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

The Government of the Argentine Republic and the Government of Malaysia, hereinafter referred to as the "Contracting Parties":

Desiring to expand and deepen economic and industrial cooperation on a long term basis, and in particular, to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party:

Recognizing the need to protect investmaents by investors of both Contracting Parties and to stimulate the flow of investments and individual business initiative with a view to the economic prosperity of both Contracting Parties:

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(a) “investment” seans, in conformity with the laws and regulations of the Contracting Party in whose territory the investment is made, every kind of asset invested by an investor of one Contracting Party, in accordance with the latter's laws. In particular, though not exclusively, it includes:

(i) movable and immovable property and any other property rights, such as aortgages, liens and pledges:

(ii) shares, stocks and debentures of companies or interests in the property of such companies:

(iii) a claim to money or a claim to any performance having financial value; loans only being included when directly related to a specific investment:

(iv) intellectual and industrial property rights, including rights with respects to copyrights, patents, trademarks, tradenames, industrial designs, trade secrets, technical processes and know-how and goodwill:

(v) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

(b) “returns” means the amount yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees:

(c) “investor” means:

(i) any natural person who is a national of a Contracting Party in accordance with its laws:

(ii) any legal person, including companies, organizations, corporations, joint-ventures, associations, or enterprise constituted or incorporated in another way under the law in force in either Contracting Party, and having its seat in the territory of that Contracting Party:

(d) “territory” means:

(i) with respect to Malaysia, all land territory comprising the Federation of Malaysia, the territorial sea, its bed and subsoil and airspace above;

(ii) with respect to the Argentine Republic, all land territory, as well as the territorial sea and the maritime areas adjacent to the outer limit of the territorial sea of the national territory, over which the Argentine Republic may, in accordance with international law, exercise sovereign rights or jurisdiction;

(e) “freely usable currency” means any currency that is widely used to make payments for international transactions and widely traded in the international exchange markets.

2.(i) 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 original investment was admitted into its territory from abroad.

(ii) Any alteration of the form in which assets are invested shall not affect their classification as investments, provided that such alteration is not contrary to the approval, if any, granted in respect of the assets originally invested.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall, within the framework of its national policies, encourage and create favourable conditions for investors of the other Contracting Party to invest capital in its territory and, subject to its rights to exercise powers conferred by its laws and regulations, shall admit such investments.

2. Investments of investors of either Contracting Party shall at all time be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

3. Neither Contracting Party shall impair the management, Maintenance, use, enjoyment or disposal of investments, as wet] as the acquisition of goods and services and the sale of its production, through unjustified or discriminatory measures.

Article 3. Most-favoured-nation Provisions

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall receive treatment which is fair and equitable, and not less favourable than that accorded to investments by investors of any third State.

2. The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of any third State 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 customs union or free trade area or a common market or a monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Parties is or may become a party; or the adoption of an agreement designed to lead to the formation or extension of such a union or area;

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

(c) the bilateral agreements providing for concessional financing concluded by the Argentine Republic with the Republic of Italy on 10 December 1997 and with the Kingdom of Spain on 3 June 1988.

Article 4. Expropriation

Neither Contracting Party shall take any measures of expropriation, nationalization or any other dispossession, having effect equivalent to nationalization or expropriation against the investment of an investor of the other Contracting Party except under the following conditions:

(a) the measures are taken for a lawful purpose and under due process of law:

(b) the measures are non discriminatory:

(c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investments affected immediately before the measure of dispossession became public knowledge, and it shall be freely transferable in freely usable currencies from the Contracting Party. Any unreasonable delay in payment of compensation shall carry an appropriate interest at commercially reasonable rate as agreed upon by both parties or at such rate as prescribed by lav.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to

war or other armed conflict, revolution, a state of national emergency. revolt. insurrection or riot in the territory of the latter Contracting Party shall receive treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to investors of any third State.

Article 6. Repatriation of Investments

1. Each Contracting Party shall allow without delay the transfer in any freely usable currency:

(a) the capital and additional sums necessary for the maintenance and development of the investment:

(b) gains, net profits. interests. dividends, royalties. assistance and technical fees and other current income accruing from any investment of the investors of the Contracting Party:

(c) funds in repayment of loans as defined in Article 1. l(a). (iii);

(d) the proceeds from a total or partial liquidation of an investment rade by investors of the other Contracting Party:

(e) compensations provided for in Article 4:

(f) the earnings of nationals of one Contracting Party who are allowed to work in connection with an investaent in the territory of the other Contracting Party.

