[TRANSLATION - TRADUCTION]

AGREEMENT ON THE PROMOTION AND RECIPROCAL 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 strengthen economic cooperation for the mutual benefit of the two countries,

Intending to create favourable conditions for investments made by investors of one Contracting Party in the territory of the other, and

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

Have agreed as follows:

Article I. Definitions

For the purposes of this Agreement,

1.The term "investors" means, with respect to either Contracting Party:

(a) Physical persons who are nationals of one of the Contracting Parties in accordance with its legislation.

(b) Enterprises, meaning legal persons, including companies, groups of companies, corporations, trading companies and any other organization, whether or not for profit, provided that they are constituted or, in any event, duly organized under the law of that Contracting Party and have their head office or registered office in the territory of that Contracting Party.

2. The term "investments" means any kind of assets which an investor from one Contracting Party invests in the territory of the other Contracting Party and in particular, but not exclusively, the following:

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

(b) Rights involving debentures, claims or any other contractual benefit having economic value, including loans made for the purpose of investment;

(c) Movable and immovable property, as well as other real rights such as mortgages, pledges, usufructs and similar rights;

(d) Intellectual property rights, including copyright and related rights; industrial property rights, such as trademarks or trade names, names of origin or geographic indications, drawings, industrial models, patents and goodwill or commercial premium;

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

No modification in the form in which assets have been invested or reinvested shall affect their status as investments.

This Agreement shall also apply to investments made in the territory of one Contracting Party by enterprises of that same Contracting Party which are effectively controlled by investors from the other Contracting Party. As an added guarantee, an enterprise of one Party shall be deemed to be effectively controlled by investors from the other Contracting Party where such investors have the power to appoint a majority of its directors or to otherwise legally manage its operations.

3. The term "returns on an investment" refers to the amounts yielded by an investment and includes in particular, but not exclusively, profits, dividends, interest, capital gains, royalties and fees.

4. The term "territory" means the land territory, the airspace and the territorial sea of each Contracting Party, together with the exclusive economic zone and the continental shelf beyond the limits of the territorial sea of each Contracting Party, over which it exercises or may exercise, in accordance with international law, jurisdiction and sovereign rights with regard to exploitation, exploration and protection of natural resources.

Article II. Promotion and acceptance

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

2. In order to increase the flow of investments, each Contracting Party shall, at the request of the other Contracting Party, make every effort to inform the requesting Party of investment opportunities in its territory.

3. When a Contracting Party has accepted an investment in its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with that investment, as well as those required for the execution of contracts relating to licences, and technical, commercial and administrative assistance. Each Contracting Party shall grant, in accordance with its legislation, as required, the necessary permits in connection with the activities of consultants or specialized personnel, regardless of their nationality.

4. This Agreement shall subsequent to its entry into force also apply to investments made prior to 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 receive at all times fair and equitable treatment and shall enjoy full protection and security. Neither Contracting Party shall at any time grant such investments treatment less favourable than that required by international law.

2. Neither Contracting Party shall obstruct in any way, by unreasonable or discriminatory measures, the functioning, management, maintenance, use, enjoyment, sale or, where

appropriate, liquidation of such investments. Each Contracting Party shall fulfil any obligation entered into with respect to investments of investors of the other Contracting Party.

Article IV. Treatment as nationals and most-favoured-nation status

1. Each Contracting Party shall grant to investments or to the returns on investment of investors of the other Contracting Party in its territory, where such investments are accepted, treatment no less favourable than that accorded to the investments or returns on investment of its own investors or to the investments or returns on investments of any third State, whichever is more favourable to the investor.

2. The treatment shall not extend to the privileges which a Contracting Party may grant to the investors of a third State by virtue of its current or future association with or participation in a free-trade area, customs union, common market, economic and monetary union or any other similar economic integration institutions.

