[TRANSLATION - TRADUCTION]

AGREEMENT BETWEEN THE GOVERNMENT OF THE ARGENTINE REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Argentine Republic and the Government of the Republic of Costa Rica, hereinafter referred to as the "Contracting Parties",

Desiring to intensify economic cooperation between the two countries,

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

Recognizing that the promotion and protection of such investments on the basis of an agreement will encourage individual economic initiative and increase prosperity in both States,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement:

1. The term "investment" means, in conformity with the laws and regulations of the Contracting Party in whose territory the investment was made, every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the latter's legislation. It includes in particular, though not exclusively:

(a) Movable and immovable property as well as any other rights in rem, such as mortgages, sureties, liens and pledges;

(b) Shares, stocks, debentures and any other form of participation in companies;

(c) Rights involving debentures or claims directly connected with an investment that are lawfully contracted and documented in accordance with the legal provisions in force in the country in which the investment is made;

(d) Intellectual property rights, including copyright, related rights and industrial property rights, such as trademarks or trade names, names of origin, industrial designs and models, and patents;

(e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

No change in the form in which the investment has been made shall affect its status as an investment under this Agreement.

2. "Investor" means, in relation to any of the Contracting Parties, the following individuals who have made investments in the territory of the other Contracting Party in aecordance with this Agreement and the legislation of the latter Contracting Party:

(a) Any individual who is a national of one of the Contracting Parties in accordance with its legislation;

(b) Any legal person, including companies, corporations, partnerships or any other organization, whether or not for profit, provided that it is constituted in accordance with the laws and regulations of one of the Contracting Parties and has its head office in the territory of that Contracting Party.

3. The provisions of this Agreement shall not apply to investments by individuals who are nationals of one Contracting Party in the territory of the other Contracting Party, if such individuals, on the date of the investment, have been domiciled for more than two years in the latter Contracting Party, unless it can be proved that such investments originate from abroad.

4. "Returns" or "yields on investment" mean all amounts yielded by an investment, such as profits, dividends, interest, capital increases and other current income.

5. "Territory" means the national territory of each Contracting Party, including the territorial sea, 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 2

Promotion and acceptance of investments

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

2. The Contracting Parties shall facilitate the holding of consultations on investment opportunities in their respective territories.

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.

Article 3.

Protection

Each Contracting Party shall at all times ensure fair and equitable treatment to investments by investors of the other Contracting Party, shall grant in its territory full protection and security to investments, and shall not impair the management, maintenance, use, enjoyment or disposal of investments through arbitrary or indiscriminate measures.

Article 4.

Treatment as nationals and most-favoured-nation

1. When a Contracting Party has admitted investments in its territory by investors of the other Contracting Party, it shall accord such investments treatment no less favourable than that given to investments by its own investors or investors of third States.

2. Between treatment as nationals and most-favoured-nation treatment, each Contracting Party shall accord the treatment that is most favourable to the investment of the investor.

3. Without prejudice to the provisions of paragraph (1) of this article, most-favoured-nation treatment shall not apply to the privileges which each Contracting Party accords to investments by investors of a third State as a result of its current or future participation in a free trade area, customs union, common market, economic or monetary union, or other similar economic integration institutions.

4. The provisions of paragraph (1) of this article shall not be interpreted as meaning that either Contracting Party is obliged to accord to investments by investors of the other Contracting Party the benefits of any treatment, preference or privilege resulting from an international double taxation avoidance agreement or other tax agreement.

5. The provisions of paragraph (1) of this article shall not be interpreted either as meaning that the Argentine Republic is obliged to extend to investments by investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from the bilateral agreements concerning concessional financing concluded with the Italian Republic on 10 December 1987 and with the Kingdom of Spain on 3 June 1988.

Article 5.

Expropriation and compensation

1. Neither Contracting Party shall take nationalization or expropriation measures or any other measure having the same effect (hereinafter referred to as "expropriation") against investments in its territory belonging to investors of the other Contracting Party, unless such measures are taken for reasons of public interest, on a basis of non-discrimination and according to due process of law. The measures shall be accompanied by arrangements for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, whichever of these circumstances is earlier, shall include interest at a normal commercial rate from the expropriation date, shall be paid without delay in convertible currency, and shall be effectively realizable and freely transferable.

2. The investor affected shall have the right, in accordance with the laws 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 de-

termine whether the expropriation and valuation of the investment were carried out in accordance with the provisions of paragraph 1 of this article.

