AGREEMENT BETWEEN THE REPUBLIC OF INDONESIA AND THE KINGDOM OF SPAIN ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Indonesia and the Government of the Kingdom of Spain, hereinafter referred to as "the Parties",

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

INTENDING to create favourable conditions for investments by investors of either 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 the present Agreement,

1. The term "Investment" means any kind of assets, such as goods and rights of all sorts, acquired under the law and regulations of the host country of the investment and in particular, although not exclusively, the following:

- shares and other forms of participation in companies;

- rights arising from all types of contributions made for the purpose of creating economic value, including every loan granted for this purpose, whether capitalized or not;

- movable and immovable property and any other property rights such as mortgages, liens or pledges;

- any rights in the field of intellectual property, including patents and trademarks, as well as manufacturing licenses and know-how;

- rights to engage in economic and commercial activities authorized by law or by virtue of a contract particularly those rights to search for cultivate, extract or exploit natural resources.

2. The term "Investor" means:

   a. in respect of the Republic of Indonesia, a natural person who according to the laws of the Republic of Indonesia is an Indonesian national and, in respect of the Kingdom of Spain, a natural person who according to the laws of the Kingdom of Spain is a resident in Spain ;

   b. any legal entity, including companies, associations of companies, trading corporate entities and other organizations which is incorporated or, in any event, is properly organized under the law of that Party and is actually managed from the territory of that Party.

3. The term "Investment incomes" refers to the income derived from an investment in accordance with the definition contained above, and includes, in particular, profits, dividends and interests.

4. The term "territory" means:

a) In respect of the Republic of Indonesia the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982.

b) In respect of the Kingdom of Spain, the land territory and its territorial waters, as well as the exclusive economic zone and the continental shelf that extends outside the limits of its territorial waters over which it has or may have jurisdiction and sovereign rights for the purposes of prospectioning, exploration and conservation of natural resources, pursuant to international law.

ARTICLE II
PROMOTION AND PROTECTION OF INVESTMENTS

1. In the efforts to promote investments either Party shall encourage and create favourable conditions for investors of the other Party to invest in its territory, and shall admit such investments in accordance with its law and regulations.

2. Each Party shall protect in its territory the investments made in accordance with its laws and regulations, by investors of the other Party and shall not hamper, by means of unjustified or discriminatory measures, the management, maintenance use, enjoyment, expansion, sale and if appropriate, the liquidation of such investments.

3. Each Party shall endeavour to grant the necessary permits relating to these investments and shall allow, within the framework of its law, the execution of contracts related to manufacturing-licenses and technical, commercial, financial and administrative assistance.

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

ARTICLE III
SCOPE OF AGREEMENT

With regard to the investments made before the enter into force of this Agreement, this Agreement shall likewise apply to investments by investors of the Kingdom of Spain in the territory of the Republic of Indonesia which have been previously granted admission in accordance with the law No. 1 of the 1967 on Foreign Capital Investments and any law amending or replacing it, and to investments by investors of the Republic of Indonesia in the territory of the Kingdom of Spain which have been made in accordance with legal Spanish provisions on foreign investments.

ARTICLE IV
TREATMENT

1. Each Party shall guarantee in its territory fair and equitable treatment for the investments made by investors of the other Party.

2. This treatment shall not be less favourable than that extended by each Party to the investments made in its territory by investors of a third country.

3. However, this treatment shall not extend to the privileges that one Party may grant to investors of a third country by virtue of its membership in:

- a free-trade area,
- a customs union,
- a common market,
- a mutual economic assistance organization or by virtue of an agreement entered into before the signature of this agreement which contains provisions similar to those granted by that Party to the members of such organization or
- a cross border trade arrangement.

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 Parties to investors of third countries by virtue of a double-taxation avoidance agreement or any other taxation agreement.

ARTICLE V
COMPENSATION FOR DAMAGES OR LOSSES

Investors of one Party whose investments or investment incomes in the territory of the other Party suffer losses owing to war, other armed conflicts, a state of national emergency or other similar circumstances in the territory of the latter shall be accorded, as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Party grants to investors of any third State. Any payment made under this Article shall be prompt, adequate, effective and freely transferable.

ARTICLE VI
NATIONALIZATION AND EXPROPRIATION

The nationalization, expropriation or any other measure of similar characteristics or effects that may be applied by the authorities of one Party against the investments in its own territory of investors of the other Party must be applied exclusively for reasons of public interest pursuant to the law, and shall in no case be discriminatory. The Party adopting such measures shall pay to the investors or his legal beneficiary an adequate indemnity in convertible currency without unjustified delay.

