

**INTERNATIONAL CENTRE FOR SETTLEMENT  
OF INVESTMENT DISPUTES  
WASHINGTON, D.C.**

**IN THE PROCEEDING BETWEEN**

**Hochtief AG  
(CLAIMANT)**

**and**

**The Argentine Republic  
(RESPONDENT)**

(ICSID Case No. ARB/07/31)

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**DECISION ON JURISDICTION**

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*Members of the Tribunal*

Professor Vaughan Lowe Q.C, President  
Judge Charles N. Brower, Arbitrator  
Mr. J. Christopher Thomas, Q.C., Arbitrator

*Secretary of the Tribunal*

Mrs. Mercedes Cordido-Freytes de Kurowski

*Representing the Claimant*

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**Date of Decision: October 24, 2011**

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1. This claim is brought by Hochtief Aktiengesellschaft, a company incorporated in the Federal Republic of Germany (“**Hochtief**”), against the Argentine Republic (“**Argentina**”), under the Treaty between the Federal Republic of Germany and the Republic of Argentina for the Promotion and Reciprocal Protection of Investments, dated 9 April 1991 (“**the BIT**”).
2. Hochtief and Argentina, the parties to the dispute and to this case, are referred to in this Decision as the (lower-case) ‘parties’. Argentina and Germany, as the States Parties to the BIT, are referred to as the (capitalized) ‘Parties’.
3. The authentic German and Spanish texts of the BIT, together with the English translation published in the *United Nations Treaty Series*<sup>1</sup>, are set out in Appendix I to this Decision. This Decision will refer to the English-language translation. The Tribunal has, however, taken full account of the fact that the authentic languages of the BIT are German and Spanish, and as will be seen it has at various stages reverted to the authentic texts where the translation is unsatisfactory.
4. The claim arises from a dispute concerning a 25-year concession awarded to Hochtief and a consortium of construction companies in 1997 for the construction, maintenance and operation of a toll road and several bridges in Argentina between the cities of Rosario and Victoria. Hochtief and other members of the consortium incorporated a company, Puentes del Litoral SA (“**PdL**”), in Argentina in order to implement the concession. Hochtief owns 26% of the shares in PdL. Hochtief claims that it was injured by actions taken by Argentina in breach of its obligations under the BIT and under customary international law.
5. The claim was initiated by the Request for Arbitration dated 5 November 2007, addressed by the Claimant to the Secretary-General of ICSID (“**the Centre**”). The Claimant appointed the Hon. Charles Brower, and the Respondent appointed J Christopher Thomas QC, to the Tribunal. Judge Brower and Mr Thomas agreed to invite Professor Vaughan Lowe QC to chair the Tribunal. The Tribunal was constituted on 30 April 2009.

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<sup>1</sup> UNTS Vol. 1910, 171 (1996).

6. By agreement of the parties the First Procedural Meeting of the Tribunal, held by telephone conference, was begun on 19 June 2009, and resumed on 16 April 2010 at the seat of ICSID in Washington, D.C. with the President of the Tribunal, prevented from flying by a volcanic ash cloud, participating by video link.
7. The Claimant's Memorial on the Merits was submitted on 29 April 2010, and the Respondent submitted its Memorial on Objections to the Jurisdiction of the Centre and the Competence of the Tribunal (including, as agreed, a brief outline of its defences on the merits) on 30 July 2010. The Claimant's Counter-Memorial on Objections to Jurisdiction was submitted on 15 October 2010, and the Respondent's Reply and Claimant's Rejoinder on 22 December 2010 and 10 February 2011 respectively.
8. The hearing on Jurisdiction was held at the World Bank's premises in Paris on 4-5 March 2011. The Claimant was represented by Mr Paul F Doyle, Mr Philip D Robben, Ms Mellisa E Byroade, and Ms Julia A Garza Benítez of Kelley Drye & Warren LLP; and the Respondent was represented by Dr Angelina Abbona, Dr Gabriel Bottini, Dr Romina de los Ángeles Mercado, Dr Verónica Lavista, Dr Matías Osvaldo Bietti, Dr Ariel Martins, and Mr Julián Santiago Negro, of the Procuración del Tesoro de la Nación. Ms Mercedes Cordido-Freytes de Kurowski acted as the Secretary of the Tribunal.

## **I The Parties' Submissions**

9. The submissions of the parties are set out in detail in their written pleadings and were developed in their oral submissions at the hearing, a verbatim record of which was kept and made available to the parties and the Tribunal shortly after the end of the hearing on Jurisdiction. All of these submissions were taken into account, and the main points are summarized here in so far as is necessary for the purposes of this Decision.
10. The Respondent raises two main objections to jurisdiction. The First Objection is that the Claimant has failed to meet the requirements set forth in Article 10 of the BIT, and that the Tribunal is consequently without jurisdiction in this case. The Second

Objection is that Hochtief is attempting in this case to bring a claim to enforce the rights of another person and has no legal standing to do so.

11. It is well established that the Tribunal has the competence to decide upon challenges to its jurisdiction. If it finds that it has jurisdiction, the position is unproblematic. If it finds that it lacks jurisdiction, a pedant might object that it had no right to determine even that question; but the Law has chosen to side with pragmatism rather than pedantry and *Kompetenz-Kompetenz* is a firmly established principle, adopted in Article 41(1) of the ICSID Convention. The Tribunal proceeds accordingly.

## **II The First Objection: BIT Article 10**

12. In translation, Article 10 of the BIT reads as follows:

**"Article 10**

(1) Disputes concerning investments within the meaning of this Treaty between one of the Contracting Parties and a national or company of the other Contracting Party shall as far as possible be settled amicably between the parties to the dispute.

(2) If a dispute within the meaning of paragraph 1 cannot be settled within six months from the date on which one of the parties concerned gave notice of the dispute, it shall, at the request of either party, be submitted to the competent courts of the Contracting 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 one of the parties to the dispute where, after a period of 18 months has elapsed from the moment when the judicial process provided for by paragraph 2 of this article was initiated, no final decision has been given or where a decision has been made but the Parties are still in dispute;

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

(4) In the cases provided for by paragraph 3 above, disputes between the Parties within the meaning of this article shall be referred by mutual agreement, when the parties to the dispute have not agreed otherwise, either to arbitral proceedings under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 or to an *ad hoc* arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law.

If there is no agreement after a period of three months has elapsed from the moment when one of the Parties requested the initiation of the arbitration procedures, the dispute shall be submitted to arbitration procedures under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 provided that both Contracting Parties are parties to the said Convention. Otherwise, the dispute shall be submitted to the above-mentioned *ad hoc* arbitral tribunal.

(5) The arbitral tribunal shall issue its ruling in accordance with the provisions of this Treaty, with those of other treaties existing between the Parties, with the laws in force in the Contracting Party in which the investments were made, including its rules of private international law, and with the general principles of international law.

(6) The arbitration decision shall be binding and both Parties shall implement it in accordance with their legislation.”

13. The Respondent says that paragraphs 10(2) and 10(3)(a) of Article 10 impose a mandatory period of 18 months, for the duration of which the dispute must be submitted to the Respondent’s courts, before the Claimant is entitled to submit the dispute to arbitration. It says that Article 10 thus establishes a mandatory condition upon which the jurisdiction of the Tribunal depends, and that the Claimant has not fulfilled that condition.
14. The Respondent makes no jurisdictional challenge based upon the requirement in Article 10(2) that six months must elapse after notice of the dispute is given, before the dispute may be submitted to the courts at the instance of either party.
15. The Claimant, for its part, invokes Article 3 of the BIT, which reads as follows:<sup>2</sup>

*“Article 3*

(1) Neither Contracting Party shall subject investments in its territory by or with the participation of nationals or companies of the other Contracting Party to treatment less favourable than it accords to investments of its own nationals or companies or to investments of nationals or companies of any third State.

(2) Neither Contracting Party shall subject nationals or companies of the other Contracting Party, as regards their activity in connection with investments in its territory, to treatment less favourable than it accords to its own nationals or companies or to nationals or companies of any third State.

(3) Such treatment shall not include privileges which may be extended by either Contracting Party to nationals or companies of third States on account of its membership in a customs or economic union, common market or free trade area.

(4) The treatment under this article shall not extend to privileges accorded by a Contracting Party to nationals or companies of a third State by virtue of an agreement for the avoidance of double taxation or other tax agreements.”

16. Article 3 must be read together with the Protocol to the BIT, which reads in material part as follows:

“With the signing of the Treaty between the Federal Republic of Germany and the Argentine Republic on the Encouragement and Reciprocal Protection of Investments, the undersigned plenipotentiaries have agreed on the following provisions, which shall be regarded as an integral part of the said Treaty:

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<sup>2</sup> See paragraphs 63 ff and 104 ff below for certain problems with this translation.

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(2) *Ad article 3:*

(a) The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of article 3, paragraph 2: the management, utilization, use and enjoyment of an investment. The following shall more particularly, though not exclusively, be deemed "treatment less favourable" within the meaning of article 3: less favourable measures that affect the purchase of raw materials and other inputs, energy or fuel, or means of production or operation of any kind or the marketing of products inside or outside the country. Measures that are adopted for reasons of internal or external security or public order, public health or morality shall not be deemed "treatment less favourable" within the meaning of article 3.

(b) The provisions of article 3 do not obligate a Contracting Party to extend tax privileges, exemptions and relief accorded only to natural persons and companies resident in its territory," in accordance with its tax laws, to natural persons and companies resident in the territory of the other Contracting Party.

(c) The Contracting Parties shall within the framework of their national legislation give favourable consideration to applications for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to nationals of either Contracting Party who, in connection with an investment, wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications for work permits shall also be given favourable consideration."

17. The Claimant submits that the effect of this MFN provision is to permit it to rely upon what it says is the more favourable provision in Article 10 of the Argentina-Chile Bilateral Investment Treaty dated 2 August 1991. That treaty, in its authentic language and in the English translation submitted in these proceedings, is set out in Appendix II.

18. Article 10 of the Argentina-Chile BIT reads as follows:

**“ARTICLE 10 Settlement of disputes regarding investments**

1. Any dispute related to the investments under this Treaty, between a Party and a national or company of the other Party shall, as far as possible, be settled by friendly negotiations between the two parties to the dispute.

2. If the dispute shall not have been settled within the term of six months as from the time it has been raised by either party, it may be submitted upon request of the national or company:

- to the national jurisdictions of the Party involved in the dispute;
- or to international arbitration in the conditions described in paragraph (3).

Once a national or company has submitted the dispute to the jurisdiction of the Party involved or to international arbitration, the election of either procedure shall be final.

3. In case of election of international arbitration, the dispute may be submitted, at the election of the national or company, to one of the arbitration entities mentioned below:

To the International Center (*sic*) for the Settlement of Investment Disputes (ICSID) created under the "Convention on the Settlement of Investment Disputes between States and Nationals of other States", opened to the signature in Washington on March 18, 1965, when each Member State which is a party to this Agreement has signed the said Convention. While this condition is not met, each Party may give its consent for the dispute to be submitted to arbitration pursuant to the Rules of the supplementary Mechanism of ICSID for the management of conciliation, arbitration or investigation proceedings;

To an "ad hoc" arbitration panel organized pursuant to the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. The arbitration panel shall render an award on the basis of this Treaty, the right of the Party that is a party to the dispute, including the rules regarding conflicts of laws and the terms and conditions of occasional private agreements reached in connection with the investment and also the principles of international law in that respect.

5. Arbitration awards shall be final and binding upon the parties to the dispute.

6. The Parties shall refrain from trying, through the diplomatic channels, arguments regarding arbitration or a judicial proceeding already pending until the relevant proceedings shall have been completed, unless the parties to the dispute shall have not discharged the arbitration award or the judgment rendered by the common court, pursuant to the terms for the discharge laid down in the award or the judgment.”

19. The important point in the Argentina-Chile BIT is that it permits unilateral reference of a dispute to arbitration six months after the dispute has been raised. There is no equivalent of the ‘18-month litigation period’ in Article 10(3) of the Argentina-Germany BIT.
20. The Respondent submits that the MFN provision in Article 3 of the Argentina-Germany BIT applies only to substantive protections under the BIT, which do not include the clauses on dispute resolution in Article 10.
21. Each party referred to principles of treaty interpretation, decisions of other arbitral tribunals, and the writings of jurists in support of its position.

