

AGREEMENT BETWEEN THE GOVERNMENT OF THE ARGENTINE REPUBLIC THE GOVERNMENT OF NEW ZEALAND FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Argentine Republic and the Government of New Zealand (each hereinafter referred to as a "Contracting Party");

Desiring to create favourable conditions for greater economic cooperation for the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognising that the encouragement and reciprocal protection of such foreign investments will be conducive to the economic prosperity of the both countries,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) "investor" means:

(a) Any natural person who is a national or permanent resident of a Contracting Party in accordance with its laws; and

(b) Any company, partnership, firm, corporation, business association or body, or other legally recognised entity incorporated, established, registered, constituted, or otherwise duly organised in accordance with the laws in force in a Contracting Party and having its head office located in the territory of that Contracting Party.

(2) "investment" means in conformity with the laws and regulations of the Contracting Party in whose territory the investment is made, every kind of asset which has been invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws. It includes, though not exclusively, any:

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

(b) Shares, stocks, debentures and similar interests in companies;

(c) Titles or claims to money or to any performance under contract having a financial value, loans only being included when they are directly related to a specific investment;

(d) Intellectual property rights including in particular copyrights, patents for inventions, industrial designs, trade marks, trade names, technical processes, plant variety rights, know-how and goodwill;

(e) Business concessions conferred by law or under contract, 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, provided that the assets continue to be invested in accordance with the laws and regulations of the Contracting Party receiving them.

(3) "returns" means a monetary amount yielded by or derived from an investment including, though not exclusively, profits, earnings, dividends, interest, capital gains, royalties, proceeds of liquidation, loan repayments and fees;

(4) "territory" means the national territory of either Contracting Party including those maritime areas adjacent and beyond the outer limit of the territorial sea of the national territory, over which the Contracting Party concerned may, in accordance with international law, exercise sovereign rights or jurisdiction.

Article 2. Scope of Application

(1) The present Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its laws, rules, and regulations, prior to or after the entry into force of the Agreement, by investors of the other Contracting Party. It shall however not be applicable to differences or disputes arising out of measures taken by either Contracting Party prior to its entry into force or to disputes involving a Contracting Party directly related to events which occurred prior to its entry into force.

(2) The provisions of this Agreement shall not apply to 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 investment was admitted into its territory from abroad.

Article 3. Admission, Promotion and Protection of Investments

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and, subject to its right to exercise powers conferred by its laws, shall admit such investments.

(2) Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment 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, sale and disposal of investments in its territory by investors of the other Contracting Party. Each Contracting Party shall observe, in accordance with its laws, any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

(3) The Contracting Parties shall to the extent possible encourage exchanges of information on relevant investment matters. In particular, the Contracting Parties shall exchange information on cases under their investment laws, regulations and policies where the treatment applying to investments of other countries differs from that applying to their own investors.

Article 4. Most Favoured Nation and National Treatment

(1) Each Contracting Party shall in its territory accord to investments and returns of the investors of the other Contracting Party treatment which is no less favourable than that accorded to investments and returns of investors of any third country or, subject to its laws and regulations, than the treatment accorded to its own investors.

Article 5. Exceptions

(1) The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any customs union, free trade area common market, regional economic organisation or similar international Agreement to which either Contracting Party is or may become a party. The provisions of this Agreement will neither be construed so as to extend to New Zealand investors the benefit of any treatment, preference or privilege resulting from the bilateral agreements providing for concessional financing concluded by the Republic of Argentina with Italy on 10 December 1987 and with Spain on 3 June 1988.

(2) The provisions of this Agreement shall not apply to matters of taxation in the territory of either Contracting Party. Such matters shall be governed by the domestic laws of each Contracting Party and the terms of any agreement relating to taxation concluded between the Contracting Parties.

(3) The provisions of this Agreement shall in no way limit the right of either Contracting Party to take any measures (including the destruction of plants and animals, confiscation of property or the imposition of restrictions on stock movement) necessary for the protection of natural and physical resources or human health, provided such measures are not applied in a manner which would constitute a means of arbitrary or unjustified discrimination.

