Agreement between the Government of the Kingdom of Sweden and the Government of the Republic of Argentina on the Promotion and Reciprocal Protection of Investments

The Government of the Kingdom of Sweden and the Government of the Republic of Argentina,

Desiring to intensify, in conformity with the principles of international law, economic cooperation to 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,

Recognizing that the promotion and protection of such investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

Have agreed as follows:

Article 1. Definitions

(1) The term "investment" shall comprise every kind of asset, invested by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include un particular, though not exclusively:

(a) Movable and immovable property as well as any other property rights, such as mortgage, lien, pledge, usufruct and similar rights;

(b) Shares and other kinds of interest in companies

(c) Title to money which is directly related to specific investment or to any performance under contract having an economic value;

(d) Patents, other industrial property rights, technical processes, trade names, know-how and other intellectual property rights as well as good-will; and

(e) Business concessions conferred by law, administrative decisions or contracts, including concessions to search for, cultivate, extract or exploit natural resources.

The meaning and scope of the assets above mentioned shall be determined by the laws and regulations of the Contracting Party in whose territory the investment was made.

No alteration of the legal form under which the assets have been invested or reinvested shall affect their qualification as investments according to this Agreement.

(2) Goods that under a leasing agreement are placed at the disposal of a lessee in the territory of one Contracting Party by a lessor being a national of the other Contracting Party or a legal person having its seat in the territory of that Contracting Party, shall be treated as an investment.

(3) The term "investor" shall mean:

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

(b) Any legal person constituted under the law in force in either Contracting Party and having its seat in the territory of that Contracting Party; and

(c) Any legal person having its seat in a third country with a predominant interest of an investor of either Contracting Party.

(4) The term "territory" shall mean the national territory of either Contracting Party as well as those maritime areas adjacent

to the outer limit of the territorial sea of the national territory, over which the Contracting Party concerned has, under its own legal system and in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

(2) Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof, as well as the acquisition of goods and services and the sale of their production, through unjustified or discriminatory measures.

(3) Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals ‘working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

(4) The investments made in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, enjoy the full protection of this Agreement.

Article 3. Most-favoured-nation Provisions

(1) Each Contracting Party shall apply to investments in its territory by investors of the other Contracting Party a treatment which is no less favourable than that accorded to investments by investors of third States.

(2) Notwithstanding the provisions of Paragraph (1) of this Article, a Contracting Party which has concluded an agreement regarding the formation of a customs union, a common market, a free-trade area or an integration area shall be free to grant more favourable treatment to investments by investors of the State or States which are also parties to the aforesaid agreements, or by investors of some of these States.

(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 any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. Expropriation and Compensation

(1) Neither of the Contracting Parties shall take any direct or indirect measure of nationalization or expropriation or any other measure having the same nature or the same effect against investments in its territory belonging to investors of the other Contracting Party, unless the following conditions are complied with:

(a) The measures are taken in the public interest and under due process of law;

(b) The measures are distinct and not discriminatory; and

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be transferable without delay in a freely convertible currency.

(2) The provisions of Paragraph (1) of this Article shall also apply to the income from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

(3) 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 ‘investors of any third State. Resulting payments shall, whenever possible, be transferable without delay in a freely convertible currency.

Article 5. Transfers

(1) Each Contracting Party shall allow the transfer in a freely convertible currency of:

(a) The income accruing from any investment by an investor of the other Contracting Party, including in particular, though not exclusively, capital gains, profit, interests, dividends, royalties, licence fees and other fees;

(b) The proceeds from a total or partial sale or liquidation of any investment by an investor of the other contracting party

(c) Funds in repayment of loans as defined in Article 1 Paragraph (1)(c) of this Agreement; and

(d) The earnings of individuals, not being its nationals, who are allowed to work in connection with an investment in its territory, and other amounts appropriated for the coverage of expenses connected with the management of the investment.

(2) Transfers shall be effected without delay and

In accordance with the procedures established by the Contracting Party in whose territory the investment was made. In any event, the transfer shall be allowed within a period of time not exceeding two months from the date on which the request for the transfer is made. (3) Subject to the provisions of Article 3, the Contracting Parties undertake to accord to transfers referred to in Paragraph (1) of this Article a treatment no less favourable than that accorded to transfers originating from investments made by investors of any third State.

Article 6. Subrogation

If a Contracting Party or one of its organs makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 7, recognize the transfer of any right or title of such an investor to the former Contracting Party or its organ and the subrogation of the former Contracting Party or its organ to any such right or title.

