

AGREEMENT BETWEEN THE GOVERNMENT OF THE ARGENTINE REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF INDIA ON PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENT

The Government of the Republic of India and the Government of the Argentine Republic (hereinafter referred to as the "Contracting Parties");

Desiring to create conditions favourable for greater investment by investors of one State in the territory of the other State,

Recognising that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

Article I. Definitions

For the purposes of this Agreement:

- (a) "companies" means corporations, firms and associations incorporated, constituted or established under the laws and regulations of either Contracting Party and engaged in substantive business operations in the territory of the same Contracting Party;
- (b) "investment" means every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws and regulations of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:
 - (i) Movable and immovable property as well as other rights such as mortgages, liens, or pledges;
 - (ii) Shares in and stock and debentures of a company and any other similar forms of participation in a company;
 - (iii) Rights to money or to any performance under contract having a financial value; loans only being included when they are directly related to a specific investment;
 - (iv) Intellectual property rights, goodwill, technical processes and know how in accordance with the relevant laws of the respective Contracting Party;
 - (v) Business concessions conferred by law or under contract, including concessions to search for and extract oil and other minerals;
- (c) 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.
- (d) "investor" means any national or company of a Contracting Party;
- (e) "nationals" means any natural person who is a national of the respective Contracting Party in accordance with its laws on nationality;
- (f) "returns" means the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties, fees and other current income;
- (g) "territory" means the national territory of either Contracting Party including the territorial waters of each Contracting Party and the airspace above it and other maritime zones including the Exclusive Economic Zone and the continental shelf that extends outside the limits of the territorial waters of each of the Contracting Parties, over which they may, in accordance with their laws in force and the international law, exercise sovereignty, sovereign rights or jurisdiction.

Article 2. Scope of the Agreement

(1) This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement but the provisions of this agreement shall not apply to any dispute, claim or difference which arose before 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 or are permanent residents 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. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and admit such investments in accordance with its laws, regulations and economic policy.

(2) Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full legal protection and security in the territory of the other Contracting Party.

Article 4. National Treatment and Most - Favoured - Nation Treatment

(1) Each Contracting Party, once it has admitted in its territory investments of investors of the other Contracting Party, shall accord to investments treatment which shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State.

(2) Each Contracting Party shall in its territory subject investors of the other Contracting Party, as regards, the management, maintenance, use, enjoyment or disposal of their investment or returns, to treatment not less favourable than that which it accords to investors of any third State. V

(3) The provisions of paragraphs 1 and 2 above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future free trade area, customs union, common market or similar regional agreement to which either of the Contracting Parties is or may become a party, or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation, or

(c) Any bilateral agreement providing for concessional financing concluded by either Contracting Party with a third country.

Article 5. Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose in accordance with law on a nondiscriminatory basis and against payment of fair, equitable and effective compensation. Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at normal market rate until the date of payment, shall be made expeditiously, be effectively realizable and be freely transferable.

(2) The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that Party, of its case and of the valuation of its investment in accordance with the principles set out in this paragraph. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

(3) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the laws in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to ensure fair and equitable compensation in respect of their investment of such investors of the other Contracting Party who are owners of those shares.

Article 6. Compensation for Losses

(1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency or civil disturbances in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

(2) This Agreement shall not preclude the application by either party of measures necessary for maintenance of public order, or the protection of its own essential security interests.

Article 7. Repatriation of Investments and Returns

(1) Each Contracting Party shall grant to investors of the other Contracting Party on a non-discriminatory basis the unrestricted transfer of all funds relating to an investment in its territory provided all obligations in accordance with its laws and regulations have been fulfilled. Such funds may include:

- (a) Capital and additional capital amounts used to maintain and increase investments;
- (b) Net operating profits including dividends and interest in proportion to their share-holding;
- (c) Repayment of any loan, including interest thereon, directly relating to the investment;
- (d) Payment of royalties and services fees relating to the investment;
- (e) Proceeds from sales of their shares;
- (f) Proceeds received by investors in case of sale or partial sale or liquidation of an investment;
- (g) The earnings of nationals of one Contracting Party who work in connection with an investment in the territory of the other Contracting Party.