(4) This Agreement shall not apply to Tokelau unless the Contracting Parties have exchanged notes agreeing to the terms on which this Agreement shall so apply.

Article 6. Expropriation and Compensation

(1) Neither Contracting Party shall take any measures of nationalisation or expropriation or any other measure having effect

equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") against the investments of investors of the other Contracting Party in its territory unless the following conditions are complied with:

- (a) The measures are taken for a public purpose related to internal needs and under due process of law;
- (b) The measures are not discriminatory; and
- (c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation.

(2) Compensation under (1) shall be based on the market value of the investment immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier. Where that value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognised principles of valuation and equitable principles taking into account the capital invested, depreciation, capital already repatriated, replacement value, currency exchange rate movements and other relevant factors. Compensation shall include interest at a normal commercial rate until the date of payment, shall be made without undue delay, be effectively realisable and be in a freely convertible currency. The investor affected shall have a right to review, under the law of the Contracting Party making the expropriation, by a judicial or other independent authority of that party of the amount of compensation and the legality of any such expropriation, nationalisation or comparable measure.

(3) Where a Contracting Party expropriates the assets of an investor in which investors of the other Contracting Party have a pecuniary interest, the provisions of paragraph (1) shall apply. paragraph (1) shall apply.

Article 7. Compensation for other Losses

The investors of one Contracting Party whose investments in the territory of the other Contracting Party have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords investors of any State or, subject to its laws and regulations, to its own investors.

Article 8. Subrogation

(1) In the event that either Contracting Party (or any agency, institution, statutory body or corporation designated by it) as a result of an indemnity it has given in respect of an investment or any part thereof makes payment to its own investors in respect of any of their claims under this Agreement, the other Contracting Party acknowledges that the former Contracting Party (or any agency, institution statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of the investors which it has indemnified. The Subrogated right of claim shall not be greater than the original right or claim of the said investors.

(2) Any payment made by one Contracting Party (or any agency, institution, statutory body or corporation designated by it) to its investors shall not affect the right of such investors to make their claims against the other Contracting Party in accordance with Article 9, in case where the former Contracting Party elects not to exercise its subrogated rights or claims. Article 9, in case where the former Contracting Party elects not to exercise its subrogated rights or claims.

(3) In the case of subrogation as defined in paragraph (1) of this article, the investor shall not pursue a claim unless authorised to do so by the Contracting Party or its agency. paragraph (1) of this article, the investor shall not pursue a claim unless authorised to do so by the Contracting Party or its agency.

Article 9. Free Transfer

(1) Each Contracting Party shall grant to investors of the other Contracting Party the unrestricted transfer of investments and returns and in particular, though not exclusively, of

- (a) The capital and additional sums necessary for the maintenance and development of the investments;
- (b) Gains, profits, interest, dividends and other current income;
- (c) Funds in repayment of loans within the scope of this Agreement;
- (d) Royalties and fees;
- (e) The proceeds from the total or partial sale or liquidation of an investment;

(f) Compensation provided for in Articles 7 and 8;Articles 7 and 8;

g) The earnings of investors of one Contracting Party who are allowed to work in connection with an investment in the territory of the other.

(2) Transfers shall be effected without delay in a freely convertible currency and in accordance with the procedures established by the Contracting Party in whose territory the investment was made, which shall not impair the substance of the rights set forth in this Article. Unless otherwise agreed by the investor, transfers shall be made at the normal applicable exchange rate at the date of the transfer.

Article 10. Consultation

The Contracting Parties shall consult at the request of either of them on matters concerning the interpretation or application of this Agreement.

Article 11. Application of other Rules

If the provisions 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 or if any agreement between an investor of one Contracting Party and the other Contracting Party contain rules, whether general or specific entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for in the present Agreement, such rules shall, to the extent that they are more favourable, prevail over the present Agreement.

Article 12. Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) Any legal dispute which arises within the terms of this Agreement concerning an investment between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

(2) If these negotiations do not result in a solution within six months from the date on which the dispute was raised by either party, the dispute may be submitted either:

(a) To the competent court or tribunal of the Contracting Party in whose territory the investment was made; or

(b) To international arbitration in accordance with the provisions of paragraph (3) of this Article.paragraph (3) of this Article.

