Agreement between the Government of the Kingdom of Denmark and the Government of the Republic of Argentina concerning the Promotion and Reciprocal Protection of Investments

Preamble

The Government of the Kingdom of Denmark and the Government of the Republic of Argentina, hereinafter referred to as the Contracting Parties,

DESIRING to strengthen the traditional ties of friendship between their countries, to extend and intensify the economic relations between them, particularly with respect to investments by the investors of one Contracting Party in the territory of the other Contracting Party,

RECOGNIZING that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development ofthe Contracting Panies, and that fair and equitable treatment of investments will serve this aim,

HAVE agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" means, in conformity with the laws and regulations of the Contracting Party in whose territory an investment is made, every kind of asset connected with economic activities, including joint ventures, invested by an investor of one Contracting Party in the territory of the other Contracting Party, in accordance with the latters laws. It includes in particular, though not exclusively:

(a) movable and immovable property, as well as any other property rights in respect of every kind of asset.

(b) shares, stocks and other kinds of participation in companies and joint ventures,

(c) title to money and claims, or to any performance having an economic value; loans only being included when they are directly related to a specific investment,

(d) intellectual property rights including in particular copyrights, patents, industrial designs, trademarks, trade names, technical processes, know-how and good-will,

(e) business concessions conferred by law or under contract including concessions to search for, cultivate, extract or exploit natural resources,

(f) returns which are reinvested.

(2) Goods that under a leasing agreement, in relation to an investment under this Agreement, are placed at the disposal of a lessee in the territory of one Contracting Party in conformity with its laws and regulations shall be treated not less favourably than an investment.

(3) The term "returns" shall mean the amounts yielded by an investment and in particular though not exclusively, include profits, interests, capital gains, dividends, royalties or fees.

(4) The term "investor" shall mean with regard to either Contracting Party any of the following making an investment in the territory of the other Contracting Party:

(i) any natural person who is a national of either Contracting Party in accordance with its law,

(ii) any entity established in accordance with, and recognized as a legal person by the law of one Contracting Party, and having its seat in the territory of that Contracting Party, such as corporations, firms, associations, development finance institutions, foundations or similar entities irrespective of whether their liabilities are limited and whether or not their activities are directed at profit.

(5) The provisions of this Agreement shall not apply to the 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.

(6) The term "territory" shall mean in respect of each Contracting Party the Territory under its sovereignty and the sea and sub· marine areas over which the Contracting Party exercises, in conformity with international law, sovereignty, sovereign rights or jurisdiction.

Subject to Article 14 the present Agreement shall not apply to the Faroe Islands and Greenland.

(7) The term "without delay" shall be deemed to be fulfilled if a transfer is made within such period as is normally required by international financial custom and not later, in any case, than two months.

(8) "Fair and equitable treatment" shall mean treatment that conforms with the standards of international law.

Article 2. Promotion of Investments

Each Contracting Party shall admit investments by investors of the other Contracting Party in accordance with its laws and regulations. and promote such investments as far as possible.

Article 3. Treatment of Investments and Investors

(1) Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair. by arbitrary or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors. To this end, it shall be understood that the treatment accorded to investments of investors by a Contracting Party shall conform to the treatment of investments of investors of the said Contracting Party or investments of investors of any third State, whichever may be more favourable to the investor concerned.

(2) Each Contracting Party shall accord to such investments full legal security and protection, which in any case shall not be less than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.

(3) Each Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment or returns, to treatment not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investor concerned.

(4) With respect to taxes, fees, charges, fiscal deductions and exemptions, each Contracting Party shall accord to investors of the other Contracting Party with respect to their investments in its territory treatment not less favourable than that accorded to its own investors or to those of any third State, whichever is more favourable to the investor concerned.

Article 4. Exceptions

(1) The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the Investors of either Contracting Party or of any third State 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:

(a) any existing or future customs union, free trade area, common market, regional economic organizations, 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 including agreements for avoidance of double taxation or any domestic legislation relating wholly or mainly to taxation.

(2) The provisions of this Agreement shall neither be construed so as to extend to investor of the other Contracting Party 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 3rd June 1988.

(3) 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 contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that it is more favourable, prevail over the present Agreement.

