[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF VENEZUELA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Kingdom of Spain and the Republic of Venezuela, hereinafter "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 either Contracting Party in the territory of the other 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:

(*a*) Any physical person who possesses the nationality of one Contracting Party pursuant to its legislation and makes investments in the territory of the other Contracting Party;

(*b*) Any juridical person, including companies, groups of companies, trading companies, subsidiaries, and other organizations which are constituted or, in any case, duly organized according to the law of that other Contracting Party, as well as juridical persons constituted in one Contracting Party but effectively controlled by investors of the other Contracting Party.

2. The term "investments" means any kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party and in particular, although not exclusively, the following assets:

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

(*b*) Rights arising from any kind of contribution made for the purpose of creating economic value, including expressly any loans made for this purpose;

(*c*) Movable and immovable property and any other real rights such as mortgages, sureties, usufructs and similar rights;

(*d*) Any rights connected with intellectual property, including expressly invention patents and trademarks, as well as manufacturing licences, technical knowledge, and goodwill;

[1] Came into force on 10 September 1997 by notification, in accordance with article XII.

(*e*) Rights to engage in economic and commercial activities granted by law or under a contract, including rights connected with the exploration, cultivation, mining or development of natural resources.

3. The term "investment income" means the yield from an investment in accordance with the definition contained in the preceding paragraph and including in particular, although not exclusively, profits, dividends, interest, capital gains and royalties.

4. The term "territory" means the land territory and the territorial sea of each Contracting Party, as well as the exclusive economic zone and the continental shelf beyond the limits of the territorial sea of each Contracting Party over which it has or may have, in accordance with international law, jurisdiction and sovereign rights for the purposes of development, exploration or conservation of natural resources.

Article II

PROMOTION, ACCEPTANCE AND SCOPE OF APPLICATION

1. Each Contracting Party shall promote in its territory investments of investors of the other Contracting Party and shall accept them in accordance with its legislation.

2. With a view to increasing significantly the reciprocal promotion of investments, the Contracting Parties shall inform each other in detail about investment opportunities in their territory.

3. 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 Party. It shall not apply to disputes in connection with events occurring before its entry into force.

Article III

PROTECTION

1. Each Contracting Party shall provide full protection and security in accordance with international law to investments made in its territory by investors of the other Contracting Party and shall not obstruct by arbitrary or discriminatory means the management, maintenance, development, use, enjoyment, extension, sale or, where appropriate, liquidation of such investments.

2. Each Contracting Party shall endeavour to grant the requisite permits in connection with such investments and, within the framework of its legislation, shall permit the execution of labour contracts and contracts concerning manufacturing licences or technical, commercial, financial or administrative assistance.

3. Each Contracting Party shall also endeavour, whenever necessary, to grant the requisite permits in connection with the activities of consultants or experts engaged by investors of the other Contracting Party.

4. Each Contracting Party shall fulfil any obligations contracted in connection with the treatment of investments made 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, of investments made by investors of the other Contracting Party.

2. Such treatment shall be no less favourable than the treatment accorded by each Contracting Party to investments made and returns obtained in its territory by its own investors or by investors of any third State.

3. Such treatment shall not, however, extend to the privileges which either Contracting Party may grant to investors of a third State by reason of its current or future membership of or participation in a customs union or under any other international agreement of a similar type.

4. The treatment granted under this article shall not extend to tax deductions or exemptions or to other similar privileges granted by either Contracting Party to investors of third countries under a double-taxation agreement or any other tax agreement.

Article V

NATIONALIZATION AND EXPROPRIATION

1. Investments made in the territory of one Contracting Party by investors of the other Contracting Party shall not be subject to nationalization, expropriation or any other measure of a similar type or having similar effects except when such a measure is taken exclusively for reasons of the public interest, in accordance with the law and in a non-discriminatory manner, and is accompanied by payment to the investor or his assignee of prompt, appropriate and effective compensation.

2. The compensation paid in respect of the measures referred to in paragraph 1 shall be equal to the real value of the investment immediately before the measure in question was taken or before it was announced or published, if such announcement or publication took place earlier. The compensation shall be paid without delay in convertible currency and shall be effectively realizable and freely transferable in accordance with the rules specified in article VII.

3. If one Contracting Party takes any of the measures referred to in the preceding paragraphs of this article in connection with the assets of an enterprise constituted in accordance with the legislation in force in any part of its territory when there is a participation in such assets by investors of the other Contracting Party, the first Contracting Party shall gnarantee to such investors prompt, appropriate and effective compensation in accordance with the provisions of the preceding paragraphs of this article.

Article VI

COMPENSATION FOR 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 riot, or other similar circumstances, including losses caused by requisitioning, shall be accorded, by way of restitution, indemnification, compensation or other settlement, treatment no less favourable than the treatment which that other Contracting Party grants to its own investors or to investors of any third State.

Article VII

TRANSFER

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, in respect of investments made in its territory, unrestricted transfer of payments in connection with such investments and in particular, but not exclusively, the following payments:

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

(*b*) Compensation under article V;

(*c*) Compensation under article VI;

(*d*) Proceeds from the sale or total or partial liquidation of investments;

(*e*) Sums required for the repayment of loans connected with an investment;

(*f*) Sums required for the purchase of raw materials or secondary materials or semi-manufactured or finished goods, or for the replacement of capital goods, or any other sums necessary for the maintenance and development of the investment;

(*g*) Wages, salaries and other remuneration received by persons who are not nationals of the Contracting Party receiving the investment who provide services in connection with an investment as administrators, advisers, or technical or specialized personnel.

2. The Contracting Party receiving the investment shall guarantee to investors of the other Contracting Party, in a non-discriminatory manner, the possibility of acquiring the necessary foreign exchange for making the transfers referred to in this article.

