

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE ARGENTINE REPUBLIC AND THE KINGDOM OF SPAIN ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Argentine Republic and the Kingdom of Spain, hereinafter referred to as “the Parties”,

Desiring to intensify economic cooperation for the economic benefit of both countries,

Intending to create favourable conditions for investments made by investors of either State in the territory of the other State,

Recognizing that the promotion and protection of investments in accordance with this Agreement will encourage initiatives in this field,

Have agreed as follows:

Article I

DEFINITIONS

1. For the purposes of this Agreement, the term “investors” shall mean:

(a) Individuals having their domicile in either Party and the nationality of that Party, in accordance with the agreements in force on this matter between the two countries;

(b) Legal entities, including companies, groups of companies, trading companies and other organizations constituted in accordance with the legislation of that Party and having their main office in the territory of that Party.

2. The term “investments” shall mean any kind of assets, such as property and rights of every kind, acquired or effected in accordance with the legislation of the country receiving the investment and in particular, but not exclusively, the following:

- Shares and other forms of participation in companies;
- Rights derived from any kind of contribution made with the intention of creating economic value, including loans directly linked with a specific investment, whether capitalized or not;
- Movable and immovable property and real rights such as mortgages, privileges, sureties, usufructs and similar rights;
- Any kind of rights in the field of intellectual property, including patents, trade marks, manufacturing licenses and know-how;
- Concessions granted by law or by virtue of a contract for engaging in economic and commercial activity, in particular those related to the prospection, cultivation, mining or development of natural resources.

¹ Came into force on 28 September 1992, the date on which the Parties notified each other (on 9 July and 28 September 1992) of the completion of the required constitutional procedures, in accordance with article XI (1).

The content and scope of the rights corresponding to the various categories of assets shall be determined by the laws and regulations of the Party in whose territory the investment is situated.

No modification in the legal forum in which assets and capital have been invested or reinvested shall affect their status as investments in accordance with this Agreement.

3. The terms “investment income or earnings” shall mean returns from an investment in accordance with the definition contained in the preceding paragraph and shall expressly include profits, dividends and interest.

4. The term “territory” shall mean the land territory of each Party, as well as the exclusive economic zone and the continental shelf beyond the limits of the territorial sea of each Party over which it has or may have, in accordance with international law, jurisdiction and sovereign rights for the purposes of prospection, exploration and conservation of natural resources.

Article II

PROMOTION AND ACCEPTANCE

1. Each Party shall, to the extent possible, promote investments made in its territory by investors of the other Party and shall accept those investments in accordance with its legislation.

2. This Agreement shall also apply to capital investments made before its entry into force by investors of one Party in the territory of the other Party in accordance with the legislation of the latter Party. This Agreement shall not, however, apply to disputes or claims arising before its entry into force.

Article III

PROTECTION

1. Each Party shall protect within its territory investments made in accordance with its legislation by investors of the other Party and shall not obstruct, by unjustified or discriminatory measures, the management, maintenance, use, enjoyment, extension, sale and, where appropriate, liquidation of such investments.

2. Each Party shall endeavour to grant the necessary permits in connection with such investments and, within the framework of its legislation, shall permit the execution of manufacturing licensing contracts and of technical, commercial, financial or administrative assistance and shall grant the requisite permits in connection with the activities of consultants or experts engaged by investors of the other Party.

Article IV

TREATMENT

1. Each Party shall guarantee in its territory fair and equitable treatment of investments made by investors of the other Party.

2. In all matters governed by this Agreement, such treatment shall be no less favourable than that accorded by each Party to investments made in its territory by investors of a third country.

3. Such treatment shall not, however, extend to the privileges which either Party may grant to investors of a third State by virtue of its participation in:

- A free trade area;
- A customs union;
- A common market;
- A regional integration agreement; or
- An organization of mutual economic assistance by virtue of an agreement concluded prior to the entry into force of this Agreement, containing terms similar to those accorded by that Party to participants of the said organization.

4. The treatment granted under this article shall not extend to tax deductions or exemptions or other similar privileges granted by either Party to investors of third countries by virtue of a double taxation agreement or any other tax agreement.

5. In addition to the provisions of paragraph 2 of this article, each Party shall, in accordance with its national legislation, grant to investments made by investors of the other Party treatment no less favourable than that granted to its own investors.