### **III The Tribunal’s analysis**

22. The Tribunal’s jurisdiction depends upon the existence of an agreement between the two parties to the dispute – Hochtief and the Republic of Argentina. That agreement is not contained in a single document. The agreement of Argentina to accept the jurisdiction of the arbitral Tribunal in respect of a certain category of disputes is contained in the Argentina-Germany BIT. Article 10 of the BIT is, in effect, an offer to submit disputes to arbitration, which investors may accept.



23. Hochtief considers that its agreement is contained in the Request for Arbitration which is intended, in effect, to be an acceptance of Argentina's offer contained in Article 10 and Article 3 of the Argentina-Germany BIT.
24. The question is whether the 'offer' and the 'acceptance' have resulted in an agreement which provides the basis for the jurisdiction of the Tribunal.
25. Both parties approached this question on the basis that is necessary to establish a consensus: i.e., that it is necessary to demonstrate that Hochtief's Request for Arbitration was an acceptance of the offer to arbitrate on the terms on which the offer was made, and not a counter-offer on different terms. The Tribunal shares this view.
26. The offer to arbitrate being contained in a treaty, it follows that the interpretation and analysis of its terms must be conducted in accordance with the law of treaties. The exercise is, accordingly, to be performed according to the principles set out in the Vienna Convention on the Law of Treaties ('VCLT'), to which both Argentina and Germany are Parties (and to which Article 11 of the BIT refers), and in particular in Articles 31-33 of the VCLT, which are familiar to all involved in investment arbitration.
27. The 'acceptance' is contained in the Request for Arbitration. There is no doubt as to the interpretation of the 'acceptance': it purports to accept the offer to arbitrate made in the BIT.

#### **IV The interpretation of BIT Article 10**

28. The task of interpreting the BIT must be approached initially by giving the terms of the treaty their ordinary meaning in their context and in the light of the BIT's object and purpose. On this basis it is apparent that Article 10 of the BIT provides for a number of possible steps and for alternative procedures in the event of a dispute arising.
29. Article 10(1) provides that disputes shall as far as possible be settled amicably between the parties to the dispute. There is no suggestion by the Respondent of any failure by the Claimant to comply with Article 10(1), which could affect the

jurisdiction of the Tribunal; and the Tribunal sees no reason to suppose that the obligation imposed by Article 10(1) has not been fulfilled.

30. Paragraph (2) of Article 10 entitles either party – here, either Hochtief or Argentina – to require the submission of the dispute to the host State’s courts:

“If a dispute within the meaning of paragraph 1 cannot be settled within six months from the date on which one of the parties concerned gave notice of the dispute, it shall, at the request of either party, be submitted to the competent courts of the Contracting Party in whose territory the investment was made.”

Paragraph (2) refers to a ‘request’, but the request triggers an obligation (‘shall ... be submitted’) to submit the dispute to the courts.

31. Neither party takes any point concerning the six-month period to which Article 10(2) refers, and the Tribunal sees no reason to suppose that this obligation imposed by Article 10(2) has not been fulfilled.
32. The words “shall ... be submitted” are the only words in Article 10 paragraph 2 that are capable of imposing a legal obligation. The precise nature of the obligation set out in paragraph (2) is obscured by the phrasing of the provision. Instead of stipulating that ‘one or other party shall submit the dispute’ to the courts, it sets out the stipulation in the passive voice: the dispute shall be submitted to the courts.
33. The Respondent reads Article 10(2) as saying that in every case one or other party must submit the dispute to the domestic courts.<sup>3</sup> The Respondent submits that “the verbal expression ‘shall be submitted’ [makes] clear that it is an order”<sup>4</sup>, so that one of the parties must submit the dispute to the domestic courts.<sup>5</sup>
34. The Claimant, on the other hand, reads Article 10(2) as giving to each party a right to have recourse to the courts, but not as imposing upon either party a duty to do so.
35. It was not suggested that either party had made a request under Article 10(2) for the reference of the dispute to the courts in Argentina. This is a matter of some

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<sup>3</sup> Memorial, paragraph 25.

<sup>4</sup> Memorial, paragraph 24.

<sup>5</sup> Memorial, paragraph 25.

significance. The Respondent could have insisted upon the reference of the dispute to its courts under Article 10(2), but it did not do so.

36. Article 10(2) says that the dispute “shall, at the request of either party, be submitted” to the national courts. Article 10(2) thus obliges party B to submit to the jurisdiction of the courts if party A requests that the dispute be referred to the courts. The provision does not, however, explicitly impose a duty on either party A or party B to refer the case to the courts.<sup>6</sup> Nor, in the view of the Tribunal, does Article 10(2) implicitly impose such a duty. Article 10(2) makes good sense interpreted without any such duty to refer implied into it. Recourse to the national courts is an important option. As far as investors are concerned, access to the host State’s courts is a right that must surely be regarded as such an elementary part of the concept of legal protection that the right of access has little need of explicit statement. But under Article 10(2) it is not only the investor but also the host State that has the right to refer disputes to court.
37. The Respondent could, if it had wished, have requested that the dispute be referred to its courts; and under Article 10(2) the Claimant would have been obliged to pursue the case in the national courts. The Respondent did not do so. Nor did the Claimant refer the dispute to the courts. The Respondent argues that in the absence of any reference of the dispute to the courts there can, under the scheme set out in Article 10, be no unilateral reference of the dispute to arbitration.
38. Article 10(3) provides that “The dispute may be submitted to an international arbitral tribunal in any of the following circumstances”. There are two such circumstances.
39. One, in Article 10(3)(b), is “Where both parties to the dispute have so agreed.” There is no suggestion that there is any such agreement in this case apart from the agreement said to result from the offer in the BIT and the acceptance in the Request for Arbitration. No more need be said about specific agreements as a route to arbitration under the BIT, although the terms of the offer in the BIT and of the Request for Arbitration are, of course, central to the questions in this case.

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<sup>6</sup> The parties to the dispute will always be a Contracting Party to the treaty and a national or company of the other contracting party: Article 10(1).

40. The other circumstance, in Article 10(3)(a), is where “[a]t the request of one of the parties to the dispute ..., after a period of 18 months has elapsed from the moment when the judicial process provided for by paragraph 2 of this Article was initiated, no final decision has been given or where a decision has been made but the Parties are still in dispute.”
41. Four points are to be noted about Article 10(3)(a). First, as in Article 10(2), it creates a right that may be exercised unilaterally: either the Claimant or the Respondent may refer the dispute to arbitration.
42. Second, reference to the courts does not entail a choice under a ‘fork in the road’ provision (and no such fork is created elsewhere in the BIT). Reference to the courts can be followed by a unilateral reference of the dispute to arbitration.
43. Third, neither party is obliged to continue to submit to the jurisdiction of the courts for more than 18 months, whether or not the courts have reached a final – or any – decision in the case.
44. Fourth, the provision does not oblige either party to accept a decision of the court as the resolution of the dispute: either party may take the position that the parties are “still in dispute” despite any court decision.
45. Respondent submits that the effect of Article 10(3) is that unless (i) there has been a reference to the courts under Article 10(2) and (ii) 18 months have elapsed since that reference, the circumstances envisaged in Article 10(3)(a) cannot arise and there can be no unilateral reference to arbitration. Claimant submits that the 18-month period is applicable only if there has in fact been a reference to the courts under Article 10(2), and that the provision has no application in circumstances where no such reference was made.
46. Because neither party is actually obliged to submit the dispute to the courts under Article 10(2), it cannot be supposed that every dispute not resolved by discussions will in fact be submitted to the courts. The question is in effect, therefore, whether the possibility of unilateral recourse to arbitration is altogether excluded in cases where there is no such reference to the courts.

47. The interpretation of Article 10(3) so as to require reference to the local courts as a precondition to recourse to arbitration in every case would, as the Respondent pointed out, have some features in common with a requirement to exhaust local remedies.<sup>7</sup> Indeed, under Article 26 of the ICSID Convention the Respondent could have required the exhaustion of local remedies as a condition of its consent to arbitration under that Convention; but it did not do so.
48. In some ways, however, the effect of Article 10(3) as interpreted by the Respondent would be radically different from that of a duty to exhaust local remedies. There is no obligation under Article 10(3) to exhaust the remedies, or even to see a first-instance case through to its conclusion if that takes longer than 18 months. There would be no question under Article 10(3) of the effectiveness of the available remedies: recourse would be obligatory even in cases where it was perfectly clear that the courts could provide no remedy – for example, in cases where legislation has effectively left the court with no option except to decide the dispute against the Claimant.
49. If Article 10(3) were indeed interpreted so as to require in each and every case 18 months of litigation before any unilateral reference to arbitration, the effect of the resultant pattern of obligations would be as follows. A claimant might decide initially not to refer the dispute to the courts. The respondent might also decide not to ‘request’ (i.e., insist) that the dispute be referred to its courts under Article 10(2); and it might also decline to agree to a consensual reference to arbitration under Article 10(3)(b). A claimant could then refer the dispute to arbitration only if it first submitted the dispute to the courts. If the Claimant did indeed then proceed to submit the case to the courts, neither the Claimant nor the Respondent would be obliged by the BIT to accept any decision rendered by the court. (We put to one side the question whether such a decision could have effect as *res judicata* in any respect.) Equally, either party could simply abandon the litigation after 18 months. After 18 months had elapsed, either party could unilaterally submit the dispute to arbitration.
50. It is no doubt arguable that there is a duty on both parties to the dispute to act in good faith during the pursuit of a settlement of the dispute, so that that there is an obligation to enter into the litigation during the 18-month period in a manner that might lead to a

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<sup>7</sup> As the Respondent noted: Memorial, paragraph 17.

resolution of the dispute by the courts. It is certainly valuable for each party (and perhaps particularly for the Respondent) that it has the right to insist upon reference of the dispute to the host State courts. It is also understandable that a six-month window for negotiations prior to any reference to the courts should be secured, as Article 10(2) does on one reading. But it is difficult to see the rationale for imposing, in the terms used in Article 10(3)(a), a duty to spend a period of 18 months with the dispute listed on the docket of domestic courts as a precondition for the reference to arbitration.

51. To oblige the parties to spend 18 months in litigation, where one or other (or both) of them might have decided in advance to reject any decision that might emerge from the courts, appears pointless. While the possibility of a requirement for pointless litigation may not be a decisive indication that this interpretation of the BIT is wrong, it must surely move some weight in that direction.
52. The problem does not arise from uncertainty as to the meaning of Article 10(3)(a) itself. Its meaning is clear. Article 10(3) supplements and follows on from Article 10(2). If either party requests that the dispute be submitted to the courts, it must be submitted to the courts. The dispute must then stay in the courts until either (i) a final decision is rendered by the courts or (ii) 18 months have elapsed from the initiation of the judicial process (Article 10(3)(a)), unless (iii) both parties agree before then to go to arbitration (Article 10(3)(b)).
53. The problem arises from the fact that there is no duty under Article 10(2) to refer the dispute to the courts, and that there is no provision in Article 10 that explicitly permits unilateral references to arbitration, except in circumstances where the dispute has in fact been referred to the courts. The only provision in Article 10 that clearly permits a reference to arbitration without prior litigation is Article 10(3)(b), which requires the agreement of both parties. Unless an additional implied right to have unilateral recourse to arbitration can be found, the result would be that litigation is always an essential precondition to the reference of a dispute to arbitration by one party acting unilaterally, but is not an essential precondition to a reference to arbitration agreed by both parties
54. Viewed in the light of the many provisions in other BITs that permit unilateral references to arbitration that result might be thought unusual; but it is not impossible,

or wholly impracticable, or wholly unreasonable. The Tribunal is, however, not convinced that it is correct to interpret the BIT to mean that litigation is always an essential precondition to unilateral reference of a dispute to arbitration, and does not decide the point or rest its decision upon the rejection of this interpretation and the existence of an implied right of unilateral reference to arbitration. The Tribunal does not need to decide the point, because the Claimant has raised another argument, based on the MFN provision in BIT Article 3. That argument was the main focus of the parties' pleadings, and is a sufficient basis for the Tribunal's decision.

55. The Tribunal thus proceeds on the assumption, and without deciding the point, that Article 10 of the Argentina-Germany BIT imposes a mandatory 18-month submission to the national courts as a precondition of unilateral recourse to arbitration under the BIT.

