

Agreement between the Republic of Argentina, the Belgo-Luxembourg Economic Union for the Promotion and Reciprocal Protection of Investments

The Government of the Republic of Argentina,

And

The Government of the Kingdom of Belgium, acting on behalf of the Government of the Grand Duchy of Luxembourg under existing agreements,

Hereinafter referred to as the Contracting Parties,

Desiring to develop its economic cooperation within a framework of respect for the principles of international law and to create favourable conditions for investments by nationals of one Contracting Party in the territory of the other party,

Convinced that the conclusion of an agreement designed to promote and protect investment based on equality and mutual benefit, create favourable conditions for investors stimulate initiatives contributing to the enhancement of the economic prosperity of the Contracting Parties,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Convention,

1. The term "investors" refers to each of the contracting parties: a) A natural person having the nationality of one of the Contracting States, in accordance with its legislation on nationality;

b) Any legal person constituted in accordance with the legislation of one of the contracting States and having its registered office in the territory of that State.

2. The term "investments" means any element of the asset and any direct or indirect contribution in money, in kind or in services, invested or reinvested in any sector of economic activity, as long as the investment has been made in accordance with the laws and regulations of the Contracting Party in whose territory it is located.

According to this agreement are considered as investments in particular, though not exclusively:

a) Movable and immovable property as well as any rights in rem, such as mortgages, liens, pledges and usufructs and similar rights;

b) Other actions, shares and any other form of participation, or even indirect minority in companies formed in the territory of one of the contracting parties;

c) Copyrights, industrial property rights, such as patents, licences, trade marks, industrial designs and models), technical processes, the transfer of know-how, registered names and goodwill;

d) Concessions under public law or contract, in particular those relating to prospecting, cultivate, extract and exploit natural resources.

e) Titles, debentures and acreencias relating to goods and rights and benefits.

The content and scope of rights for the various categories of assets shall be determined by the laws and regulations of the Contracting Party in whose territory the investment is situated.

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

3. The term "territory means the Territory as well as the maritime areas, namely, marine and submarine areas over which a Contracting State has sovereignty, sovereign rights or jurisdiction in accordance with its laws and international law.

Article 2. Investment Promotion

1. Each Contracting Party shall promote investments in its territory of investors of the other Contracting Party and shall admit in accordance with its legislation.

2. In particular, each Contracting Party shall, in accordance with its laws, the conclusion and implementation of licensing agreements and contracts for commercial, administrative or technical assistance, provided that such activities related to investments.

Article 3. Protection of Investments

1. All existing and future investments made by investors of one Contracting Party, shall be accorded fair and equitable treatment in the territory of the other contracting party.

2. Without prejudice to the measures necessary for the maintenance of public order, investments shall enjoy adequate protection and security, excluding any unjustified or discriminatory measure which would impede in law or in fact, management, maintenance, use, enjoyment or disposal.

Article 4. Most Favoured Nation

1. In all matters governed by this Agreement, investors of each Contracting Party shall, in the territory of the other contracting party, the most favoured nation treatment. this treatment shall in no case be less favourable than that recognised by international law.

2. However, this treatment shall not extend to the privileges which one Contracting Party agrees to investors of a third State by virtue of:

- a) Its participation in or association of a free trade area, customs union, Common Market or any other form of international economic organization;
- b) An agreement for the avoidance of double taxation or other tax convention.

Article 5. Privative and Restrictive Property Measures

1. Each Contracting Party undertakes not to take directly or indirectly any measure of expropriation or nationalization or any other measures having similar effect with regard to investments in its territory and belonging to investors of the other contracting party.

2. In the event that requirements of public interest, national security interest or justify a derogation from paragraph 1, the following conditions shall be complied with:

- a) Where the measures are taken in accordance with the respective legal procedure;
- b) They are neither discriminatory nor contrary to a specific commitment;
- c) They are accompanied by provisions for the payment of adequate and effective compensation.

3. The amount of compensation shall correspond to the real value of the relevant investments on the eve of the day on which the measures taken or were published.

The compensation shall be paid in the currency of the Member State to which the investor belongs. They will produce interest in accordance with normal commercial rate from the date on which they are fixed until the date of payment, shall be paid without delay and be freely transferable, regardless of the place of residence or location of the beneficiary.

4. Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or national revolt in the territory of the other Contracting Party, shall be accorded by the latter treatment at least equal to that accorded to the investors of the most favoured nation as regards restitution,

indemnification, compensation or other relief.

5. For the matters covered by this article, each Contracting Party shall accord to investors of the other party which treatment shall be at least equal to the same agrees in its territory to investors of the most favoured nation. This treatment shall in no case be less favourable than that recognised by international law.

