[TRANSLATION - TRADUCTION]

AGREEMENT BETWEEN THE GOVERNMENT OF THE ARGENTINE REPUBLIC AND THE GOVERNMENT OF THE UNITED MEXICAN STATES FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Argentine Republic and the Government of the United Mexican States, hereinafter referred to as "the Contracting Parties",

Desiring to strengthen the bonds of friendship between their peoples and to expand and intensify economic relations between the Contracting Parties, in particular with respect to investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that a bilateral agreement on the promotion and protection of investments is necessary to promote economic development and stimulate the flow of capital and technology between the Contracting Parties,

Desiring to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the principle of international reciprocity,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement,

1. "Investment" means, in accordance with the laws and regulations of the receiving Contracting Party, any type of asset invested by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the legislation of the latter. It includes, in particular, but not exclusively, the following:

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

(b) Shares, stocks in companies and any other form of participation in partnerships, companies or enterprises;

(c) Titles to money and rights to performances having an economic value; the latter shall be included only when they are provided by the investor to the enterprise constituting his investment or result from a financial operation contracted for a period exceeding 3 years;

(d) Intellectual property rights including, in particular, copyrights, patents, industrial designs, trademarks, trade names, know-how and goodwill;

(e) Interests or rights deriving from the provision of capital or other resources in the territory of one Contracting Party for an economic activity undertaken in the territory of the other Contracting Party, as the result of the granting of a concession;

(f) Investments made by partnerships, companies or enterprises of one Contracting Party more than half of whose capital is provided by investors of the other Contracting Party;

(g) Participation by investors of one Contracting Party in activities and acts referred to in the legislation of the other Contracting Party concerning foreign investment, such as trust funds.

2. "Investment" does not include:

(a) Payment obligations or the granting of loans to a State or a State enterprise;

(b) Pecuniary claims deriving exclusively from commercial contracts for the sale of goods and services by a national or partnership, company or enterprise in the territory of one Contracting Party to a partnership, company or enterprise in the territory of the other Contracting Party.

3. "Investor" means any individual or legal entity that makes or has made an investment:

(a) Individuals must be nationals of one of the Contracting Parties, in accordance with its legislation, and

(b) Legal entities must be constituted in accordance with the laws and regulations of a Contracting Party and have their seat in the territory of that Contracting Party.

4. "Transfers" means international remittances and payments.

5. "Returns" means all amounts yielded by an investment, such as profits, dividends, interest, royalties and other current income.

6. "Territory" means the territory of each Contracting Party, including the territorial sea, the exclusive economic zone and the continental shelf, provided that international law entitles the Contracting Party concerned to exercise rights of sovereignty or jurisdiction in those areas.

7. "Days" means calendar days.

Article 2. Scope

1. This Agreement shall apply to measures adopted or retained by a Contracting Party concerning the investors of a Contracting Party with respect to their investments and the investments made by such investors in the territory of the other Contracting Party.

2. This Agreement shall apply throughout the territory of the Contracting Parties as defined in article 1, paragraph 6. The provisions of this Agreement shall prevail over any incompatible rule that may exist in the internal legislation of the Contracting Parties.

3. With regard to the provisions of articles 4 and 10, individuals who are nationals of one Contracting Party and have their domicile in the territory of the other Contracting Party where the investment is situated, may claim only the treatment accorded by the latter Contracting Party to its own nationals.

4. This Agreement shall apply to all investments made before or after the date of its entry into force, but its provisions shall not apply to any dispute, claim or difference which arose before it entered into force.

5. This Agreement shall not apply to:

(a) Economic activities reserved for the State in accordance with the legislation of each Contracting Party;

(b) Measures adopted by a Contracting Party for reasons of national security or public order;

(c) Financial services, save to the extent authorized by the legislation of each Contracting Party.

6. Article 3 shall not apply to any measure retained by a Contracting Party in accordance with its legislation in force at the time when this Agreement entered into force. After that date, any incompatible measure adopted by a Contracting Party shall not be more restrictive than those existing when this Agreement entered into force.

Article 3. National treatment and most-favoured nation treatment

1. Each Contracting Party shall at all times ensure fair and equitable treatment of investors of the other Contracting Party and their investments, and shall not impair, by arbitrary or discriminatory measures, the operation, management, use, enjoyment or disposal thereof.

2. When a Contracting Party has admitted in its territory investments by investors of the other Contracting Party, it shall accord such investors and their investments full legal protection and shall also accord them treatment no less favourable than that given to its own investors and their investments or to investors of third States.

3. If a Contracting Party accords special treatment to investors of third States or their investments by virtue of double taxation agreements or agreements establishing free trade areas, customs unions, common markets, regional agreements, economic or monetary unions or similar institutions, that Contracting Party shall not be obliged to accord such treatment to investors of the other Contracting Party or their investments.

