

[ENGLISH TEXT — TEXTE ANGLAIS]

AGREEMENT ON THE PROMOTION AND RECIPROCAL PROTECTION OF
INVESTMENTS BETWEEN SPAIN AND UKRAINE

Spain and Ukraine, hereinafter referred to as "the Contracting Parties",

Desiring to intensify their economic cooperation for the mutual benefit of both countries,

Intending to create and maintain 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 the present Agreement,

1. The term "Investment" shall comprise every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and shall include, in particular, though not exclusively:

- a) inovable and immovable property and any other property rights such as mortgages, liens, usufructs, pledges and similar rights;
- b) shares in and stocks and debentures of a company or any other form of participation in a company;
- c) claims to money or to any performance under contract having economic value, including every loan granted for the purpose of creating economic value;
- d) Intellectual property rights, including copyrights, patents, industrial designs, trademarks and tradenames, as well as 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.

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment, provided that such a change is made in accordance with the law and regulations of the host Contracting Party of the investment.

2. The term "investor" means with regard to either Contracting Party:

- a) physical persons who, according to the law of that Contracting Party, are considered to be its nationals;
- b) legal entities, including companies, associations, partnerships, corporations and any other organization incorporated or constituted or, otherwise, duly organized under the law of that Contracting Party;

c) any legal entity constituted or duly organized under the law of the other Contracting Party but directly or indirectly controlled by any physical person as defined in a) or by any legal entity as defined in b) above.

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

4. The term "territory" designates the land territory and territorial waters 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 waters of each of the Contracting Parties, over which they have or may have jurisdiction and sovereign rights for the purposes of exploitation, exploration and conservation of natural resources, pursuant to international law.

Article 2. Promotion and admission

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. In order to encourage mutual investment flows, each Contracting Party shall endeavour to inform the other Contracting Party, at the request of the latter Contracting Party, on the investment opportunities in its territory.

3. 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 investment. 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.

2. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyment, sale, and if it is the case, the liquidation of such investments. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article 4. National treatment and most favoured nation treatment

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

2. The provisions of paragraph 1 of this Article shall not be construed so as to oblige one Contracting Party to extend to the Investors of the other Contracting Party the benefit

of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue on:

a) any existing or future customs union or free trade area or a monetary union or similar international agreements or other forms of regional economic cooperation to which either of the Contracting Parties is or may become a party, or

b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 5. Expropriation

1. Investments or returns 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, pursuant to the law, on a non discriminatory basis and shall be accompanied by 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 the impending expropriation became public knowledge, whichever is the earlier (hereinafter referred to as the "valuation date"). Compensation shall be paid without delay, be effectively realizable and be freely transferable.

3. Such fair 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 normal commercial rate established on a market basis for the currency of valuation from the date of expropriation until the date of payment.

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 to determine whether such expropriation and the valuation of its investment conform to 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 or returns 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) of this Article, an investor of a Contracting Party who, in any of the situations referred to in that paragraph, suffers losses 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.

3. Resulting payments in connection with paragraphs 1) and 2) of this Article shall be made without delay in a freely convertible currency 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 needed for the maintenance or increase of an 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.

Article 8. More favourable terms

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.

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 own investors in the territory of the other Contracting Party, the latter Contracting Party shall recognise 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 the former Contracting Party or its designated Agency to be the direct beneficiary of any payment for indemnification or other compensation of which the investor could be entitled to.

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 the dispute cannot be thus settled within six months it shall, upon the request in writing of either Contracting Party, be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three 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 any 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, of the rules contained in this Agreement or in other agreements in force between the Contracting Parties, and as well as of the universally 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 the arbitrator appointed by it 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 a 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 host Contracting Party of the investment. As far as possible, the parties concerned shall endeavour to settle these differences 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 shall be submitted, at the choice of the investor, to:

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

-- an ad hoc court of arbitration established under the Arbitration Rules of the United Nations Commission on International Trade Law;

-- 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 18 March 1965, in case both Contracting Parties become members of this Convention. As long as a Contracting Party which is party in the dispute has not become a Contracting State of the Convention mentioned above, the dispute shall be dealt with pursuant to the Additional Facility for the Administration of proceedings by the Secretariat of the Centre;

3. The arbitration shall be based on:

-- the provisions of this Agreement and of the other agreements in force between the Contracting Parties;

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

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

4. 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.

5. 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. Applicability of the Agreement

This Agreement shall be applicable to investments made prior or after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party.

Article 13. Entry into force, duration and termination

1. Each of the Contracting Parties shall notify the other of the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force on the date of the second notification.

2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, one year before the expiry of the initial or any subsequent periods, either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

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 of ten years from such date of termination.

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

Done in duplicate at Kiev, this 26 day of February 1998, in Spanish, Ukrainian and English languages, all texts being equally authentic.

For Spain:

RAMON DE MIGUEL Y EGEA
Deputy Minister for Foreign Affairs and European Union

For Ukraine:

ANDRIY I. GONCHARUK
First Deputy Minister of Foreign Economic Relations and Trade