

[TRANSLATION — TRADUCTION]

AGREEMENT ON THE RECIPROCAL PROMOTION AND PROTECTION OF
INVESTMENTS BETWEEN THE KINGDOM OF SPAIN AND THE RE-
PUBLIC OF BOLIVIA

The Kingdom of Spain and the Republic of Bolivia, 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 I. Definitions

For the purposes of this Agreement,

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

(a) The term "national" means any physical person having the nationality of one of the Contracting Parties in accordance with its legislation;

(b) The term "company" means any legal person or any other entity constituted or duly organized in accordance with the laws of one of the Contracting Parties which has its registered office in the territory of that Party, such as for example limited liability companies, partnerships and associations.

2. The term "investments" means any kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's legislation, including in particular, but not exclusively, the following:

(a) Movable and immovable property and other property rights such as mortgages, liens, usufructs and similar rights;

(b) Shares, bonds, debentures and any other form of participation in companies;

(c) Claims to money or any other contractual claim which has economic value and is connected with an investment;

(d) Intellectual property rights: industrial property rights such as distinguishing marks, patents, and industrial designs or drawings; copyrights and other related rights; integrated circuits and means of plant variation;

(e) Rights to undertake economic and commercial activities conferred by law or by contract, including concessions to explore and prospect for or to cultivate, extract or exploit natural resources.

Investments made in the territory of one Contracting Party by a company of that same Contracting Party but owned or effectively controlled by investors of the other Contracting Party shall likewise be regarded as investments of investors of the latter Contracting Party if they have been made in accordance with the legislation of the first Contracting Party.

No change in the form in which assets are invested or reinvested shall affect their character as investments, provided that such change is made in accordance with the legislation of the host Contracting Party.

3. The term "investment returns" means the amounts yielded by an investment, in particular, but not exclusively, profits, dividends, interest, capital gains, royalties and fees, as well as any income from operating surpluses.

4. The term "territory" means:

(a) With respect to the Kingdom of Spain: the land territory, the internal waters and the territorial sea, as well as the exclusive economic zone and the continental shelf extending beyond the limit of the territorial sea, over which the Kingdom of Spain has or may have jurisdiction and/or sovereign rights pursuant to international law;

(b) With respect to the Republic of Bolivia: the territory under its sovereignty and jurisdiction pursuant to its legislation and international law.

Article 2. Promotion and admission of investments

1. Each Contracting Party shall promote in its territory, to the extent possible, investments of investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

2. When a Contracting Party has admitted an investment in its territory, it shall issue, in accordance with its legislation, the necessary permits relating to the investment and to the implementation of licensing contracts and contracts of technical, commercial or administrative assistance. Each Contracting Party shall endeavour, whenever necessary, to issue the necessary authorizations relating to the activities of consultants and other skilled personnel, 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 receive fair and equitable treatment and shall enjoy full protection and security. In no case shall either Contracting Party accord to such investments treatment less favourable than the treatment required by international law.

2. Neither Contracting Party shall in any way obstruct by arbitrary or discriminatory measures the management, maintenance, use, enjoyment, disposal, sale or, when necessary, liquidation of such investments. Each Contracting Party shall fulfil any written contractual

obligation in relation to investments of investors of the other Contracting Party which is in conformity with the domestic legislation of the first Contracting Party.

Article 4. National treatment and most-favoured-nation treatment

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

2. Each Contracting Party shall accord to investors of the other Contracting Party, with respect to the management, maintenance, use, enjoyment, disposal, sale or, when necessary, liquidation of such investments made in its territory treatment no less favourable than the treatment accorded to its own investors or to investors of a third State, whichever is more favourable to the investor.

3. The treatment accorded pursuant to paragraphs 1 and 2 of this article shall not be construed as obliging either Contracting Party to extend to investors of the other Contracting Party or to their investments the benefit of any treatment, preference or privilege resulting from its present or future association with or participation in any free-trade zone or customs or economic union or in any other form of regional economic organization.

4. The treatment accorded pursuant to paragraphs 1 and 2 of this article does not relate to the advantages which one Contracting Party may accord to investments or investors of third States under an agreement on the avoidance of double taxation or other tax agreements.

5. Measures adopted for reasons of public order or safety or public health shall not be regarded as "less favourable" within the meaning of this article.

Article 5. Nationalization and expropriation

1. Investments of investors of one Contracting Party in the territory of the other Contracting Party shall not be subject to nationalization, expropriation or any other measure having similar effects (hereinafter referred to as "expropriation") except for reasons of public interest and in accordance with due process of law, in a non-discriminatory manner, and with payment of prompt, adequate and effective compensation.

2. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the adoption or official notification of the expropriation measure or before its imminence becomes publicly known, whichever is the earlier (hereinafter referred to as "the valuation date").

3. The market value shall be calculated in a freely convertible currency at the market exchange-rate for that currency on the valuation date. The compensation shall include interest at a commercial rate established in accordance with market criteria for that currency from the date of expropriation until the date of payment. The compensation shall be paid without delay and shall be effectively realizable and freely transferable.

4. The investor in question shall be entitled, under the law of the Contracting Party making the expropriation, to prompt review of his case by the judicial authority or other

competent and independent authority of that Contracting Party in order to determine whether the expropriation and valuation of his investment have been effected in accordance with the principles established in this article.

5. If a Contracting Party expropriates the assets of a company which is constituted in its territory in accordance with the legislation in force there and in which investors of the other Contracting Party own shares, the first Contracting Party must ensure that the provisions of this article are applied in such a way as to guarantee to such investors prompt, adequate and effective compensation.

