

AGREEMENT BETWEEN THE GOVERNMENT OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE ORIENTAL REPUBLIC OF URUGUAY FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Oriental Republic of Uruguay;

Desiring to create favourable conditions for greater investment by nationals and companies of one State in the territory of the other State;

Recognising that the encouragement and reciprocal protection, under international agreement, of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement;

(a) "investment means every kind of asset and in particular, though not exclusively, includes:

(i) Movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) Shares in and stock debentures of a company and any other form of participation in a company;

(iii) Claims to money or to any performance under contract having a financial value;

(iv) Intellectual property rights, goodwill, technical processes and know-how;

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

A change in the form in which assets are invested does not affect their character as investments. The term "investment" includes all investments, whether made before or after the date of entry into force of this Agreement, but this Agreement shall in no case apply to disputes which arose before its entry into force;

(b) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

(c) "nationals" means:

(i) In respect of the United Kingdom: physical persons deriving their status as United Kingdom nationals from the law in force in the United Kingdom;

(ii) In respect of the Oriental Republic of Uruguay: physical persons who according to its legislation are considered as its nationals;

This Agreement shall not apply to investments made by physical persons who are nationals of both Contracting Parties;

(d) "companies" means:

(i) In respect of the United Kingdom: corporations, firms and associations incorporated or constituted under the law in force in any part of the United Kingdom or in any territory which this Agreement is extended in accordance with the provisions of

Article 11;

(ii) In respect of the Oriental Republic of Uruguay: corporations, companies, firms and associations constituted or duly organized under its law in force;

(e) "territory" means:

(i) In respect of the United Kingdom: Great Britain and Northern Ireland, including the territorial sea and any maritime area situated beyond the territorial sea of the United Kingdom which has been or might in the future be designated under the national law of the United Kingdom in accordance with international law as an area within which the United Kingdom may exercise rights with regard to the sea-bed and subsoil and the natural resources, and any territory to which this Agreement is extended in accordance with the provisions of Article 11;

(ii) In respect of the Oriental Republic of Uruguay: its territorial area including any maritime area which has been or might in the future be designated by virtue of the national legislation of the Oriental Republic of Uruguay, in accordance with international law, as an area in which it may exercise rights with regard to the sea-bed and subsoil and the natural resources.

Article 2. Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favorable conditions for nationals or companies of the other Contracting Party to invest capital in its territory, and, in accordance with its right to exercise powers conferred by its laws, shall admit such capital.

(2) Investments for nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

Article 3. Treatment of Investments

(1) Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favorable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favorable than that which it accords to its own nationals or companies or to nationals or companies of any third State.

(3) If the provision of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties, in addition to the present Agreement, contain rules, whether general or specific, entitling investments by nationals or companies of the other Contracting Party to a treatment more favorable than is provided for by the present Agreement, such rules shall to the extent that they are more favorable prevail over the provisions of the present Agreement.

Article 4. Compensation for Losses

Nationals or companies 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 be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable than that which the latter Contracting Party accords to its own nationals or companies or to nationals or companies of any third State. Resulting payments shall be freely transferable.

Article 5. Expropriation

(1) Investments of nationals or companies of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Party on a non-

discriminatory basis and against prompt, fair and effective compensation. Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, and shall include interest at a normal commercial rate until the date of payment. The payment shall be made without delay, be effectively realizable and be freely transferable. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a competent and independent authority having jurisdiction under the law of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, compensation shall be paid in accordance with the provisions of paragraph (1) of this Article to the company whose assets are expropriated so as to permit the said nationals or companies to receive from the company prompt, fair and effective compensation.

Article 6. Repatriation of Investment and Returns

Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the unrestricted transfer of the invested capital and its returns. Transfers shall be effected without delay in the convertible currency in which the capital was originally invested or in any other currency which may be agreed by the investor and the Contracting Party concerned. Transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 7. Exceptions

The provisions of this Agreement relative to the grant of not less favorable treatment, as provided for in Articles 3 and 4, shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other the benefit of any treatment, preference or privilege resulting from:

- (a) Any existing or future customs union, common market or free trade zone or similar international agreement to which either of the Contracting Parties is or may become a party; or
- (b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 8. Settlement of Disputes between a National or Company and a Host State

(1) Disputes which arise between a national or a company of one Contracting Party and the other Contracting Party with regard to an investment of the former, which have not been amicably settled after a period of three months has elapsed from written notification of a claim, shall be submitted, at the request of one of the parties involved, to the decision of the competent tribunal of the Contracting Party in whose territory the investment was made.