3. The treatment accorded under this article shall not extend to the advantages of any preference, treatment or privilege which a Contracting Party may grant to the investments of its own investors or to the investments of any third State under an international agreement relating in full or in part to taxation, including agreements for the avoidance of double taxation, or under any domestic legislation relating in full or principally to taxation.

Article V. Nationalization and expropriation

1. Investments or returns on the investment 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 where any such measure is adopted for reasons of public interest or social benefit, in accordance with legal procedures, on a non-discriminatory basis and with payment of prompt, appropriate and effective compensation.

2. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation measure was adopted or announced publicly, whichever comes first (hereinafter referred to as "date of valuation"). Compensation shall be paid without delay, and shall be effectively realizable and freely transferable.

3. The fair market value shall be calculated in freely convertible currency, at the market exchange rate for that currency on the date of valuation. Such compensation shall include interest at a commercial rate established with reference to market criteria for that currency from the date of expropriation to the date of payment.

4. The investor affected shall have the right, in accordance with the law of the Contracting Party responsible for the expropriation, to prompt review of his or its case by the competent judicial or other independent authority of that Contracting Party, in order to determine whether the expropriation and valuation of the investment were carried out in accordance with the provisions of this article.

5. If a Contracting Party expropriates the assets of an enterprise constituted in its territory in accordance with the law, in which investors of the other Contracting Party have invested, the former Contracting Party must ensure that the provisions of this article are

applied in such a way as to guarantee the prompt, adequate and effective payment of compensation to those investors.

Article VI. Compensation for losses

1. Investors of one Contracting Party whose investments or returns on investment in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, state of national emergency, rebellion, disturbance or any other similar circumstance, shall be accorded by way of restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Contracting Party accords to its own investors or to the investors of any third State, whichever is more favourable to the affected investor. Any such payments shall be freely transferable.

2. Without prejudice to the provisions of paragraph 1 of this article, investors of one Contracting Party who suffer losses in any of the situations mentioned therein, in the territory of the other Contracting Party, as a result of:

(a) Requisitioning of their investments or part thereof by the armed forces or authorities of the latter Contracting Party, or

(b) Unjustified destruction of their investments or part thereof by the armed forces or authorities of the latter Contracting Party,

Shall be granted by the latter Contracting Party adequate and effective restitution or compensation, in freely convertible currency. Payments made in that connection shall be freely transferable.

Article VII. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the unrestricted transfer of any payments in respcct of their investments, in particular, but not exclusively, the following:

(a) The initial capital and any additional amounts necessary for the maintenance, expansion and development of the investments;

(b) Returns on an investment, as defined in article 1;

(c) Amounts necessary for the reimbursement of loans in connection with an investment;

(d) Indemnities and compensation as provided for in articles V and VI;

(e) Proceeds from the sale or liquidation, in full or in part, of an investment;

(f) Salaries and other rcmuneration received by personnel recruited for the purposes of an investment;

(g) Payments as a result of the settlement of disputes.

2. The transfers described in this Agreement shall be made promptly, in freely convertible currency at the market exchange rate valid on the date of transfer.

3. Without prejudice to the provisions of this article, the Contracting Parties may take equitable, non-discriminatory measures in good faith under its legislation to prevent fraud

and ensure compliance with fiscal obligations. Such measures may not affect the substance of the principles established in this article.

4. The Contracting Parties shall accord to the transfers referred to in this article treatment no less favourable than that accorded to transfers of payments arising out of investments made by investors of any third State.

5. Notwithstanding the provisions of paragraph 1 of this article, either Contracting Party, in circumstances of exceptional balance of payments difficulties, may establish temporary controls on transfers provided that measures or programmes based on internationally accepted criteria are put in place. These restrictions shall be imposed for a limited period of time, in an equitable and non-discriminatory manner and in good faith.

Article VIII. More favourable terms

1. If the law of either Contracting Party, or the current or future obligations under international law outside the framework of the present Agreement between the Contracting Parties, should give rise to general or specific rules by virtue of which the investments of investors of the other Contracting Party are accorded treatment more favourable than that provided for in this Agreement, those rules shall, to the extent that they are more favourable, prevail over this Agreement.