Article 6. Compensation for losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, state of national emergency, insurrection, disturbance, or any other similar event shall be accorded, by way of restitution, indemnification, compensation or other settlement, treatment no less favourable than the treatment which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is the more favourable to the investor concerned. The resulting payments shall 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, in particular, but not exclusively, the following:

- (a) The initial capital and additional amounts needed for the maintenance, increase or development of an investment;
- (b) Investment returns, as defined in article 1;
- (c) Funds needed for the repayment of loans connected with an investment;
- (d) Indemnification and compensation 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 recruited from abroad in connection with an investment;
- (g) Payments arising out of the settlement of disputes.

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

3. Without prejudice to the provisions of paragraphs 1 and 2 of this article, each Contracting Party may delay or block a transfer by the application in good faith of fair and non-discriminatory measures:

- (a) Designed to protect the rights of creditors,
- (b) Relating to criminal offences or to decisions or sentences in administrative or judicial proceedings,

provided that such measures and their application are not used as a means of evading the Contracting Party's commitments and obligations under this Agreement.

Article 8. Other provisions

1. If, either now or in the future, the legislation of either Contracting Party or the mutual obligations of the Contracting Parties arising from international law apart from this Agreement result in a general or specific rule under which investments of investors of the other Contracting Party must be accorded more favourable treatment than the treatment provided for in this Agreement, such a rule shall prevail over this Agreement insofar as it is more favourable.

2. Terms agreed by one Contracting Party with investors of the other Contracting Party which are more favourable than the terms of this Agreement shall not be affected by this Agreement.

3. No provision of this Agreement shall affect the provisions of the international treaties regulating intellectual/industrial property rights.

Article 9. Principle of subrogation

If one Contracting Party or its designated agency makes a payment under an insurance contract or a guarantee against non-commercial risks in respect of an investment of one of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognize the subrogation of any right or entitlement possessed by the investor to the first Contracting Party or its designated agency, which may then exercise, by virtue of the subrogation, any right or entitlement to the same extent as the preceding owner. This subrogation means that the first Contracting Party or its designated agency may become the direct beneficiary of any payment in respect of indemnification or compensation to which the initial investor could be entitled.

Article 10. Settlement of disputes between the Contracting Parties

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

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 an arbitral tribunal.

3. The arbitral tribunal shall be constituted in the following way: each Contracting Party shall appoint one arbitrator and these two arbitrators shall choose a national of a third State as Chairman. The arbitrators shall be appointed within two months and the Chairman within four months from the date on which either Contracting Party informs the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If the necessary appointments have not been made within the time limits specified in paragraph 3 of this article, either Contracting Party, in the absence of any other agree-

ment, may invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is unable to perform this function or is a national of one of the Contracting Parties, the Vice-President shall be invited to make the appointments. If the Vice-President is unable to perform this function or is a national of one 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 either Contracting Party.

5. The arbitral tribunal shall make its decision on the basis of the rules contained in this Agreement or in other agreements in force between the Contracting Parties and in accordance with the generally accepted principles of international law.

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

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

8. Each Contracting Party shall bear the costs of the arbitrator which it appoints and the costs of its representation in the arbitral proceedings. The other costs, including those of the Chairman, shall be borne equally by the two Contracting Parties.

Article 11. Disputes between one Contracting Party and investors of the other Contracting Party

1. Any investment dispute which may arise between one of the Contracting Parties and an investor of the other Contracting Party in relation to matters regulated by this Agreement shall be notified in writing, with detailed information, by the investor to the other Contracting Party which is the recipient of the investment. The parties to the dispute shall endeavour to settle their differences, to the extent possible, by amicable accord.

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 may be submitted at the investor's choice to:

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

- An "ad hoc" arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law; or

- The International Centre for Settlement of Investment Disputes (ICSID) established under the Convention on Settlement of Investment Disputes between States and Nationals of other States, which was opened for signature in Washington on 18 March 1965, if both Contracting Parties have acceded to this Convention. If one of the Contracting Parties is not a party to the Convention, the dispute may be settled by the ICSID secretariat under the Supplementary Mechanism for the administration of conciliation, arbitration and fact-finding procedures.

3. The arbitration shall be based on:

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

- The rules and the generally accepted principles of international law;
- The national law of the Contracting Party in whose territory the investment was made, including the rules on conflict of law.

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

5. The arbitral decisions shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the decisions in accordance with its national legislation.

Article 12. Scope of application

1. This Agreement shall apply to investments made before or after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party. However, this Agreement shall not apply to any dispute which arose before its entry into force.

2. The treatment accorded by this Agreement shall not apply to taxation matters.

Article 13. Entry into force, extension and denunciation

1. This Agreement shall enter into force on the date on which the Contracting Parties have notified each other of the completion of their respective constitutional formalities required for the entry into force of international agreements. It shall remain in force for an initial period of 10 years and shall be extended indefinitely unless one of the Contracting Parties informs the other Contracting Party through the diplomatic channel, with six months' prior notice, of its decision to denounce this Agreement.

2. With respect to investments made before the date of the denunciation of this Agreement, the provisions contained in the other articles of this Agreement shall remain in force for an additional period of 10 years from the date of denunciation.

Article 14. Additional provision

This Agreement shall revoke and replace, on its entry into force, the Agreement between the Kingdom of Spain and the Republic of Bolivia on reciprocal promotion and protection of investments, signed at Madrid on 24 April 1990.

In witness whereof, the respective undersigned plenipotentiaries, duly authorized by their respective Governments, have signed this Agreement.

Done at Madrid on 29 October 2001 in duplicate in the Spanish language, both texts being equally authentic.

For the Kingdom of Spain:

JUAN COSTA CLIMENT
Secretary of State for Trade and Tourism

For the Republic of Bolivia:

GUSTAVO FERNÁNDEZ SAAVEDRA
Minister for Foreign Affairs and Religion