[ENGLISH TEXT — TEXTE ANGLAIS]

AGREEMENT ON ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE ARGENTINE REPUBLIC

The Government of the Kingdom of the Netherlands and the Government of the Argentine Republic, hereinafter referred to as the "Contracting Parties",

Desiring to strengthen the traditional ties of friendship between their countries, to extend and intensify the economic relations between them, particularly with respect to investments by the investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investments is desirahle,

Have agreed as follows:

Article 1

For the purposes of the present Agreement:

a) The term "investments" 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 Contracting Party, and shall include in particular, though not exclusively:

(i) movahle and immovable property as well as any other rights in rem in respect of every kind of asset;

(ii) rights derived from shares, bonds and other kinds of interests in companies and joint ventures;

(iii) title to money or to any performance having an economic value;

(iv) rights in the fields of intcllectual property, technical processes, goodwill and know-how;

(v) rights granted under public law, including rights to prospect, explore, extract, and win natural resources.

The meaning and scope of the different assets shall be determined by the laws and regulations of the Contracting Party in the territory of which the investment has been made.

No alteration on the legal form in which the assets have been invested or re-invested shall affect their qualification as investments according to this Agreement.

b) thc term "investor" shall comprise with regard to either Contracting Party:

(i) natural persons having the nationality of that Contracting Party in accordance with its law;

(ii) without prejudice to the provisions of paragraph (iii) hereafter, legal persons constituted under the law of that Contracting Party and actually doing business under the laws in foree in any part of the territory of that Contracting Party in which a place of effective management is situated; and

(iii) legal persons, wherever located, controlled, directly or indirectly, by nationals of that Contracting Party.

c) the term "territory" includes the maritime areas adjacent to the coast of the State concerned, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

Article 2

Either Contracting Party shall, within the framework of its laws and regulations, promote economic cooperation through the protection in its territory of investment of investors of the other Contracting Party. Subject to its right to exercise powers conferred by its laws or regulations, eaeh Contracting Party shall admit such investments.

Article 3

1. Each Contracting Party shall ensure fair and equitable treatment to investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors.

2. More particularly, each Contracting Party shall accord to such investments the same security and protection as it accords either to those of its own investors or to those of investors of any third State, whichever is more favourable to the investor concerned.

3. If a Contracting Party has accorded special advantages to investors of any third State by virtue of agreements establishing customs unions, economic unions, integration areas or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

4. If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Party in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that is more favourable prevail over the present Agreement.

Article 4

1. Investments which are subject to a special agreement between one of the Contracting Parties and an investor of the other Contracting Party shall be ruled by the provisions of this Agreement and by those of such special agreement.

2. Each Contracting Party shall observe any obligation it may have entered into with regard to investment of investors of the other Contracting Party.

Article 5

With respect to taxes, fees, charges and to fiscal deductions and exemptions, each Contracting Party shall accord to investors of the other Contracting Party who are engaged in any economic activity in its territory, treatment not less favourable than that accorded to its own investors or to those of any third State, whichever is more favourable to the investors concerned. For this purpose, however, there shall not be taken into account any special fiscal advantages accorded by that Party under an agreement for the avoidance of double taxation, by virtue of its participation in a customs union, economic union, integration area or similar institution, or on the basis of reciprocity with a third State.

Article 6

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the unrestricted transfer of their payments related to an investment and in particular though not exclusively:

a) profits, dividends and other current income from investments;

b) interest and repayment of the principal of loans;

c) funds necessary to replace capital assets in order to safeguard the continuity of an investment:

d) amounts necessary to cover expenses resulting from the operation of the investment such as royalties or fees;

e) earnings of natural persons;

f) the proceeds of sale or liquidation of the investment.

2. The free transfer shall take place in a frecly convertible currency without undue restriction or delay, in accordance with the procedures established by each Contracting Party; such procedures shall not imply a rejection, a suspension or denaturalization of such right.

Article 7

Neither of the Contracting Parties shall take any direct or indirect measure of nationalization or expropriation or any other measure having a similar nature or similar effect against investments made in its territory by investors of the other Contracting Party, unless the following conditions are complied with:

a) the measures are taken in the public interest and under duc process of law;

b) the measures are not discriminatory or contrary to any specific arrangement;

c) the measures are accompanied by provisions for the payment of just compensation. Such compensation shall represent the genuine value of the investments affected and shall, in order to be effective for the claimants, be paid and made transferable, without undue delay, to the country designated by the claimants concernod and in the currency of the country

of which the claimants are nationals, in the currency in which the investment has been made, or in any freely convertible currency, whichever is accepted by the claimants.

Article 8

Investors of one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of general emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned. Such treatment shall by no means be less favourable than that ruled by international law.

Article 9

1. If the investments of an investor of one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or re-insurer into the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party.

2. The insurer or re-insurer shall, within the limits of subrogation, be entitled to exercise any right which the investor would have been entitled to exercise.

Article 10

1. Disputes between one Contracting Party and an investor of the other Contracting Party regarding issues covered by this agreement shall, if possible, be settled amicably.

2. If such disputes cannot be settled according to the provisions of paragraph (1) of this article within a period of three months from the date on which either party to the dispute requested amicable settlement, either party may submit the dispute to the administrative or judicial organs of the Contracting Party in the territory of which the investment has been made.

3. If within a period of eighteen months from submissions of the dispute to the competent organs mentioned in paragraph (2) above, these organs have not given a final decision or if the decision of the aforementioned organs has been given but the parties are still in dispute, then the investor concerned may resort to international arbitration or conciliation. Each Contracting Party hereby consents to the submission of a dispute as referred to in paragraph (1) of this Article to international arbitration.

