[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA AND THE GOVERNMENT OF THE ARGENTINE REPUBLIC ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Venezuela and the Government of the Argentine Republic, hereinafter referred to as "the Contracting Parties";

Desiring to intensify economic cooperation between the two countries;

Determined to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Convinced that in so doing they are contributing to the technological progress and economic well-being of their peoples, as well as to the development of relations between them based on cooperation and friendship;

Recognizing that the promotion and protection of such investments through an agreement will help to stimulate individual business initiatives and will increase the prosperity of both States;

Have agreed as follows:

Article 1

DEFINITIONS

For the purposes of this Agreement:

1. The term "investor" means:

(*a*) Any natural person having the nationality of one of the Contracting Parties, in accordance with its laws;

(*b*) Any legal entity constituted in accordance with the laws and regulations of one Contracting Party and having its main office in the territory of that Contracting Party;

(*c*) Any legal entity effectively controlled by investors of one Contracting Party.

2. The term "investment" means, in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made, 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 of the latter. It includes in particular, but not exclusively:

(*a*) Movable and immovable property as well as any other property rights such as mortgages, guarantees and pledges;

(*b*) Shares, stocks and any other kind of participation in companies;

(*c*) Titles to money and claims to performance having an economic value, loans being included only when they are directly related to a specific investment;

[1] Came into force on 1 July 1995 by notification, in accordance with article 12.

(*d*) Intellectual property rights including, in particular, copyrights, patents, industrial designs, trade marks, trade names, technical processes, know-how, clientele and goodwill;

(*e*) Economic concessions granted by law or by virtue of a contract, including concessions for the prospection, cultivation, mining or development of natural resources.

3. The term "returns" means all amounts yielded by an investment, such as profits, dividends, interests, royalties and other current income.

4. The term "territory" means the national territory of either Contracting Party, including the territorial sea and those maritime areas adjacent to the outer limit of the territorial sea of the national territory, over which the Contracting Party concerned may, in accordance with international law, exercise sovereign rights or jurisdiction.

Article 2

SCOPE OF THE AGREEMENT

1. This Agreement shall apply to all investments made before or after the date of its entry into force, but the provisions of this Agreement shall not apply to any disagreement, claim or dispute arising from facts or events which predate its entry into force.

2. The provisions of this Agreement shall not apply to the investments made by natural persons who are nationals of one Contracting Party in the territory of the other Contracting Party if such persons have, at the time of the investment, been domiciled in the latter Contracting Party for more than two years, unless it is proved that the investment was admitted into its territory from abroad.

Article 3

ADMISSION

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.

Article 4

TREATMENT

1. Each Contracting Party shall, in accordance with the standards and rules of international law, at all times ensure fair and equitable treatment of the investments of nationals of the other Contracting Party, and shall not impair by unjustified or discriminatory measures the management, maintenance, use, enjoyment or disposal thereof.

2. Each Contracting Party shall, once it has admitted into its territory investments by investors of the other Contracting Party, accord to such investments full legal protection and treatment no less favourable than that accorded to investments of its own national investors or investors of third states.

3. Without prejudice to the provisions of paragraph 2, neither Contracting Party shall be required to extend to the investments of investors of the other Contracting Party the benefit of any treatment, advantage or privilege which either Contracting Party accords to investors of a third state by virtue of:

(*a*) Its participation in or association with a free trade area, customs union, common market or any similar integration agreement;

(*b*) An international agreement relating wholly or in part to taxation issues;

(*c*) The bilateral agreements on concessional financing entered into by the Argentine Republic and the Italian Republic on 10 December 1987 and by the Argentine Republic and the Kingdom of Spain on 3 June 1988.

4. Any obligations entered into by one Contracting Party with an investor of the other Contracting Party relating to the treatment of the latter's investment shall be binding and protected by this Agreement.

Article 5

FREE TRANSFER

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

(*a*) Capital and additional amounts necessary for the management, maintenance or development of the investments;

(*b*) Profits, gains, interests, dividends and other current income;

(*c*) Funds for the reimbursement of loans as defined in article 1, paragraph 2 (*c*);

(*d*) Royalties and fees;

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

(*f*) The compensations provided for in articles 6 and 7;

(*g*) The savings of nationals of one Contracting Party who, in accordance with the laws of the other Contracting Party, are working as managers, administrators, advisers, technicians or specialized workers in connection with an investment by an investor of the former in the territory of the latter.

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

Article 6

EXPROPRIATIONS

1. Neither Contracting Party shall take any measures to expropriate or nationalize investments belonging to nationals of the other Contracting Party in its territory or take any measures having an equivalent effect, unless such measures are

taken in the public interest, on a basis of non-discrimination and under due process of law.

2. Such measures shall be accompanied by provisions for the rapid payment of adequate and effective compensation. The amount of such compensation shall represent the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, whichever is greater, shall include interest at a normal commercial rate until the date of payment, shall be paid without delay and shall be effectively realizable and freely transferable.

Article 7

COMPENSATION FOR DAMAGES

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, a state of national emergency, revolt, insurrection or riot shall be accorded, as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Contracting Party accords to its own nationals, or to nationals of a third state.

Article 8

SUBROGATION

1. If a Contracting Party or a legal entity designated by it makes a payment to an investor under a guarantee or bond to cover non-commercial risks taken in connection with an investment, the other Contracting Party shall recognize the validity of the subrogation of the Contracting Party or the legal entity concerned with regard to any right or title of the investor. The Contracting Party or legal entity concerned 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 a case of 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 legal entity concerned.

Article 9

APPLICATION OF OTHER RULES

If the provisions of the legislation of either Contracting Party or existing obligations under international law or obligations which may be established hereafter 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 rules, whether general or specific, which accord to investments by investors of the other Contracting Party treatment more favourable than that established in this Agreement, those rules shall to the extent that they are more favourable prevail over this Agreement.