Article V

NATIONALIZATION AND EXPROPRIATION

Nationalization, expropriation or any other measure having similar characteristics or effects that might be adopted by the authorities of one Party against investments made in its territory by investors of the other Party shall be effected only in the public interest, in accordance with the law, and shall in no case be discriminatory. The Party adopting such measures shall pay the investor or his assignee appropriate compensation, without undue delay and in freely convertible currency.

Article VI

TRANSFERS

1. Each Party shall grant to investors of the other Party, in respect of investments made in its territory, the possibility of transferring freely income, earnings and other payments relating to those investments and in particular, but not exclusively, the following:

- The investment income or earnings provided for in article I;
- The compensation provided for in article V;
- The proceeds from the sale or total or partial liquidation of an investment;
- The wages, salaries and other remuneration received by nationals of one Party who have obtained in the other Party the necessary work permits in connection with an investment.

2. Transfers shall take place in conformity with the relevant procedures established by each Party and in any case within six months from the date of the request. The Parties may not deny, indefinitely suspend or substantially alter this right.

3. Transfers shall be made in freely convertible currency.

Article VII

MORE FAVOURABLE TERMS

1. Where a matter is governed by this Agreement and also by another international agreement to which both Parties are a party or by general international law, the Parties and their investors shall be subject to whichever terms are more favourable.

2. Where one Party, on the basis of specific laws, regulations, provisions or contracts, has applied to investors of the other Party terms more advantageous than those provided for in this Agreement, such investors shall be accorded the more favourable treatment.

Article VIII

PRINCIPLE OF SUBROGATION

1. Where either Party has provided a financial guarantee against non-commercial risks in respect of an investment made by an investor of that Party in the territory of the other Party, the latter Party shall agree to application of the principle of subrogation of the first Party to the economic rights of the investor, but not to the real rights from the moment when the first Party makes a payment against the guarantee which it has provided.

2. As a consequence of such subrogation, the first Party shall be the direct beneficiary of any payment of compensation to which the original investor might be entitled. In no case may a subrogation apply to rights of ownership, use, enjoyment or any other real right deriving from ownership of the investment without first obtaining the relevant authorizations required under the legislation on foreign investment in force in the Party in which the investment was made.

Article IX

SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Any dispute between the Parties relating to the interpretation or application of this Agreement shall, as far as possible, be settled by diplomatic means.

2. If a dispute cannot be thus settled within six months from the start of negotiations, it shall, at the request of either Party, be submitted to an arbitral tribunal.

3. The arbitral tribunal shall be constituted as follows: each Party shall appoint an arbitrator and these two arbitrators shall nominate a national of a third State as chairman. The arbitrators shall be appointed within three months and the chairman within five months from the date on which either Party informed the other Party of its intention to submit the dispute to an arbitral tribunal.

4. If one Party has not appointed its arbitrator within the period specified, the other Party may request the President of the International Court of Justice to make the necessary appointments. If the President of the Court is a national of either Party or is otherwise prevented from acting, the appointments shall be made by the Vice-President of the Court. If the Vice-President is also a national of either Party, or is also prevented from acting, the appointment shall be made by the member of the Court next in seniority who is not a national of either Party.

5. The arbitral tribunal shall issue its ruling in accordance with the provisions of this Agreement, with those of other agreements existing between the Parties, with the laws in force in the country in which the investments were made and with the universally recognized principles of international law.

6. Unless the Parties decided otherwise, the tribunal shall determine its own procedures.

7. The tribunal shall take its decision by a majority of votes and such decision shall be final and binding on both Parties.

8. Each Party shall defray the expenses of the arbitrator appointed by it and the expenses relating to its representation in the arbitral proceedings. The remaining expenses, including those of the chairman, shall be shared equitably by the two Parties.

Article X

SETTLEMENT OF DISPUTES BETWEEN A PARTY AND INVESTORS OF THE OTHER PARTY

1. Disputes arising between a Party and an investor of the other Party in connection with investments within the meaning of this Agreement shall, as far as possible, be settled amicably between the parties to the dispute.

2. Where a dispute within the meaning of paragraph 1 cannot be settled within six months from the date on which one of the parties to the dispute instigated it, it shall, at the request of either party, be submitted to the competent tribunals of the Party in whose territory the investment was made.

3. The dispute may be submitted to an international arbitral tribunal in any of the following circumstances:

(a) At the request of either party to the dispute, when no decision has been reached on the substance 18 months after the judicial proceeding provided for in paragraph 2 of this article began or

When such a decision has been reached, but the dispute between the parties persists;

(b) When both parties to the dispute have so agreed.

