

Agreement Between The Government of Canada And The Government Of The Republic Of Argentina For The Promotion And Protection Of Investment

The Government of Canada and the Government of the Republic of Argentina, hereinafter referred to as the "Contracting Parties",

Recognizing that the promotion and the protection of investments of investors of one Contracting Party in the territory of the other Contracting Party will be conducive to the stimulation of business initiative and to the development of economic cooperation between them,

Have agreed as follows:

Article I. Definitions

For the purpose of this Agreement:

(a) The term "investment" means any kind of asset defined in accordance with the laws and regulations of the Contracting Parties in whose territory the investment is made, held or invested either directly, or indirectly through an investor of a third State, by an investor of one Contracting Party in the territory of the other Contracting Party, in accordance with the latter's laws. It includes in particular, though not exclusively:

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

(ii) Shares, stock, bonds and debentures or any other form of participation in a company, business enterprise or joint venture;

(iii) Money, claims to money, claims to performance under contract having a financial value, and loans directly related to a specific investment;

(iv) Intellectual property rights, including rights with respect to copyrights, patents, trademarks as well as trade names, industrial designs, good will, trade secrets and know-how;

(v) Rights, conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources.

Any change in the form of an investment does not affect its character as an investment.

(b) The term "investor" means:

(i) Any natural person possessing the citizenship of or permanently residing in a Contracting Party in accordance with its laws,

(ii) In respect of Canada, any juridical person, including corporations, partnerships, trusts, joint ventures, organizations, associations or enterprises incorporated or duly constituted in accordance with applicable laws of that Contracting Party, or

(iii) In respect of the Republic or Argentina, any juridical person constituted according to the laws and regulations of the Republic of Argentina or having its seat in the territory of the Republic of Argentina,

Who makes the investment;

(c) The term "returns" means all amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, fees or other current income;

(d) The term "territory" means, in respect of each Contracting Party, its territory as well as those maritime areas, including

the seabed and subsoil adjacent to the outer limit of the territorial sea, over which each Contracting Party exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas.

Article II. Promotion and Protection of Investment

(1) Each Contracting Party shall encourage the creation of favourable conditions for investors of the other Contracting Party to make investments in its territory.

(2) Subject to its laws and regulations, each Contracting Party shall admit investments of investors of the other Contracting Party.

(3) This Agreement shall not preclude either Contracting Party from prescribing laws and regulations in connection with the establishment of a new business enterprise or the acquisition of a business enterprise in its territory, provided that such laws and regulations are applied equally to all foreign investors. Decisions taken pursuant to such laws and regulations shall not be subject to the provisions of Articles X or XII of this Agreement. Articles X or XII of this Agreement.

(4) Investments or returns of investors of either Contracting Party shall at all times be accorded fair and equitable treatment in accordance with principles of international law and shall enjoy full protection and security in the territory of the other Contracting Party.

Article III. Most-favoured-nation Provisions

(1) Each Contracting Party shall grant to investments or returns of investors of the other Contracting Party in its own territory, treatment no less favourable than that which it grants to investments or returns of investors of any third State.

(2) Each Contracting Party shall grant investors of the other Contracting Party, as regards their management, use, enjoyment, transfer or disposal of their investments or returns in its territory, treatment no less favourable than that which it grants to investors of any third State.

Article IV. National Treatment

Each Contracting Party shall, to the extent possible and in accordance with its laws and regulations, grant to investments or returns of investors of the other Contracting Party treatment no less favourable than that which it grants to investments or returns of its own investors.

Article V. Exceptions

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 benefits of any treatment, preference or privilege resulting from:

(i) Any existing or future bilateral or multilateral agreement:

(a) Establishing a free trade area or customs union;

(b) Liberalizing trade in services;

(c) For mutual economic assistance, integration or co-operation;

(d) Relating to taxation.

(ii) The bilateral economic co-operation agreements concluded by the Republic of Argentina with Italy on 10 December, 1987 and with Spain on 3 June, 1988 respectively.

Article VI. Compensation for Losses

Investors of one Contracting Party who suffer losses because their investments or returns on the territory of the other Contracting Party are affected by armed conflict, revolution, civil strife, national emergency or a natural disaster on that territory, shall be accorded by such latter Contracting Party, in respect of restitution, indemnification, compensation or other settlement, treatment consistent with international law and no less favourable than that it accords to its own investors or to investors of any third State.

Article VII. Expropriation

(1) Investments or returns of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for a public purpose, under due process of law, in a non-discriminatory manner and against prompt, adequate and effective compensation. Such compensation shall be based on the genuine value of the investment expropriated immediately before the expropriation or at the time the proposed expropriation became public knowledge, whichever is the earlier, shall be payable from the date of the expropriation at a normal commercial rate of interest, shall be paid without delay and shall be effectively realizable and freely transferable.

(2) The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of its case and of the valuation of its investment in accordance with the principles set out in this Article.

Article VIII. Transfer of Funds

(1) Each Contracting Party shall guarantee to an investor of the other Contracting Party the unrestricted transfer of investments and returns. Without limiting the generality of the foregoing, each Contracting Party shall also guarantee to the investor the unrestricted transfer of:

- (a) Funds in repayment of loans directly related to a specific investment;
- (b) The proceeds of the total or partial liquidation of any investment;
- (c) Wages and other remuneration accruing to a citizen of the other Contracting Party who was permitted to work in connection with an investment in the territory of the other Contracting Party;
- (d) Any compensation owed to an investor by virtue of Articles VI or VII of this Agreement.