2. Where one Contracting Party has agreed with investors of the other Contracting Party to terms more favourable than those of this Agreement, those terms shall not be affected by this Agreement.

Article IX. Principle of subrogation

Where one Contracting Party or an agency designated by it has made a payment by virtue of an insurance contract or guarantee against non-commercial risks in respect of an investment made by one 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 entitlement of that investor to the former Contracting Party or its designated agency as well as the right of the former Contracting Party or its designated agency to exercise, by virtue of said subrogation, any right or entitlement in the place of the former owner. Such transfer shall enable the former Contracting Party or the agency designated by it to be the direct beneficiary of any indemnity or compensation payments to which the initial investor might be entitled.

Article X. Settlement of disputes between the Contracting Parties

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

2. If a dispute cannot be thus settled within six months from the start of the negotiations, it shall, at the request of either of the two Contracting Parties, 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 select a national 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 of the two Contracting Parties communicates to the other Contracting Party its intention to submit the dispute to an arbitral tribunal.

4. If the necessary appointments have not been made within the period specified in paragraph 3 of this article, either Contracting Party, in the absence of any other agreement, 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 prevented from acting or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from acting or is a national of either Contracting Party, the appointments shall be made by the next most senior member of the International Court of Justice who is not a national of either Contracting Party.

5. The arbitral tribunal shall issue its ruling in accordance with the provisions of the present Agreement or other agreements in force between the Contracting Parties and the universally recognized principles of international law.

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

7. The tribunal shall take its decision by a majority of votes, and such decision shall be final and binding on both parties.

8. Each Contracting Party shall defray the expenses of the arbitrator appointed by it and of its representation in the arbitral proceedings. The remaining expenses, including those of the president, shall be shared equally by the two Contracting Parties.

Article XI. Disputes between a Contracting Party and investors of the other Contracting Party

1. Any investment-related dispute which may arise between a Contracting Party and an investor of the other Contracting Party with respect to the issues regulated by this Agreement shall be notified in writing by the investor, together with a detailed report, to the Contracting Party receiving the investment. The parties to the dispute shall, as far as possible, endeavour to settle such differences amicably.

2. If the dispute cannot be thus settled within six months from the date of the written notification mentioned in paragraph 1, the investor may submit the dispute to:

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

(b) One of the following international arbitral tribunals:

(i) The International Centre for the Settlement of Investment Disputes (ICSID), established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington on 18 March 1965, after both States Parties to this Agreement have acceded to it;

(ii) Where either of the Contracting Parties is not a Contracting State of ICSID, the dispute shall be settled in accordance with the Additional Facility for the Administration of Conciliation, Arbitration and Fact-finding Proceedings by the Secretariat of ICSID;

(iii) An ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), where neither of the Contracting Parties is a party to ICSID.

3. When an investor submits a dispute to an arbitral tribunal, this decision shall be final. Where the investor submits a dispute to the competent court of the Contracting Party in whose territory the investment was made, the national court may also refer the dispute to the arbitral tribunals referred to in the present article, provided that the said court has not handed down a ruling. In the latter case, the investor shall take such measures as are necessary to terminate the judicial proceeding under way.

4. Arbitration shall be based on:

(a) The provisions of the present Agreement and of other agreements concluded between the Contracting Parties;

(b) The national law of the Contracting Party in whose territory the investment was made, including the rules on conflict of laws; and

(c) The generally accepted rules and principles of international law.

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

6. The arbitral decisions shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to carry out the decision 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 notify each other that their respective constitutional formalities for the entry into force of interuational agreements have been completed. It shall remain in force for an initial period of 10 years and shall thereafter be extended indefinitely, unless either of the Contracting Parties terminates it in accordance with paragraph 3 of the present article.