4. Each Contracting Party shall accord to investors of the other Contracting Party who suffer losses on their investments in its territory owing to armed conflict, state of national emergency or insurrection, treatment no less favourable than that accorded to its own investors or investors of third States with respect to restitution, indemnification, compensation or other settlement.

Article 4. Transfers

1. Each Contracting Party shall allow all transfers in respect of an investment in its territory by an investor of the other Contracting Party to be made freely and without delay. Such transfers shall include:

(a) Returns, dividends, interest, reinvested capital, royalties, expenditure on administration, and technical assistance and other fees, and other sums deriving from the investment;

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

(c) Payments made in accordance with a contract involving an investor or his investment and funds for the repayment of the loans referred to in article 1, paragraph 1 (c);

(d) Payments deriving from compensation paid in accordance with article 3, paragraph 4, and article 5; and

(e) Payments deriving from the application of the provisions concerning the settlement of disputes.

2. Each Contracting Party shall allow the transfers to be made in freely convertible currencies, at the exchange rate applicable on the date of the transfer, without delay and 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. Without prejudice to the provisions of paragraphs 1 and 2, each Contracting Party may retain rules and regulations requiring reports on currency transfers. Furthermore, each Contracting Party may protect the rights of creditors or ensure the performance of decisions resulting from judicial or arbitral proceedings by applying those laws and regulations equitably, without discrimination and in good faith.

4. In the event of a fundamental imbalance in the balance of payments, a Contracting Party may impose temporary controls on exchange operations, provided that the measures or programmes applied conform to commonly accepted international standards. These restrictions shall be established for a limited period, equitably, without discrimination and in good faith.

Article 5. Expropriation and compensation

1. Neither Contracting Party may directly or indirectly nationalize or expropriate an investment by an investor of the other Contracting Party in its territory, or adopt any measures equivalent to expropriation or nationalization of such investment, unless it does so:

(a) For reasons of public interest;

(b) On a non-discriminatory basis;

(c) In conformity with the principle of legality; and

(d) With payment of compensation, in accordance with paragraphs 2 to 4.

2. The compensation shall be equivalent to the market value of the expropriated investment immediately before the expropriation occurred ("expropriation date") or before the expropriation became public knowledge. The criteria for calculating the value shall include current value, declared fiscal value of tangible assets, and any other criteria deemed appropriate for determining the market value.

3. Compensation shall be paid without delay and shall be effectively realizable and freely transferable.

4. The amount paid shall not be less than the amount which would have been paid as compensation on the expropriation date in a currency freely convertible in the international financial market, if such currency had been converted at the commercial rate in force on the

valuation date, plus interest at a reasonable commercial rate for such currency until the date of payment.

Article 6. Subrogation

If a Contracting Party or an agency designated by it has given a financial guarantee in respect of non-commercial risks connected with an investment made by its investors in the territory of the other Contracting Party and from the time when the first Contracting Party or its designated agency makes any payment under that guarantee, that Contracting Party or its designated agency shall be the direct beneficiary of any payments to which the investor might have claim. Should there be any dispute, only the investor may initiate or participate in proceedings before national courts or submit the dispute to international arbitral tribunals in accordance with the provisions of article 10 of this Agreement and the Annex thereto.

Article 7. Exchange of information

With a view to increasing significantly reciprocal participation in investments, the Contracting Parties shall provide each other with detailed information, relating especially to the following:

(a) Investment opportunities;

(b) The laws, regulations or provisions that directly or indirectly concern foreign investment including, among other things, exchange and tax regimes; and

(c) The performance of foreign investment in their respective territories.

Article 8. More favourable terms

If the legislation of either Contracting Party or any current or future obligations arising out of international law established between the Contracting Parties in addition to this Agreement contain general or specific rules according to 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 insofar as they are more favourable.

Article 9. Information requirements

Notwithstanding the provisions of this Agreement, the Contracting Parties may require an investor of the other Contracting Party or his investment in their territory to provide routine information concerning the investment, exclusively for statistical purposes. The Contracting Party shall protect the information, which must remain confidential, from any dissemination that might negatively affect the competitive status of the investment or the investor.

Article 10. Settlement of disputes between an investor and the Contracting Party receiving the investment

1. Any dispute concerning the provisions of this Agreement between an investor of one Contracting Party and the other Contracting Party shall, as far as possible, be settled through amicable consultations or negotiations.

2. This article and the Annex establish a mechanism for the settlement of investment-related disputes arising after this Agreement enters into force which ensures both equal treatment of investors of the Contracting Parties in accordance with the principle of international reciprocity and due exercise of the right to a hearing and the right to defence in legal proceedings before an impartial arbitral tribunal, where appropriate.