## **V The MFN provision**

56. The Claimant considers that the MFN provision in Article 3 of the BIT entitles it to rely upon the more liberal provisions on dispute settlement in the Argentina-Chile BIT. The Respondent, in contrast, considers that the Article 3 MFN provision applies only to 'substantive' rights, which in its view do not include the dispute settlement provisions, under the BIT.
57. The parties referred extensively to the jurisprudence and to writings of scholars on the effect of MFN clauses in BITs. The apparent inconsistencies in the case-law of arbitration tribunals on the question of the applicability of MFN clauses to dispute settlement provisions afforded each party the possibility of supporting its position by reference to earlier awards.
58. The Tribunal has given very careful consideration to this jurisprudence, and is conscious of the advantages of consistency in the approaches of different tribunals to similar questions. It is also aware of the significance that other tribunals have attached to differences between the formulations of MFN provisions in various treaties. That said, it is the responsibility of this Tribunal to interpret to the best of its ability the specific provisions of the particular treaties that are applicable in this case, and not to

choose between broad doctrines or schools of thought, or to conduct a head-count of arbitral awards taking various positions and to fall in behind the numerical majority.

## **VI Does the MFN provision apply to dispute settlement?**

59. The first question for the Tribunal is whether the MFN provision in BIT Article 3 is in principle capable of applying to dispute settlement provisions so as to modify BIT Article 10.
60. Article 3 contains provisions extending MFN treatment both to investments (Article 3(1)), and to investors (Article 3(2)). The obligation is the same in each case.<sup>8</sup> The entitlement is to treatment that is not less favourable than the State accords to its own nationals or companies or to investments of nationals or companies of any third State. In the present case it is the entitlement of the investor that is relevant, because it is the treatment of the investor as a disputing party that is in issue.
61. Article 3(2) does not provide that once one becomes an ‘investor’ under the Argentina-Germany BIT one has an entitlement to MFN or national treatment in every aspect of one’s life, whether or not related to the investment. It does not, for example, give a right to join the ‘nationals only’ queue at immigration desks. Rather, Article 3(2) stipulates that the entitlement to demand MFN or national treatment from the State applies to investors “as regards their activity in connection with investments in its territory.”
62. Is dispute settlement an ‘activity in connection with the investment’? The Respondent argues that *ad Article 3* in the Protocol to the BIT indicates that it is not. *Ad Article 3* provides that

“(a) The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of article 3, paragraph 2: the management, utilization, use and enjoyment of an investment. The following shall more particularly, though not exclusively, be deemed "treatment less favourable" within the meaning of article 3: less favourable measures that affect the purchase of raw materials and other inputs, energy or fuel, or means of production or operation of any kind or the marketing of products inside or outside the country. Measures that are adopted for reasons of internal or external security or public order, public health or morality shall not be deemed "treatment less favourable" within the meaning of article 3.”

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<sup>8</sup> As is clear in the authentic German and Spanish texts but not in the UN’s English translation.



63. In this English translation the opening phrase is unclear. It might be read as meaning that the listed examples (i) are deemed to be ‘activities’ but (ii) are not exclusively to be characterised as ‘activities’ and may also have another character. Alternatively, it might be read as meaning (i) that the following examples are deemed to be ‘activities’ but (ii) that the list is not exhaustive and there may be other examples of ‘activities’.
64. In the authentic Spanish and German texts of the BIT the opening phrase is “Por ‘actividades’ en el sentido del apartado 2 del artículo 3 se considerarán, en especial pero no exclusivamente ...” and “Als ‘Betätigung’ im Sinne des Artikels 3 Absatz 2 ist insbesondere, aber nicht ausschließlich...” It is therefore clear that *ad Article 3* is setting out a non-exhaustive list of examples of ‘activities’ within the meaning of BIT Article 3.
65. It is suggested that the phrase “the management, utilization, use and enjoyment of an investment” should be read as an indication that the reference is to a range of activities concerned with the commercial operation of the investment, and that this does not include the pursuit of dispute settlement under BIT Article 10.
66. The Tribunal considers that the phrase “the management, utilization, use and enjoyment of an investment” does include recourse to dispute settlement, as an aspect of the management of the investment. Indeed, the (‘procedural’) right to enforce another (‘substantive’) right is one component of the bundles of rights and duties that make up the legal concept of what property is.
67. This is clear if one considers the case of a claim to money or to performance having an economic value, both of which are stipulated by Article 1(c) of the Argentina-Germany BIT to be within the definition of an ‘investment, or of intellectual property rights, addressed in Article 1(d). The argument that although a State could not cancel such claims or intellectual property rights without violating the BIT, it could cancel the right to pursue the claims or enforce the intellectual property rights through litigation or arbitration without violating the BIT is nonsensical. It is nonsensical because the right to enforcement is an essential component of the property rights themselves, and not a wholly distinct right.

68. This is a perfectly reasonable interpretation of the BIT. The BIT is an agreement both for the promotion and for the reciprocal protection of investments. It is an agreement between two States, which no doubt is intended to operate to the benefit of both States but which plainly confers benefits directly upon investors. The Tribunal considers that the provisions of Article 10, which on any interpretation confer upon investors the possibility of recourse to arbitration in addition to the right to have recourse to national courts, are a form of protection that is enjoyed within the scope of “the management, utilization, use and enjoyment of an investment”. Unlike the inter-State dispute settlement provisions in Article 9, which safeguard the interests of the States parties in the event of a dispute regarding the interpretation or application of the BIT, Article 10 is a benefit conferred on investors and designed to protect their interests and the interests of a State Party in its capacity as a host State party to a dispute with an investor: it is a protective right that sits alongside the guarantees against arbitrary and discriminatory measures, expropriation, and so on.
69. If the investor submitted a dispute with a third party to the national courts in order to protect its legal interests – a simple claim for contractual payments from a customer would be an adequate example – it is difficult to see any reason why that litigation should not be regarded as a management activity to which the Article 3 MFN provision is applicable so as to supplement the entitlement to juridical security under Article 4 of the BIT.
70. A court fee or bond requirement imposed on litigants who are nationals of State A but not on nationals of State B, for example, would appear to be caught by the MFN provision. So, too, would a requirement under national law to submit to conciliation prior to litigation, imposed upon nationals of A but not nationals of B.
71. The Tribunal sees no good reason to treat disputes between the investor and the State any differently from litigation between the investor and another private party, or to distinguish between the pursuit of remedies in the courts and their pursuit in arbitration, both of which are contemplated in Article 10 of the BIT.
72. Accordingly, the Tribunal is satisfied that the MFN provision is in principle applicable to the pursuit of dispute settlement procedures.

73. If there should be any doubt as to whether the pursuit of dispute settlement procedures falls within the scope of ‘management’, the Tribunal considers that there can be no doubt that the settlement of disputes is an “activity in connection with investments”, to use the language of BIT Article 3 itself rather than the non-exhaustive phraseology of *ad Article 3*.
74. The fact that BIT Article 4(4) stipulates expressly that nationals or companies of either Contracting party are entitled to MFN treatment “in respect of the matters provided for in this Article”, but that there is no express MFN stipulation in BIT Article 10 itself, does not change the position.<sup>9</sup> There is similarly no express statement on MFN treatment in BIT Article 2 or BIT Article 5: but to the extent that those Articles are concerned with the treatment of “investments” or of “nationals or companies of the other Contracting Party, as regards their activity in connection with investments in its territory”, Article 3 paragraphs (1) and (2) make clear that the MFN provision is applicable. Moreover, Article 3 paragraphs (3) and (4) explicitly exclude certain matters from the scope of the MFN clause, but dispute settlement is not among them.
75. The Tribunal is accordingly satisfied that the MFN provision in Article 3 of the Argentina-Germany BIT applies to dispute settlement under Article 10 of that BIT.
76. At this stage in the argument two further questions arise: (i) what effect does the entitlement to ‘most favourable’ treatment have upon the jurisdiction of a tribunal constituted in pursuance of the provisions of BIT Article 10? and (ii), is the requirement of 18 months prior litigation ‘less favourable’?

## **VII MFN and jurisdictional limits**

77. It is well understood that MFN clauses are subject to implicit limitations. An example was given by the International Law Commission in its Commentary on its draft Articles on Most-Favoured-Nation clauses. It said that an MFN clause in a commercial treaty between State A and State B would not entitle State A to claim the

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<sup>9</sup> It is also arguable that the application of the MFN provision to dispute settlement procedures is an aspect of the enjoyment of full legal protection and security that is guaranteed by Article 4(1). The Tribunal takes no position on this point.

extradition of a criminal from State B on the ground that State B has agreed to extradite such criminals to State C or voluntarily does so. The reason, it said, “is that the clause can only operate in regard to the subject-matter which the two States had in mind when they inserted the clause in their treaty.”<sup>10</sup>

78. That proposition cannot seriously be challenged, and the principle is applicable to the present case. Having decided that the MFN provision is in principle applicable to the dispute settlement provisions of Article 10 of the BIT, it focuses attention on the need to ask precisely what rights are covered by the MFN obligation.
79. In the present case, it might be argued that the MFN clause requires that investors under the Argentina-Germany BIT be given MFN treatment during the conduct of an arbitration but that the MFN clause cannot create a right to go to arbitration where none otherwise exists under the BIT. The argument can be put more generally: the MFN clause stipulates how investors must be treated when they are exercising the rights given to them under the BIT but does not purport to give them any further rights in addition to those given to them under the BIT.
80. The question is, does the MFN clause in question here create new rights where none previously existed? and if not, is the right to have unilateral recourse to arbitration without the 18-month litigation period a distinct, new right or is it rather a matter of the manner in which those who already have a right to arbitrate are treated?
81. In the view of the Tribunal, it cannot be assumed that Argentina and German intended that the MFN clause should create wholly new rights where none otherwise existed under the Argentina-Germany BIT. The MFN clause stipulates a standard of treatment and defines it according to the treatment of third parties. The reference is to a standard of treatment accorded to third parties, not to the extent of the legal rights of third parties. Non-statutory concessions to third party investors could, in principle, form the basis of a complaint that the MFN obligation has not been secured. In contrast (to take an example comparable to the ILC example concerning commercial treaties and extradition), rights of visa-free entry for the purposes of study, given to nationals of a third State, could not form the basis of such a complaint under the BIT. The MFN

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<sup>10</sup> Sir Arthur Watts, *The International Law Commission 1949-1998*, (Oxford, 1999), vol. III, p. 1821.

clause is not a *renvoi* to a range of totally distinct sources and systems of rights and duties: it is a principle applicable to the exercise of rights and duties that are actually secured by the BIT in which the MFN clause is found.

82. The Tribunal thus considers that the critical question is whether the absence of the 18-month litigation period in the dispute settlement provision of the Argentina-Chile BIT is a distinct right (in which case it would not be brought into the Argentina-Germany BIT by the operation of the MFN clause) or is a provision that concerns the treatment of investors in relation to the exercise of an existing right to arbitrate (in which case the MFN clause in the Argentina-Germany BIT could operate to disapply the 18 month litigation period in Article 10(3)(a)).
83. There is no established criterion to distinguish for this purpose between a ‘right’ and ‘treatment in relation to the exercise of a right’. But there are several indications that the 18-month pre-arbitration litigation requirement should be regarded as a matter of the treatment of investors in exercising their rights in relation to dispute settlement and not as the subject of a distinct right.
84. On any interpretation of Article 10 of the Argentina-Germany BIT, an investor can ultimately exercise its rights so as to submit the dispute unilaterally to arbitration, without the need for the further specific consent of the State party to the dispute to proceed to arbitration. At worst, the investor (or indeed the State) could request the submission of the dispute to the courts under BIT Article 10(2) and then proceed 18 months later to arbitration under Article 10(3)(a). There is, therefore, a right under the Argentina-Germany BIT to submit an investment dispute to arbitration and to do so without the consent of the other party to the dispute.
85. Reliance on the Argentina-Chile BIT via the MFN clause would not give Hochtief a right to reach a position that it could not reach under the Argentina-Germany BIT: it would enable it only to reach the same position as it could reach, by its own unilateral choice and actions, under the Argentina-Germany BIT, but to do so more quickly and more cheaply, without first pursuing litigation in the courts of Argentina for 18 months.

