

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ARGENTINA AND THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Argentina and the Government of the Republic of Nicaragua, hereinafter referred to as the "Parties".

With the desire to intensify economic cooperation between the two States

With the aim of creating favourable conditions for investments by investors of one Party in the territory of the other Party;

Recognizing that the promotion and protection of such investments on the basis of an agreement will contribute to the stimulation of individual economic initiative and increase the prosperity of both States.

Have agreed on the following:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" means, in accordance with the laws and regulations of the Party in whose territory the investment is made, any type of asset invested by investors of one Party in the territory of the other Party, in accordance with the laws and regulations of the latter Party, and includes in particular, but not exclusively

(a) ownership of movable and immovable property, as well as other rights in rem such as mortgages, sureties and pledges;

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

(c) debts and entitlements to benefits with an economic value; loans shall be included only where they are directly linked to a specific investment;

(d) intellectual property rights including in particular copyright, patents, industrial designs, trademarks, trade names, know-how and goodwill;

(e) economic concessions granted by law or by contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources.

No change in the legal form in which the assets and capital have been invested or reinvested shall affect their qualification as investments under the terms of 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, claim or controversy which arose before its entry into force.

(2) The term "investor" means

(a) any natural person who is a national of one of the Parties, in accordance with its legislation, and who makes an investment in the territory of the other Party.

(b) any legal entity constituted in accordance with the laws and regulations of a Party and having its seat in the territory of that Party, and making an investment in the territory of the other Party.

(3) The provisions of this Agreement shall not apply to investments made by natural persons who are nationals of a Party in the territory of the other Party, if such persons have, at the date of investment, been domiciled for more than two years in

the latter Party, unless it is shown that the investment was admitted into its territory from abroad.

(4) The term "earnings" means all sums produced by an investment, such as profits, dividends, interest, royalties and other current income.

(5) The term "territory" means the territory of each Party, including the territorial sea and those maritime areas adjacent to the outer limit of the territorial sea, over which each Party exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Investment Promotion

Each Party shall promote in its territory investments by investors of the other Party, and shall admit such investments in accordance with its laws and regulations.

Article 3. Investment Protection

1) Each Party shall at all times ensure fair and equitable treatment of investments of investors of the other Party, and shall not impair their management, maintenance, use, enjoyment or disposition through unjustified or discriminatory measures.

(2) Each Party, once it has admitted in its territory investments of investors of the other Party, shall accord full legal protection to such investments and shall accord them treatment no less favourable than that accorded to investments of its own domestic investors or investors of third States.

(3) Without prejudice to the provisions of Paragraph (2) of this Article, most-favored-nation treatment shall not apply to the privileges accorded by each Party to investors of a third State as a result of its participation or association in a free trade area, customs union, common market, or regional agreement.

(4) The provisions of Paragraph (2) of this Article shall not be construed to require a Party to extend to investors of the other Party the benefits of any treatment, preference or privilege resulting from an international agreement relating wholly or partly to taxation matters.

(5) The provisions of Paragraph (2) of this Article shall also not be construed to extend to investors of the other Party the benefit of any treatment, preference or privilege resulting from bilateral agreements providing concessional financing entered into by Argentina with Italy on December 10, 1987 and with Spain on June 3, 1988.

Article 4. Entry of Personnel and Management

(1) Neither Party may require an enterprise of the other Party, which is an investment under this Agreement, to appoint to senior management positions individuals of a specific nationality.

(2) Subject to their laws, regulations and policies regarding the entry and stay of foreign personnel, both Parties shall permit the entry and stay in their territory of personnel necessary for the purpose of establishing, developing, managing or advising on an investment.

Article 5. Performance Requirements

No Party shall establish performance requirements as a condition for the establishment, expansion or maintenance of investments, which require or necessitate commitments to export goods or specify that certain goods or services be purchased locally, or impose any other similar requirements.

Article 6. Expropriation and Compensation

(1) Neither Party shall take nationalization or expropriation measures, or any other measures having the same effect, against investments in its territory belonging to investors of the other Party, unless such measures are taken in the public interest, on a non-discriminatory basis and under due process of law. The measures shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. The amount of such compensation shall correspond to the market value of the expropriated investment immediately before the expropriation or before the imminent expropriation became public, shall include interest from the date of the expropriation at a normal commercial rate, shall be paid without delay, and shall be effectively realizable and freely transferable.

(2) Investors of one Party who suffered losses on their investments in the territory of the other Party, whether due to war or

other armed conflict, a state of national emergency, revolt, insurrection or riot, shall be accorded, in respect of restitution, compensation, indemnification or other redress, treatment no less favourable than that accorded to their own investors or to investors of any third State.