Once the dispute has been submitted or agreement has been reached to submit a dispute to the competent court or tribunal of the Contracting Party in whose territory the investment was made or to international arbitration, the election of one or the other procedure will be final.

(3) In the case of international arbitration, unless the parties to the dispute agree otherwise, the dispute shall be submitted to either:

(a) 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 March 1965; or,Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature in Washington on 18 March 1965; or,

(b) If both parties to the dispute agree, arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force.Arbitration Rules of the United Nations Commission on International Trade Law as then in force.

(4) Paragraph (3) of this Article shall not constitute, by itself, the consent of the Contracting Party required in Article 25(1) of the Convention on the Settlement of Investment Disputes opened for signature in Washington on 18 March 1965.Paragraph (3) of this Article shall not constitute, by itself, the consent of the Contracting Party required in Article 25(1) of the Convention on the Settlement of Investment Disputes opened for signature in Washington on 18 March 1965.

(5) If international arbitration is agreed to, the arbitral tribunal shall decide in accordance with the provisions if this Agreement, the laws of the Contracting Party involved in the dispute, including its laws on conflict of laws, the terms of *any specific agreement concluded in relation to the investment from which the dispute arose and the relevant principles of international law.

(6) The decision of the competent court or tribunal, or of the arbitral tribunal, as the case may be, shall be final and binding for the parties to the dispute. Each Contracting Party shall give effect to these decisions in accordance with its laws.

Article 13. Disputes between Contracting Parties

(1) The Contracting Parties shall endeavour to resolve any difference between them regarding the interpretation or application of the provisions of this Agreement by friendly negotiations.

(2) If the difference cannot thus be settled within six months following the date of notification of the difference, either Contracting Party may submit it to an Ad-hoc Arbitral Tribunal in accordance with this Article.

(3) The Arbitral Tribunal shall be formed by three members and shall be constituted as follows: within two months of the notification by a Contracting Party of its wish to settle the dispute by arbitration, each Contracting Party shall appoint one arbitrator. These two members shall then, within thirty days of the appointment of the last one, agree upon a third member who shall be a national of a third country and who shall act as the Chair. The appointment of the Chair shall be approved by the Contracting Parties within thirty days of that person's nomination.

(4) If, within the time limits provided for in paragraph (2) and (3) of this Article the required appointment has not been made or the required approval has not been given, either Contracting Party may request the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is prevented from carrying out the said function or if that person is a national of either Contracting Party, the appointments shall be made by the Vice-President, and if the latter is prevented or if that person is a national of either Contracting Party, the appointments shall be made by the most senior Judge of the Court who is not a national of either Contracting Party. The third member appointed in accordance with this paragraph shall not be a national of either Contracting Party, and shall act as the Chair. paragraph (2) and (3) of this Article the required appointment has not been made or the required approval has not been given, either Contracting Party may request the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is prevented from carrying out the said function or if that person is a national of either Contracting Party, the appointments shall be made by the Vice-President, and if the latter is prevented or if that person is a national of either Contracting Party, the appointments shall be made by the most senior Judge of the Court who is not a national of either Contracting Party. The third member appointed in accordance with this paragraph shall not be a national of either Contracting Party, and shall act as the Chair.

(5) The Tribunal shall reach a written decision by a majority vote and shall determine its procedure.

(6) Each Contracting Party shall bear the cost of the arbitrator it has appointed 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 unless agreed otherwise.

(7) The decisions of the Arbitral Tribunal shall be final and binding on both Parties.

Article 14. Final Provisions

(1) The Contracting Parties shall notify each other in writing when the constitutional requirements for the entry into force of this Agreement have been fulfilled. This Agreement shall enter into force on the thirtieth (30th) day from the date of the later notification.

(2) This Agreement shall remain in force for a period of ten years. It shall remain in force thereafter until one of the Contracting Parties gives one year's written notice of termination through diplomatic channels of its intention to terminate.

(3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 13 shall remain in force for a further period of fifteen years from that date. Articles 1 to 13 shall remain in force for a further period of fifteen years from that date.

For the Government of the Argentine Republic For the Government of New Zealand