(2) Nothing in paragraph (1) of this Article shall affect the transfer of any compensation under Articles 5 and 6 of this Agreement.

(3) Unless otherwise agreed to between the parties, currency transfer under paragraph (1) of this Article shall be permitted in the currency of the original investment or any other convertible currency. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

(4) All transfers shall be made in accordance with the procedures established by the Contracting Party in whose territory the investment was made, which shall not impair the substance of rights set forth in this Article.

Article 8. Subrogation

(1) Where one Contracting Party or its designated agency has guaranteed any indemnity against non-commercial risks in respect of an investment by any of its investors in the territory of the other Contracting Party and has made payment to such investors in respect of their claims Under this Agreement, the other Contracting Party shall recognise that the first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and asserts the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claims of such investors.

(2) In the case of subrogation as defined in paragraph (1) above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or its designated agency.

Article 9. Settlement of Disputes between an Investor and Contracting Party

(1) Any dispute which arises within the terms of this Agreement between an investor of one Contracting Party and the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute or by conciliation under mutually agreed procedures.

(2) If the dispute cannot thus be settled by negotiation within six months following the date on which the dispute has been raised by either party or the conciliation proceedings are terminated other than by signing of a settlement agreement, it may be submitted either:

(a) For resolution in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's competent judicial or administrative bodies; or

(b) To international arbitration according to the provisions of paragraph 3.

If the parties disagree on the choice of (a) or (b) above, the opinion of the investor shall prevail.

(3) Where an investor or a Contracting Party has submitted a dispute to the aforementioned competent judicial or administrative bodies of the Contracting Party where the investment has been made or to international arbitration, this choice shall be final.

(4) If it is decided to refer the dispute to international arbitration, it shall be submitted:

(a) To the International Centre for the Settlement of Investment Disputes (ICSID), having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signatures at Washington DC on 18 March 1965, provided that both Contracting Parties are parties to the said Convention, or

(b) In case paragraph (a) is not applicable, to the ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings if both parties to the dispute so agree, or

(c) Under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) if within a period of three months following the decision to refer the dispute to arbitration there is no agreement on the selection of a forum under paragraphs (a) and (b).

(5) The arbitration tribunal shall decide in accordance with the provisions of this Agreement, the laws of the Contracting Party involved in the dispute, including its rules on conflict of law, the terms of any specific agreement concluded in relation to such an investment and the relevant principles of international law.

(6) The arbitral decision shall be final and binding for the parties to dispute. Each Contracting Party shall execute them in accordance with its laws.

Article 10. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall as far as possible, be settled through negotiation.

(2) If a dispute between Contracting Parties cannot thus be settled within six months from the time the dispute arose, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President, shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is 'prevented from discharging the said 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 arbitral tribunal shall reach its decision by a majority of votes. Such decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 11. Entry and Sojourn of Personnel

A contracting Party shall, subject to its laws and regulations relating to the entry and sojourn of non-citizens, permit natural persons of the other Contracting Party and personnel employed by companies of the other Contracting Party to enter and

remain in its territory for the purpose of engaging in activities connected with investments.

Article 12. Applicable Laws

All investments shall, subject to this Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

Article 13. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, 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 rules shall, to the extent that they are more favourable, prevail over the present Agreement.

Article 14. Entry Into Force

This Agreement shall be subject to ratification and shall enter into force on the date of exchange of Instruments of Ratification.

Article 15. Duration and Termination

(1) This Agreement shall remain in force for a period of ten years and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate the Agreement. The Agreement shall stand terminated one year from the date on receipt of such written notice.

(2) Notwithstanding termination of this Agreement pursuant to paragraph (1) of this Article, the provisions of Articles 1 to 13 of this Agreement shall continue to be effective for a further period of fifteen years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at New Delhi on Friday this 20th day of August, 1999, in two originals each in the Hindi, Spanish, and English languages, all texts being equally authentic. In case of divergence of interpretation of its provisions, the English text shall prevail.

(signed) Dr. E.A.S. Sarma

Secretary Department of Economic Affairs in the Ministry of Finance

For the Government of the Republic of India

(signed) Julio Caceres

Secretary for Coordination in the Argentine Ministry of Economy

For the Government of the Argentine Republic