3. The transfers referred to in this Agreement sball be made without delay in the convertible currency chosen by the investor and at the exchange rate applicable on the day of the transfer.

4. The Contracting Parties undertake to facilitate, when necessary, the procedures for making such transfers without delay or restriction, in accordance with the practices of international financial centres. In particular, no more than three months may elapse from the date on which an investor submits in due order the necessary applications for making a transfer and the time at which such transfer is actually made.

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

Article VIII

MORE FAVOURABLE TERMS

1. If the legislation of one Contracting Party or current or future reciprocal obligations of the Contracting Parties under international law not connected with this Agreement provide general or special regulations pursuant to which investments of investors of the other Contracting Party must be accorded more favourable treatment than the treatment provided for in this Agreement, such regulations shall prevail over this Agreement to the extent that they are more favourable.

2. Any terms more favourable than the terms contained in this Agreement which may be agreed upon by one Contracting Party with investors of the other Contracting Party shall not be affected by this Agreement.

Article IX

PRINCIPLE OF SUBSTITUTION

If one Contracting Party or an entity desiguated by it has provided a financial guarantee against non-commercial risks in connection with an investment made by one of its investors in the territory of the other Contracting Party, the other Contracting Party shall accept the substitution of the first Contracting Party or its entity in respect of the economic rights of the investor from the time at which the first Contracting Party or its entity makes a payment under the guarantee in question. Such substitution shall allow the first Contracting Party or its entity to be the direct beneficiary of any kind of payment in respect of compensation for which the investor is a creditor.

With regard to property rights, rights of use or enjoyment and any other real rights, such substitution may take place only if the relevant permits have first been obtained, in accordance with the legislation in force in the Contracting Party in which the investment was made.

Article X

DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled, as far as possible, by amicable means.

2. If a 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 constituted as follows: each Contracting Party shall appoint an arbitrator, and these two arbitrators shall choose a national of a third State as president. The arbitrators shall be appointed within a time limit of three months and the president within a time limit of five months from the date on which either Contracting Party informs the other Contracting Party of its intention to submit the dispute to a court of arbitration.

4. If one Contracting Party does not appoint its arbitrator within the time limit, the other Contracting Party may invite the President of the International Court

of Justice to make the appointment. If the two arbitrators do not agree on the appointment of the third arbitrator within the time limit, either Contracting Party may invite the President of the International Court of Justice to make the appointment.

5. If, in one of the cases envisaged in paragraph 4 of this article, the President of the International Court of Justice cannot perform the said function or is a national of either Contracting Party, the Vice-President of the Court shall be invited to make the appointments in question.

If the Vice-President of the Court cannot perform the said function or is a national of either Contracting Party, 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 make its award 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 principles of international law.

7. Unless the Contracting Parties decide otherwise, the court sball establish its own procedures.

8. The court shall make its award by a majority vote, and the award shall be final and binding on both Contracting Parties.

9. Each Contracting Party shall pay the expenses of the arbitrator appointed by it and the costs of its representation in the arbitral proceedings. The other expenses, including those of the president, shall be borne equally by the two Contracting Parties.

Article XI

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

1. The details of any dispute which may arise between an investor of one Contracting Party and the other Contracting Party concerning the fulfilment by that Party of the obligations established in this Agreement shall be notified in writing by the investor to the Contracting Party receiving the investment. As far as possible, the parties to the dispute shall try to settle their differences by amicable agreement.

2. If a dispute cannot be settled in this way within a time limit of six months from the date of the written notification referred to in paragraph 1, it shall be submitted, at the investor's choice:

(*a*) To the competent courts of the Contracting Party in whose territory the investment was made, or

(*b*) To the International Centre for Settlement of Investment Disputes (ICSID) established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which was opened for signature in Washington on 18 March 1965,[1] provided that both States parties to this Agreement have acceded to the Convention. If either Contracting Party has not acceded to the Convention, recourse shall be had to the Additional Facility for the administration of conciliation, arbitration and fact-finding procedures by the ICSID secretariat.

[1] United Nations, *Treaty Series*, vol. 575, p. 159.

3. If for any reason the arbitral bodies referred to in paragraph 2 (*b*) of this article are not available, or if the two parties so agree, the dispute shall be submitted to an *ad hoc* court of arbitration established in accordance with the arbitration rules of the United Nations Commission on International Trade Law.[1]

4. The arbitration shall be based on:

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

(*b*) The rules and principles of international law;

(*c*) The national law of the Contracting Party in whose territory the investment was made, including the rules on conflicts of law.

5. Arbitral awards shall be confined to determining whether a Contracting Party has failed to fulfil its obligations under this Agreement and such failure has caused harm to an investor of the other Contracting Party and, if so, to fixing the amount of the compensation.

6. Arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce the awards in accordance with its national legislation.

Article XII

ENTRY INTO FORCE, EXTENSION AND TERMINATION

1. This Agreement shall enter into force when the two Contracting Parties have notified each other of the completion of their respective constitutional formalities. It shall remain in force for an initial period of 10 years and shall be automatically renewed for consecutive periods of two years.

Either Contracting Party may terminate this Agreement by means of written notification given six months before the date of its expiry.

2. In the event of termination, the provisions of articles I to XI of this Agreement shall continue to be applied for a period of 10 years to investments made before the termination.

DONE in two original copies in Spanish, both copies being equally authentic, at Caracas on 2 November 1995.

For the Kingdom of Spain:

AURELIO PÉREZ GIRALDA
Ambassador of Spain to Venezuela

For the Republic of Venezuela:

MIGUEL ANGEL BURELLI RIVAS
Minister for Foreign Affairs

[1] United Nations, *Official Records of the General Assembly, Thirty-first Session, Supplement No. 39, Volume I* (A/31/39), p. 182.