86. Secondly, the avoidance of the 18-month period in the Argentina-Germany BIT by reliance on the MFN clause would have no impact upon the scope of the jurisdiction of the Tribunal. It would not result in any case falling within its jurisdiction that could not eventually be brought before the Tribunal by the Claimant acting alone under Article 10 of the Argentina-Germany BIT. Nor would it remove the right of the Respondent to invoke Article 10(2) of the BIT in any dispute, and to require its submission to the national courts.
87. Third, the 18-month litigation period gives no inherent benefit, other than the interposition of a period in which the parties may refine and reflect upon their respective positions, to the other party. Neither party is bound to continue the litigation for more than 18 months, whether or not the litigation has reached a conclusion. Neither party is bound to accept that the dispute has been resolved by any final court decision that is rendered within the 18 month period. Either party may, under BIT Article 10 paragraphs (3) and (4) bring the dispute before ICSID. That is very clear from Article 10 itself.
88. While it is true that, as the Respondent noted,<sup>11</sup> the 18-month period gives the courts the opportunity to resolve the dispute, the arbitrary limit upon the time allowed for litigation and the express removal of any duty to accept any judgment makes that opportunity, unlike a true duty to exhaust local remedies, to some extent perfunctory and insubstantial. There is no certain benefit of which the other party is deprived by allowing the MFN provision to render the 18-month period inapplicable. While not logically or legally decisive, the fact that adherence to the 18-month rule would bring no necessary benefit, and no necessary result other than the delay of the arbitration proceedings, is a fact from which the Tribunal derives some encouragement to believe that its decision is correct.
89. The Tribunal also notes that, to the extent that recourse to national courts is indeed considered to be a benefit to either party, each party has the right under BIT Article 10(2) to insist, unilaterally, that the dispute be referred to national courts. Indeed, from one perspective the question under consideration here is whether the Respondent, having chosen not to require a reference to the national courts under

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<sup>11</sup> Transcript, Day 1, p. 4.

Article 10(2) may now raise the fact that there was no such reference as a bar to the arbitration of the dispute of which the Tribunal is seised.

90. The Tribunal observes that this approach to distinguishing between what is a new, independent, right to arbitrate and what is simply a manner in which an existing right to arbitrate must be exercised reflects the distinction between questions of jurisdiction and questions of admissibility. Jurisdiction is an attribute of a tribunal and not of a claim, whereas admissibility is an attribute of a claim but not of a tribunal. A distinction may also be drawn between questions of admissibility and questions of receivability. A tribunal might decide that a claim of which it is seised and which is within its jurisdiction is inadmissible (for example, on the ground of *lis alibi pendens* or *forum non conveniens*); or it might refuse even to receive and become seised of a claim that is within its jurisdiction because of some fundamental defect in the manner in which the claim is put forward.
91. In broad terms, the Tribunal considers that the question in this case is not whether the MFN clause can alter the jurisdiction of tribunals established under the BIT but whether it can affect the prescribed procedures for accessing that jurisdiction. The reason can be expressed in terms of the distinction between rights and the manner in which rights are required to be exercised.
92. The reason might also be based upon the fact that the Contracting Parties to the BIT (Argentina, Germany) are not the same as the parties to the dispute (Argentina, Hochtief). If a tribunal is established by or under a treaty made by States, its jurisdiction is fixed by that treaty. Its jurisdiction can be altered by the agreement of the States Parties to treaty; but it cannot be altered by the parties to disputes who present themselves to the tribunal. So, for example, the ICJ could not hear a claim from an individual claimant against a State, even if the 'Respondent' State agreed to appear before the Court and defend the claim. If the Court purported to hear the case, it would not be functioning as 'the ICJ' under the ICJ Statute.
93. Similarly, if this Tribunal were asked by both parties to the present dispute to decide upon, say, a dispute which arose before the treaty entered into force, and were to accede to that request, it would not be functioning as an Article 10 tribunal under the Argentina-Germany BIT. Argentina and Germany agreed, in Protocol *ad Article 8*,

that the Treaty shall in no case apply to disputes which arose before it entered into force. Argentina and Hochtief cannot by agreement between themselves vary the terms of that agreement between Argentina and Germany. In such a hypothetical case it may be that, because the disputing parties had consented to put the matter to this tribunal, the tribunal would have the legal competence to hear and decide the pre-existent complaint case: but if it did hear and decide the case it would be functioning as an *ad hoc* tribunal, and not as an Argentina-Germany BIT tribunal.

94. Questions of admissibility, on the other hand, are different from questions of jurisdiction. The disputing parties are entitled to raise objections based upon questions of admissibility, but they are not bound to do so; and if they do not raise those objections, they will have acquiesced in any breach of the requirements of admissibility and that acquiescence will ‘cure’ the breach. The tribunal, if it has jurisdiction, will proceed to hear the case.
95. In the ICJ, for example, rules on admissibility include such matters as the rules on the nationality of claims and the exhaustion of local remedies. The ICJ may have jurisdiction to decide whether State A had injured corporation B in violation of international law; but it may be that the claim actually filed is inadmissible because it has been brought by the wrong State,<sup>12</sup> or because local remedies have not yet been exhausted.<sup>13</sup> But if no objection is raised on such grounds, the Court will not raise the matter *proprio motu*.<sup>14</sup> If, on the other hand, the objection based upon admissibility is raised and upheld, the very same claim (*mutatis mutandis*) could be brought by another State or brought after the exhaustion of local remedies (to pursue the examples used above), because the Court has jurisdiction in respect of the claim. Defects in admissibility can be waived or cured by acquiescence: defects in jurisdiction cannot.

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<sup>12</sup> *Case concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment, Feb. 5, 1970, ICJ Reports 1970, p. 3.

<sup>13</sup> *Interhandel Case (Switzerland v. United States)*, Judgment of March 21, 1959, ICJ Reports 1959, p. 6.

<sup>14</sup> See *Case concerning the Elettronica Sicula S.p.A. (ELSI) (United States v. Italy)*, Judgment, July 20, 1989, ICJ Reports 1989, p. 15.



96. Viewed from this perspective the question in the present case is whether the 18-month period is a requirement of the kind in respect to which the Respondent could accept or acquiesce in non-compliance, and whether it has done so. The Tribunal considers that the Respondent can indeed accept or acquiesce in such non-compliance and that the jurisdiction of the Tribunal remains unaffected by it. It regards the 18-month period as a condition relating to the manner in which the right to have recourse to arbitration must be exercised – as a provision going to the admissibility of the claim rather than the jurisdiction of the Tribunal.
97. In this case there are two sets of conditions for access to arbitration: those in the Argentina-Germany BIT and those in the Argentina-Chile BIT. As explained above, the Tribunal considers that those sets of conditions are provisions relating to the protection of investors and to the management, utilization, use and enjoyment of an investment, and accordingly covered by the Article 3 MFN provision.
98. The MFN provision does not permit the selective picking of components from each set of conditions, so as to manufacture a synthetic set of conditions to which no State's nationals would be entitled. The Claimant in this case cannot rely upon the lack of an 18-month litigation period in the Argentina-Chile BIT and ignore the fact that Article 10(2) of the Argentina-Chile BIT imposes a 'fork in the road' provision: it must rely upon the whole scheme as set out in either Article 10 of the Argentina-Chile BIT or Article 10 of the Argentina-Germany BIT. In this case it has chosen to rely upon Article 10 of the Argentina-Chile BIT.
99. The resulting position should be spelled out, as should the scope of the Tribunal's decision. The Tribunal notes the limits of its jurisdiction as set by the Argentina-Germany BIT. It accepts that the procedures relating to the bringing of a dispute to the Tribunal are covered by Article 3 of the Argentina-Germany BIT. And it accepts that the Claimant can therefore rely upon the procedures set out in Article 10 of the Argentina-Chile BIT (including the 'fork in the road' provision). The MFN provision thus operates in this case within the jurisdiction of the Tribunal as set by the Argentina-Germany BIT, and operates so as to modify the procedures applicable to the seising of the Tribunal. It is not necessary to decide what the position would have been if the Argentina-Chile BIT had established a wider jurisdiction for tribunals than

is established in the Argentina-Germany BIT, and the Tribunal takes no position on this question.

### **VIII Is Article 10(3) ‘less favourable’?**

100. It is sometimes suggested that it is wrong to presuppose that, for example, litigation in national courts is any less favourable than arbitration, or that a right to arbitrate after 18-months of litigation in national courts is less favourable than a right to arbitrate immediately. The Tribunal does not share that view. It considers that whatever the substantive merits of litigation and of arbitration, it is always more favourable to have the choice as to which to employ than it is not to have that choice.<sup>15</sup> This implies no criticism whatever of the national courts.

### **IX Other issues: the location of the ‘treatment’**

101. It was argued by the Respondent, on the basis of the wording of BIT Article 3, that the MFN provision applied only to treatment that is meted out in the territory of the State, and that its application in these proceedings was not treatment within the territory of the State. Further, it was said that because the practice in investment arbitrations is for the tribunal not to sit in the host State, this was a further indication that Article 3 is inapplicable to the Article 10 procedures.<sup>16</sup>

102. The consequence of this argument, if correct, is said to be that the duty to accord MFN treatment was not engaged in this case, so that the Claimant cannot rely upon the MFN obligation in order to establish the jurisdiction of the Tribunal.

103. Article 3(1) and (2) of the BIT as it is translated in the *United Nations Treaty Series* read as follows:

“(1) Neither Contracting Party shall subject investments in its territory by or with the participation of nationals or companies of the other Contracting Party to treatment less favourable than it accords to investments of its own nationals or companies or to investments of nationals or companies of any third State.

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<sup>15</sup> There are, no doubt, value judgments concerning the desirability of choice and the existence of free will presupposed in that proposition. The Tribunal is, however, content to accept it as a premise.

<sup>16</sup> Transcript, day 1, pp. 26 – 33.

(2) Neither Contracting Party shall subject nationals or companies of the other Contracting Party, as regards their activity in connection with investments in its territory, to treatment less favourable than it accords to its own nationals or companies or to nationals or companies of any third State.”

104. The phrase translated as ‘in its territory’ is placed differently in the corresponding and authentic German and Spanish texts, which read as follows:

“(1) Jede Vertragspartei behandelt Kapitalanlagen von Staatsangehörigen oder Gesellschaften der anderen Vertragspartei oder Kapitalanlagen, an denen Staatsangehörige oder Gesellschaften der anderen Vertragspartei beteiligt sind, in ihrem Hoheitsgebiet nicht weniger günstig als Kapitalanlagen der eigenen Staatsangehörigen und Gesellschaften oder Kapitalanlagen von Staatsangehörigen und Gesellschaften dritter Staaten.

(2) Jede Vertragspartei behandelt Staatsangehörige oder Gesellschaften der anderen Vertragspartei hinsichtlich ihrer Betätigung im Zusammenhang mit Kapitalanlagen in ihrem Hoheitsgebiet nicht weniger günstig als ihre eigenen Staatsangehörigen und Gesellschaften oder Staatsangehörige und Gesellschaften dritter Staaten.”

“(1) Ninguna de las Partes Contratantes someterá en su territorio a las inversiones de nacionales o sociedades de la otra Parte Contratante o a las inversiones en las que mantengan participaciones los nacionales o sociedades de la otra Parte Contratante, a un trato menos favorable que el que se conceda a las inversiones de los propios nacionales y sociedades o a las inversiones de nacionales y sociedades de terceros Estados.

(2) Ninguna de las Partes Contratantes someterá en su territorio a los nacionales o sociedades de la otra Parte Contratante, en cuanto se refiere a sus actividades relacionadas con las inversiones, a un trato menos favorable que a sus propios nacionales y sociedades o a los nacionales y sociedades de terceros Estados.”

105. The phrase ‘in its territory’ appears to be linked to the treatment, rather than to the investment; and the material words would be more precisely translated as “... shall subject in its territory investments ...” or “... shall in its territory subject investments ...”. The result would be that the subjection of investments or investors to treatment outside Argentina could not engage liability under Article 3 of the BIT.

106. Giving this phrase its full weight and assuming, *arguendo*, that actions of the Respondent outside Argentina with respect to investments made by a claimant would not covered by the BIT, the question would be whether the invocation of the 18-month period under Article 10(3) in this case is treatment ‘outside the territory’ of the State. The Tribunal does not consider that it is.

107. The investment was made in Argentina. The Respondent’s decision to invoke the challenge based upon Article 10(3) of the BIT is an act which was located in the seat of the Respondent’s Government, and which would be implemented in Argentina by

requiring the Claimant to engage in litigation before the courts in Argentina. Thus far, no extraterritorial element is evident.

108. The only extraterritorial elements appear to be that the jurisdiction challenge is raised in a session held outside Argentina by a Tribunal that is characterised by the Respondent as having an institutionally extraterritorial nature because it is an international tribunal expected to sit outside the Respondent State.<sup>17</sup>
109. The critical question is, what is the ‘treatment’ to which the MFN obligation applies. The relevant treatment in this case is not constituted by the act of the reading or hearing by the Tribunal of the Respondent’s challenge based upon BIT Article 10(3). The place where that happens is not the location of the treatment: it is the location of the consequences or the effects of the treatment (and, furthermore, the actual location of the reading or hearing is purely contingent, and may differ as between members of the Tribunal). The treatment of which the Claimant complains is the Respondent’s insistence upon the ‘18-month’ requirement and insistence by way of a jurisdictional challenge upon the pursuit of litigation in the courts in Argentina.
110. The ‘international’ nature of this Tribunal does not alter the position. It does not deprive the conduct of the Respondent of its intra-territorial character.
111. In the view of the Tribunal, the relevant treatment is the reliance by the Respondent, not having invoked Article 10(2), upon Article 10(3) and the refusal of the Respondent to submit to immediate arbitration as the Claimant wishes. That conduct cannot be said to be conduct outside the territory of the Respondent for the purposes of Article 3 of the BIT.