Article 10

SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Any disputes which may arise 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 six months from the start of negotiations, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal.

3. This arbitral tribunal shall be constituted in each case as follows: Within two months of receipt of the request for arbitration, each Contracting Party shall appoint a member of the tribunal. Those two members shall elect a national of a third state, who, with the approval of both Contracting Parties, shall be chairman of the tribunal. The chairman shall be appointed within two months from the date on which the Contracting Parties appointed the other two members.

4. If the necessary appointments have not been made within the periods specified in paragraph 3 of this article, either Contracting Party may, if no other arrangement has been made, request the President of the International Court of Justice to make the necessary appointments. If the President of the Court is a national of either Contracting Party, or is otherwise prevented from acting, the Vice-President of the Court shall be requested to make the necessary appointments. If the Vice-President is a national of either Contracting Party, or is also prevented from acting, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be requested to make the necessary appointments.

5. The arbitral tribunal shall take its decision by a majority of votes. Its decision shall he binding on both Contracting Parties. Each Contracting Party shall defray the expenses of its member of the tribunal and any expenses relating to its representation in the arbitral proceedings. The expenses of the Chairman, as well as any other expenses, shall in principle be shared equally by the Contracting Parties. However, the arbitral tribunal may rule in its decision that a larger share of the expenses should be paid by one of the Contracting Parties and such ruling shall be binding on both Contracting States. The tribunal shall determine its own procedures.

Article 11

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

1. Any dispute between an investor of one Contracting Party and the other Contracting Party concerning fulfilment by the latter of the provisions of this Agreement, shall, as far as possible, be settled amicably.

2. Where the dispute cannot be settled within six months from the date on which one of the Parties instigated it, it shall be submitted, at the request of the investor:

— Either to the competent tribunals of the Contracting Party in whose territory the investment was made.

— Or to international arbitration in accordance with the provisions of paragraph 3 below.

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

3. In the case of international arbitration, the investor and the Contracting Party may agree to submit the dispute:

(*a*) To the International Centre for Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and the Nationals of Other States opened for signature in Washington on 18 March 1965,[1] provided that each State Party to this Agreement has acceded to it. If such is not the case, each Contracting Party shall agree to submit the dispute to arbitration in accordance with the Additional Facility Rules of ICSID for the management of conciliation, arbitration or inquiry proceedings;

(*b*) To an *ad hoc* arbitral tribunal established in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).[2]

If, three months after the date of notification of a request for arbitration, no agreement has been reached on the choice of one of the above procedures, the parties to the dispute shall submit it to the International Centre for Settlement of Investment Disputes (ICSID) or to its Additional Facility referred to in paragraph (*a*) above.

4. The arbitral tribunal shall make its decision on the basis of the provisions of this Agreement, the law of the Contracting Party concerned, including its norms relating to conflicts of law, the provisions of any other agreements relating specifically to investment, as well as the principles of international law in that area.

5. The arbitral decision shall be confined to determining whether there has been a breach of this Agreement by the Contracting Party concerned and whether that breach damaged the interests of the investor and, if necessary, to setting the amount of compensation to be paid.

6. The arbitral decisions shall be final and binding on the parties to the dispute. Each Contracting Party shall execute them in accordance with its laws.

7. Each Contracting Party undertakes not to use the diplomatic channel in connection with disputes referred to in this article unless the other Contracting Party has failed to comply with the arbitral award.

8. The investor and the Contracting Party concerned may agree on any other method for resolving disputes which may arise between them.

Article 12

ENTRY INTO FORCE, DURATION AND TERMINATION

1. This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties notify each other in writing that they have fulfilled their respective constitutional requirements for the entry into

[1] United Nations, *Treaty Series*, vol. 575, p. 159.

[2] United Nations, *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17), p. 34.

force of this Agreement. It shall remain in force for 10 years. It shall remain in force thereafter until 12 months after the date on which one Contracting Party notifies the other in writing that it has decided to terminate the Agreement.

2. In the case of investments made prior to the date of notification of termination of this Agreement, the provisions of articles 1 to 11 shall remain in force for a period of 10 years starting on that date.

DONE at Caracas on 16 November 1993, in two originals in the Spanish language, both texts being equally authentic.

For the Government
of the Republic of Venezuela:

FERNANDO OCHOA ANTICH
Minister for Foreign Affairs

For the Government
of the Argentine Republic:

GUIDO DI TELLA
Minister for Foreign Affairs,
International Trade and Worship

PROTOCOL

At the time of the signing of the Agreement on the Reciprocal Promotion and Protection of Investments between the Government of the Republic of Venezuela and the Government of the Republic of Argentina, the undersigned plenipotentiaries have agreed on the following provisions, which form an integral part of this Agreement:

I. Concerning article 1, paragraph 1, subparagraph (*c*), the legal entities that wish to invoque this Agreement shall be obliged to furnish proof of said control. The following will be accepted as title of proof:

1. The subsidiary nature of a legal entity of one of the Contracting Parties;

2. A percentage of participation in the capital of one legal entity which permits effective control, such as, in particular, participation greater than one half of the capital;

3. The possession, direct or indirect, of voting rights, which allow for holding a decisive position on the main organs of the legal entity or for influencing decisively in another manner its functioning.

II. The payments in relation to the investments made in virtue of a programme of one Contracting Party for the conversion of the public debt in investments are governed by the applicable legal and contractual provisions.

For the Government
of the Republic of Venezuela:

FERNANDO OCHOA ANTICH
Minister for Foreign Affairs

For the Government
of the Republic of Argentina:

GUIDO DI TELLA
Minister for Foreign Affairs,
International Affairs and Worship