4. At the moment the dispute is submitted to arbitration each party to the dispute shall adopt all necessary measures to interrupt the procedures instituted at the organs as mentioned in paragraph (2) of this Article.

5. Where the dispute is referred to international arbitration or conciliation, the investor concerned may submit the dispute either to:

-- The International Centre for Settlement of Investment Disputes (hereinafter referred to as I.C.S.I.D.) created by the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States" opened for signature at Washington, on 18th March 1965 (hereinafter referred to as the Convention), once both Contracting Parties have become a party to the Convention; until such time as the latter condition shall be fulfilled, the Additional Facility for the administration of proceedings by the secretariat of I.C.S.I.D. shall be used;

-- An ad hoc arbitration tribunal to be established under the arbitration rules of the United Nations Commission on International Trade Law.

6. A legal person which is incorporated or constituted under the law in force in the territory of one Contracting Party and which, before a dispute arises, is controlled by nationals of the other Contracting Party shall, in accordance with article 25 (2) (b) of the Convention be treated for the purposes of the Convention as a national of the other Contracting Party.

7. The arbitration tribunal addressed in accordance with paragraph (5) of this Article shall decide on the basis of the law of the Contracting Party which is a party to the dispute (including its rules on the conflict of law), the provisions of the present Agreement, special Agreements concluded in relation to the investment concerned as well as such rules of international law as may be applicable.

Article 11

This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before its entry into force.

Article 12

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, the Netherlands Antilles and to Aruba, unless the notification provided for in Article 15, paragraph (1) provides otherwise.

Article 13

Either Contracting Party may propose the other Party to consult on any matter concerning the interpretation or application of the Agreement. The other Party shall accord sympathetic consideration to and shall afford adequate opportunity for such consultation.

Article 14

1. Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement, which cannot be settled within a reasonable lapse of time, by means of diplomatic negotiations or other amicable means, such as a Joint Committee, shall, unless the Parties have otherwise agreed, be submitted, at the request of either Party, to an arbitral tribunal, composed of three members. Each Party shall appoint one ar-

bitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Party.

2. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such appointment, the latter Party may invite the President of the International Court of Justice to make the necessary appointment.

3. If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice to make the necessary appointment.

4. If, in the cases provided for in the paragraphs 2 and 3 of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Party the most senior member of the Court available who is not a national of either Party shall be invited to make the necessary appointments.

5. The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice the power of the tribunal to decide the dispute es aequo et bono if the Parties so agree.

6. Unless the Parties decide otherwise, the tribunal shall determine its own procedure.

7. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.

8. Each Contracting Party shall bear the cost of the member appointed by that Contracting Party. The cost of the Chairman as well as any other cost shall be borne in equal parts by the two Contracting Parties.

Article 15

1. The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the procedures constitutionally required therefor in their respective countries have been complied with, and shall remain in force for a period of ten years.

2. Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of ten years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3. In respect of investments made before the date of the termination of the present Agreement the foregoing Articles thereof shall continue to be effective for a further period of fifteen years from that date.

4. Subject to the period mentioned in paragraph (2) of this Article, the Government of the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect to any of the parts of the Kingdom.

In witness whereof, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

Done in duplicate in Buenos Aires, on the 20th day of October 1992, in the Dutch, Spanish and English languages, the three texts being equally authentic. In case of difference of interpretation the English text will prevail.

For the Government of the Kingdom of the Netherlands:
Y. C. M. T. VAN ROOY

For the Government of the Argentine Republic:
G. DI TELLA

PROTOCOL TO THE AGREEMENT BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE ARGENTINE REPUBLIC ON THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

On the signing of the Agreement between the Kingdom of the Netherlands and the Argentine Republic on the encouragement and reciprocal protection of investments, the undersigned representatives have agreed on the following provisions which constitute an integral part of the Agreement:

A. -- With reference to Article I, paragraph b) (i) and (iii) the Agreement shall not be applicable to the investments made or controlled in the Argentine Republic by natural persons who are nationals of the Kingdom of the Netherlands if such persons have, at the time of the investment, been domiciled for more than two years in the Argentine Republic.

B. -- With reference to Article I, paragraph b) (iii) the Contracting Party in the territory of which the investments are undertaken may require proof of the control invoked by the investors of the other Contracting Party. The following facts, inter alia, shall be accepted as evidence of the control:

(i) being an affiliate of a legal person of the other Contracting Party;

(ii) having a direct or indireet participation in the capital of a company higher than 49% or the direct or indirect possession of the necessary votes to obtain a predominant position in assemblies or company organs.

C. -- With respect to Articles 1, paragraph a) under (iii) and Article 6 paragraph b) of the Agreement, the Contracting Parties agree that where loans are concerned, these Articles shall only be applicable to loans which are legally contracted and directly related to specific investment.

D. -- With reference to Articles 3 and 5 of the Agreement the Contracting Parties agree that the Argentine Republic shall not be obliged to accord to investors of the Kingdom of the Netherlands such special advantages or privileges which it has granted to investments made in the framework of bilateral agreements concluded by the Argentine Republic with Italy on 10th December 1987 and Spain on 3rd June 1988, and which are particularly based on the concessional character of the financing of those investments foreseen in those agreements. However, the Argentine Republic shall seek to avoid that such privileges or advantages significantly affect the competitive conditions for investments and activities of investors of the Kingdom of the Netherlands.

Y.C.M.T. VAN ROOY

G. DI TELLA