## **X The Second Objection: Hochtief’s Standing**

112. The second objection is that Hochtief lacks the standing to present this claim because the rights belong to a different juridical person. The argument is in essence that because Hochtief operated through a locally-incorporated subsidiary, PdL, and that subsidiary is the party that was allegedly injured, Hochtief has no right to bring this claim.

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<sup>17</sup> Transcript, Day 1, p. 33; and Day 1, p. 4.

113. The Respondent referred to Article 25(2)(b) of the ICSID Convention in this connection and argued that its effect was that PdL should have brought the claim, and that for it to be entitled to do so it would have to show that Argentina had agreed to accord PdL the same rights as a foreign investor and that PdL was in fact under foreign control.<sup>18</sup> It argued that claims by shareholders ('derivative claims') are only allowed where they are specifically provided for in the BIT, and it contrasted the Argentina-Germany BIT with the Argentina-US BIT in this respect.<sup>19</sup>
114. The Respondent pointed out that *ad Article 4* in the Protocol to the BIT provided for compensation "also" in the event of the taking of measures "against the company in which the investment is made" (i.e., the locally-incorporated subsidiary; in this case, PdL), drawing the inference that in other cases no action lies in respect of injury to the company in which the investment is made.
115. Whatever the thinking behind the drafting of *ad Article 4* might have been, Article 1(1)(b) of the BIT is unequivocal in stipulating that an investment includes "shares, stocks in companies, and other forms of participation in companies." The States Parties to the BIT could, had they wished, have limited the scope of the term 'investment' to cases where the foreign investor holds a controlling shareholding or even a 100% shareholding in a locally-incorporated subsidiary in the host State. They did not do so.
116. Hochtief owns 26% of the shares in PdL, to which it has contributed capital and made loans totalling over USD 34 million.<sup>20</sup> Given the scale of what would be regarded in any commercial context as an investment, and given the likelihood of consortium funding for large-scale projects, it is not surprising that the States Parties to the BIT agreed upon a definition of 'investment' that includes configurations such as those in the present case. Moreover, the terms of the tender document under which Hochtief bid for the right to engage in this project stipulated that the successful bidder would have to operate through a company incorporated in Argentina.

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<sup>18</sup> Transcript, Day 1, pp. 43-44.

<sup>19</sup> Transcript, Day 1, pp. 45-46.

<sup>20</sup> Request for Arbitration, paragraphs 4, 100. The total contribution including interest up to May 2007 is said to be almost USD 50 million: *ibid.*, paragraph 102.

117. The fact that Hochtief agreed, under Article 5 of the Concession contract, to assign all of its rights and obligations to PdL does not alter the position. Indeed, it confirms that Hochtief's investment consisted precisely in its shares in PdL and other forms of investment recognized in BIT Article 1(1).<sup>21</sup>
118. Similarly, the fact that there are jurisdictional clauses relating to disputes under the concession contract, providing for litigation or arbitration in Argentina,<sup>22</sup> does not alter the position. Those provisions govern the manner in which PdL must pursue dispute settlement; but they do not alter the character of Hochtief's participation in PdL as an investment.
119. The Tribunal has no doubt that Hochtief has made an investment in Argentina, in PdL, and that it is an investor under the BIT.

## **XI Jurisdiction of the Centre**

120. The Respondent sought a declaration that the dispute was not only outside the jurisdiction of the Tribunal but also outside the jurisdiction of the Centre. The Tribunal does not accept that this is so. The dispute plainly concerns a dispute between a State Party to the BIT and an investor of the other State Party, both States being Contracting Parties to the ICSID Convention. The dispute arises out of an investment; and the parties to the dispute have, as explained above, consented to submit it to arbitration. The Tribunal accordingly considers that the requirements of the ICSID Convention and in particular Article 25 thereof, are met.

## **XII The contract claims and double recovery**

121. The Respondent argued that Hochtief's claim overlapped with contractual claims being pursued in the courts in Argentina, and that Respondent was being put at risk of having to pay twice for the same alleged injury.

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<sup>21</sup> Transcript, Day 1, pp. 55-56.

<sup>22</sup> See Transcript, Day 1, p. 59.

122. The Tribunal is aware of this risk, but does not consider that it is a matter that goes to the question of jurisdiction. It will, if necessary, be addressed at a later stage in these proceedings.

### **XIII Costs**

123. The Respondent requested an order that costs and fees be taxed against the Claimant. The Tribunal reserves this question for decision along with the merits of this dispute.

### **XIV Conclusion**

124. The Tribunal has reached this Decision on Jurisdiction by a majority. It has done so after a great deal of thought and detailed discussion, reflecting the difficulty of the question. It is right to record the seriousness of those discussions, and the openness with which differing views have been considered, and the high regard of those in the majority for the carefully reasoned arguments of their co-arbitrator.

125. Accordingly, for the reasons set out above, the Tribunal *decides*:

(i) to reject the Respondent's submission that the Centre has no jurisdiction and the Tribunal has no competence over this case;

(ii) to assert that the Centre has jurisdiction and the Tribunal has competence over this case; and

(iii) to decide upon the question of costs and fees at a later stage, along with the merits of the dispute.

*[signed]*

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Honorable Charles N. Brower  
Arbitrator

*[signed]*

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Mr. J. Christopher Thomas, Q.C.  
Arbitrator

*[signed]*

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Professor Vaughan Lowe  
President of the Tribunal



## Appendix I

# *Treaty Series*

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*Treaties and international agreements  
registered  
or filed and recorded  
with the Secretariat of the United Nations*

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# *Recueil des Traités*

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*Traités et accords internationaux  
enregistrés  
ou classés et inscrits au répertoire  
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## *Treaty Series*

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*Treaties and international agreements  
registered  
or filed and recorded  
with the Secretariat of the United Nations*

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VOLUME 1910

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## *Recueil des Traités*

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*Traités et accords internationaux  
enregistrés  
ou classés et inscrits au répertoire  
au Secrétariat de l'Organisation des Nations Unies*

United Nations • Nations Unies

New York, 2001

***Treaties and international agreements  
registered or filed and recorded  
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VOLUME 1910

1996

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## NOTE BY THE SECRETARIAT

Under Article 102 of the Charter of the United Nations every treaty and every international agreement entered into by any Member of the United Nations after the coming into force of the Charter shall, as soon as possible, be registered with the Secretariat and published by it. Furthermore, no party to a treaty or international agreement subject to registration which has not been registered may invoke that treaty or agreement before any organ of the United Nations. The General Assembly, by resolution 97 (I), established regulations to give effect to Article 102 of the Charter (see text of the regulations, vol. 859, p. VIII).

The terms "treaty" and "international agreement" have not been defined either in the Charter or in the regulations, and the Secretariat follows the principle that it acts in accordance with the position of the Member State submitting an instrument for registration that so far as that party is concerned the instrument is a treaty or an international agreement within the meaning of Article 102. Registration of an instrument submitted by a Member State, therefore, does not imply a judgement by the Secretariat on the nature of the instrument, the status of a party or any similar question. It is the understanding of the Secretariat that its action does not confer on the instrument the status of a treaty or an international agreement if it does not already have that status and does not confer on a party a status which it would not otherwise have.

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\* \*

Unless otherwise indicated, the translations of the original texts of treaties, etc., published in this *Series* have been made by the Secretariat of the United Nations.

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## NOTE DU SECRÉTARIAT

Aux termes de l'Article 102 de la Charte des Nations Unies, tout traité ou accord international conclu par un Membre des Nations Unies après l'entrée en vigueur de la Charte sera, le plus tôt possible, enregistré au Secrétariat et publié par lui. De plus, aucune partie à un traité ou accord international qui aurait dû être enregistré mais ne l'a pas été ne pourra invoquer ledit traité ou accord devant un organe des Nations Unies. Par sa résolution 97 (I), l'Assemblée générale a adopté un règlement destiné à mettre en application l'Article 102 de la Charte (voir texte du règlement, vol. 859, p. IX).

Le terme « traité » et l'expression « accord international » n'ont été définis ni dans la Charte ni dans le règlement, et le Secrétariat a pris comme principe de s'en tenir à la position adoptée à cet égard par l'Etat Membre qui a présenté l'instrument à l'enregistrement, à savoir que pour autant qu'il s'agit de cet Etat comme partie contractante l'instrument constitue un traité ou un accord international au sens de l'Article 102. Il s'ensuit que l'enregistrement d'un instrument présenté par un Etat Membre n'implique, de la part du Secrétariat, aucun jugement sur la nature de l'instrument, le statut d'une partie ou toute autre question similaire. Le Secrétariat considère donc que les actes qu'il pourrait être amené à accomplir ne confèrent pas à un instrument la qualité de « traité » ou d'« accord international » si cet instrument n'a pas déjà cette qualité, et qu'ils ne confèrent pas à une partie un statut que, par ailleurs, elle ne posséderait pas.

\*  
\* \*

Sauf indication contraire, les traductions des textes originaux des traités, etc., publiés dans ce *Recueil* ont été établies par le Secrétariat de l'Organisation des Nations Unies.

I

*Treaties and international agreements*

*registered*

*on 8 February 1996*

*Nos. 32532 to 32544*

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*Traités et accords internationaux*

*enregistrés*

*le 8 février 1996*

*N<sup>os</sup> 32532 à 32544*





**No. 32538**

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**GERMANY  
and  
ARGENTINA**

**Treaty on the encouragement and reciprocal protection of  
investments (with protocol and exchanges of notes).  
Signed at Bonn on 9 April 1991**

*Authentic texts: German and Spanish.*

*Registered by Germany on 8 February 1996.*

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**ALLEMAGNE  
et  
ARGENTINE**

**Traité relatif à la promotion et à la protection réciproque des  
investissements (avec protocole et échanges de notes).  
Signé à Bonn le 9 avril 1991**

*Textes authentiques : allemand et espagnol.*

*Enregistré par l'Allemagne le 8 février 1996.*

[GERMAN TEXT — TEXTE ALLEMAND]

**VERTRAG ZWISCHEN DER BUNDESREPUBLIK DEUTSCHLAND  
UND DER ARGENTINISCHEN REPUBLIK ÜBER DIE FÖRDE-  
RUNG UND DEN GEGENSEITIGEN SCHUTZ VON KAPITAL-  
ANLAGEN**

Die Bundesrepublik Deutschland

und

die Argentinische Republik –

in dem Wunsch, die wirtschaftliche Zusammenarbeit zwischen beiden Staaten zu vertiefen,

in dem Bestreben, günstige Bedingungen für Kapitalanlagen von Staatsangehörigen oder Gesellschaften des einen Staates im Hoheitsgebiet des anderen Staates zu schaffen,

in der Erkenntnis, daß eine Förderung und ein vertraglicher Schutz dieser Kapitalanlagen geeignet sind, die private wirtschaftliche Initiative zu beleben und den Wohlstand beider Völker zu mehren –

haben folgendes vereinbart:

**Artikel 1**

Für die Zwecke dieses Vertrags

1. umfaßt der Begriff „Kapitalanlagen“ alle Arten von Vermögenswerten gemäß der Gesetzgebung der Vertragspartei, in deren Hoheitsgebiet die Kapitalanlage in Übereinstimmung mit diesem Vertrag vorgenommen wird, insbesondere, aber nicht ausschließlich
  - a) Eigentum an beweglichen und unbeweglichen Sachen sowie sonstige dingliche Rechte wie Hypotheken und Pfandrechte;
  - b) Aktien, Anteilsrechte an Gesellschaften und andere Arten von Beteiligungen an Gesellschaften;
  - c) Ansprüche auf Geld, das verwendet wurde, um einen wirtschaftlichen Wert zu schaffen, oder Ansprüche auf Leistungen, die einen wirtschaftlichen Wert haben;



- d) Rechte des geistigen Eigentums wie insbesondere Urheberrechte, Patente, Gebrauchsmuster, gewerbliche Muster und Modelle, Marken, Handelsnamen, Betriebs- und Geschäftsgeheimnisse, technische Verfahren, Know-how und Goodwill;
  - e) öffentlich-rechtliche Konzessionen einschließlich Aufsuchungs- und Gewinnungskonzessionen;
2. bezeichnet der Begriff „Erträge“ diejenigen Beträge, die auf eine Kapitalanlage entfallen, wie Gewinnanteile, Dividenden, Zinsen, Lizenz- oder andere Entgelte;
3. bezeichnet der Begriff „Staatsangehörige“
- a) in bezug auf die Bundesrepublik Deutschland:  
Deutsche im Sinne des Grundgesetzes für die Bundesrepublik Deutschland.
  - b) in bezug auf die Argentinische Republik:  
Argentinier im Sinne der argentinischen Rechtsvorschriften;
4. bezeichnet der Begriff „Gesellschaften“ juristische Personen sowie Handelsgesellschaften oder sonstige Gesellschaften oder Vereinigungen mit oder ohne Rechtspersönlichkeit, die ihren Sitz im Hoheitsgebiet einer der Vertragsparteien haben, gleichviel, ob ihre Tätigkeit auf Gewinn gerichtet ist oder nicht.