Article 6. Transfers

1. Each Contracting Party in whose territory the investors of the other Contracting Party shall grant investments made, those investors the free transfer of their liquid assets, including the following:

- a) Profits and dividends other normally profits arising out of investments;
- b) The amounts required for the repayment of loans genuinely undertaken directly linked to the fulfilment of the investment and the corresponding interests;
- c) The product of the implementation of its assets, the total or partial liquidation of the investment, including capital gains or increases in the capital invested if any;
- d) The compensation paid pursuant to Article 5;
- e) The amounts necessary for the costs related to the operation of the investment, such as payment of similar licences;

2. The nationals of either Contracting Party allowed to work in connection with an investment accepted in the territory of the other Contracting Party shall also be authorised to transfer their respective countries of origin an appropriate portion of the earnings.

3. The free transfer shall take place in accordance with the procedures established by each of the Contracting Parties which may not refuse, suspend or indefinitely denature that right.

Each Contracting Party shall issue the required authorisations to ensure the execution of the transfer without delay and without any fees and other charges incurred.

4. Each contracting party retains the right, in case of exceptional difficulties balance of payments, establish limitations on transfers in an equitable and non-discriminatory manner and in accordance with their international obligations. Such limitations may not exceed investor, each for a period of thirty six months and shall include the possibility to stagger each transfer in several parts for a period of not more than 18 months.

5. Without prejudice to paragraph 4, each Contracting Party shall accord at all times to investments of investors of the other party the free transfer of dividends actually distributed in currencies from its exports.

Article 7. Exchange Rate

1. The transfers referred to in articles 5 and 6 of this Agreement shall be conducted according to the rate of exchange applicable on the date on which the goods are carried out and in accordance with the foreign exchange regulations in force in the State in whose territory the investment has been made.

2. The rates of exchange shall in no case be less favourable than those accorded to investors of the most favoured nation, particularly under specific obligations under agreements or arrangements concluded in the protection of investments.

3. In all cases, the exchange rate applied shall be fair and equitable.

Article 8. Subrogacion

1. If a Contracting Party or an agency of the party to its own investors under a guarantee to an investment agreement, the other Contracting Party shall recognize that the rights of the investor compensation were transferred to the contracting party or the relevant government agency as the insurer.

Under the same conditions that investors, and within the limits of the rights so transferred, the insurer may through subrogation to exercise the rights of and enforce such investors, as well as their respective claims. The subrogation shall also apply to the rights of free transfer and use of arbitration referred to in articles 6 and 12. Such rights may be exercised by the insurer within the limits of the quota of risk covered by the contract by the investor and guarantee the collateral taker, within the limits of the assessment of risk is not covered by the contract.

2. With regard to the rights transferred, the other Contracting Party may make with respect to any of the insurer subrogation into the rights of the investor responsibilities or contract law, compensation to them.

Article 9. Applicable Rules

When an investment is governed by this Agreement and simultaneously by the national legislation of a Contracting Party or international conventions in existing or future Parties subscribe to investors of the other contracting party may invoke the provisions that are more favourable.

Article 10. Special Agreements

1. Investments which have been the subject of a special agreement between a Contracting Party and investors of the other Contracting Party shall be governed by the provisions of this Agreement and that agreement.

2. Each Contracting Party shall at all times with investors commitments of the other contracting party.

Article 11. Disputes between the Contracting Parties Concerning the Interpretation or Application

1. Any dispute concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.

2. If the parties do not reach agreement through the diplomatic channel, the dispute shall be submitted to a committee composed of representatives of both parties; the Commission shall meet at the request of either party and without undue delay.

3. If the Commission is unable to resolve the dispute shall be submitted, at the request of either of the contracting parties to an arbitration procedure established for each individual case in the following manner:

Each Contracting Party shall appoint an arbitrator within two months from the date on which either Contracting Party has informed the other party of its intention to submit the dispute to arbitration. Within two months after their appointment, the two arbitrators shall agree upon a national of a third State who shall be the Chair of the arbitral tribunal.

If the time limits have been fulfilled without incurring designations, either of the Contracting Parties shall request the President of the International Court of Justice to make the appointment of the arbitrator or arbitrators not appointed.

If the President of the International Court of Justice is a national of either Contracting Party or a State with which a contracting party does not maintain diplomatic relations, or for any other reason that is unable to perform this function, invite the Vice-President of the International Court of Justice to make the appointment.

4. The Court thus constituted shall determine its own rules of procedure. Such decisions shall be taken by a majority of votes; shall be final and binding on the contracting parties.

5. Each Contracting Party shall defray the expenses demanded by the appointment of its arbitrator. The disbursements inherent in the appointment of the third arbitrator as well as the operating expenses of the Tribunal shall be borne equally by the Contracting Parties.