Article 6

Compensation for losses

The investors of a Contracting Party who suffer losses on their investments in the territory of the other Contracting Party owing to war or other armed conflict, state of national emergency, revolt, insurrection, civil disturbance or any other similar events of domestic disturbance shall be accorded by the latter Contracting Party treatment as regards restitution, indemnification, compensation or other settlement no less favourable than that accorded to the investments of its own investors or to the investments of investors of a third State, whichever treatment is more favourable to the investment of the affected investor.

Article 7

Transfers

1. Each Contracting Party shall accord to investors of the other Contracting Party the unrestricted transfer of investments and earnings and in particular, but not exclusively, the following:

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

(b) Profits, interest, dividends and other current income;

(c) Funds required for the repayment of the loans referred to in article 1, paragraph 1 (c);

(d) The proceeds from the sale or total or partial liquidation of an investment;

(e) The compensation provided for in articles 5 and 6;

(f) The income of nationals of one Contracting Party who have received work permits in connection with an investment in the territory of the other Contracting Party;

(g) Payments resulting from the settlement of disputes arising from an investment.

Without prejudice to the provisions of this article, the Contracting Parties may take measures under their legislation to prevent fraud, ensure compliance with fiscal obligations or compile information for statistical purposes.

2. The transfers shall be effected without delay in freely convertible currency at the rate of exchange applicable on the date of the transfer, in accordance with the procedures established by the Contracting Party in whose territory the investment was made; these procedures shall not affect the substance of the rights provided for in this article.

3. A transfer shall be deemed to have been made without delay if it is effected within the period normally required for the completion of transfer formalitics. Such period shall commence with the submission of the relevant request and may in no circumstances exceed two months.

Article 8

Principle of subrogation

1. If a Contracting Party or one of its agencies makes a payment to an investor under a guarantee or insurance against non-commercial risks which it has accorded in respect of an investment, the other Contracting Party shall, in accordance with the procedures provided for in its legislation, recognize the validity of the subrogation in favour of that Contracting Party or one of its agencies with respect to any right or entitlement of the investor. The Contracting Party or one of its agencies shall be authorized, within the limits of the subrogation, to exercise the same rights as the investor would have been authorized to exercise.

2. In the event of a subrogation as defined in paragraph (1) of this article, the investor shall make no claim unless authorized to do so by the Contracting Party or its agency.

Article 9.

More favourable terms

If the legislation of either Contracting Party or any current or future obligation arising out of international law established between the Contracting Parties in addition to this Agreement, or an agreement between an investor of one Contracting Party and the other Contracting Party contain general or specific rules according the investments made by investors of the other Contracting Party treatment more favourable than that provided for in this Agreement, those rules shall prevail over this Agreement, to the extent that they are more favourable.

Article 10.

Scope of application

This Agreement shall apply to all investments made before or after the date of its entry into force, but its provisions shall not be applicable to any dispute, claim or disagreement that arose prior to its entry into force or that is related to events that occurred prior to its entry into force or that is related to the mere continuation of such pre-existing situations.

Article 11

Settlement of disputes between the Contracting Parties

1. Disputes between the Contracting Parties relating to the interpretation or application of this Agreement shall, as far as possible, be settled through the diplomatic channel.

2. If a dispute between the Contracting Parties cannot be thus settled within a reasonable period, it shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.

3. The arbitral tribunal shall be established for each specific case in the following manner. Within three months of the transmittal of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. These two members shall elect a national of a third State who, with the approval of the two Contracting Parties, shall be appointed president of the tribunal. The president shall be appointed within five months following the date of the transmittal of the request for arbitration.

4. If the necessary appointments have not been made within the time limits provided for in paragraph (3) of this article, either Contracting Party may, in the absence of other arrangements, invite the President of the International Court of Justice to make the necessary. appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging that function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is also a national of either Contracting Party, or is also prevented from discharging that 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. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedures.

6. The arbitral tribunal shall base its decision on this Agreement and on the generally recognized rules of international law. It shall take its decision by a majority of votes, and such decision shall be final and binding on both Contracting Parties. Each Contracting Party shall defray the costs of its member of the tribunal and of its representation in the arbitral proceedings. The costs of the president and the remaining costs shall in principle be shared equally by the Contracting Parties.

Article 12

Settlement of disputes between an investor and the Contracting Party receiving the investment

1. Any investment-related dispute, under the terms of this Agreement, between an investor of a Contracting Party and the other Contracting Party shall be notified in writing by the investor, together with a detailed report, to the Contracting Party receiving the investment and shall, as far as possible, be settled by amicable consultations.