## Artikel 2

(1) Jede Vertragspartei wird in ihrem Hoheitsgebiet Kapitalanlagen von Staatsangehörigen oder Gesellschaften der anderen Vertragspartei fördern und diese Kapitalanlagen in Übereinstimmung mit ihren Rechtsvorschriften zulassen. Sie wird Kapitalanlagen in jedem Fall gerecht und billig behandeln.

(2) Kapitalanlagen von Staatsangehörigen oder Gesellschaften einer Vertragspartei, die im Hoheitsgebiet der anderen Vertragspartei gemäß deren Gesetzgebung vorgenommen worden sind, genießen den vollen Schutz dieses Vertrags.

(3) Eine Vertragspartei wird die Verwaltung, die Verwendung, den Gebrauch oder die Nutzung der Kapitalanlagen von Staatsangehörigen oder Gesellschaften der anderen Vertragspartei in ihrem Hoheitsgebiet in keiner Weise durch willkürliche oder diskriminierende Maßnahmen beeinträchtigen.

## Artikel 3

(1) Jede Vertragspartei behandelt Kapitalanlagen von Staatsangehörigen oder Gesellschaften der anderen Vertragspartei

oder Kapitalanlagen, an denen Staatsangehörige oder Gesellschaften der anderen Vertragspartei beteiligt sind, in ihrem Hoheitsgebiet nicht weniger günstig als Kapitalanlagen der eigenen Staatsangehörigen und Gesellschaften oder Kapitalanlagen von Staatsangehörigen und Gesellschaften dritter Staaten.

(2) Jede Vertragspartei behandelt Staatsangehörige oder Gesellschaften der anderen Vertragspartei hinsichtlich ihrer Betätigung im Zusammenhang mit Kapitalanlagen in ihrem Hoheitsgebiet nicht weniger günstig als ihre eigenen Staatsangehörigen und Gesellschaften oder Staatsangehörige und Gesellschaften dritter Staaten.

(3) Diese Behandlung bezieht sich nicht auf Vorrechte, die eine Vertragspartei den Staatsangehörigen oder Gesellschaften dritter Staaten wegen ihrer Mitgliedschaft in einer Zoll- oder Wirtschaftsunion, einem gemeinsamen Markt oder einer Freihandelszone einräumt.

(4) Die in diesem Artikel gewährte Behandlung bezieht sich nicht auf Vergünstigungen, die eine Vertragspartei den Staatsangehörigen oder Gesellschaften dritter Staaten aufgrund eines Doppelbesteuerungsabkommens oder sonstiger Vereinbarungen über Steuerfragen gewährt.

#### Artikel 4

(1) Kapitalanlagen von Staatsangehörigen oder Gesellschaften einer Vertragspartei genießen im Hoheitsgebiet der anderen Vertragspartei vollen rechtlichen Schutz und volle rechtliche Sicherheit.

(2) Kapitalanlagen von Staatsangehörigen oder Gesellschaften einer Vertragspartei dürfen im Hoheitsgebiet der anderen Vertragspartei nur zum allgemeinen Wohl und gegen Entschädigung enteignet, verstaatlicht oder anderen Maßnahmen unterworfen werden, die in ihren Auswirkungen einer Enteignung oder Verstaatlichung gleichkommen. Die Entschädigung muß dem Wert der enteigneten Kapitalanlage unmittelbar vor dem Zeitpunkt entsprechen, in dem die tatsächliche oder drohende Enteignung, Verstaatlichung oder vergleichbare Maßnahme öffentlich bekannt wurde. Die Entschädigung muß unverzüglich geleistet werden und ist bis zum Zeitpunkt der Zahlung mit dem üblichen bankmäßigen Zinssatz zu verzinsen; sie muß tatsächlich verwertbar und frei transferierbar sein. Die Rechtmäßigkeit der Enteignung, Verstaatlichung oder vergleichbaren Maßnahme und die Höhe der Entschädigung müssen in einem ordentlichen Rechtsverfahren nachgeprüft werden können.

(3) Staatsangehörige oder Gesellschaften einer Vertragspartei, die durch Krieg oder sonstige bewaffnete Auseinandersetzungen,

Revolution, Staatsnotstand oder Aufruhr im Hoheitsgebiet der anderen Vertragspartei Verluste an Kapitalanlagen erleiden, werden von dieser Vertragspartei hinsichtlich der Rückerstattungen, Abfindungen, Entschädigungen oder sonstigen Gegenleistungen nicht weniger günstig behandelt als ihre eigenen Staatsangehörigen oder Gesellschaften. Solche Zahlungen müssen frei transferierbar sein.

(4) Hinsichtlich der in diesem Artikel geregelten Angelegenheiten genießen die Staatsangehörigen oder Gesellschaften einer Vertragspartei im Hoheitsgebiet der anderen Vertragspartei Meistbegünstigung.

#### Artikel 5

(1) Jede Vertragspartei gewährleistet den Staatsangehörigen oder Gesellschaften der anderen Vertragspartei den freien Transfer, der im Zusammenhang mit einer Kapitalanlage stehenden Zahlungen, insbesondere

- a) des Kapitals und zusätzlicher Beträge zur Aufrechterhaltung oder Ausweitung der Kapitalanlage;
- b) der Erträge;
- c) zur Rückzahlung der in Artikel 1, Absatz 1 Buchstabe c genannten Darlehen;
- d) des Erlöses im Fall vollständiger oder teilweiser Liquidation oder Veräußerung der Kapitalanlage;
- e) der Entschädigungen nach Artikel 4.

(2) Der Transfer erfolgt unverzüglich entsprechend den im Hoheitsgebiet der jeweiligen Vertragsparteien geltenden Verfahren und zu dem jeweils gültigen Kurs. Dieser Kurs darf nicht wesentlich von dem Kreuzkurs (cross rate) abweichen, der sich aus denjenigen Umrechnungskursen ergibt, die der Internationale Währungsfonds zum Zeitpunkt der Zahlung Umrechnungen der betreffenden Währungen in Sonderziehungsrechte zugrunde legen würde.

#### Artikel 6

Leistet eine Vertragspartei ihren Staatsangehörigen oder Gesellschaften Zahlungen aufgrund einer Gewährleistung für eine Kapitalanlage im Hoheitsgebiet der anderen Vertragspartei, so erkennt diese andere Vertragspartei, unbeschadet der Rechte der erstgenannten Vertragspartei aus Artikel 9, die Übertragung aller Rechte und Ansprüche dieser Staatsangehörigen oder Gesellschaften kraft Gesetzes oder aufgrund Rechtsgeschäfts auf

die erstgenannte Vertragspartei an. Die andere Vertragspartei erkennt auch den Eintritt der erstgenannten Vertragspartei in diese Rechte und Ansprüche des Rechtsvorgängers nach Grund und Höhe an. Für den Transfer von Zahlungen aufgrund der übertragenen Rechte und Ansprüche gilt Artikel 5 entsprechend.

#### Artikel 7

(1) Ergibt sich aus den Rechtsvorschriften einer Vertragspartei oder aus völkerrechtlichen Verpflichtungen, die neben diesem Vertrag zwischen den Vertragsparteien bestehen oder in Zukunft begründet werden, eine allgemeine oder besondere Regelung, durch die den Kapitalanlagen der Staatsangehörigen oder Gesellschaften der anderen Vertragspartei eine günstigere Behandlung als nach diesem Vertrag zu gewähren ist, so geht diese Regelung dem vorliegenden Vertrag insoweit vor, als sie günstiger ist.

(2) Jede Vertragspartei wird jede andere Verpflichtung einhalten, die sie in bezug auf Kapitalanlagen von Staatsangehörigen oder Gesellschaften der anderen Vertragspartei in ihrem Hoheitsgebiet übernommen hat.

#### Artikel 8

Dieser Vertrag gilt auch für Angelegenheiten, die sich nach Inkrafttreten dieses Vertrags in bezug auf Kapitalanlagen ergeben, die Staatsangehörige oder Gesellschaften der einen Vertragspartei im Hoheitsgebiet der anderen Vertragspartei gemäß deren Rechtsvorschriften vor Inkrafttreten dieses Vertrags vorgenommen haben.

#### Artikel 9

(1) Meinungsverschiedenheiten zwischen den Vertragsparteien über die Auslegung oder Anwendung dieses Vertrags sollen, soweit möglich, durch die Regierungen der beiden Vertragsparteien beigelegt werden.

(2) Kann eine Meinungsverschiedenheit auf diese Weise nicht beigelegt werden, so ist sie auf Verlangen einer der beiden Vertragsparteien einem Schiedsgericht zu unterbreiten.

(3) Das Schiedsgericht wird von Fall zu Fall gebildet, indem jede Vertragspartei ein Mitglied bestellt und beide Mitglieder sich auf den Angehörigen eines dritten Staates als Obmann einigen, der von den Regierungen der beiden Vertragsparteien zu bestellen ist. Die Mitglieder sind innerhalb von zwei Monaten, der Obmann innerhalb von drei Monaten zu bestellen, nachdem die eine Vertragspartei der anderen mitgeteilt hat, daß sie die Meinungsverschiedenheiten einem Schiedsgericht unterbreiten will.

(4) Werden die in Absatz 3 genannten Fristen nicht eingehalten, so kann in Ermangelung einer anderen Vereinbarung jede Vertragspartei den Präsidenten des Internationalen Gerichtshofs bitten, die erforderlichen Ernennungen vorzunehmen. Besitzt der Präsident die Staatsangehörigkeit einer der beiden Vertragsparteien oder ist er aus einem anderen Grund verhindert, so soll der Vizepräsident die Ernennungen vornehmen. Besitzt auch der Vizepräsident die Staatsangehörigkeit einer der beiden Vertragsparteien oder ist auch er verhindert, so soll das im Rang nächstfolgende Mitglied des Gerichtshofs, das nicht die Staatsangehörigkeit einer der beiden Vertragsparteien besitzt, die Ernennungen vornehmen.

(5) Das Schiedsgericht entscheidet mit Stimmenmehrheit. Seine Entscheidungen sind bindend. Jede Vertragspartei trägt die Kosten ihres Mitglieds sowie ihrer Vertretung in dem Verfahren vor dem Schiedsgericht; die Kosten des Obmanns sowie die sonstigen Kosten werden von den beiden Vertragsparteien zu gleichen Teilen getragen. Im übrigen regelt das Schiedsgericht sein Verfahren selbst.

(6) Sind beide Vertragsparteien auch Vertragsstaaten des Übereinkommens vom 18. März 1965 zur Beilegung von Investitionsstreitigkeiten zwischen Staaten und Angehörigen anderer Staaten, so kann mit Rücksicht auf die Regelung in Artikel 27 Absatz 1 dieses Übereinkommens das vorstehend vorgesehene Schiedsgericht insoweit nicht angerufen werden, als zwischen dem Staatsangehörigen oder der Gesellschaft einer Vertragspartei und der anderen Vertragspartei eine Vereinbarung nach Maßgabe des Artikels 25 des Übereinkommens zustande gekommen ist. Die Möglichkeit, das vorstehend vorgesehene Schiedsgericht im Fall der Nichtbeachtung einer Entscheidung des Schiedsgerichts des genannten Übereinkommens (Artikel 27) anzurufen, bleibt unberührt.

#### Artikel 10

(1) Meinungsverschiedenheiten in bezug auf Investitionen im Sinne dieses Vertrags zwischen einer der Vertragsparteien und einem Staatsangehörigen oder einer Gesellschaft der anderen Vertragspartei sollen, soweit möglich, zwischen den Streitparteien gütlich beigelegt werden.

