Agreement between the Government of the French Republic and the Government of the Eastern Republic of Uruguay of Uruguay on the reciprocal encouragement and protection of investments

The Government of the French Republic and the Government of the Eastern Republic of Uruguay, hereinafter referred to as "the Contracting Parties",

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for French investment in Uruguay and Uruguayan investment in France;

Convinced that the encouragement and protection of such investments, within the framework of international law, are likely to stimulate the transfer of capital and technology between the two countries, in the interest of their economic development

Have agreed on the following provisions:

Article 1.

For the purposes of this Agreement:

1. The term "investment" means assets such as property, rights and interests of every kind and particularly, but not exclusively:

(a) movable and immovable property as well as all rights in rem such as property rights, mortgages, liens, usufructs and similar rights, such as bonds;

(b) Shares, share premiums and other forms of participation, even if minority or indirect, in companies incorporated in the territory of one of the Contracting Parties;

(c) Bonds, debts and rights to any benefits of economic value;

(d) copyrights, industrial property rights (such as patents, licenses, trademarks, industrial models and layouts), technical processes, registered names and goodwill

(e) concessions granted by law or under contract or by bodies governed by public law, including concessions relating to the exploration, cultivation, extraction or exploitation of natural resources, including those located in the maritime areas of the Contracting Parties, provided that such assets shall be or have been invested in accordance with the legislation of the Contracting Party in whose territory or maritime areas the investment is made, whether before or after the entry into force of this Agreement.

Any change in the form of investment of the assets shall not affect their characterization as an investment, provided that such change is not contrary to the law of the Contracting Party in whose territory or maritime areas the investment is made.

2. The term "nationals" refers to natural persons possessing the nationality of one of the Contracting Parties, in accordance with their respective legislation. This Agreement shall not apply to investments of natural persons who are nationals of both Contracting Parties, unless such persons are, or were at the time of the investment, domiciled outside the territory of the Contracting Party in which the investment was made.

3. The term "companies" means any legal entity incorporated in the territory of one of the Contracting Parties in accordance with the laws of that Party and having its registered office therein, or controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal entities having their registered office in the territory of one of the Contracting Parties and incorporated in accordance with the laws of that Party.

4. The term "income" means all sums produced by an investment, such as profits, royalties or interest, during a given period.

Income from the investment and, in the case of reinvestment, income from reinvestment shall enjoy the same protection as the investment.

5. "Maritime areas" means the maritime and submarine areas over which the Contracting Parties exercise, in accordance with international law, sovereignty, sovereign rights or jurisdiction.

Article 2.

Each Contracting Party shall, within the framework of its legislation and the provisions of this Agreement, admit and encourage investments made by the nationals and companies of the other Party in its territory and in its maritime zones.

Article 3.

Each Contracting Party undertakes to ensure, in its territory and in its maritime zones, fair and equitable treatment of the investments of the nationals and companies of the other Party and to ensure that the exercise of the right so recognized is not hindered in law or in fact.

Article 4.

Each Contracting Party shall, in its territory and maritime zones, apply to the nationals or companies of the other Party, in respect of their investments and activities related to such investments, the treatment accorded to its nationals or companies, or the treatment accorded to the nationals or companies of the most-favoured nation, whichever is more advantageous. In this connection, nationals authorized to work in the territory and maritime zone of one of the Contracting Parties shall be given appropriate material facilities for the exercise of their professional activities.

This treatment shall not, however, extend to the privileges which a Contracting Party grants to the nationals or companies of a third State by virtue of its participation in or association with a free trade area, a customs union, a common market or any other form of regional economic organization.

This Article shall not apply to advantages granted by either Contracting Party to nationals or companies of third States under an agreement for the avoidance of double taxation or any other agreement relating to taxes.

Article 5.

1. Investments made by nationals or companies of either Contracting Party shall enjoy full protection and security in the territory and maritime area of the other Contracting Party.

2. The Contracting Parties shall not take any measures of expropriation or nationalization, or any other measures the effect of which is to dispossess, directly or indirectly, the nationals and companies of the other Party of investments belonging to them in their territory and maritime area, except in the public interest and provided that such measures are not discriminatory or contrary to any particular undertaking given by the Contracting Party concerned.

Any measures of dispossession which may be taken shall give rise to the payment of prompt and adequate compensation, the amount of which, calculated on the real value of the investments concerned, shall be assessed in relation to the economic situation immediately prior to the time when such measures become publicly known or effective.

This compensation, its amount and the way in which it is to be paid, shall be fixed at the latest on the date of the dispossession. This compensation is effectively realizable, paid without delay and freely transferable. It shall bear interest until the date of payment at the official rate of interest on the Special Drawing Right as fixed by the International Monetary Fund.

3. Nationals or companies of one of the Contracting Parties whose investments have suffered losses as a result of war or any other armed conflict, revolution, state of national emergency or revolt in the territory or maritime areas of the other Contracting Party shall be accorded by the latter treatment no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation, particularly as regards compensation.

Article 6.

Each Contracting Party shall, in the territory or maritime area of which investments have been made by nationals or companies of the other Contracting Party, grant to such nationals or companies the free transfer of:

(a) Interest, dividends, profits and other current income ;

(b) royalties derived from intangible rights referred to in paragraph 1(d) and (e) of Article 1

(c) Payments made for the repayment of loans regularly contracted;

(d) Proceeds from the sale or liquidation of the investment, in whole or in part, including capital gains on the investment;

(e) the compensation for loss or dispossession provided for in Article 5, paragraphs 2 and 3 above.

Nationals of each Contracting Party who have been authorized to work in the territory or maritime areas of the other Contracting Party, in connection with an approved investment, shall also be authorized to transfer their remuneration to their country of origin.