Article 7. Transfers

(1) Each Party shall ensure to investors of the other Party the unrestricted transfer of investments and earnings, and in particular, but not exclusively, of

(a) the capital and additional sums required for the maintenance and development of the investments

(b) profits, earnings, interest, dividends and other current income.

(c) funds for the repayment of loans as defined in Article 1, Paragraph (1), (c);

(d) royalties and fees;

(e) the proceeds of any sale or disposal of all or part of an investment;

(f) compensation as provided for in Article 6;

(g) the earnings of nationals of a Party who have obtained an authorization to work in connection with an investment in the territory of the other Party.

(2) Transfers shall be permitted without delay, in freely convertible currency, at the normal exchange rate applicable on the date of transfer.

All in accordance with the procedures established by the Party in whose territory the investment was made, which may not affect the substance of the rights provided for in this Article.

Article 8. Subrogation

(1) If a Party or an agency designated by it makes a payment to an investor pursuant to a guarantee or insurance it has entered into in connection with an investment, the other Party shall recognise the validity of subrogation in favour of that Party or its agency in respect of any right or title of the investor. The Party or its agency shall be entitled, within the limits of subrogation, to exercise the same rights as the investor would have been entitled to exercise.

(2) In the case of a subrogation as defined in Paragraph (1) of this Article, the investor shall not make any claim unless authorized to do so by the Party or its agency.

Article 9. Implementation of other Rules

If the provisions of the legislation of either Party or the obligations of international law existing or to be established between the Parties in addition to this Agreement or if an agreement between an investor of one Party and the other Party contains rules, whether general or specific, which accord investments made by investors of the other Party more favourable treatment than that provided for in this Agreement, those rules shall prevail over this Agreement to the extent that they are more favourable.

Article 10. Settlement of Disputes between the Parties

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

(2) If a dispute between the Parties cannot be settled in this manner within six months of the commencement of negotiations, it shall, at the request of either Party, be submitted to an arbitral tribunal.

(3) The tribunal shall be constituted for each particular case as follows: Within two months of receipt of the request for arbitration, each Party shall appoint a member of the tribunal.

These two members shall elect a national of a third State who, with the approval of both Parties, shall be appointed President of the tribunal. The President will be appointed within two months from the date of the appointment of the other two members.

(4) If the necessary appointments have not been made within the time limits provided for in paragraph (3) of this Article, either Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments.

If the President is a national of one of the Parties or if, for any reason, he is prevented from exercising this function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of a Party, or if he or she is also prevented from exercising that function, the Member of the International Court of Justice next in seniority who is not a national of a Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall take its decision by majority vote. Such decision shall be binding on both Parties. Each Party shall bear the expenses of its member of the tribunal and of his or her representation in the arbitral proceedings; the expenses of the chairman and the other expenses shall in principle be borne equally by the Parties.

However, the arbitral tribunal may determine in its decision that a greater share of the costs be borne by one of the two Parties, and this decision shall be binding on both Parties.

The tribunal will determine its own procedure.

Article 11. Settlement of Disputes between an Investor and the Host Party of the Investment

(1) Any dispute concerning the provisions of this Agreement between an investor of one Party and the other Party shall, to the extent possible, be settled by amicable consultation.

(2) If the dispute cannot be settled within six months of its being raised by either party, it may be submitted at the request of the investor.

- or to the competent courts of the Party in whose territory the investment was not made.

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

Once an investor has submitted the dispute to the jurisdictions of the Party concerned or to international arbitration, the choice of either procedure shall be final.

(3) In the event of recourse to international arbitration, the dispute may be brought, at the option of the investor:

- to 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 in Washington on 18 March 1965, once each State Party to this Agreement has acceded to it. Until this condition is met, each Party will give its consent to submit the dispute to arbitration in accordance with the Rules of Procedure of the ICSID Additional Facility for the Administration of Conciliation, Arbitration or Fact-Finding Proceedings;

- to an "ad hoc" arbitration tribunal established in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL)

(4) The arbitration body 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 the rules on the conflict of laws, the terms of any particular agreements concluded in relation to investment and the principles of international law in this field.

(5) Arbitration awards shall be final and binding on the parties to the dispute.

Each Party shall enforce them in accordance with its law.

Article 12. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force on the first day of the second month following the date of the last notification by which the Parties inform each other through diplomatic channels that the constitutional requirements for the entry into force of this Agreement have been fulfilled. It will be concluded for a period of ten years and may be automatically renewed by tacit agreement between the Parties for an equal period unless one of them decides to terminate it by giving twelve months' notice through diplomatic channels to the other.

(2) In respect of investments made before the date on which the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 12 shall continue in force for a period of 15 years from that date.

Done at the city of Buenos Aires, on August 10, 1998, in two originals, both equally authentic.

For the Government of the Republic of Nicaragua.

For the Government of the Republic of Argentina.