(2) Kann eine Meinungsverschiedenheit im Sinne von Absatz 1 nicht innerhalb einer Frist von sechs Monaten ab dem Zeitpunkt ihrer Geltendmachung durch eine der beiden Streitparteien beigelegt werden, so ist sie auf Verlangen einer der beiden Streitparteien den zuständigen Gerichten der Vertragspartei, in deren Hoheitsgebiet die Investition getätigt wurde, zu unterbreiten.

(3) Unter jeder der nachstehend genannten Voraussetzungen kann die Meinungsverschiedenheit einem internationalen Schiedsgericht unterbreitet werden:

- a) auf Verlangen einer Streitpartei, wenn binnen 18 Monaten seit Einleitung des gerichtlichen Verfahrens gemäß Absatz 2 eine Sachentscheidung des angerufenen Gerichts nicht vorliegt oder wenn eine derartige Entscheidung vorliegt, die Meinungsverschiedenheit zwischen den Streitparteien aber fortbesteht;
- b) wenn beide Streitparteien sich darauf geeinigt haben.

(4) Sofern die Streitparteien nichts anderes vereinbart haben, werden Meinungsverschiedenheiten zwischen den Streitparteien in den Fällen von Absatz 3 dieses Artikels entweder einem Schiedsverfahren im Rahmen des Übereinkommens vom 18. März 1965 zur Beilegung von Investitionsstreitigkeiten zwischen den Staaten und Angehörigen anderer Staaten oder einem Ad hoc-Schiedsgericht nach den UNCITRAL-Schiedsregeln einvernehmlich unterworfen.

Kommt binnen drei Monaten, nachdem eine Streitpartei die Einleitung eines Schiedsverfahrens verlangt hat, keine Einigung zustande, so wird die Meinungsverschiedenheit – sofern beide Vertragsparteien Vertragsstaaten des Übereinkommens vom 18. März 1965 zur Beilegung von Investitionsstreitigkeiten zwischen Staaten und Angehörigen anderer Staaten sind – einem Schiedsverfahren im Rahmen des vorgenannten Übereinkommens unterworfen. Anderenfalls wird die Meinungsverschiedenheit dem vorgenannten Ad hoc-Schiedsgericht unterworfen.

(5) Das Schiedsgericht trifft seine Entscheidungen auf der Grundlage dieses Vertrags und gegebenenfalls anderer zwischen den Vertragsparteien geltender Übereinkünfte, des nationalen Rechts der Vertragspartei, in deren Hoheitsgebiet die Investition belegen ist – einschließlich der Regeln des Internationalen Privatrechts – und der allgemeinen Rechtsgrundsätze des Völkerrechts.

(6) Der Schiedsspruch ist bindend und wird gemäß innerstaatlichem Recht vollstreckt.

#### Artikel 11

Die Bestimmungen dieses Vertrags gelten auch in den in Artikel 63 des Wiener Übereinkommens vom 23. Mai 1969 über das Recht der Verträge genannten Fällen uneingeschränkt fort.

### Artikel 12

(1) Dieser Vertrag bedarf der Ratifikation; die Ratifikationsurkunden werden so bald wie möglich in Buenos Aires ausgetauscht.

(2) Dieser Vertrag tritt einen Monat nach Austausch der Ratifikationsurkunden in Kraft. Er bleibt zehn Jahre lang in Kraft; nach deren Ablauf verlängert sich die Geltungsdauer auf unbegrenzte Zeit, sofern nicht eine der beiden Vertragsparteien den Vertrag mit einer Frist von zwölf Monaten vor Ablauf schriftlich kündigt. Nach Ablauf von zehn Jahren kann der Vertrag jederzeit mit einer Frist von zwölf Monaten gekündigt werden.

(3) Für Kapitalanlagen, die bis zum Zeitpunkt des Außerkrafttretens dieses Vertrags vorgenommen worden sind, gelten die Artikel 1 bis 11 noch für weitere fünfzehn Jahre vom Tag des Außerkrafttretens des Vertrags an.

Geschehen zu Bonn am 9. April 1991 in zwei Urschriften, jede in deutscher und spanischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

Für die Bundesrepublik  
Deutschland:  
GENSCHER

Für die Argentinische  
Republik:  
GUIDO DI TELLA

## PROTOKOLL

Bei der Unterzeichnung des Vertrags zwischen der Bundesrepublik Deutschland und der Argentinischen Republik über die Förderung und den gegenseitigen Schutz von Kapitalanlagen haben die unterzeichneten Bevollmächtigten außerdem folgende Bestimmungen vereinbart, die als Bestandteile des Vertrags gelten:

## (1) Zu Artikel 1

- a) Artikel 1 Nummer 1 des Vertrags findet keine Anwendung auf Kapitalanlagen in der Argentinischen Republik von natürlichen Personen, die Staatsangehörige der anderen Vertragspartei sind, wenn die betreffenden Personen zur Zeit der Vornahme ihrer ursprünglichen Investition bereits mehr als zwei Jahre ihren Wohnsitz in der Argentinischen Republik hatten, es sei denn, daß ihre Kapitalanlage nachweislich aus dem Ausland eingebracht wurde.
- b) Erträge aus der Kapitalanlage und im Fall ihrer Wiederanlage auch deren Erträge genießen den gleichen Schutz wie die Kapitalanlage.
- c) Als „andere Arten von Beteiligungen“ im Sinne von Artikel 1 Nummer 1 Buchstabe b werden vor allem solche Kapitalanlagen angesehen, die ihrem Inhaber keine Stimm- oder Kontrollrechte vermitteln.
- d) Die in Nummer 1 Buchstabe c genannten Ansprüche auf Geld umfassen Ansprüche aus Darlehen, die im Zusammenhang mit einer Beteiligung stehen und nach Zweck und Umfang den Charakter einer Beteiligung haben (beteiligungähnliche Darlehen). Hierunter fallen nicht Kredite von dritter Seite, z. B. Bankkredite zu kommerziellen Bedingungen.
- e) Unbeschadet anderer Verfahren zur Feststellung der Staatsangehörigkeit gilt insbesondere als Staatsangehöriger einer Vertragspartei jede Person, die einen von den zuständigen Behörden der betreffenden Vertragspartei ausgestellten nationalen Reisepaß besitzt. Der Vertrag findet keine Anwendung auf Investoren, die Staatsangehörige beider Vertragsparteien sind.
- f) Für die Feststellung, ob der Begriff „Gesellschaft“ nach Artikel 1 Nummer 4 anwendbar ist, wird auf ihren Sitz abgestellt, wobei hierunter der Ort zu verstehen ist, an dem die Gesellschaft ihre Hauptverwaltung hat.



- g) Der Vertrag gilt auch in den Gebieten der ausschließlichen Wirtschaftszone und des Festlandssockels, soweit das Völkerrecht der jeweiligen Vertragspartei die Ausübung von souveränen Rechten oder Hoheitsbefugnissen in diesen Gebieten erlaubt.

(2) Zu Artikel 3

- a) Als „Betätigung“ im Sinne des Artikels 3 Absatz 2 ist insbesondere, aber nicht ausschließlich, die Verwaltung, die Verwendung, der Gebrauch und die Nutzung einer Kapitalanlage anzusehen. Als eine „weniger günstige“ Behandlung im Sinne des Artikels 3 sind insbesondere, aber nicht ausschließlich anzusehen: weniger günstige Bedingungen beim Bezug von Rohstoffen und anderen Zulieferungen, Energie und Brennstoffen sowie Produktions- und Betriebsmitteln aller Art und beim Absatz von Erzeugnissen im In- und Ausland. Maßnahmen, die aus Gründen der inneren und äußeren Sicherheit und öffentlichen Ordnung, der Volksgesundheit oder Sittlichkeit zu treffen sind, gelten nicht als „weniger günstige“ Behandlung im Sinne des Artikels 3.
- b) Die Bestimmungen des Artikels 3 verpflichten eine Vertragspartei nicht, steuerliche Vergünstigungen, Befreiungen und Ermäßigungen, welche gemäß den Steuergesetzen nur den in ihrem Hoheitsgebiet ansässigen natürlichen Personen und Gesellschaften gewährt werden, auf im Hoheitsgebiet der anderen Vertragspartei ansässige natürliche Personen und Gesellschaften auszudehnen.
- c) Die Vertragsparteien werden im Rahmen ihrer innerstaatlichen Rechtsvorschriften Anträge auf die Einreise und den Aufenthalt von Personen der einen Vertragspartei, die im Zusammenhang mit einer Kapitalanlage in das Hoheitsgebiet der anderen Vertragspartei einreisen und sich aufhalten wollen, wohlwollend prüfen; das gleiche gilt für Arbeitnehmer der einen Vertragspartei, die im Zusammenhang mit einer Kapitalanlage in das Hoheitsgebiet der anderen Vertragspartei einreisen und sich dort aufhalten wollen, um eine Tätigkeit als Arbeitnehmer auszuüben. Auch Anträge auf Erteilung der Arbeitslaubnis werden wohlwollend geprüft.

(3) Zu Artikel 4

Ein Anspruch auf Entschädigung besteht auch dann, wenn durch in Artikel 4 genannte Maßnahmen in das Unternehmen, in dem die Kapitalanlage angelegt ist, eingegriffen und dadurch die Kapitalanlage erheblich beeinträchtigt wird.

## (4) Zu Artikel 5

Als „unverzüglich“ durchgeführt im Sinne des Artikels 5 Absatz 2 gilt ein Transfer, der innerhalb einer Frist erfolgt, die normalerweise zur Beachtung der Transferförmlichkeiten erforderlich ist. Die Frist beginnt mit der Einreichung eines formgerechten und vollständigen Antrags und darf unter keinen Umständen zwei Monate überschreiten.

## (5) Zu Artikel 8

Der Vertrag gilt jedoch in keinem Fall für Meinungsverschiedenheiten und Streitfälle, die vor seinem Inkrafttreten entstanden sind.

## (6) Bei Beförderungen von Gütern und Personen, die im Zusammenhang mit einer Kapitalanlage stehen, wird eine Vertragspartei die Transportunternehmen der anderen Vertragspartei, vorbehaltlich der zwischen beiden Vertragsparteien bestehenden internationalen Übereinkünfte, weder ausschalten noch behindern und, soweit erforderlich, Genehmigungen zur Durchführung der Transporte erteilen.

Geschehen zu Bonn am 9. April 1991 in zwei Urschriften, jede in deutscher und spanischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

Für die Bundesrepublik  
Deutschland:

GENSCHER

Für die Argentinische  
Republik:

GUIDO DI TELLA

[SPANISH TEXT — TEXTE ESPAGNOL]

TRATADO ENTRE LA REPÚBLICA FEDERAL DE ALEMANIA Y  
LA REPÚBLICA ARGENTINA SOBRE PROMOCIÓN Y PROTECCIÓN  
RECÍPROCA DE INVERSIONES

El Gobierno de la República Federal de Alemania

y

el Gobierno de la República Argentina,

con el deseo de intensificar la cooperación económica entre  
ambos Estados,

con el propósito de crear condiciones favorables para las  
inversiones de los nacionales o sociedades de uno de los dos  
Estados en el territorio del otro Estado,

reconociendo que la promoción y la protección de esas inver-  
siones mediante un tratado pueden servir para estimular la inicia-  
tiva económica privada e incrementar el bienestar de ambos  
pueblos,

han convenido lo siguiente:

**Artículo 1**

A los fines del presente Tratado

- (1) El concepto de «inversiones» designa todo tipo de activo  
definido de acuerdo con las leyes y reglamentaciones de la  
Parte Contratante en cuyo territorio la inversión se realizó de  
conformidad con este Tratado; en particular, pero no exclusi-  
vamente, esto incluye:
- a) la propiedad de bienes muebles e inmuebles y demás  
derechos reales, tales como hipotecas y derechos de  
prenda;
  - b) las acciones, derechos de participación en sociedades y  
otros tipos de participaciones en sociedades;
  - c) los derechos a fondos empleados para crear un valor  
económico o a prestaciones que tengan un valor econó-  
mico;
  - d) los derechos de propiedad intelectual, tales como los  
derechos de autor, patentes, modelos de utilidad, dise-  
ños y modelos industriales y comerciales, marcas, nom-

- bres comerciales, secretos industriales y comerciales, procedimientos tecnológicos, know how y valor llave;
- e) las concesiones otorgadas por entidades de derecho público, incluidas las concesiones de prospección y explotación.
- (2) El concepto de «ganancias» designa las sumas obtenidas de una inversión, tales como las participaciones en los beneficios, los dividendos, los intereses, los derechos de licencia y otras remuneraciones.
- (3) El concepto de «nacionales» designa:
- a) con referencia a la República Federal de Alemania:  
los alemanes en el sentido de la Ley Fundamental de la República Federal de Alemania;
- b) con referencia a la República Argentina:  
los argentinos en el sentido de las disposiciones legales vigentes en Argentina.
- (4) El concepto de «sociedades» designa todas las personas jurídicas, así como todas las sociedades comerciales y demás sociedades o asociaciones con o sin personería jurídica que tengan su sede en el territorio de una de las Partes Contratantes, independientemente de que su actividad tenga o no fines de lucro.