3. If the dispute cannot be settled within six months from the date on which the disputing party gave notice thereof, it may, at the request of the investor, be submitted to:

The competent courts of the Contracting Party in whose territory the investment was made; or

International arbitration according to the provisions of paragraph 4.

Once an investor has submitted the dispute to the courts of the Contracting Party concerned or to international arbitration, the choice of that procedure shall be final.

4. The investor shall notify the Contracting Party in writing of his intention to submit the dispute to international arbitration, at least 90 days in advance, a period which may run parallel to the second part of the period referred to in paragraph 3.

In the event of recourse to international arbitration, the investor may submit the dispute in accordance with:

(a) The Convention on the Settlement of Investment Disputes between States and Nationals of Other States, concluded in Washington on 18 March 1965[1] ("ICSID Convention"), when both Contracting Parties have acceded to that Convention;

(b) The rules of the ICSID Additional Facility when one of the Contracting Parties has not acceded to the ICSID Convention; or

(c) The Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL"), adopted by the General Assembly of the United Nations on 15 December 1976. [2]

5. The arbitral body shall base its decisions concerning the disputes submitted to it on the provisions of this Agreement and the relevant rules and principles of international law.

The interpretation of a provision of this Agreement established by the Contracting Parties by mutual agreement and in writing shall be binding on any arbitral body established in accordance with the Agreement.

6. The arbitral award shall do no more than determine whether the Contracting Party has failed to implement this Agreement and whether the investor has sustained an injury as a result of that failure. If that is the case, it shall:

1. United Nations, *Treaty Series*, vol. 575, p. 159.
2. Ibid., *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17), p. 34.

(a) Establish the amount of compensation to be paid for the injury sustained;

(b) Order the restitution of the property or, if that is impossible, the payment of appropriate compensation;

(c) Determine the interest to be paid.

The arbitral body may not order the payment of punitive compensation.

The award shall not affect the rights of any third party, in accordance with the applicable local legislation.

7. Arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party shall enforce them in accordance with its legislation; if they do not, the investor may call for the enforcement of an arbitral award in accordance with the ICSID Convention, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, concluded in New York on 10 June 1958[1] ("New York Convention") or the Inter-American Convention on International Commercial Arbitration, concluded in Panama on 30 January 1975[2] ("Inter-American Convention"). For the purposes of article I of the New York Convention, it shall be considered that the claim submitted to arbitration arises from a commercial relationship or operation.

8. In any arbitral proceedings concerning an investment-related dispute, a Contracting Party may not allege, whether as defence, counter-claim, defence of set-off or other plea, that the investor has received or will receive compensation or other indemnification for all or part of the alleged injury, in accordance with an insurance contract or guarantee.

Article 11. Settlement of disputes between the Contracting Parties

1. The Contracting Parties agree to hold consultations and negotiations concerning any matter relating to the interpretation or application of this Agreement should any dispute arise in that regard. The Contracting Parties shall devote the necessary attention to and provide adequate opportunities for such consultations and negotiations.

2. If the dispute cannot be settled through consultations and negotiations within six months of their initiation, either Contracting Party may, without prejudice to any other agreement between the Parties, submit the dispute to an arbitral tribunal consisting of three members. Each Contracting Party shall appoint one arbitrator. The two arbitrators shall elect a national of a third State who, with the approval of the two Contracting Parties, shall be appointed president of the tribunal. If any arbitrator is not available to perform his functions, a substitute arbitrator shall be appointed in accordance with the provisions of this article.

3. The Contracting Parties shall appoint their respective arbitrators within two months from the date on which either of them informed the other in writing of its desire to submit the dispute to an arbitral tribunal. The president of the tribunal shall be appointed within two months following the date of the appointment of the last of the aforementioned arbitrators.

1. United Nations, *Treaty Series*, vol. 330, p. 3.
2. Ibid., vol. 1438, p. 245.

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 one of the Contracting Parties or is otherwise prevented from discharging that function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is 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.The tribunal shall determine its own procedures, unless the Contracting Parties agree otherwise, and shall settle the dispute in accordance with the provisions of this Agreement and the applicable rules of international law. The tribunal shall take its decision by a majority of votes and such decision shall be final and binding on both Contracting Parties.

6. 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. Nevertheless, the arbitral tribunal may in its decision stipulate that one of the Contracting Parties shall pay a larger share of the expenses, and this award shall be binding on the Parties.

Article 12. Entry into force

I. The Contracting Parties shall notify each other in writing that their constitutional formalities for the approval and entry into force of this Agreement have been completed.

2. This Agreement shall enter into force thirty days after the date on which the last of the notifications referred to in paragraph 1 above is received by the Contracting Party concerned.

Article 13. Validity and termination

1.This Agreement shall remain in force for a period of 10 years and shall remain in force thereafter unless it is terminated in accordance with paragraph 2 of this article.