Article 7. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations between the Governments of the Contracting Parties through the diplomatic channel.

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

(3) The arbitration tribunal shall be set up from case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State as their chairman, to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting Party has advised the other Contracting Party of its wish to submit the dispute to an arbitration tribunal.

(4) If the time limits referred to in Paragraph (3) of this Article have not been complied with, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

(5) If the President of the International Court of Justice is prevented from discharging the function provided for in Paragraph (4) of this Article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

(6) The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties. Each Contracting Party shall bear the cost of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings; the cost of the chairman as well as any other costs shall in principle be borne in equal parts by the two Contracting Parties. The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 8. Disputes between an Investor and a Contracting Party

(1) Any dispute concerning an investment which arises within the terms of this Agreement between an investor of one of the Contracting Parties 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 matter of the dispute has been raised by either party, it may be submitted upon request of the investor either to

- The national jurisdiction of the Contracting Party in whose territory the investment was made, or

- International arbitration according to the provisions of Paragraph (3) of this Article. Once an investor has submitted a dispute to the aforementioned national jurisdiction or to international arbitration, the choice of one or other of these procedures 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 law of the Contracting Party involved in the dispute, including its rules on conflict of laws, the terms of any specific agreement concluded in relation to such an investment and the principles of international law.

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

Article 9. Application of National and International Law

This Agreement shall in no way restrict the rights and benefits which an investor of one Contracting Party enjoys under national or international law in the territory of the other Contracting Party.

Article 10. Application of the Agreement

This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before its entry into force.

Article 11. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force on the day the Governments of the two Contracting Parties notify each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.

(2) This Agreement shall remain in force for a period of ten years. Thereafter it shall remain 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.

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

In witness whereof the undersigned, duly authorized to this effect, have signed this Agreement.

Done at Stockholm on 22 November 1991/in duplicate in the Swedish, Spanish 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 Kingdom of Sweden For the Government of the Republic of Argentina

[Signatures]

On signing the Agreement between the Government of the Kingdom of Sweden and the Government of the Republic of Argentina on the Promotion and Reciprocal Protection of Investments, the undersigned, duly authorized to this effect, have agreed on the following provisions, which constitute an integral part of the said Agreement.

A. With reference to Article 1 Paragraph (3) (a):

The Agreement shall not be applicable to investments in the Republic of Argentina by natural persons, who are nationals of the Kingdom of Sweden if, at the time of the investment, such persons have been domiciled for more than two years in the Republic of Argentina, except when it is proved that the investment originates abroad.

B. With reference to Article 1 Paragraph (3) (c):

The Contracting Party in whose territory the investments are undertaken may require the proof of the predominant interest invoked by the investors of the other Contracting Party. The following facts, inter alia, shall be accepted as evidence of the predominant interest:

i) The status of an affiliate of a legal person of the other Contracting Party;

ii) A direct or indirect participation in the capital of a legal person which allows an effective control as, in particular, a direct or indirect participation higher than 50% of the capital;

iii) The direct or indirect possession of the votes necessary to obtain a dominant position in the company organs or to influence the functioning of the legal person in a decisive way.

C. With reference to Article 3:

The following shall not be invoked as a basis for most-favoured-nation treatment:

1. The treatment granted to investments under the bilateral agreements, which Sweden has concluded with the Ivory Coast on 27 August 1965, with Madagascar on 2 April 1966 and with Senegal on 24 February 1967; and

2. The treatment granted to investments made within the frame of concessional financing (soft credits) provided for in bilateral agreements concluded by the Republic of Argentina with Italy on 10 December 1987 and with Spain on 3 June 1988.

D. Any transfer referred to in this Agreement shall be effected at the applicable exchange rate in each case. Such exchange rate shall not differ more than marginally from the cross rate of the exchange rates the International Monetary Fund (IMF) would apply on the date the transfer is made if it exchanged the money of the countries concerned for Special Drawing Rights (S.D.R.).

E. In order to create favourable conditions for assessing the financial position and results of activities related to investments in the territory of one of the Contracting Parties, this Contracting

Party shall - notwithstanding its own national requirements for bookkeeping and auditing - permit the investment to be subject also to bookkeeping and auditing according to standards which the investor is subjected to by his national requirements or according to internationally accepted standards (e.g. International Accounting Standards (IAS) drawn up by the International Accounting Standards Committee (IASC). The results of such accountancy and audit shall be freely transferable.

Done at Stockholm on 22 November 1991/in duplicate in the Swedish, Spanish 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 Kingdom of Sweden For the Government of the Republic of Argentina

[Signatures]