ARTICLE VII
TRANSFER

With regard to the investments made in its territory, each Party shall grant to investors of the other Party the right to freely transfer the income deriving therefrom and other payments related thereto, including particularly but not exclusively, the following:

a). capital and additional capital amounts used to maintain and increase investments;

b). net operating profits including dividends and interests in proportion to the share-holding of the foreign participant;

c). repayment of any loan and the relevant interest thereof, as far as it is related to the investment;

d). payment of royalties and services fees as far as it is related to the investment;

e). proceeds from sales of shares owned by the foreign share-holders;

f). compensation for damages or losses;

g). compensation for expropriation;

h). proceeds received by investor in case of liquidation;

i). the earnings of nationals of one Party who are allowed to work in connection with investment in the territory of the other Party.

The transfers shall be made in freely-convertible foreign currencies.

The host Party of the investment shall allow the investor of the other Party, or the company in which he has invested, to have access to the official foreign-exchange market in a non-discriminatory manner so that the investor may purchase the necessary foreign currency to make the transfers pursuant to this article.

The transfer shall be made after compliance by the investor with the tax obligations laid down by current law in force in the host Party of the investment.

The Parties undertake to facilitate the procedures needed to make these transfers without excessive delays. In particular, no more than three months must elapse from the date on which the investor properly submits the necessary applications in order to make the transfer until the date the transfer actually takes place. Therefore, both Parties undertake to carry out the necessary formalities, both for the purchase of foreign currency and for its effective transfer abroad, within that period of time.

ARTICLE VIII
MORE FAVOURABLE TERMS

More favourable terms than those of this Agreement which have been agreed to by one of the Parties with investors of the other Party shall not be affected by this Agreement.

ARTICLE IX
SUBROGATION

In case one party or any of its designated agency has granted any guarantee against non-commercial risks in respect of an investment by its investor in the territory of the other Party and has made payment to such investor under that guarantee, the other Party shall recognize, in accordance with its law, the transfer of the rights of such investor to the former Party or any of its designated agency. The subrogation of the latter shall no exceed the original rights of such investor. As regards the transfer of payments to be made to the other Party by virtue of such subrogation, the provisions of Article VI and VII shall apply respectively.

ARTICLE X
SETTLEMENT OF DISPUTES BETWEEN ONE PARTY AND INVESTORS OF THE OTHER PARTY

1. Disputes between one of the Parties and one investor of the other Party shall be notified in writing, including a detailed information, by the investor to the

host Party of the investment. As far as possible the Parties shall endeavour to settle these differences by means of a friendly agreement.

2. If these disputes cannot be settled in this way within twelve months from the date of the written notification mentioned in paragraph 1 through the pursuit of local remedies, the dispute may be submitted to:

- the ad hoc of arbitration established under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law or

- 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", in case both Parties become signatories of this Convention.

3. The arbitration decisions shall be final and binding for the parties in dispute. Each Party undertakes to execute the decisions in accordance with its national law.

ARTICLE XI
SETTLEMENT OF CONFLICTS OF INTERPRETATION OF THE AGREEMENT BETWEEN THE PARTIES

1. Any dispute between the Parties relative to the interpretation or application of this Agreement shall as far as possible be settled by the Governments of the two Parties through diplomatic channels.

2. If it were not possible to settle the dispute in this way within six months from the start of the negotiations, it may be submitted, at the request of either of the two Parties, to a court of arbitration.

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

4. If the appointments of the members of the Court of Arbitration are not made within a period of six months from the date of request for arbitration, either Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments within three months. Should the President be a national of one Party or should he not be able to perform this designation because of other reasons, this task shall be entrusted to the Vice-President of the Court, or to the next senior Judge of the Court who is not a national of either Party.

5. The court of arbitration 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 Parties, and well as of the universally recognized principles of international law.

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

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

8. Each 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 Parties.

ARTICLE XII
CONSULTATION AND AMENDMENT

1. Either Party may request that a consultation be held on any matter that both Parties agree to discuss.

2. This Agreement may be amended at any time, if deemed necessary, by mutual consent.

ARTICLE XIII
ENTRY INTO FORCE, DURATION AND TERMINATION

1. This Agreement shall enter into force on the date on which the two Parties shall have notified each other that the 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 ten years and, by tacital renewal, for consecutive ten years periods.

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

2. In respect of investments made prior to the date of termination of the present Agreement, the provisions of Article I to XII shall continue to be effective for a further period of ten years from the date of termination of the present Agreement.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement.

DONE in originals in Indonesian, Spanish and English all of which are equally authentic, in Jakarta, May 30,1995.

FOR THE GOVERNMENT OF
THE REPUBLIC OF INDONESIA

ALI ALATAS, SH
Minister of Foreign Affairs

FOR THE GOVERNMENT OF
THE KINGDOM OF SPAIN

JAVIER GOMEZ NAVARRO
Minister of Trade and
Tourism