AGREEMENT BETWEEN THE GOVERNMENT OF THE ARGENTINE REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF CUBA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Argentine Republic and the Government of the Republic of Cuba nominated, hereinafter referred to as the "Contracting Parties"; desiring to intensify economic cooperation between the two countries;

In order to create favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party, involving transfers of capital;

Recognizing that the promotion and protection of such investment based on an agreement will contribute to the prosperity of both States.

Have agreed as follows:

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 was made, every kind of assets invested by investors of one Contracting Party in the territory of the other contracting party, in accordance with the legislation of the latter. includes in particular, though not exclusively:

a) Ownership of movable and immovable property as well as any other rights in rem such as mortgages, bonds and pledges;

b) shares, company quotas, and any other type of participation in companies;

c) Claims and rights to performance having an economic value; loans shall be included only when they are regularly contracted and documented according to the rules in force in the country where the investment made and is directly linked to a specific investment;

d) Intellectual Property Rights, including copyrights, patents, industrial designs, trademarks, trade names, technical processes, know-how, and goodwill;

e) Economic concessions conferred by law or under contract, including concessions to prospecting, 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.

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 or difference claim, which arose before its Entry into Force.

(2) The term "investor" means:

a) With respect to the Republic of Argentina:

Any natural person who is a national of the Republic of Argentina in accordance with its laws;

With respect to the Republic of Cuba:

A natural person possessing the citizenship of the Republic of Cuba in accordance with its laws.

b) Any legal person constituted in accordance with the laws and regulations of one Contracting Party and having its seat in the territory of that Contracting Party, regardless of whether or not its activities are non-profit-making.

(3) The provisions of this Agreement shall not apply to investments made by natural persons 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 all amounts resulting from an investment interests, such as profits, dividends, royalties and other revenue streams.

(5) The term "territory" means the territory of each Contracting Party, including 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 its legislation and international law, sovereign rights or jurisdiction.

Article 2. Investment Promotion

Each Contracting Party shall in its territory investments by investors 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 at all times fair and equitable treatment to investments of investors of the other Contracting Party, be accorded full legal protection and shall not affect their management, maintenance, use, enjoyment or disposal through unjustified or discriminatory measures.

(2) Each Contracting Party shall accord to returns of investments and investors of the other contracting party treatment not less favourable than that accorded to the returns of investments and investors of any third State.

(3) Each Contracting Party shall accord to returns of investments and investors of the other contracting party treatment not less favourable than that accorded in similar situations, in accordance with its laws and regulations, to its own returns of investments and investors.

(4) 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.

(5) 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.

(6) 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 bilateral agreements that provide concessional financing by the Argentine Republic signed with Italy and Spain on 10 December 1987 on 3 June 1988.

Article 4. Expropriation and Compensation

(1) 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 belonging to investors of the other contracting party unless the measures are taken for a public purpose; on a non-discriminatory basis and under due process of law. the legality of the expropriation and the amount of compensation shall be reviewable by ordinary judicial procedure.

The measures shall be accompanied by provisions for the payment of prompt, effective and adequate compensation. 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 became public, shall include interest from the date of expropriation at a normal commercial rate shall be paid without delay and shall be effectively realizable and freely transferable.

(2) Investors of one Contracting Party who suffer losses of their investments in the territory of the other contracting party owing to war or other armed conflict, a national state of emergency, revolt, riot or insurrection shall be accorded, with respect to restitution, indemnification, compensation or other relief, a treatment no less favourable than that accorded to its own investors to investors or of any third State. such payments shall be freely transferable.

Article 5. Transfers

(1) Each Contracting Party shall guarantee to investors of the other contracting party, after the implementation of tax obligations, the free transfer of investments and returns, and in particular, though not exclusively:

a) The principal and additional amounts necessary for the maintenance and development of the investment.

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 an investment.

f) The compensation referred to in article 4.

g) The earnings of nationals of one Contracting Party who are allowed to work in connection with an investment in the territory of the other contracting party.

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

Article 6. Subrogation

(1) If a Contracting Party or any of its agencies made a payment to an investor by virtue of a guarantee or insurance that has engaged in connection with an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of the Contracting Party or any of its agencies in respect of any right or title of the investor. the Contracting Party or any of its agencies shall be authorized, within the limits of subrogation to exercise the rights which the investor would have been entitled to exercise.

(2) As regards property rights, use, enjoyment or any other right derived from the ownership of subrogation investment may occur after obtaining the relevant authorisations in accordance with the legislation in force in the Contracting Party where the investment was made.

(3) In the case of subrogation as defined in paragraph (1) of this article, the investor shall not pursue a claim unless he is authorized to do so by the contracting party or its agency.

Article 7. Implementation of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing or future between the Contracting Parties in addition to this Agreement or whether an agreement between an investor of one Contracting Party and the other contracting party contain rules whether general or specific that accorded to the investments made by investors of the other contracting party to a more favourable treatment than is provided for by the present Agreement, such rules shall prevail over this agreement to the extent that they are more favourable.

Article 8. Settlement of Disputes between the Contracting Parties

(1) Any dispute arising between the contracting parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.

(2) If a dispute between the contracting parties cannot be settled in this way within six months after the beginning of negotiations, the dispute shall be submitted, at the request of either contracting party 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. these two members shall select a national of a third State who on approval of 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 shall not make the necessary appointments, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to proceed with the necessary appointments. if the President is a national of one of the contracting parties or, if for any reason, is 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 any of the contracting parties or if he is also prevented from discharging

the function, the said member of the International Court of Justice who is next in order of precedence and 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 decision shall be binding on both contracting parties. each Contracting Party shall bear the costs of the 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 principle in equal parts by the contracting parties. however, the arbitral tribunal shall determine its decision that a higher proportion of costs be borne by one of the two contracting parties. the tribunal shall determine its own procedure.

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

(1) Any dispute concerning the provisions of this agreement between an investor of one Contracting Party and the other Contracting Party, it shall, as far as possible, be settled by amicable consultations.

(2) If the dispute cannot be settled within six months from the date on which it was raised by one or other party, it may be submitted at the request of the investor:

- either to the competent courts of the Contracting Party in whose territory the investment was made.

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

Once the investor has submitted the dispute to the courts of the Contracting Party concerned or to international arbitration, the choice of one of these procedures is final.

(3) In the event of recourse to international arbitration, the dispute may be brought to an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(4) The arbitral tribunal shall decide on the basis of the provisions of this Agreement, the Law of the Contracting Party which is a party to the dispute including its rules on the Conflict of Laws, to the terms of any specific agreement concluded in relation to the investment as well as the principles of international law.

(5) The arbitral awards shall be final and binding on the parties to the dispute. each Contracting Party shall execute the In accordance with its legislation.

Article 10. 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 have notified each other in writing that they have completed their respective constitutional requirements for entry into force of this Agreement. they shall be valid for 10 years. thereafter it shall remain in force until the expiration of twelve months from the date on which either contracting party of its decision to terminate this Agreement.

(2) With respect to investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of articles 1 to 10 shall remain in force for a period of ten years from that date.

Done at Buenos Aires, on 30 November 1995, in two original copies, in the Spanish language, both texts being equally authentic.

FOR THE GOVERNMENT OF THE ARGENTINE REPUBLIC

FOR THE GOVERNMENT OF THE REPUBLIC OF CUBA