(2) Transfers shall be effected without delay in the convertible currency in which the capital as originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned and in accordance with the procedure established by that Contracting Party. Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer.

Article IX. Subrogation

(1) If a Contracting Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance it has entered into in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of such Contracting Party or agency thereof to any right or title held by the investor.

(2) A Contracting Party or any agency thereof which is subrogated to the right of an investor in accordance with paragraph (1) of this Article, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment concerned and its related returns. Such rights may be exercised by the Contracting Party or any agency thereof or by the investor if the Contracting Party or any agency thereof so authorizes. paragraph (1) of this Article, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment concerned and its related returns. Such rights may be exercised by the Contracting Party or any agency thereof or by the investor if the Contracting Party or any agency thereof so authorizes.

Article X. Settlement of Disputes between an Investor and the Host Contracting Party

(1) Disputes which arise within the terms of this Agreement between an investor of one Contracting Party and the other Contracting Party with regard to an investment of the former, which have not been amicably settled, 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 may be submitted to international arbitration by one of the parties to the dispute in one of the following circumstances:

- (i) Where the Contracting Party and the investor have so agreed;
- (ii) 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;

(iii) Where the final decision of the aforementioned tribunal has been made but the Parties are still in dispute.

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

(a) The International Centre for the Settlement of Investment Dispute having regard to the provisions, where applicable, of 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, (provided that both Contracting Parties are Parties to the said Convention) and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding proceedings; or Convention on the Settlement of Investment Disputes between states and Nationals of other States, opened for signature at Washington, DC on 18 March 1965, (provided that both Contracting Parties are Parties to the said Convention) and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding proceedings; or

(b) An international arbitrator or ad hoc arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law. ad hoc arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

If after a period of three months from written notification of the submission of the dispute to arbitration there is no agreement to one of the above alternative procedures, 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. The Parties to the dispute may agree in writing to modify these Rules.

(4) The arbitral tribunal shall decide the dispute in accordance with the provisions of this Agreement, with reference to the laws of the Contracting Party involved in the dispute, including its rules on conflict of laws; terms of any specific agreement concluded in relation to such an investment and principles of international law, as may be applicable. The arbitration decision shall be final and binding on both Parties.

Article XI. Consultations and Exchange of Information

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to consultations on the interpretation or application of this Agreement. Upon request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions, administrative practices or procedures, or policies of the other Contracting Party may have on investments covered by this Agreement.

Article XII. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, whenever possible, be settled amicably through consultations.

(2) If a dispute cannot be settled through consultations, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal for decision.

(3) An arbitral tribunal shall be constituted for each dispute. Within two months after receipt through diplomatic channels of the request for arbitration, each Contracting Party shall appoint one member to the arbitral tribunal. The two members shall then select a national of a third State who, upon approval by the two contracting parties, shall be appointed Chairman of the arbitral tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members of the arbitral tribunal.

(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 the necessary appointments. If the President is a national of either contracting Party or 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 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. 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 the necessary appointments. If the President is a national of either contracting Party or 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 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 determine its own procedure. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Unless otherwise agreed, the decision of the arbitral tribunal shall be rendered within six months of the appointment of the Chairman in accordance with paragraphs (3) or (4) of this Article. paragraphs (3) or (4) of this Article.

(6) Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings; the costs related to the Chairman and any remaining costs shall be borne equally by the Contracting Parties. The arbitral 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.

Article XIII. Other International Agreements

(1) When a matter is covered both by the provisions of this Agreement and any other international agreement to which both Contracting Parties are bound, nothing in this Agreement shall prevent an investor of one Contracting Party that has investments in the territory of the other Contracting Party from benefitting from the most favourable regime.

(2) If a dispute arises with respect to matters covered by the agreements referred to in paragraph 1, the investor shall choose the procedures provided for in one such agreement to govern the resolution of the dispute. paragraph 1, the investor shall choose the procedures provided for in one such agreement to govern the resolution of the dispute.

Article XIV. Application

(1) This Agreement shall apply to any investment made by an investor of one Contracting Party in the territory of the other Contracting Party before or after the entry into force of this Agreement, but the provisions of this Agreement shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment that was settled before its entry into force.

(2) The provisions of Articles VIII and X shall not apply to the investments made by natural persons who are citizens 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 original investment was admitted into its territory from abroad. Articles VIII and X shall not apply to the investments made by natural persons who are citizens 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 original investment was admitted into its territory from abroad.

Article XV. Entry Into Force

(1) 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 shall enter into force on the date of the latter of the two notifications.

(2) This Agreement shall remain in force unless either Contracting Party notifies in writing the other Contracting Party of its intention to terminate it. The notice of termination of this Agreement shall become effective one year after it has been received by the other Contracting Party. In respect of investments or commitments to invest made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles I to XIV inclusive of this Agreement shall remain in force for a period of fifteen years. Articles I to XIV inclusive of this Agreement shall remain in force for a period of fifteen years.

Barbara McDougall

FOR THE GOVERNMENT OF CANADA

Guido Di Tella

FOR THE GOVERNMENT OF THE REPUBLIC OF ARGENTINA