Article 5. Expropriation and Compensation

Investments of investors 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 the expropriating Party, under due process of law, on a basis of non discrimination and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall be made without delay and shall include interest at normal commercial rate until the date of payment, be effectively realizable in convertible currency and be freely transferable. The investor concerned shall have a right to prompt review of the legality of the measure taken against the investment and of its valuation in accordance \vith the principles set out in this paragraph by due process of law in the territory of the Contracting Party making the expropriation.

Article 6. Compensation for Losses

Investors 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, 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 favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investor concerned.

Article 7. Repatriation and Transfer of Capital and Returns

(1) Each Contracting Party shall without delay allow the transfer of:

(a) the invested capital or the proceed of total or partial liquidation or alienation of the investment,

(b) the returns realized,

(c) the payments made for the reimbursement of loans and interests due as defined in Article (1) (c),

(d) earnings of non-resident natural persons involved in the investment.

(2) Transfers of currency pursuant to Article 5, 6 and section (I) of this Article shall be made in the convertible currency in which the investment has been made or in any convertible currency if so agreed by the investor, at the exchange rate applicable on the date of transfer and in accordance with the laws and regulations of the transferring Contracting Party.

Article 8. Subrogation

If one Contracting Party or its designated agency makes payment to its own investors under a guarantee, covering non-commercial risks, it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) the assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or to its designated agency as well as

(b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

Article 9. Disputes between a Contracting Party and an Investor

(1) Any dispute which arises within the terms of this Agreement concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.

(2) If the dispute cannot thus be settled within six months, following the date on which the dispute has been raised by either

party, it may be submitted, upon request of the investor, either to:

- the competent tribunal of the Contracting Party in whose territory the investment was made, or

- international arbitration according to the provisions of paragraph (3).

Where an investor has submitted a dispute to the aforementioned competent tribunal of the Contracting Party where the investment has been made or to international arbitration, this choice shall be final.

(3) In case of international arbitration, the dispute shall be submitted, at the investor's choice, either to :

- 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, once both Contracting Parties become members thereof. As far as this provision is not complied with, each Contracting Party consents that the dispute be submitted to arbitration under the regulations of the ICSID Additional Facility for the Administration of Conciliation, Arbitration. and Fact-Finding Proceedings, or

- an arbitration tribunal set up from case to case in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(4) The arbitration tribunal shall decide in accordance with the provisions of this Agreement, the laws of the Contracting Party involved in the dispute, including its rules on conflict of law, the terms of any specific agreement concluded in relation to such an investment and the relevant principles of international law.

(5) The arbitral decisions shall be final and binding for the parties in the dispute. Each Contracting party shall execute them in accordance with its laws.

Article 10. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled through negotiations between the Contracting Parties.

(2) If such a dispute cannot be settled within three months from the request for negotiations, it shall upon the request of either Contracting Party, be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case, in the following way:

- Within three months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State, who on approval by the Contracting Panies shall be appointed Chainnan of the tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two members.

(4) If within any of the periods specified 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 apply the provisions of this Agreement, and the principles of international law. It shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The arbitral tribunal determines its own procedure.

(6) 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.

Article 11. Amendments

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such manner as may be 'agreed between the Contracting Parties. Such amendments shall enter into force when the Contracting Parties have notified each other that the constitutional requirements for the entry into force have been fulfilled.

Article 12. Consultations

Either Contracting Party may propose the other Party to consult on any matter affecting the application of the present Agreement. These consultations shall be held at a place and at a time agreed upon through diplomatic channels

Article 13. Applicability of this Agreement

The provisions of this Agreement shall, from the date of its entry into force, also apply to investments which have been made before that date, but shall not apply to any disputes in existence at that date or to claims based on actions or events having taken place before that date.

Article 14. Territorial Extension

At the time of entry into force of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to the Faroe Islands and Greenland as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 15. Entry Into Force

This Agreement shall enter into force thirty days after the date on which the Governments of the Contracting Parties have notified each other that the constitutional requirements for the entry into force of this Agreement have been fulfilled.

Article 16. Duration and Termination

(1) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, after the expiry of the initial period of ten years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

(2) 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 10 shall remain in force for a further period of ten years from that date.

DONE in duplicate at Copenhagen on 6 November, 1992, in the Danish, Spanish and English languages, all texts being equally authentic.

In the case of divergence of interpretation, reference shall be made to the English text.

For the Government of the Kingdom of Denmark

Henrik Wohlk

For the Government of the Republic of Argentina

Alieto Guadagni