(2) The aforementioned disputes shall be submitted to international arbitration in the following cases:

(a) If one of the parties so requests, in any of the following circumstances:

(i) Where, after a period of eighteen months has elapsed from the moment when the dispute was submitted to the competent tribunal of the Contracting Party in whose territory the investment was made, the said tribunal has not given its final decision:

(ii) Where the final decision of the aforementioned tribunal is manifestly unjust or violates the provisions of this Agreement;

(b) Where the Contracting Party, in accordance with the powers which its internal law confers upon it, and the national or company of the other Contracting Party have so agreed:

(3) Where the dispute is referred to international arbitration, the national or company and the Contracting Party concerned in the dispute may agree to refer the dispute to:

(a) Either an international arbitrator or ad hoc arbitration tribunal of three members according to what has been expressly agreed by the parties. The arbitrator or arbitrators shall be appointed by a special agreement or in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);

(b) The International Centre for the Settlement of Investment Disputes where both Contracting Parties are party to the

Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington DC on 18 March 1965(1).

If after a period of three months from written notification of the claim there is no agreement to one of the above alternative procedures, the arbitration shall be undertaken by an ad hoc tribunal of three members and the parties to the dispute shall be bound to submit it to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. Notwithstanding the above, where the Secretary General of the Permanent Court of Arbitration at the Hague or the appointing authority are nationals of one of the Contracting Parties, or where it is not possible for them to undertake this function, the President of the Court of Arbitration of the International Chamber of Commerce in Paris shall be the person to make the appointment. Where the president is a national of one of the Contracting Parties or if he is prevented from doing the above, the Vice-President of the Court of Arbitration of the International Chamber of Commerce in Paris or the member of the said Court next in seniority and who is not a national of either of the Contracting Parties shall be invited to make the appointment. The parties may agree in writing to modify the UNCITRAL Rules.

(4) As regards the Oriental Republic of Uruguay, the decision of the competent tribunal within the meaning of paragraph (1) of this Article means a judicial decision without appeal.

Article 9. 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 the diplomatic channel.

(2) If a dispute between the Contracting Parties cannot thus be settled within a reasonable period of time, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be composed of three members and 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 so appointed 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 Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall decide on the basis of the provisions of this Agreement, and such rules of international law and the domestic law of the State in which the investment which gave rise to the dispute was made as the tribunal considers applicable.

(6) The arbitral tribunal shall determine its own procedure. It shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties.

(7) 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 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.

(8) Neither Contracting Party shall bring an international claim in respect of a dispute which one of its nationals or companies and the other Contracting Party have submitted to the decision of the competent tribunal of the Party in whose territory the investment was made or to the arbitration provided for in Article 8 of this Agreement, unless such other Contracting Party shall have failed to abide by and comply with the award rendered in such dispute.

Article 10. Subrogation

(1) If one Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment to the former Contracting Party or its designated Agency by law or by legal transaction of all the rights and claims of the national or company indemnified. The former Contracting Party or its designated Agency is entitled to exercise such rights and enforce

such claims in its capacity as subrogate, to the same extent as the national or company indemnified.

(2) The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it in its capacity as subrogate and any payments receivable by it in pursuance of those rights and claims as the national or company indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payments received by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

Article 11. Territorial Extension

At the time of the entry into force of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to such territories for whose international relations the Government of the United Kingdom are responsible as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 12. Entry Into Force

Each Contracting Party shall notify the other in writing of the completion of the constitutional formalities required in its territory for the entry into force of this Agreement. This Agreement(1) shall enter into force on the date of the latter of the two notifications.

Article 13. Duration and Termination

This Agreement shall remain in force for a period of 10 years. Thereafter it shall continue in force until the expiration of 12 months from the date of which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments made at any time before the termination of the Agreement, its provisions shall remain in force with respect to such investments for an additional period of 20 years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, having signed this Agreement.

Done in duplicate at London this 21st day of October 1991 in the English and Spanish languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

MARK LENNOX-BOYD

For the Government of the Oriental Republic of Uruguay:

ENRIQUE BRAGA SILVA