AGREEMENT BETWEEN THE GOVERNMENT OF THE ARGENTINE REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Argentine Republic and the Government of the Republic of Indonesia (hereinafter referred to as the "Contracting Parties");

Bearing in mind the fiendly and cooperative relations existing between the two countries and their peoples;

Desiring to intensify economic cooperation between both countries;

Intending to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion and protection of such investments on the basis of an agreement will be conducive to the stimulation of investment activities and will increase prosperity in both States. Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term “investment” means, in conformity with the laws and regulations of the Contracting Party in whose territory the investment is made, every kind of asset 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 in particular, though not exclusively:

(a) movable and immovable property as well as any other property rights, such as mortgages, liens and pledges;

(b) shares, stocks and any other kind of participation in companies;

(c) title to money and claims to 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 goodwill;

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

(2) The term "investor" means:

(a) any natural person who is a national of a Contracting Party in accordance with its laws;

(b) any legal person constituted in accordance with the laws and regulations of a Contracting Party and having its seat in the territory of that Contracting Party.

(3) The term “returns” means all amounts yielded by an investment and in particular, though not exclusively, includes profit, dividends, interests, capital gains, royalties or fees.

(4) The term “territory” means:

(a) In respect of the Argentine Republic:

The national territory of the Argentine Republic including the territorial sea and those maritime areas adjacent to the outer limit of the territorial sea of the national territory, over which the Argentine Republic may, in accordance with international law, exercise sovereign rights or jurisdiction.

(b) In respect of the Republic of Indonesia:

The territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention of the Law of the Sea, 1982.

Article 2. Promotion and Protection of Investments

(1) Either Contracting Party shall encourage and create favourable conditions for investment by investors of the other Contracting Party to invest in its territory, and shall admit such capital in accordance with its laws and regulations.

(2) Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full legal protection and security in the territory of the other Contracting Party.

Article 3. Treatment of Investments

(1) Each Contracting Party, once it has admitted investments in its territory by investors of the other Contracting Party, shall grant them treatment which is no less favourable than that accorded to investments by investors of any third State or, subject to the provisions contained in the Protocol of this Agreement, to investments by its own investors.

(2) Notwithstanding the provisions of paragraph (1) of this Article, the treatment of the most favoured nation shall not apply to any treatment, preference or privilege which either Contracting Party accords to investors of a third State because of its membership in, or association with a free trade area, customs union, common market or similar agreement.

(3) The provisions of paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from an international agreement relating wholly or mainly to taxation.

Article 4. Expropriation

Neither of the Contracting Parties shall take any measure of nationalization or expropriation or any other measure having the same effect against investments in its territory belonging to investors of the other Contracting Party, unless the 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. Such compensation shall be calculated in conformity with internationally acknowledged standard methods. It shall amount to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation became public knowledge, shall include interest from the date of expropriation at a normal commercial rate, shall be paid without delay and shall be effectively realizable and freely transferable.

Article 3. Compensation for Losses

Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State.

Article 6. Transfers

(1) Each Contracting Party shall grant to investors of the other Contracting Party the unrestricted transfer of all payments related to investments 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, interests, dividends and other current income;

(c) funds in repayment of loans as defined in Article (1), paragraph (1), (c);

(d) royalties and fees;

(e) the proceeds from a total or partial sale or liquidation of an investment;

(f} compensations provided for in Articles (4) and (3);

(g) the earnings of nationals 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 freely convertible currency, at the normal applicable exchange rate at the date of the transfer, 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.

Article 7. Subrogation

(1) If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee or insurance against non-commercial risks it has contracted in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favor of the former Contracting Party or its designated agency to any right or title held by the investor. The Contracting Party or its designated agency shall within the limits of subrogation, be entitled to exercise the same rights which the investor would have been entitled to exercise.

(2) In the case of subrogation as defined in paragraph (1) above, the investor shail not pursue a claim unless authorized to do so by the Contracting Party or its designated agency.

Article 8. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established thereafter 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 9. Settlement of Disputes between the Contracting Parties

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

(2) If a dispute between the Contracting Parties cannot thus be settled within six months from the beginning of the 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 two 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 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 reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. 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 in principle 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. The tribunal shall determine its own procedure.

Article 10. Settlement of Disputes between an Investor and the Host Contracting Party

(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, as far as 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;

- 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 National of other States opened for signature in Washington on 18 March 1965, once both Contracting Parties herein 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 IcsipD 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 relevant principles of international law.

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

Article 11. The Applicability of this Agreement

(1) This Agreement shall apply to investments by investors of the Argentine Republic in the territory of the Republic of Indonesia which have been granted admission in accordance with the law No. 1 of 1967 concerning Foreign Investment and any law amending or replacing it, and to investments by investors of the Republic of Indonesia in the territory of the Argentine Republic which have been granted admission in accordance with its laws and regulations.

