AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF PERU AND THE GOVERNMENT OF THE REPUBLIC OF ARGENTINA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Argentine Republic and the Government of the Republic of Peru, hereinafter referred to as the "Contracting Parties";

Desiring to intensify economic cooperation for mutual benefit of both countries;

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

Recognizing that the promotion and protection of investments by such an agreement can stimulate the private business initiative and will increase prosperity in both countries.

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" means, in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made, every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with this Agreement. Includes in particular, though not exclusively:

a) ownership of movable and immovable property, as well as other rights in rem such as mortgages, sureties and pledge rights;

b) shares, company quotas and any other type of participation in companies or "joint ventures";

(c) debt securities and entitlements to benefits with an economic value; loans shall be included only where they are directly linked to a specific investment

(d) intellectual property rights including, in particular, copyright, patents, industrial designs, trademarks, trade names, know-how, technological processes and key rights;

e) economic concessions granted by law or by contract, including concessions for the prospection, cultivation, extraction or exploitation of natural resources.

(2) The term investor "means:

a) Any natural person who is a national of one of the Contracting Parties, in accordance with its laws.

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

c) Any legal person established in accordance with the law of any country which is effectively controlled by natural or legal persons of the other contracting party.

(3) The term "proceeds" means all amounts resulting from an investment made in accordance with this Agreement, such as interests, profits, dividends, royalties and other revenue streams.

(4) The term "territory" means, in the areas within the land and maritime boundary, marine and submarine areas in which the contracting parties exercise sovereign rights and jurisdiction in accordance with their respective laws and international law.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and shall admit in accordance with its laws and regulations.

(2) Investments made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter shall enjoy the full protection of this Agreement.

(3) Each Contracting Party shall at all times fair and equitable treatment to investments of investors of the other Contracting Party and shall not affect their management, maintenance, use, enjoyment or disposal through unjustified or discriminatory measures.

Article 3. National Treatment and Most-favoured-nation Clause

(1) Each Contracting Party, once admitted investments of investors in its territory of the other contracting party, they agree upon a treatment no less favourable than that accorded to its own of investments or investors to investors of third States, whichever is more favourable to the investments of investors of the other contracting party.

(2) Without prejudice to paragraph (1), the most-favoured-nation Treatment shall not apply to privileges which either Contracting Party accords to investors of a third State because of its association or participation in a free trade area, customs union, common market or regional agreement.

(3) The provisions of paragraph (1) of this Article shall not be construed 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 international agreement relating wholly or partially to taxation matters.

Article 4. Expropriation

(1) Investments of investors of one Contracting Party shall enjoy full legal protection and security in the territory of the other contracting party.

(2) Neither of the Contracting Parties shall take measures of expropriation or nationalization or any other measures having the same effect against investments in its territory and belonging to investors of the other contracting party unless the measures are taken for reasons of national security or 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, effective and adequate compensation.

(3) The amount of such compensation shall correspond to the market value of the expropriated investment was immediately before the expropriation or before the impending expropriation became public, 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.

(4) The expropriation or equivalent measure, the amount of compensation, as well as any other matter may be reviewed by a regular judicial procedure according to the laws and regulations of the Contracting Party where the measure.

Article 5. Compensation for Losses

Investors of one Contracting Party who suffer losses of their investments in the territory of the other contracting party owing to war or other armed conflicts, a national state of emergency, revolt, riot or insurrection shall be accorded, with respect to restitution, indemnification, compensation or other relief, a treatment no less favourable than that accorded to its own investors to investors or of any third State. resulting payments shall be freely transferable.

Article 6. Transfers

(1) Each Contracting Party shall accord to investors of the other Contracting Party the free transfer of payments related to investments and in particular, though not exclusively:

a) capital of the investment and reinvestments and additional amounts necessary for the maintenance and development of the investment;

b) profits;

c) funds in repayment of loans as defined in article 1, paragraph (1), (c), as well as their interests.

d) proceeds of sale or liquidation of all or part of an investment;

e) compensation or reparation provided in articles 4 and 5;

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

(2) Transfers shall be effected without delay in a freely convertible currency at the rate of exchange applicable on the date of transfer pursuant to the procedures established by the Contracting Party in whose territory the investment was made, which shall not affect the substance of the rights under this article.

Article 7. Subrogation

(1) If a Contracting Party or an agency designated by it made a payment to an investor by virtue of a guarantee or insurance that has engaged in relation to an investment against non-commercial risks, the other Contracting Party shall recognize the validity of the subrogation in favour of that Contracting Party or agency to any right or title of the investor. the Contracting Party or its authorized agency shall, within the limits of subrogation to exercise the rights which the investor would have been entitled to exercise. for the transfer of payments under the rights governed subrogees mutatis mutandis Article 6 of this Agreement.

(2) In the case of subrogation, as defined in paragraph (1) of this Article, the investor shall not pursue a claim unless he is authorized to do so by the contracting party or its agency.

Article 8. Implementation of the Agreement

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

(2) The provisions of this Agreement shall continue to be fully applicable even in cases provided for in article 63 of the Vienna Convention on the Law of Treaties of 23 May 1969.