2. If the dispute cannot be settled within six months from the date of the written notification referred to in paragraph (1), it may, at the request of the investor, be submitted to:

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

(b) International arbitration according to the provisions of paragraph 5 of this article.

3. If the investor has given notice of the dispute and the parties fail to agree on the choice of (a) or (b), the opinion of the investor shall prevail.

4. In accordance with paragraphs (2) and (3) above, once the investor or the Contracting Party has submitted the dispute to the courts of the Contracting Party concerned or to international arbitration, the choice of that procedure shall be final.

5. In the event of recourse to international arbitration, the dispute may be submitted to:

(a) The International Centre for Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature in Washington on 18 March 1965, when both States Parties to this Agreement have acceded to it. If this condition is not met, each Contracting Party consents that the dispute shall be submitted to arbitration in accordance with the regulations of the ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact-finding Proceedings; or

(b) An ad hoc arbitral tribunal set up in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

6. If no agreement is reached on the choice of a forum, as provided for in paragraph 5 (a) or 5 (b), within three months of the written notification of the submission of the dispute to arbitration, the parties to the dispute shall submit the dispute to the International Centre for Settlement of Investment Disputes.

7. The arbitral tribunal shall issue its ruling in accordance with the provisions of this Agreement, the laws of the Contracting Party involved in the dispute, including its rules on conflict of laws, the terms of any specific agreement concluded in relation to the investment and the relevant principles of international law.

8. The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party shall enforce them in accordance with its legislation.

9. The Contracting Parties shall not pursue, through diplomatic channels, arguments concerning an arbitration or judicial proceeding that is already under way, unless the parties to the dispute have failed to abide by the award of the arbitral award or the judgement of the ordinary courts, in accordance with the terms of compliance established in the award or judgement.

Article 13

Entry into force, duration and termination

1. This Agreement shall enter into force on the first day of the second month after the date on which the Contracting Parties notify each other in writing that their constitutional requirements for the entry into force of this Agreement have been fulfilled. It shall remain valid for 10 years. Thereafter, it shall remain in force until the expiration of a period of one year from the date on which either Contracting Party notifies the other Contracting Party in writing of its decision to terminate this Agreement.

2. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of articles 1 to 12 shall remain in force for a period of 10 years following that date.

Done in Buenos Aires, on 21 May 1997, in duplicate originals, in Spanish, both texts being equally authentic.

For the Government of the Argentine Republic:
GUIDO DI TELLA

For the Government of the Republic of Costa Rica:
JOSÉ MARÍA SALAZAR XIRINACHS

PROTOCOL

On signing the Agreement for the Reciprocal Promotion and Protection of Investments, the Argentine Republic and the Republic of Costa Riea have agreed on the following provisions, which shall be regarded as an integral part of the said Agreement.

Ad article 5

1. For the purposes of article 5 (1), the Contracting Parties agree that in the case of Costa Rica "market value" shall mean the fair price, which shall be equivalent to the amount of the compensation to be determined as follows:

The decision shall include all the information required to identify the asset being valued. In the case of movable property, the decision shall contain the valuation independently of the land, crops, constructions, tenancies, leases, commercial rights, the right to exploit deposits and any other assets or rights for which compensation may be paid. In the case of movable property, each item shall be valued separately and the elements that determine its valuation shall be indicated. The valuations shall take into account only actual permanent damage and shall not include or take into account future acts or valid expectations that affect the asset. Nor shall any increase in value as a result of the project that gave rise to the expropriation be recognized. Any expert decision must indicate clearly and in detail the grounds on whieh the value was assigned to the asset and the methodology that was used.

2. The Contracting Parties agree that any dispute that arises in connection with the distribution or administration of export quotas in the domestic market as a result of the imposition of quantitative restrictions by either of the Contracting Parties or by a third State shall be regarded as a commercial matter and shall therefore be settled by the Contracting Parties using the applicable commercial rules. Consequently, none of the provisions of article 5 of this Agreement shall serve as a basis for an investor of one of the Contracting Parties to claim that the effects of the distribution or administration of a quota should be considered to be an indirect expropriation.

Ad article 7

None of the provisions of article 7 (f) shall be interpreted as requiring either of the Contracting Parties to authorize the exercise of professional aetivities, which shall be subject to the legislation of each Contracting Party.

For the Government of the Argentine Republic:

GUIDO DI TELLA

For the Government of the Republic of Costa Rica:

JOSÉ MARÍA SALAZAR XIRINACHS