

AGREEMENT BETWEEN THE REPUBLIC OF ARGENTINA AND THE REPUBLIC OF TURKEY ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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

Desiring to intensify economic cooperation between the two countries, especially with regard to the inversions of investors of one Contracting Party in the territory of the other Contracting Party:

For the purpose of establishing fair and equal conditions for investors of a Contracting Party in the territory of the other Contracting Party:

Recognizing that the reciprocal promotion and protection of such investment based on an agreement will stimulate economic initiative individually and will increase prosperity in both states:

Have agreed as sigulente:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" means, in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, every kind of assets 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. This includes in particular, though not exclusively:

- (a) movable and immovable property and property rights such as mortgages and pledges;
- (b) shares, company quotas and other forms of participation in companies
- (c) titles of credit and claims to a performance that has an economic value and loans directly related to a specific investment;
- (d) intellectual property rights including in particular copyrights, patents, industrial designs, trademarks, trade names, technical processes, know-how and goodwill;
- (e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

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 dispute, claim or dispute that has arisen with anterioridad its entry into vigor.

(2) The term "investor" means:

- (a) Any natural person who is a national of a Contracting Party in accordance with its laws and regulations;
- (b) Any legal person, including companies, organizations, associations, incorporated or otherwise, constituted conforming to the laws and regulations in force of a Contracting Party and having its seat in the territory of that Contracting Party.

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

(4) The term "proceeds" means the amounts yielded by an investment and includes, in particular, although not exclusively

profits, dividends, interests and royalties.

(5) The term "territory" means the area within the land boundaries and territorial waters of each Contracting Party, as well as the exclusive economic zone and the continental shelf extending beyond the limits of the territorial waters of each Contracting Party over which it may exercise jurisdiction or sovereign rights for the purpose of exploring, exploiting and conserving natural resources, in accordance with international law.

Article 2. Investment Promotion

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

Article 3. Protection of Investments

(1) Each Contracting Party shall accord fair and equitable treatment to investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal of such investments by unreasonable or discriminatory measures.

(2) Each Contracting Party shall accord full legal protection to investments of investors of the other Contracting Party, once established in its territory, and shall accord to such investments treatment no less favourable than that accorded to investments of investors of third States and, in accordance with its laws and regulations, than that accorded to investments of its own investors.

(3) Without prejudice to paragraph (2) of this Article, most-favoured-nation treatment shall not apply to privileges accorded by each Contracting Party to investors of a third State by reason of its membership or association in a free trade area, a customs union, a common market or regional economic agreements.

(4) The provisions of paragraph (2) of this Article shall not be construed to require a Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or partly to taxation.

(5) The provisions of paragraph (2) of this Article shall also not be construed to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from bilateral agreements providing for concessional finance entered into by the Argentine Republic with Italy on 10 December 1987 and with Spain on 3 June 1988.

Article 4. Nationalization, Expropriation and Compensation

(1) Neither Contracting Party shall take nationalization or expropriation measures or any other measures having the same effect against investments in its territory belonging to investors of the other Contracting Party unless such measures are taken in the public interest and under due process of law. The measures shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. The amount of such compensation shall correspond to the actual market value of the expropriated investment immediately before the expropriation or before the imminent expropriation became public, shall include interest from the date of the expropriation, shall be paid without undue delay and shall be effectively realizable and freely transferable.

(2) Investors of one Contracting Party who suffered losses on their investments in the territory of the other Contracting Party owing to war or other armed conflicts, a state of national emergency, revolt, insurrection, or mutiny, shall receive in respect of restitution, compensation, indemnification or other settlement, treatment no less favourable than that accorded to their own investors or to investors of any third State.

Article 5. Transfers

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of payments relating to investments, and in particular of

(a) profits;

(b) the proceeds from the sale or liquidation of all or any part of an investment, including any additional sums required for the maintenance and development of the investment;

(c) compensation in accordance with Article 4;

(d) repayments and interest payments on investment-related loans;

(e) wages, salaries and other remuneration received by nationals of a Contracting Party who have obtained in the territory of the other Contracting Party the appropriate authorization to work in connection with the investment;

(f) payments due under an investment dispute.

(2) Transfers shall be made in the freely convertible currency with which the investment was made or in any other freely convertible currency, if this is accepted by the investor, and at the exchange rate prevailing on the date of transfer.

(3) Subject to the provisions of paragraphs (1) and (2), each Contracting Party may maintain laws and regulations;

(a) providing for procedures to be observed in connection with transfers permitted by this Article, provided that such procedures are promptly completed by the Contracting Party concerned, and do not affect the substance of the rights enshrined in paragraphs (1) and (2) of this Article;

(b) requiring reports on transfers of currency;

(c) which impose taxes on profits through measures such as withholding taxes on dividends or other transfers. In addition, each Contracting Party may protect the rights of creditors or ensure the enforcement of decisions rendered in legal proceedings, through the equitable, non-discriminatory and good faith application of such laws and regulations.

Article 6. Subrogation

(1) If the investment of an investor from one Contracting Party is insured against non-commercial risks under a system established by law, any subrogation of an insurer resulting from the terms of the insurance contract shall be recognised by the other Contracting Party.