Article 9. Implementation of other Rules

If the provisions of the law of either Contracting Party or obligations under international law existing or future between the Contracting Parties in addition to this Convention or an agreement between an investor of one Contracting Party and the other Contracting Party, contain rules whether general or specific that accorded to the investments made by investors of the other contracting party to a more favourable treatment than is provided for by the present Agreement, such rules shall prevail over this agreement to the extent that they are more favourable.

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

(1) Any dispute concerning the provisions of this agreement between an investor of one Contracting Party and the other Contracting Party, it shall, as far as possible, be settled by amicable consultations.

(2) If the dispute cannot be settled within six months from the date on which it was raised by one or other party, it may be submitted at the request of the investor:

- to the competent courts of the Contracting Party in whose territory the investment was made; or

- to international arbitration under the conditions described in paragraph (3).

Once the investor has submitted the dispute to the courts of the Contracting Party concerned or to international arbitration, the choice of one of these procedures is final.

(3) In the event of recourse to international arbitration, the dispute may be brought, at the choice of the investor:

- International Centre for Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965, when each State Party to this Agreement has acceded to it. as long as this requirement is not fulfilled, each Contracting

Party consents that the dispute be submitted to arbitration under the ICSID Additional Facility Rules for the administration of conciliation, arbitration of fac-finding proceedings.

- to an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(4) The arbitral tribunal shall decide on the basis of the provisions of this Convention on the Law of the Contracting Party which is a party to the dispute including its rules on the Conflict of Laws, to the terms of any specific agreement concluded in relation to the investment as well as the principles of international law.

(5) The arbitral awards shall be final and binding on the parties to the dispute. each Contracting Party shall in accordance with its legislation.

Article 11. Settlement of Disputes between the Contracting Parties

(1) Any dispute arising between the contracting parties concerning the interpretation or application of this Agreement, as far as possible, be settled through diplomatic channels.

(2) If a dispute between the contracting parties cannot be settled in this way within six months after the beginning of negotiations, the dispute shall be submitted, at the request of either contracting party 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. These two members shall select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this article shall not make the necessary appointments, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to proceed with the necessary appointments. If the President is a national of one of the contracting parties or if for any reason is 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 of the Contracting Parties or if he is found also prevented from discharging the function, the said member of the International Court of Justice who is next in order of precedence and 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 costs of the 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 principle in equal parts by the Contracting Parties. However, the arbitral tribunal shall determine its decision that a higher proportion of costs 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.

(6) Neither Contracting Party shall give diplomatic protection or to an international claim by a dispute which one of its investors and the other Contracting Party be submitted to an arbitral tribunal or a competent national court of the host State of the investment, such as required by article 10 of this Agreement unless the other contracting party does not comply with the award or judgment.

Article 12. Entry Into Force , Duration and Termination

(1) This Agreement shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that they have completed their respective constitutional requirements for entry into force of this Agreement. They shall be valid for an indefinite and may only be denounced by either contracting parties after the first ten years of its Entry into Force. the withdrawal shall take effect 12 months after one of the Contracting Parties notifies in writing to the other contracting party of its intention to terminate it.

(2) With respect to investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of articles 1 to 11 shall remain in force for a period of 15 years from that date.

Done at Lima, on the tenth day of November in the year nineteen hundred and ninety-four in two original copies, in the Spanish language, both texts being equally authentic.

For the Government of the Republic of Peru

EFRAIN GOLDENBERG

PRESIDENT OF THE COUNCIL OF MINISTERS OF FOREIGN AFFAIRS,

For the Government of the Republic of Argentina

GUIDO DI TELLA

MINISTERS AND MINISTER OF INTERNATIONAL TRADE, WORSHIP AND FOREIGN AFFAIRS

Protocol

In the act of signing the Agreement between the Government of the Republic of Peru and the Government of the Republic of Argentina on the Promotion and Reciprocal Protection of Investments, the undersigned have further agreed to the following provisions, which constitute an integral part of this Agreement:

Ad. Article 1, Paragraph (2), (c)

The Contracting Party in whose territory investments take place may request proof of control invoked by investors of the other Contracting Party. Any of the following facts, among others, may be considered as evidence of control:

(i) a percentage of direct or indirect shareholding in the capital of a legal person which permits effective control, such as, in particular, a shareholding of more than half;

(ii) direct or indirect holding of a such number of votes as makes it possible to exercise a determining position in corporate bodies or to influence decisively the functioning of the legal person.

Ad. Article 3

The provisions of paragraph (1) of this Article shall also not be interpreted as extending to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from the bilateral agreements providing concessional financing, signed between the Argentine Republic and Italy on 10 December 1987 and with Spain on 3 June 1988.

Ad. Article 8

As far as the Argentine Republic is concerned, the provisions of this Convention shall not apply to investments made by natural persons who are nationals of the other Contracting Party, if such persons, at the date of the investment, have been domiciled for more than two years in the Argentine Republic, unless it is proved that the investment was admitted to its territory from abroad.

For the Government of the Republic of Peru

EFRAIN GOLDENBERG

PRESIDENT OF THE COUNCIL OF MINISTERS OF FOREIGN AFFAIRS,

For the Government of the Republic of Argentina

GUIDO DI TELLA

MINISTERS AND MINISTER OF INTERNATIONAL TRADE, WORSHIP AND FOREIGN AFFAIRS