4. In the cases provided for in paragraph 3 above, disputes between the parties within the meaning of this article shall be submitted by mutual agreement, unless the parties to the dispute have agreed otherwise, either to an arbitral proceeding in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965,¹ or to an *ad hoc* arbitral

¹United Nations, *Treaty Series*, vol. 575, p. 159.

tribunal established in conformity with the rules of the United Nations Commission on International Trade Law.

If, three months after the date on which one of the Parties requested the commencement of arbitral proceedings, no agreement has been reached, the dispute shall be submitted to an arbitral proceeding in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965, provided that both Parties are a party to that Convention. If they are not, the dispute shall be submitted to the *ad hoc* tribunal mentioned above.

5. The arbitral tribunal shall make its decision on the basis of this Agreement and, where appropriate, on the basis of other treaties in force between the Parties, the domestic law of the Party in whose territory the investment was made, including its norms of private international law, and the general principles of international law.

6. The arbitral award shall be binding and each Party shall execute it in accordance with its legislation.

Article XI

ENTRY INTO FORCE, RENEWAL AND TERMINATION

1. This Agreement shall enter into force on the day on which the two Governments notify each other that their respective constitutional formalities for the entry into force of international agreements have been completed. It shall remain in force for an initial period of 10 years and shall be tacitly renewed for consecutive periods of two years.

2. Either Party may terminate this Agreement by giving written notification six months before the date of its expiration.

3. In the event of termination, the provisions of articles I to X of this Agreement shall continue to apply, for a period of 10 years, to investments made before its termination.

DONE at Buenos Aires on 3 October 1991, in duplicate in the Spanish language, both texts being equally authentic.

For the Kingdom of Spain:

[Signed]

CLAUDIO ARANZADI MARTINEZ
Minister for Industry,
Trade and Tourism

[Signed]

RAFAEL PASTOR
Ambassador of Spain in Argentina

For the Argentine Republic:

[Signed]

DOMINGO CAVALLO
Minister for the Economy
and Public Works and Services

[Signed]

ALIETO GUADAGNI
Under-Secretary for International
Economic Relations

PROTOCOL

With the signing of the Agreement between the Argentine Republic and the Kingdom of Spain on the reciprocal promotion and protection of investments, the following provisions have also been agreed:

1. *With reference to articles IV and VII:*

The interpretation of articles IV and VII of the Agreement shall be that the Parties consider that the application of most-favoured-nation treatment shall not extend to the specific treatment reserved by either Party for foreign investors in respect of investments made in the context of concessionary funding provided for in a bilateral agreement concluded by that Party with the country to which the aforementioned investors belong, such as the Treaty for the establishment of a special associative relationship between Argentina and Italy of 10 December 1987¹ and the General Treaty of cooperation and friendship between Spain and Argentina of 3 June 1988.²

2. *With reference to article VI:*

(a) The Party in whose territory the investment is made shall facilitate access to the official currency exchange market by the investor of the other Party or the company in which he has invested, on a non-discriminatory basis and subject to the same terms as local companies in which no foreign investment has been made, in order to obtain the necessary currency to make the transfers provided for in article VI.

(b) Transfers shall be made once the investor has complied with the fiscal obligations established by the legislation in force in the territory of the Party in which the investment is made.

(c) The Parties undertake to facilitate the necessary procedures to enable transfers to be effected without undue delay or restrictions. Specifically, no more than six months shall elapse between the date on which the investor duly submits the requests required to make the transfer and the date on which the transfer is actually made. Both Parties therefore undertake to comply with the necessary formalities for both the purchase of foreign currency and its actual transfer abroad within the time-limit specified above.

(d) Each Party reserves the right, in the event of exceptional balance-of-payments difficulties, to set limits on transfers, in a fair and non-discriminatory manner and in conformity with its international obligations. Such limits may not exceed, for each investor, a period of 36 months and shall include the possibility of making each transfer in a number of instalments, over a period not exceeding 18 months.

(e) Without prejudice to the provisions of the foregoing paragraph, each Party shall at all times allow investors of the other Party freely to transfer with currency derived from their exports dividends that have effectively been distributed.

Buenos Aires, 3 October 1991

[CLAUDIO ARANZADI MARTINEZ]

[DOMINGO CAVALLO]

[RAFAEL PASTOR]

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¹ United Nations, *Treaty Series*, vol. 1537, No. I-26689.

² *Ibid.*, vol. 1546, No. I-26811.