2. Either Contracting Party may terminate this Agreement at the end of the initial 10-year period or at any time thereafter by giving 12 months' prior written notification.

3. In the case of investments made while this Agreement is in force, its provisions shall continue to have effect with respect to such investments for a further period of 10 years following the date on which the Agreement is terminated.

Done at Buenos Aires, on 13 November 1996, in two original copies in Spanish, both texts being equally authentic.

For the Government of the Argentine Republic:
ARMANDO CARO FIGUEROA

For the Government of the United Mexican States:
ANGEL GURRIA

ANNEX

SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND THE CONTRACTING PARTY RECEIVING THE INVESTMENT

Article 1. Settlement of disputes between a Contracting Party and an investor of the other Contracting Party

1. An investor of a Contracting Party may, in his own right or as a representative of a partnership, company or enterprise of the other Contracting Party that is a legal person which he owns or which is under his direct or indirect control, in accordance with the laws and regulations of the Contracting Parties, submit a claim to arbitration alleging that the other Contracting Party has failed to fulfil an obligation established in this Agreement.

2. The investor shall submit a claim in accordance with this Agreement as soon as he becomes aware of the alleged non-fulfilment and of any losses or injury suffered, at the latest four years from the date on which he should have become aware of the non-fulfilment.

3. A partnership, company or enterprise which is an investment cannot submit a claim to arbitration in accordance with this Agreement.

4. The investor cannot submit a claim in accordance with this Agreement as the representative of a partnership, company or enterprise if the latter has initiated proceedings before any judicial or administrative tribunal with respect to the measure alleged to be a violation. However, the foregoing shall not apply to the exercise of administrative remedies before the authorities responsible for implementing the measure alleged to be a violation, pursuant to the legislation of the Contracting Party. The investor who submits a claim in accordance with this Agreement or the partnership, company or enterprise which submits a claim through an investor acting as its representative cannot initiate proceedings before any judicial or administrative tribunal with respect to the measure alleged to be a violation.

Article 2. Arbitration rules applicable

The applicable arbitration rules referred to in article 10 of the Agreement shall govern the arbitration and shall be supplemented by the changes set forth in this Annex.

Article 3. Number of arbitrators and method of appointment

1. Unless the parties to the dispute decide otherwise, the tribunal shall be made up of three arbitrators. Each of the parties to the dispute shall appoint one arbitrator; the third arbitrator, who shall be the president of the arbitral tribunal, shall be appointed by the parties by mutual agreement.

2.The arbitrators appointed in accordance with this Annex must be experienced in the areas of international law and investment.

3. If a tribunal as defined in this Agreement has not been set up within a period of ninety days from the date on which the claim was submitted to arbitration, whether because a

party to the dispute has not appointed an arbitrator or because the parties cannot agree on the appointment of a president of the arbitral tribunal, the Secretary-General of ICSID ("Secretary-General"), at the request of either party, shall appoint, at his discretion, the arbitrator or arbitrators not yet appointed. When appointing the president of the tribunal, the Secretary-General shall ensure that the president is not a national of either party.

Article 4. Consolidation of proceedings

1. The tribunal of consolidation shall be set up and proceed in accordance with the UNCITRAL Arbitration Rules, whenever appropriate.

2. Proceedings shall be consolidated in the following cases:

(a) When an investor submits a claim as representative of a partnership, company or enterprise which is under his direct or indirect control and at the same time one or more other investors having shares in the same partnership, company or enterprise, but not a controlling share, submit make claims in their own right as a result of the same non- fulfilment; or

(b) When two or more claims submitted to arbitration have a question of law or fact in common.

3. The tribunal of consolidation shall determine the jurisdiction to which the claims must be submitted and shall examine those claims together.

Article 5. Publication of awards

The final award shall be published only if there is an agreement in writing to that effect between the parties to the dispute.

PROTOCOL

On the occasion of the signing of the Agreement between the Government of the Argentine Republic and the Government of the United Mexican States for the Promotion and Reciprocal Protection of Investments, the signatories hereto have also agreed on the following provisions, which form part of that Agreement:

With reference to article 3, paragraph 2:

The Contracting Parties shall not interpret this paragraph as entailing the extension to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from the bilateral agreements concerning concessional financing concluded by the Argentine Republic with the Italian Republic on 10 December 1987 and with the Kingdom of Spain on 3 June 1988.

With reference to article 10 and the Annex to this Agreement:

For the United Mexican States, the provisions referring to the dispute settlement mechanism shall not apply to any decision of the National Commission on Foreign Investment.

Done at Buenos Aires, on 13 November 1996, in two original copies in Spanish, both texts being equally authentic.

For the Government of the Argentine Republic:
ARMANDO CARO FIGUEROA

For the Government of the United Mexican States:
ANGEL GURRIA