(2) This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agreement, but the provisions of this Agreement shall not apply to any dispute, claim or difference which arose before its entry into force.

Article 12. Consultation and Amendment

(1) Either Contracting Party may request that a consultation be held on any matter that both Contracting Parties agree to discuss.

(2) This Agreement may be amended at any time, if its deems necessary, by mutual consent.

Article 13. Entry Into Force, Duration and Termination

(1) This Agreement shail enter into force on the first day of the third month following the date on which the Contracting Parties notify each other in writing that their constitutional requirements for the entry into force of this Agreement have been fulfilled. It shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

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

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Buenos Aires, on November 7, 1995, in the Spanish, Indonesian and English languages, the three texts being equally authentic. In case there is any divergence of interpretation of the provisions, the English text shall, however, prevail.

For the Government of the Argentine Republic

Guido DI TELLA

For the Government of the Republic of Indonesia

Ali ALATAS

Protocol

At the time of the signing of the Agreement concerning the promotion and protection of investments between the Government of the Argentine Republic and the Government of the Republic of Indonesia, the undersigned have, in addition, agreed on the following provisions which shall be regarded as an integral part of the said Agreement:

A.. With Reference to Article 3:

The Government of the Republic of Indonesia, while confirming the grant in its territory of the most-favoured-nation treatment to investments by investors from the Argentine Republic, reserves its right to maintain limited exceptions to national treatment of such investments in view of the fact that there are separate laws governing investments in Indonesia, i.e.:

1. Law No. 1 of 1967 concerning Foreign Investment.

2. Law No. 6 of 1968 concerning Domestic Investment.

Full national treatment of investments by investors from the Republic of Argentina in Indonesia will be granted in so far as further amendments of Law No. 1 of 1967 allow for such treatment.

Notwithstanding the above statement, the Government of the Republic of Indonesia, in accordance with the existing laws and regulations, extends to investments by investors of the Argentine Republic the following incentives, privileges and preferences which are also accorded. to its own investors:

1. Fiscal

a. Exemption from import duties

- on importation of capital goods, namely machinery, equipment, spare parts and auxiliary equipment.

- on importation of the raw materials for the purpose of two years full production.

b. Exemption from Income Tax (PPh) on importation of capital goods up to the date of commercial production and for raw materials exemption is given for one year from the date of commercial production.

c. Exemption from Transfer of Ownership fee for ship registration certificate made for the first time in Indonesia.

d. Deferment of payment of Value Added Tax (PPN) and Sales Tax on Luxury Goods (PPN BM) on importation of capital goods directly related to the production process. It does not include the spare parts, the lifetime of which is more than one year.

e. Postponement of payment of Value Added Tax (PPN) and Sales Tax on Luxury Goods (PPn BM) on importation of capital goods by foreign or domestic investment companies engaged in the field of : hotel, office building, shopping center and public transportation. Postponement shall apply for a period of up to five years counted from the date of commercial operation of the company concerned.

2. Export

a. Restitution (drawback) of import duties and import duties surcharge on importation of goods and materials for manufacturing export products.

b. Exemption from Value Added Tax and Sales Tax on luxury goods and materials purchases domestically to be used in the exports products.

c. Export credits are available to any national and joint venture company throughout Indonesia.

d. The company can import raw materials required regardless of the availability of comparable domestic products.

B.. With Reference to Article 11

The scope of the Agreement in Article 11 is limited to investments which have been granted admission in the territory of Indonesia in accordance with Law No. 1 of 1967, concerning Foreign Investments or with any law amending or replacing it. However, this scope needs to be broadened to cover other sectors outside those at present covered by Article 11 and efforts shall be made by the Indonesian authorities concerned in order to have those sectors also covered by this Agreement. As such progress takes place, this Agreement shall automatically cover these other sectors.

C.. With Reference to Article 1 Paragraph (2) (a)

The provisions of this Agreement shall not apply to the investments made by natural persons who are nationals of the Republic of Indonesia in the territory of Argentina if such persons have, at the time of the investment, been domiciled in the territory of the latter for more than two years, unless it is proved that the investment was admitted into its territory from abroad.

D.. With Reference to Article 3

The provisions of paragraph (1) of this Article shall not be construed so as to extend to investors 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 Argentine Republic with the Republic of Italy on 10 December 1987 and with the Kingdom of Spain on 3 June 1988.

DONE in duplicate at Buenos Aires, on November 7, 1995, in the Spanish, Indonesian and English languages, the three texts being equally authentic. However, in case there is any divergence of interpretation the English text shall prevail.

For the Government of the Republic of Argentina

For the Government of Republic of Indonesia