(2) The insurer may not exercise other rights than those which the investor would have been able to exercise.

(3) Disputes between a Contracting Party and the insurer shall be settled in accordance with the provisions of Article 8 of this Agreement.

Article 7. Implementation of other Rules

If the provisions of the laws and regulations of any Contracting Party or the Agreements or any other obligations existing or to be established between the Contracting Parties in addition to this Convention or an agreement between an investor of one Contracting Party and the other Contracting Party contains rules, whether general or specific, which accord investments made by investors of the other Contracting Party more favourable treatment than that provided for in this Convention, those rules shall prevail over this Convention to the extent that they are more favourable.

Article 8. Settlement of Disputes between Investors and a Contracting Party of the other Contracting Party

(1) Any dispute concerning investment under the terms of this Convention between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably.

(2) If the dispute cannot be settled within six months after it has been raised by either party, it shall, at the request of the investor, be submitted:

- either to the competent court of the Contracting Party involved in the dispute;

- or to international arbitration under the conditions described in paragraph 3.

Once an investor has submitted the dispute to the above-mentioned competent court of the Contracting Party where the investment was made or to international arbitration, this choice shall be final.

(3) In case of international arbitration, the dispute may be brought to the investor's choice:

- to 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 at Washington on 18 March 1965, when each State party to this Agreement has acceded to it. Pending the fulfilment of this condition, each Contracting Party gives its consent to submit the dispute to arbitration under the rules of the ICSID Additional Facility, or

- to an "ad hoc" arbitration tribunal established in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

(4) The arbitral body shall decide on the basis of the provisions of this Convention, the law of the Contracting Party to the dispute, including the rules of conflict of laws, and the terms of any particular agreement concluded in relation to the investment, as well as the principles of international law on the subject.

(5) Arbitration decisions shall be final and binding on the parties to the dispute. Each Contracting Party shall implement them in accordance with its laws and regulations. Settlement of disputes between a Contracting Party and investors of the other Contracting Party.

Article 9. Settlement of Disputes between the Contracting Parties

(1) The Contracting Parties shall endeavour, in good faith and in a spirit of co-operation, to find a prompt and equitable solution to any dispute arising between them concerning the interpretation or application of this Convention. To this end, the Contracting Parties undertake to enter into direct and meaningful negotiations with a view to achieving such a solution. If, through this procedure, the Contracting Parties are unable to reach a solution within six months of the beginning of the dispute between them, the dispute may be submitted, at the request of any of the Contracting Parties, to an arbitral tribunal of three members.

(2) Within two months of receipt of such a request, each Contracting Party shall appoint an arbitrator. The two arbitrators shall appoint a third arbitrator as Chairman, who shall be a national of a third State. In the event that either Contracting Party fails to appoint an arbitrator within the required time, the other Contracting Party may request the President of the International Court of Justice to make the appointments.

(3) If the two arbitrators are unable to agree on the choice of the Chairman within two months of their appointment, the Chairman shall be appointed at the request of either Contracting Party by the President of the International Court of Justice.

(4) If, in the cases provided for in paragraphs (2) and (3) of this Article, the President of the International Court of Justice is unable to exercise the functions there laid down or if he is a national of any of the Contracting Parties, the appointment shall be made by the Vice-President and if the Vice-President is unable to exercise his function or is a national of any of the Contracting Parties, the appointment shall be made by the most senior Member of the Court who is not a national of any of the Contracting Parties.

(5) The Court shall have three months from the date of the selection of the President to agree upon rules of procedure, including time limits, which are in accordance with other provisions of this Convention. In the absence of such agreement, the Court shall request the President of the International Court of Justice to establish rules of procedure, taking into account generally recognised rules of procedure for international arbitration. The Arbitral Tribunal shall take its decisions, which shall be final and binding, by a majority vote.

(6) The expenses of the Chairman, the other arbitrators and other costs of the proceedings shall be borne equally by the Contracting Parties. However, the Tribunal may decide at its discretion that one of the Contracting Parties shall bear a greater proportion of the costs.

(7) A dispute shall not be submitted to an international arbitral tribunal pursuant to the provisions of this Article where the same dispute has been brought before another international arbitral tribunal pursuant to the provisions of Article 8 and is still pending before that tribunal. However, this shall not prevent the Contracting Parties from entering into direct and meaningful negotiations with each other.

Article 10. Entry Into Force and Duration

(1) This Convention shall enter into force on the first day of the second month after the date on which the Contracting Parties have notified each other in writing that their constitutional requirements for the entry into force of this Convention have been fulfilled. This Convention shall remain in force for a period of ten years. It shall thereafter remain in force until the expiry of a period of twelve months after the date on which either Contracting Party has notified the other in writing of its intention to denounce it.

(2) In respect of investments made before the date on which the notification of denunciation of the Convention becomes effective, the provisions of Articles 1 to 9 shall remain in force for a further period of ten years from that date.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Ankara, on 8 May 1992, in two originals in the English, Spanish and Turkish languages, all three being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE ARGENTINE REPUBLIC

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY