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

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

Desiring to intensify the economic cooperation between the two States;

In order to create favourable conditions for investments by nationals or companies of one of the two States in the term of another State, involving transfers of capital;

Recognizing that the promotion and protection of investments by such an agreement can serve to stimulate private economic initiative and enhancing the well-being of the peoples of both countries;

Have agreed as follows;

Article I. Definitions

For the purposes of this Agreement:

1. The term "investment" means, in accordance with the laws of the host country, every kind of asset that an investor of a Contracting Party invests in the territory of the Contracting Party and who directly or indirectly owned or controlled by nationals or companies of the other party, in accordance with the legislation of the latter, in particular, though not exclusively:

a) Ownership of movable and immovable property and other property rights such as mortgages and pledges;

b) Shares, rights of participation in companies and other kinds of interests in companies, as well as the capitalization of profits eligible to be transferred abroad;

c) Obligations, credit or loans directly related to an investment, regularly contracted and documented according to the rules in force in the country where the investment is made;

d) Intellectual Property Rights, including copyrights and industrial property rights, such as patents, technical processes, trade marks or trade names, trademarks, industrial designs, business names, know-how and goodwill;

e) Concessions granted under public law entities, either by law, administrative act or by virtue of a contract, including concessions to exploit, cultivate, extract or exploit natural resources.

Any alteration of the form in which assets and capital have been invested or reinvested shall affect their qualification of investments in accordance with this Agreement.

2. Income or profits, returns means the amounts obtained from an investment in a given period, such as participation in the benefits, dividends, royalties or other fees.

3. The term "investor" means:

a) Any natural person who is a national of one of the Contracting Parties, in accordance with its legislation.

b) Legal entities, including companies, corporations, business associations or any other constituted in accordance with the laws and regulations of one Contracting Party and having its seat, as well as their effective economic activities in the territory of that Contracting Party.

4. The term "territory" means the territory of each Contracting Party, including the territorial sea and any maritime areas

adjacent to the outer limit of the territorial sea over which the contracting party exercises, in accordance with international law, sovereign rights or jurisdiction.

Article II. Scope

1. This Agreement shall apply to all investments made before or after its Entry into Force by investors of one Contracting Party in the territory of the latter.

2. Notwithstanding this Agreement shall not apply to differences or disputes which have arisen prior to its validity or directly related to events before its Entry into Force.

3. The provisions of this Agreement shall not apply to investments made 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.

Article III. Admission, Promotion and Protection of Investments

1. Each Contracting Party shall, subject to its general policy in the field of investment, encourage investments in its territory of investors of the other Contracting Party and admitted in conformity with their legislation and claim.

2. Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not hinder the management, maintenance, use, enjoyment, extension and sale and liquidation of such investments by unreasonable or discriminatory measures.

Article IV. Treatment of Investments

1. Each Contracting Party shall ensure fair and equitable treatment within its territory to investments of investors of the other Contracting Party.

2. Each Contracting Party shall have admitted an investment in its territory of investors of the other Contracting Party, be flat accorded legal protection to such investments and they agree upon a treatment no less favourable than that accorded to its own of investments or investors to investors of third States.

3. Without prejudice to the provisions of paragraph (2) of this article, the Most-favored-nation treatment shall not apply to privileges which either Contracting Party accords to investors of a third State because of its association or participation in a free trade area, customs union, common market or regional agreement.

4. The provisions of paragraph (2) of this Article shall not be construed as to oblige one contracting party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement relating wholly or partially to taxation matters.

5. The provisions of paragraph (2) of this Article shall not be construed not to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from the bilateral agreements that provide concessional financing signed between the Argentine Republic with Italy and Spain on 10 December 1987 on 3 June 1988.

Article V. Expropriation and Compensation

1. Investments of nationals or companies of one Contracting Party shall enjoy full legal protection and security in the territory of the other contracting party.

2. Neither of the Contracting Parties shall take measures of expropriation or nationalization or any other measures having the same effect against investments in its territory and that are directly or indirectly to investors of the other contracting party unless the measures are taken for reasons of public need or purpose, on a non-discriminatory basis and under due process of law.

3. The measures referred to in paragraph (2) of this article, shall be accompanied by provisions for the payment of compensation or prompt, effective and adequate compensation. It shall be paid without delay and shall be effectively realizable and freely transferable. The amount of such compensation shall correspond to the market value of the expropriated investment was immediately before the expropriation or before the impending expropriation becomes public. Where it is difficult to determine the value, or compensation shall be determined in accordance with generally recognized

principles of valuation and equitable, taking into account the capital invested, depreciation, repatriated capital replacement value to date, and other relevant factors. Any delay in payment of compensation shall be added at a commercial interest rate established on the basis of the market value, from the date of expropriation or loss until the date of payment.

4. The legality of the expropriation or nationalization or any other measures having an equivalent effect and the amount of compensation may be claimed in ordinary judicial procedure.

5. Investors of either Contracting Party whose investments in the territory of the other contracting party are losses due to a war or any other armed conflict, a national state of emergency, civil disturbance or other similar events in the other Contracting Party, shall receive from this latter, in that regard to redress, compensation or other settlement, a treatment no less favourable than that which the Contracting Party accords to domestic investors or any third State.

Article VI. Free Transfer

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

a) The capital and additional amounts for the maintenance or development of the investments;

b) The benefits, profits, dividends, interests and other current income;

c) The funds in repayment of loans as defined in article 1, paragraph (1) (c);

d) Royalties and fees;

e) The proceeds from a total or partial sale or liquidation of the investment;

f) The compensation or compensation provided for in article 4;

g) The proceeds of the settlement of a dispute.

2. Transfers shall be effected without delay in any freely convertible currency at the rate of exchange applicable on the date of transfer pursuant to the procedures established by the Contracting Party in whose territory the investment was made, which shall not affect the substance of the rights under this article.

Article VII. Subrogation

1. If a Contracting Party or an agency authorised by it has granted a contract of insurance or other form of financial guarantee against non-commercial risks with regard to an investment by one of its investors in the territory of the other contracting party, the latter shall recognize the rights of the first contracting party to the rights of subrogation of the investor, when it has made a payment under the contract or guarantee.

2. If a Contracting Party has paid to its investor and has taken by their rights, such an investor may not claim such rights to the other Contracting Party, except with the express authorization of the first contracting party.

Article VIII. Implementation of other More Favourable Standards

1. If the provisions of law of either Contracting Party or obligations under international law not covered by the present Agreement, current or future between the contracting parties claim result in a general or special under which must be accorded to investments of nationals or companies of the other contracting party to a more favourable treatment than that provided for by the present Agreement, such rules shall prevail over the present Agreement, as is more favourable.

2. Each Contracting Party shall execute other commitment that has entered into with regard to investments of nationals or companies of the other contracting party in its territory.

Article IX. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes arising under this agreement between one Contracting Party and an investor of the other Contracting Party which has made investments in the territory of the first, shall, as far as possible, be settled through amicable consultations.

2. If these consultations do not a solution is reached within three months from the date of request for settlement, the investor may submit the dispute to:

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

b) To international arbitration of 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.

To this end, each contracting party consents to advance and irrevocably any difference cannot be referred to arbitration.

3. Once the investor has submitted or has agreed to submit the dispute to the competent court of the Contracting Party in whose territory the investment has been made or the arbitral tribunal, the choice of one or other of the procedure shall be final.

4. For the purposes of this article, any legal person which is constituted in accordance with the legislation of one Contracting Party and which, before the emergence of the dispute was found in possession of investors of the other Contracting Party, shall be treated in accordance with article 25 (2) (b) Washington of the said Convention, as a juridical person of the other contracting party.

5. The arbitral awards shall be final and binding on the parties to the dispute and shall be executed in accordance with the domestic law of the Contracting Party in whose territory the investment has been made.

6. The Contracting Parties shall seek, through diplomatic channels matters related to disputes submitted to court proceedings or international arbitration in accordance with the provisions of this article, until the relevant processes are completed, except where the other party in the dispute has not complied with the court decision or the decision of the arbitral tribunal, under the terms established in the respective decision or award.

Article X. Settlement of Disputes between the Contracting Parties

1. Disputes arising between the contracting parties concerning the interpretation and application of this Agreement shall be settled as far as possible through amicable negotiations.

2. If an agreement cannot be achieved within a period of six months from the date of notification of the dispute, either Contracting Party may submit it to an ad hoc arbitral tribunal in accordance with the provisions of this article.

3. The arbitral tribunal shall consist of three members and shall be constituted in the following manner: within two months from the date of notification of the request for arbitration, each Contracting Party shall appoint an arbitrator. Ithese two arbitrators within one month from the appointment of the last one, shall select a third member who shall be a national of a third State, who shall chair the Tribunal. The designation of the Chairman shall be approved by the Contracting Parties within one month from the date of his nomination.

4. If within the periods specified in paragraph 3 of this article, the appointment has not been made or required the approval has been granted, either Contracting Party may request the President of the International Court of Justice to make the delegation. If the President of the International Court of Justice is prevented from discharging the function or if he is a national of either Contracting Party, the Vice-President shall make the appointment, and if the latter is prevented or is a national of either of the Contracting Parties, the judge of the Court who in seniority who is not a national of one of the Contracting Parties shall make the appointment.

5. The President of the Tribunal shall be a national of a third State with which both contracting parties maintain diplomatic relations.

6. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the Principles of International Law and the general principles of law recognized by the contracting parties. The Tribunal shall decide by a majority of votes shall determine its own rules and proceedings.

7. Each Contracting Party shall bear the costs of the arbitrator concerned as well as those relating to its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs of the proceedings shall be settled in equal parts by the contracting parties unless they agree otherwise.

8. The decisions of the Tribunal shall be final and binding on both contracting parties.

Article XI. Consultations

The Contracting Parties shall consult on any matter relating to the application or interpretation of this Agreement.

Article XII. Final Provisions

1. This agreement is subject to ratification and Entry into Force days after the exchange of instruments of ratification.

2. This Agreement shall remain in force for a period of ten years and shall be extended indefinitely. After ten years, this Agreement may be denounced at any time by either Contracting Party with an intended twelve months notice through diplomatic channels.

3. With respect to investments made prior to the date that was made effective notice of termination of this Agreement, its provisions shall remain in force for a further period of ten years from that date.

4. This Agreement shall apply irrespective of the existence of diplomatic relations between the two Contracting Parties.

Done at Buenos Aires, on April 21, 1998, in two originals in Spanish, both being equally authentic.

For the Government of the Argentine Republic

For the Government of the Republic of Guatemala