of arbitrators which shall be governed by the provisions of Title Four.

2. The ICSID Convention or the rules mentioned shall govern the arbitration, except as modified by this Appendix.

TITLE FOUR

NUMBER OF ARBITRATORS AND METHOD OF APPOINTMENT

1. The Tribunal shall be made up of three arbitrators, except in cases where the disputing parties agree on any other odd number of arbitrators. Each disputing party shall appoint one arbitrator; the third arbitrator, who shall be the president of the arbitral tribunal, shall be appointed by the disputing parties by mutual Agreement.

2. The arbitrators appointed in accordance with this Appendix must be experienced in the areas of international law and investments.

3. If a tribunal as defined in this Appendix has not been set up within a period of 90 days from the date on which the claim was submitted for arbitration, whether because a Contracting Party has not appointed an arbitrator or because the disputing parties cannot agree on the appointment of a president for the arbitration tribunal, the Secretary-General of ICSID, at the request of either one of the disputing parties, shall name, at his discretion, the arbitrator or arbitrators not yet appointed. However, when appointing the president of the tribunal, the Secretary-General of ICSID must ensure that that president is not a national of the Contracting Party or a national of the Contracting Party of the disputing investor.

TITLE FIVE

CONSOLIDATION OF PROCEEDINGS

1. Proceedings may be consolidated in the following cases:

(*a*) When a disputing investor makes a claim as a representative of an enterprise under his direct or indirect control and, at the same time one or more other investors having shares in the same business, but not a controlling share, make claims in their own right as a result of the same violations; or

(*b*) When two or more claims submitted to arbitration have a question of law or fact in common.

2. A disputing party that wishes consolidation to occur, shall request the Secretary-General of ICSID to establish a tribunal and shall specify in its request:

(*a*) The name of the Contracting Party or of the disputing investors whose claims it wishes to consolidate;

(*b*) The nature of the consolidation order sought;

(*c*) The grounds on which the order is sought.

3. The tribunal of consolidation shall be set up in accordance with the UNCITRAL Arbitration Rules and shall proceed in accordance with the provisions of those rules, except as stipulated in this Appendix.

4. The tribunal of consolidation shall decide the jurisdiction to which the claims must be submitted and shall examine those claims together, unless it determines that the interests of either of the disputing parties would be prejudiced thereby.

5. If the tribunal of consolidation determines that the proceedings or claims submitted for arbitration in accordance with Title Three share common questions of fact or of law, that tribunal, in the interests of a fair and effective settlement, and after having heard the disputing parties, may assume jurisdiction and issue a ruling on:

(*a*) All, or some of the proceedings taken together; or

(*b*) One or more of the claims contained in those proceedings, being of the opinion that so doing would assist in the resolution of the others.

6. If the disputing parties opt for the mechanism described in Title Three, paragraph 1 (*d*), the rules relating to consolidation shall be those established therein. Nevertheless, the arbitrators shall be appointed in accordance with Title Four of this Appendix.

TITLE SIX

APPLICABLE LAW

1. Any tribunal established in accordance with this Appendix shall issue its ruling in the claims submitted to it in accordance with the provisions of this Agreement and the applicable rules of international law.

2. Any interpretation set forth by the Contracting Parties by mutual Agreement concerning a provision of this Agreement shall be binding on any tribunal established pursuant thereto.

TITLE SEVEN

FINAL AWARD

1. Where a tribunal established in accordance with this Appendix makes an award against a Contracting Party, the tribunal may award only, jointly or separately:

(*a*) Monetary damages and any applicable interest;

(*b*) The restitution of property, in which case the award shall provide that the Contracting Party may pay monetary damages plus any applicable interest in lieu of restitution.

2. If the claim was made by an investor on behalf of an enterprise:

(*a*) An award granting monetary damages and any applicable interest shall provide for the sum to be paid to the enterprise;

(*b*) An award of restitution of property shall provide that restitution be made to the enterprise.

3. The award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable local legislation.

TITLE EIGHT

ENFORCEMENT OF THE AWARD

1. An award made by a tribunal established pursuant to this Agreement shall be binding only on the disputing parties and only in respect of the particular case.

2. The disputing parties shall abide by and comply with the award without delay.

3. The Contracting Party in question shall see to it that the award is duly enforced in its territory.

4. The disputing investor may appeal for enforcement of an arbitral award in accordance with the ICSID Convention or the New York Convention.

5. For the purposes of article 1 of the New York Convention, any claim submitted for arbitration in accordance with this Appendix shall be considered to have arisen from a commercial relationship or operation.

TITLE NINE

PAYMENTS PURSUANT TO CONTRACTS FOR SECURITY OR GUARANTEES

During an arbitral proceeding pursuant to the provisions of this Appendix, a Contracting Party shall not use as a defence, counter-claim, right of compensation or any other right, that the disputing investor received or will receive, by virtue of a contract of security or guarantee, indemnification or other compensation for all or part of the alleged damages.

TITLE TEN

PUBLICATION OF AWARDS

The final award shall be published only if there is an agreement in writing to that effect between the disputing Parties.