Article 12. Settlement of Disputes Relating to Investments

1. Any dispute concerning an investment which may arise between an investor of one Contracting Party and the other Contracting Party with respect to matters governed by this Agreement shall, as far as possible, be settled amicably through consultations between the parties to the dispute.

2. If these consultations do not provide a solution, the dispute may be referred to the competent judicial or administrative jurisdiction of the Contracting Party in whose territory the investment is located.

3. If a dispute persisted after the expiry of a period of 18 months from the notification of commencement of proceedings before the court previously established, the dispute may be submitted to international arbitration.

To this end, each contracting party grants for the purposes of this Convention, and advance its irrevocable consent to a dispute may be submitted to arbitration.

4. From the beginning of one of the arbitration procedures, each Party to the dispute shall take the steps necessary for the withdrawal of the Court.

5. In the event of recourse to international arbitration, the dispute may be brought before the arbitration bodies designated below, at the choice of the investor:

— The International Centre for Settlement of Investment Disputes (I.C.S.I.D.) 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. As long as this requirement is not fulfilled, each Contracting Party consents that the dispute be submitted to arbitration under the Additional Facility Rules of the I.C.S.I.D.;

— An ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (C.N.U.D.M.I.).

6. Neither Contracting Party, which is a party to put a dispute, exceptions, at any phase of the arbitration procedure or of the execution of an arbitral award, by the fact that the investor who is the opposing party in the dispute has received compensation to cover all or part of its losses pursuant to an insurance policy or to the guarantee provided for in article 8 of this Agreement.

7. The arbitral tribunal shall decide on the basis of the Law of the Contracting Party which is a party to the dispute including the rules relating to conflicts of power, on the basis of the provisions of this Agreement and the terms of any specific agreement concluded in relation to the investment as well as the principles of international law.

8. The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the decisions in accordance with its legislation.

Article 13. Entry Into Force and Duration

1. This Agreement shall enter into force one month after the date on which the contracting parties have exchanged their respective instruments of ratification. This Agreement shall remain in force for a period of ten years.

Unless a complaint is made by one of the Contracting Parties, made at least six months before the expiration of the period of validity of this Agreement, it shall be successively renewed by tacit renewal for a further period of ten years, each Contracting Party reserving the right to denounce it by notification sent at least six months before the expiration date of the current validity period.

2. Investments made prior to the expiration date of this Agreement shall remain subject to its provisions for a period of ten years as of said date

2. Investments made prior to the date of termination of this Agreement shall remain subject to its provisions for a period of ten years from that date.

In WITNESS WHEREOF the undersigned representatives, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Brussels, 28 June 1990, each in two originals in the Dutch, French and English languages, all texts being equally authentic.

* * *

Brussels, 28 June 1990.

Sir,

During the negotiations that led to the signing of the Agreement between the Argentine Republic and the belgo-luxembourg Economic Union, to promote and protect investment reciprocamente agreed as follows:

1. The interpretation of article 1, para. 1 (a) of the Convention, as regards the Republic of Argentina, the Convention does not apply to investments of natural persons who are nationals of Belgium Luxembourg, or if, at the time of the investment, are domiciled for more than two years in the territory of the Argentine Republic.

2. The interpretation of article 4 of the Agreement is that the Contracting Parties consider that the application of most-favoured-nation treatment does not extend to the privileges which particular Argentina subject to foreign investors by an investment made in the framework of a concessional financing, provided by a bilateral agreement concluded by the Argentine Republic with the country to which they belong those investors.

It is understood that if the contracting parties conclude a similar agreement among themselves, Belgium and Luxembourg investors to invest in the framework of the Agreement shall in the territory of the Argentine Republic, treatment at least equal to the above.

I would be grateful if you would confirm his agreement with the above.

The Minister of my highest consideration.

Domingo Cavallo

Ministry of Foreign Affairs and Worship of the Argentine Republic

The Minister of Foreign Affairs of the Kingdom of Belgium,

D. Mark Eyskens

* * *

Brussels, 28 June 1990.

Sir,

I have the honour to acknowledge receipt of your letter from the date which reads as follows:

During the negotiations that led to the signing of the Agreement between the Argentine Republic and the belgo-luxembourg Economic Union, to promote and protect investment reciprocamente agreed as follows:

1. The interpretation of article 1, para. 1 (a) of the Convention, as regards the Republic of Argentina, the Convention does not apply to investments of natural persons who are nationals of Belgium Luxembourg, or if, at the time of the investment, are domiciled for more than two years in the territory of the Argentine Republic.

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I would be grateful if you would confirm his agreement with the above.

The Minister of my highest consideration. "

I I confirm by this Agreement with the above.

Please accept, Mr. Minister, the expression of my highest consideration.

Mark Eyskens

Minister for Foreign Affairs of the Kingdom of Belgium

The Minister of Foreign Affairs and Worship of the Argentine Republic

D. Domingo Cavallo