ANNEX I

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

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

Desiring to intensify economic co-operation between both countries,

Intending to create favourable conditions for investments made by investors of each 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 1
DEFINITIONS

For the purposes of this Agreement,

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

   a) the term "national" means physical persons who, according to the law of that Party, are considered to be its nationals.

   b) the term "company" means juridical persons or any other legal entity constituted or otherwise duly organized under the applicable law of that Party and having its seat in the territory of that same Party, such as corporations, partnerships or business associations.

2. The term "investment" means every kind of asset invested by investors of one Party in the territory of the other Party in accordance with the laws and regulations of the latter Party and in particular, though not exclusively, includes:

   a) movable and immovable property and any other property rights such as mortgages, liens, pledges and similar rights;

   b) a company or business enterprise or shares in and stocks and debentures of a company or any other form of participation in a company or business enterprise;

c) claims to money or to any performance under contract having economic value and associated with an investment;

d) intellectual and industrial property rights; 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.

Investments made in the territory of one Party by any company of that same Party which is actually owned or controlled by investors of the other Party shall likewise be considered as investments of investors of the latter Party if they have been made in accordance with the laws and regulations of the former Party.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments.

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, the internal waters, the territorial sea and the airspace of each of the Parties, as well as the exclusive economic zone and the continental shelf that extend outside the limits of the territorial sea of each of the Parties over which they have or may have jurisdiction and/or sovereign rights in accordance with international law.

ARTICLE 2
PROMOTION AND ADMISSION OF INVESTMENTS

1. Each Party shall in its territory promote, as far as possible, investments by investors of the other Party. Each Party shall admit such investments in accordance with its laws and regulations.

2. When a Party shall have admitted an investment in its territory, it shall, in accordance with its laws and regulations, give the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Party shall 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 Party in the territory of the other Party shall be accorded fair and equitable treatment and shall enjoy full protection and

security. In no case shall a Party accord to such investments treatment less favourable than that required by international law.

2. Neither Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments. Each Party shall observe any obligation it may have entered into in writing with regard to investments of investors of the other Party.

ARTICLE 4
NATIONAL TREATMENT AND MOST FAVOURED NATION TREATMENT

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

2. Each Party shall accord, in its territory, to investors of the other Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State whichever is more favourable to the investor concerned.

3. The treatment granted under paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Party to extend to the investors of the other Party and their investments the benefit of any treatment, preference or privilege resulting from:

a) its membership of, or association with, any existing or future free trade area, customs, economic or monetary union or other similar international agreements including other forms of regional economic organisation, or

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

4. Measures that have to be taken for reasons of public security and order or public health shall not be deemed treatment “less favourable” within the meaning of this Article.

ARTICLE 5
EXPROPRIATION

1. Investments of investors of either Party in the territory of the other 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, in accordance with due process of law, on a non discriminatory basis and against the payment of prompt, adequate and effective compensation.

2. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became publicly known, whichever is earlier (hereinafter referred to as the "valuation date").

3. Such market value shall be expressed 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 commercial rate established on a market basis for the currency of valuation from the date of expropriation until the date of payment. Compensation shall be paid without delay, be effectively realizable and freely transferable.

4. The investor affected shall have the right, under the law of the Party making the expropriation, to prompt review, by a judicial authority or other competent authority of that Party, of its case, including the valuation of its investment and the payment of compensation, in accordance with the principles set out in this Article.

5. Where a 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 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 Party who are owners of those shares.

ARTICLE 6
COMPENSATION FOR LOSSES

1. Investors of one Party whose investments in the territory of the other 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 Party, as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter 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), an investor of one Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other 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 Party restitution or compensation which in either case shall be prompt, adequate and effective. Resulting payments shall be made without delay and be freely transferable.

ARTICLE 7
TRANSFERS

1. Each Party shall guarantee to investors of the other 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 to maintain or increase the 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 applicable on the date of transfer.

ARTICLE 8
APPLICATION OF OTHER PROVISIONS

1. If the legislation of either Party or obligations under international law existing at present or established hereafter between the Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments by investors of the other 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 Parties with investors of the other Party shall not be affected by this Agreement.

3. Nothing in this Agreement shall affect the provisions established by international Agreements relating to the intellectual and industrial property rights in force at the date of its signature.

ARTICLE 9
SUBROGATION

If one 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 investors in the territory of the other Party, the latter Party shall recognize the assignment of any right or claim of such investor to the former Party or its designated Agency and the right of the former 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 for the former Party or its designated Agency to be the direct beneficiary of any payment for indemnification or other compensation to which the investor could be entitled.

ARTICLE 10
SETTLEMENT OF DISPUTES BETWEEN THE PARTIES

1. Any dispute between the Parties concerning the interpretation or application of this Agreement shall as far as possible be settled 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 shall be submitted, at the request of either of the two Parties, to an arbitral tribunal.

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

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either 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 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 Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall issue its decision on the basis of the provisions contained in this Agreement as well as the generally accepted principles of international law.

6. Unless the 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 Parties.

8. Each Party shall bear the expenses of its own arbitrator 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 Parties.

ARTICLE 11
DISPUTES BETWEEN A PARTY AND AN INVESTOR OF THE OTHER PARTY

1. Disputes between an investor of one Party and the other Party concerning an investment, under this Agreement, shall be notified in writing by the investor to the latter Party. As far as possible, the parties concerned shall endeavour to settle these disputes amicably through negotiations.

2. If these disputes cannot be settled amicably within six months from the date of the written notification mentioned in paragraph 1, the dispute may be submitted, at the choice of the investor, to:

- the competent court of the Party in whose territory the investment was made; or
- an ad hoc tribunal of arbitration established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); 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", opened for signature at Washington on 18th March 1965,in case both Parties become members of this Convention. As long as a 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 rules of the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings of the ICSID.

3. The arbitration shall be based on the provisions of this Agreement, the national law of the Party in whose territory the investment was made, including the rules relative to conflicts of law, and the rules and generally accepted principles of international law as may be applicable.

4. A 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 Party undertakes to execute the decisions in accordance with its national law.

ARTICLE 12
SCOPE OF APPLICATION

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

ARTICLE 13
ENTRY INTO FORCE, DURATION AND TERMINATION

1. This Agreement shall enter into force on the date on which the Parties shall have notified each other that their respective constitutional formalities required for the entry into force of international agreements have been completed.

2. This Agreement shall remain in force for an initial period of ten years. Thereafter it shall continue in force unless denounced in writing by either Party twelve months before of its expiration. After the expiration of the initial period of ten years this Agreement may be denounced at any time by either Party giving twelve month's written notice to the other Party.

3. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 12 shall remain in force for a further period of ten years from the date of termination of this Agreement.

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

DONE in duplicate at ……. this …. day of……, 200... in the Albanian, Spanish and English languages, all texts being equally authentic. In case of misinterpretation of the provisions of this Agreement, the English text shall prevail.

FOR THE GOVERNMENT OF THE KINGDOM OF SPAIN

FOR THE GOVERNMENT OF THE REPUBLIC OF ALBANIA