2. Transfers shall be effected without delay in freely usable currency at the prevailing exchange rate at the date of the transfer, in accordance with the procedures established by the Contracting Party in whose territory the investment vas made. which shall not imply a rejection, a suspension or denaturalization of such transfer.

3. Without restricting the generality of the provisions of Article 3, the Contracting Parties undertake to accord to the transfers referred to in paragraph 1 of this Article a treatment as favourable as that accorded to transfers originating from investments made by investors of any third State.

4. Transfers are subject to the right of each Contracting Party to exercise equitably and in good faith powers conferred upon it by its laws and regulations at the time the investment is made as well as new laws and regulations thereafter, provided that no investor shall be put in a less favourable position than at the time of commencement of the investment.

Article 7. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute which arises within the terms of this Agreement concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.

2. If the dispute cannot thus be settled within six (6) months following the date on which the dispute has been raised by either party, it may be submitted. upon request of the investor, either to:

- the competent tribunal of the Contracting Party in whose territory the investment vas made:

- international arbitration according to the provisions of paragraph 3.

Where an investor has submitted a dispute to the aforementioned competent tribunal of the Contracting Party where the investment had been wade or to international arbitration, this choice shall be final.

3. In case of international arbitration, the dispute shall be submitted, at the investor's choice, either to:

- the International Centre for the Settlement of Investment Disputes (ICSID) created by the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for Signature in Washington on 18 Warch 1965, ance both Contracting Parties herein become members thereof. As far as this provision is not complied with. each Contracting Party consents that the dispute be submitted to arbitration under the regulations of the ICSID Additional Facility for the Administration of Conciliation. Arbitration and Fact-Finding Proceedings: or

- an arbitration tribunal set up from case to case in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. The arbitration tribunal shall decide in accordance with the provisions of this Agreement. the lavs 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 lav.

S. The arbitral decisions shall be final and binding for the Parties in the dispute. Each Contracting Party shall execute therm in accordance vith its lavs.

Article 8. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

2. If a dispute betveen the Contracting Parties cannot thus he settled within a period of six (6) months, it shall upon the request of either Contracting Party be subraitted 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 members of the International Court of Justices next in seniority who is not a national of either Contracting Party shall be invited to nake the necessary appointments.

5. The arbitral tribunal shall reach its decisions by a majority of votes. Such decision 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 in principle 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 9. Subrogation

If a Contracting Party makes a payment to any of its investors under a guarantee it has granted in respect to an investment, the other Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 7, recognise the transfer of any right or title of such investor to the former Contracting Party and the subrogation of the former Contracting Party to any right or title.

Article 10. Application to Investments

This Agreement shall apply to investments made in the territory of either Contracting Party in accordance with its legislation, rules or regulations by investors of the other Contracting Party in accordance with its legislation, rules or regulations by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement. It shall however not be applicable to divergencies or disputes which have arisen prior to its entry into force.

Article 11. Other Rules

1. Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable to this case.

2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions of contracts is more favourable than that accorded by this Agreement, the sore favourable treatment shall be accorded.

Article 12. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force thirty (30) days after the later date on which the Governments of the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been

fulfilled. The later date shall refer to the date on which the last notification letter is sent.

2. This Agreement shall remain in force for a period of ten (10) years, and shall continue in force. unless terminated in accordance with paragraph 3 of this Article.

3. Either Contracting Party may, by giving one (1) year's written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten (10) year period or any time thereafter.

4. With respect to investments made or acquired prior to the date of termination of this Agreement. the provisions of all the other Articles of this Agreement shall continue to be effective for a period of ten (10) years from such date of termination.

IN WITNESS VHEREOF, the undersigned, duly authorized thereto by their respective Governaents, have signed this Agreement.

Done in duplicate at Kuala Lumpur, this sixth of September 1994 in Bahasa Malaysia, Spanish and English languages, all texts 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 MALAYSIA