The transfers referred to in the preceding paragraphs shall be made without delay at the normal rate of exchange officially applicable on the date of transfer.

Article 7.

1. Insofar as the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case basis, to investments made by nationals or companies of that Party in the territory or maritime zones of the other Party.

2. Investments by nationals and companies of one of the Contracting Parties in the territory or maritime zones of the other Party may not obtain the guarantee referred to in the preceding paragraph unless they have first obtained the approval of the latter Party.

3. If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory or maritime zones of the other Party, makes payments to one of its nationals or to one of its companies, it shall thereby be subrogated to the rights and actions of such national or company.

Such payments shall not affect the rights of the beneficiary of the guarantee to institute or pursue the actions provided for in Article 8 of this Agreement.

Article 8.

1. Any dispute relating to investments between one of the Contracting Parties and a national or company of the other Contracting Party shall, as far as possible, be settled amicably between the two Parties concerned.

2. If the dispute has not been settled within six months from the time it was raised by either of the parties concerned, it shall be submitted, at the request of the investor :

- either to the national courts of the Contracting Party involved in the dispute ;

- or to international arbitration, under the conditions described in paragraph 3 below.

Once an investor has submitted the dispute to international arbitration, the choice of this procedure remains final and puts an end to all other procedures. If the investor has submitted the proceedings to the domestic courts of the Contracting Party involved in the dispute, recourse to international arbitration is no longer possible in cases where:

a) the investor does not withdraw from the court proceedings before the judgment;

(b) the judgment of the competent court is in accordance with the provisions of this Agreement. If the judgment is found not to be in conformity with the provisions of this Agreement, the arbitral tribunal shall first rule on such conformity.

3. In the event of recourse to international arbitration, the dispute may be brought before one of the following designated arbitration bodies at the option of the investor:

(a) 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 March 18, 1965, when each State party to this Agreement has acceded thereto;

(b) to the ad hoc three-member arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). If the Secretary-General of the Permanent Court of Arbitration at The Hague is a national of either Contracting Party or is otherwise prevented from performing the function assigned to him by Article 7 of

the UNCITRAL Rules, either party to the dispute may request the President of the Court of Arbitration of the Stockholm International Chamber of Commerce to perform this function.

4. The arbitration body shall decide the dispute on the basis of the provisions of this Agreement, the terms of any special agreements entered into with respect to the investment, the principles of international law on the subject, and the law of the Contracting Party to the dispute, including the rules on conflict of laws.

5. Arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce the awards.

6. No Contracting Party shall grant diplomatic protection or make an international claim in respect of a dispute which one of its nationals or companies and the other Contracting Party have submitted to the procedures provided for in this Article, unless that other Contracting Party has failed to carry out or comply with the award rendered in respect of the dispute.

For the purposes of the preceding paragraph, diplomatic protection does not include mere diplomatic representations intended solely to facilitate the settlement of disputes.

Article 9.

Investments which have been the subject of a special undertaking by one Contracting Party in respect of the nationals and companies of the other Contracting Party shall, without prejudice to the provisions of this Agreement, be governed by the terms of that undertaking in so far as it contains provisions more favourable than those contained in this Agreement.

Article 10.

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.

2. If the dispute is not settled within six months of its being raised by either Contracting Party, it shall, at the request of either Contracting Party, be submitted to an arbitration tribunal.

3. The said tribunal shall be constituted for each particular case in the following manner:

Each Contracting Party shall appoint one member, and both members shall appoint, by mutual agreement, a national of a third State who shall be appointed by both Contracting Parties as chairman. All members shall be appointed within three months of the date on which one Contracting Party has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits laid down in paragraph 3 above have not been observed, either Contracting Party shall, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or is otherwise prevented from serving in that capacity, the most senior Under-Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

5. The arbitration tribunal shall take its decisions by a majority vote. Such decisions shall be final and binding on the Contracting Parties.

The tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal decides otherwise, taking into account particular circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the Parties.

Article 11.

Each of the Parties shall notify the other of the completion of the internal procedures required for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

The Agreement is concluded for an initial period of ten years. It shall remain in force after that term unless either Party denounces it through diplomatic channels with one year's notice.

Upon the expiration of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for a further period of twenty years.

Done in Paris, this 14th day of October 1993, in two originals, each in the French and Spanish languages, both texts being equally authentic.

For the Government of the French Republic :

Edmond Alphandéry

For the Government of the Eastern Republic of Uruguay :

Ignacio de Posadas

PROTOCOL

With regard to Article 1:

The legal persons referred to in paragraph 3 of this Agreement may be required to provide evidence of such control in order to avail themselves of the provisions of this Agreement. Such evidence may include, for example:

(a) The status of a subsidiary of a juridical person established under the law of one of the Contracting Parties;

(b) direct or indirect ownership of a percentage of the capital of a juridical person established under the law of one of the Contracting Parties that is adequate to exercise effective control;

(c) the holding of voting rights or representation on the governing bodies of a legal person which would enable effective control to be exercised.

With regard to Article 3:

Any restriction on the purchase and transportation of auxiliary raw materials, energy and fuel, and means of production and operation of any kind, any impediment to the sale and transportation of products within the country and abroad, and any other measures having a similar effect, shall be deemed to be de jure or de facto impediments to fair and equitable treatment.

With regard to Article 5:

The Contracting Parties shall give sympathetic consideration, within the framework of their domestic legislation, to applications for entry and authorization for residence, work and movement submitted by nationals of a Contracting Party in connection with an investment made in the territory or maritime area of the other Contracting Party;

(d) The provisions of the Agreement signed today between the Government of the French Republic and the Government of the Eastern Republic of Uruguay shall not apply to disputes arising prior to today's date.