2. Either Contracting Party may terminate this Agreement by giving written notice six months before the date of expiry.

3. The provisions contained in the preceding articles of this Agreement shall remain in force for an additional period of 10 years from the date of termination with respect to investments made before the date of termination of this Agreement.

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

Done at San José, Costa Rica, in two originals, in the Spanish language, both copies being equally authentic, on 8 July 1997.

For the Kingdom of Spain:

IGNACIO AGUIRRE BORREL
Ambassador of Spain

For the Republic of Costa Rica:

JOSÉ MANUEL SALAZAR XIRINACHS
Minister of Exterior Commerce

Exchange of notes
I
MINISTRY OF FOREIGN AFFAIRS

R.E.I.

NOTE VERBALE

The Ministry of Foreign Affairs presents its compliments to the Embassy of the Republic of Costa Rica in Spain and has the honour to refer to the Agreement on the Promotion and Reciprocal Protection of Investments between the Kingdom of Spain and the Republic of Costa Rica, which was signed in San José on 8 July 1997. An error has been noted on page 13 of the signed text (a photocopy of which is attached) and also of the initialled text.

Article XII, paragraph 1 (end of the paragraph)

Where it states "... in accordance with paragraph 3 of the present article", it should state instead "... in accordance with paragraph 2 of the present article".

If the authorities of the Republic of Costa Rica are in agreement with this correction to the signed text and so indicate in a note verbale, then this exchange of notes will permit the text of the Agreement to be corrected before it is submitted to the Spanish Parliament for ratification and subsequent promulgation.

The Ministry of Foreign Affairs takes this opportunity , etc.

The Embassy of the Republic of Costa Rica in Madrid

II

EMBASSY OF COSTA RICA

MADRID, SPAIN

Ref. No. 555/97

The Embassy of Costa Rica presents its compliments to the Ministry of Foreign Affairs and has the honour to refer to note verbale No. 19/18 of 17 September 1997. The Embassy of Costa Rica wishes to inform the Ministry of Foreign Affairs in this regard that the Costa Rican authorities have agreed that paragraph 1 of article XII of the Agreement on the Promotion and Reciprocal Protection of Investments between the Kingdom of Spain and the Republic of Costa Rica should be corrected. Attached hereto is a photocopy of the letter under reference number DNCI-143-97, dated 9 October 1997, from Mr. Jaime Granados Brenes, Director of International Trade Negotiations of the Ministry of Foreign Trade of Costa Rica addressed to His Excellency Mr. Víctor Ibáñez- Martín Mellado, Ambassador of the Kingdom of Spain in San José, Costa Rica.

The Embassy of Costa Rica takes this opportunity, etc.

Madrid, 25 November 1997

The Ministry of Foreign Affairs
Madrid

MINISTRY OF FOREIGN TRADE

SAN JOSÉ, COSTA RICA

San José, 9 October 1997

DNC1-143-97

Sir,

With reference to the note verbale received by the Ministry of Foreign Affairs of Spain concerning the error discovered in article XII, paragraph 1, of the Agreement on the Promotion and Reciprocal Protection of Investments between the Republic of Costa Rica and the Kingdom of Spain, in both the signed and initialled texts, I wish to inform you that Costa Rica agrees to the insertion of the proposed correction.

Accordingly, the last sentence of paragraph 1 of article XII should read:"in accordance with paragraph 2 of the present article." This modification shall be incorporated in the text to be submitted to the legislature for approval and subsequent promulgation. I should be grateful if you would communicate our approval of the above-mentioned change to your authorities.

Accept, Sir, etc.

JAIME GRANADOS BRENES
Director of International Trade Negotiations

His Excellency Mr. Víctor Ibáñez-Martín Mellado
Ambassador of the Kingdom of Spain
San José, Costa Rica

c.c. Rose-Marie Karpinski de Murillo
Ambassador of Costa Rica to Spain
Luis Guillermo Solis
Director General of Foreign Policy