### Artículo 2

(1) Cada una de las Partes Contratantes promoverá las inversiones dentro de su territorio de nacionales o sociedades de la otra Parte Contratante y las admitirá de conformidad con sus leyes y reglamentaciones. En todo caso tratará las inversiones justa y equitativamente.

(2) Las inversiones realizadas por nacionales o sociedades de una de las Partes Contratantes en el territorio de la otra Parte Contratante de acuerdo con las leyes y reglamentaciones de esta última gozarán de la plena protección de este Tratado.

(3) Ninguna de las Partes Contratantes perjudicará en su territorio la administración, la utilización, el uso o el goce de las inversiones de nacionales o sociedades de la otra Parte Contratante a través de medidas arbitrarias o discriminatorias.

### Artículo 3

(1) Ninguna de las Partes Contratantes someterá en su territorio a las inversiones de nacionales o sociedades de la otra Parte Contratante o a las inversiones en las que mantengan participa-

ciones los nacionales o sociedades de la otra Parte Contratante, a un trato menos favorable que el que se conceda a las inversiones de los propios nacionales y sociedades o a las inversiones de nacionales y sociedades de terceros Estados.

(2) Ninguna de las Partes Contratantes someterá en su territorio a los nacionales o sociedades de la otra Parte Contratante, en cuanto se refiere a sus actividades relacionadas con las inversiones, a un trato menos favorable que a sus propios nacionales y sociedades o a los nacionales y sociedades de terceros Estados.

(3) Dicho trato no se extenderá a los privilegios que una de las Partes Contratantes conceda a los nacionales y sociedades de terceros Estados por formar parte de una unión aduanera o económica, un mercado común o una zona de libre comercio.

(4) El trato acordado por el presente artículo no se extenderá a las ventajas que una de las Partes Contratantes conceda a los nacionales o sociedades de terceros Estados como consecuencia de un acuerdo para evitar la doble imposición o de otros acuerdos en materia impositiva.

#### Artículo 4

(1) Las inversiones de nacionales o sociedades de una de las Partes Contratantes gozarán de plena protección y seguridad jurídica en el territorio de la otra Parte Contratante.

(2) Las inversiones de nacionales o sociedades de una de las Partes Contratantes no podrán, en el territorio de la otra Parte Contratante, ser expropiadas, nacionalizadas, o sometidas a otras medidas que en sus efectos equivalgan a expropiación o nacionalización, salvo por causas de utilidad pública, y deberán en tal caso ser indemnizadas. La indemnización deberá corresponder al valor de la inversión expropiada inmediatamente antes de la fecha de hacerse pública la expropiación efectiva o inminente, la nacionalización o la medida equivalente. La indemnización deberá abonarse sin demora y devengará intereses hasta la fecha de su pago según el tipo usual de interés bancario; deberá ser efectivamente realizable y libremente transferible. La legalidad de la expropiación, nacionalización o medida equiparable, y el monto de la indemnización, deberán ser revisables en procedimiento judicial ordinario.

(3) Los nacionales o sociedades de una de las Partes Contratantes que sufran pérdidas en sus inversiones por efecto de guerra u otro conflicto armado, revolución, estado de emergencia nacional o insurrección en el territorio de la otra Parte Contratante, no serán tratados por ésta menos favorablemente que sus propios nacionales o sociedades en lo referente a restituciones.

compensaciones, indemnizaciones u otros resarcimientos. Estos pagos deberán ser libremente transferibles.

(4) En lo concerniente a las materias regidas por el presente artículo, los nacionales o sociedades de una de las Partes Contratantes gozarán en el territorio de la otra Parte Contratante del trato de la nación más favorecida.

#### Artículo 5

(1) Cada Parte Contratante garantizará a los nacionales o sociedades de la otra Parte Contratante la libre transferencia de los pagos relacionados con una inversión, especialmente:

- a) del capital y de las sumas adicionales para el mantenimiento o ampliación de la inversión de capital;
- b) de las ganancias;
- c) de la amortización de los préstamos definidos en el inciso c) del apartado 1 del artículo 1;
- d) del producto de la venta o liquidación total o parcial de la inversión;
- e) de las indemnizaciones previstas en el artículo 4.

(2) La transferencia se efectuará sin demora de acuerdo a los procedimientos establecidos en el territorio de cada Parte Contratante y al tipo de cambio aplicable en cada caso. Dicho tipo de cambio no deberá diferir sustancialmente del tipo cruzado (cross rate) resultante de los tipos de cambio que el Fondo Monetario Internacional aplicaría si en la fecha del pago cambiaran las monedas de los países interesados en derechos especiales de giro.

#### Artículo 6

Si una Parte Contratante realiza pagos a sus nacionales o sociedades en virtud de una garantía otorgada por una inversión en el territorio de la otra Parte Contratante, esta última, sin perjuicio de los derechos que en virtud del artículo 9 corresponden a la primera Parte Contratante, reconocerá el traspaso de todos los derechos de aquellos nacionales o sociedades a la primera Parte Contratante, bien sea por disposición legal o por acto jurídico. Asimismo, la otra Parte Contratante reconocerá la causa y el alcance de la subrogación de la primera Parte Contratante en todos estos derechos del titular anterior. Para la transferencia de los pagos en virtud de los derechos transferidos regirá *mutatis mutandis* el artículo 5.

### Artículo 7

(1) Si de las disposiciones legales de una de las Partes Contratantes o de las obligaciones emanadas del derecho internacional no contempladas en el presente Tratado, actuales o futuras, entre las Partes Contratantes, resultare una reglamentación general o especial en virtud de la cual deba concederse a las inversiones de los nacionales o sociedades de la otra Parte Contratante un trato más favorable que el previsto en el presente Tratado, dicha reglamentación prevalecerá sobre el presente Tratado, en cuanto sea más favorable.

(2) Cada Parte Contratante cumplirá cualquier otro compromiso que haya contraído con relación a las inversiones de nacionales o sociedades de la otra Parte Contratante en su territorio.

### Artículo 8

El presente Tratado se aplicará también a los asuntos surgidos después de su entrada en vigor en relación a las inversiones efectuadas por los nacionales o sociedades de una Parte Contratante conforme a las leyes y reglamentaciones de la otra Parte Contratante en el territorio de esta última antes de la entrada en vigor del mismo.

### Artículo 9

(1) Las controversias que surgieren entre las Partes Contratantes sobre la interpretación o aplicación del presente Tratado deberán, en lo posible, ser dirimidas por los Gobiernos de ambas Partes Contratantes.

(2) Si una controversia no pudiere ser dirimida de esa manera, será sometida a un tribunal arbitral a petición de una de las Partes Contratantes.

(3) El tribunal arbitral será constituido ad hoc; cada Parte Contratante nombrará un miembro, y los dos miembros se pondrán de acuerdo para elegir como presidente a un nacional de un tercer Estado que será nombrado por los Gobiernos de ambas Partes Contratantes. Los miembros serán nombrados dentro de un plazo de dos meses, el Presidente dentro de un plazo de tres meses, después de que una de las Partes Contratantes haya comunicado a la otra que desea someter la controversia a un tribunal arbitral.

(4) Si los plazos previstos en el párrafo 3 no fueren observados, y a falta de otro arreglo, cada Parte Contratante podrá invitar al Presidente de la Corte Internacional de Justicia a proceder a los nombramientos necesarios. En caso de que el presidente sea nacional de una de las Partes Contratantes o se halle impedido por otra causa, corresponderá al Vicepresidente efectuar los

nombramientos. Si el Vicepresidente también fuere nacional de una de las dos Partes Contratantes o si se hallare también impedido, corresponderá al miembro de la Corte que siga inmediatamente en el orden jerárquico y no sea nacional de una de las Partes Contratantes, efectuar los nombramientos.

(5) El tribunal arbitral tomará sus decisiones por mayoría de votos. Sus decisiones serán obligatorias. Cada Parte Contratante sufragará los gastos ocasionados por la actividad de su árbitro, así como los gastos de su representación en el procedimiento arbitral; los gastos del presidente, así como los demás gastos, serán sufragados por partes iguales por las dos Partes Contratantes. Por lo demás, el tribunal arbitral determinará su propio procedimiento.

(6) Si ambas Partes Contratantes fueren también Estados Contratantes del Convenio sobre arreglo de diferencias relativas a inversiones entre Estados y nacionales de otros Estados del 18 de marzo de 1965, no se podrá, en atención a la disposición del párrafo 1 del artículo 27 de dicho Convenio, acudir al tribunal arbitral arriba previsto cuando el nacional o la sociedad de una Parte Contratante y la otra Parte Contratante hayan llegado a un acuerdo conforme al artículo 25 del Convenio. No quedará afectada la posibilidad de acudir al tribunal arbitral arriba previsto en el caso de que no se respete una decisión del Tribunal de Arbitraje del mencionado Convenio (artículo 27).

### Artículo 10

(1) Las controversias que surgieren entre una de las Partes Contratantes y un nacional o una sociedad de la otra Parte Contratante en relación con las inversiones en el sentido del presente Tratado deberán, en lo posible, ser amigablemente dirimidas entre las partes en la controversia.

(2) Si una controversia en el sentido del párrafo 1 no pudiera ser dirimida dentro del plazo de seis meses, contado desde la fecha en que una de las partes en la controversia la haya promovido, será sometida a petición de una de ellas a los tribunales competentes de la Parte Contratante en cuyo territorio se realizó la inversión.

(3) La controversia podrá ser sometida a un tribunal arbitral internacional en cualquiera de las circunstancias siguientes:

- a) a petición de una de las partes en la controversia, cuando no exista una decisión sobre el fondo después de transcurridos dieciocho meses contados a partir de la iniciación del proceso judicial previsto por el apartado 2 de este artículo, o cuando exista tal decisión pero la controversia subsista entre las partes;



b) cuando ambas partes en la controversia así lo hayan convenido.

(4) En los casos previstos por el párrafo 3 anterior, las controversias entre las partes, en el sentido de este artículo, se someterán de común acuerdo, cuando las partes en la controversia no hubiesen acordado otra cosa, sea a un procedimiento arbitral en el marco del «Convenio sobre Arreglo de Diferencias relativas a las inversiones entre Estados y nacionales de otros Estados», del 18 de marzo de 1965 o a un tribunal arbitral ad hoc establecido de conformidad con las reglas de la Comisión de Naciones Unidas para el Derecho Mercantil Internacional (C.N.U.D.M.I.).

Si después de un periodo de tres meses a partir de que una de las partes hubiere solicitado el comienzo del procedimiento arbitral no se hubiese llegado a un acuerdo, la controversia será sometida a un procedimiento arbitral en el marco del «Convenio sobre Arreglo de Diferencias relativas a las inversiones entre Estados y nacionales de otros Estados», del 18 de marzo de 1965, siempre y cuando ambas Partes Contratantes sean partes de dicho Convenio. En caso contrario la controversia será sometida al tribunal arbitral ad hoc antes citado.

(5) El Tribunal arbitral decidirá sobre la base del presente Tratado y, en su caso, sobre la base de otros tratados vigentes entre las Partes, del derecho interno de la Parte Contratante – en cuyo territorio se realizó la inversión, incluyendo sus normas de derecho internacional privado, y de los principios generales del derecho internacional.

(6) La sentencia arbitral será obligatoria y cada Parte la ejecutará de acuerdo con su legislación.

#### **Artículo 11**

Las disposiciones del presente Tratado continuarán siendo plenamente aplicables aún en los casos previstos por el artículo 63 de la Convención de Viena sobre el derecho de los Tratados del 23 de mayo de 1969.

#### **Artículo 12**

(1) El presente Tratado será ratificado; los instrumentos de ratificación serán canjeados a la mayor brevedad posible en Buenos Aires.

(2) El presente Tratado entrará en vigor un mes después de la fecha en que se haya efectuado el canje de los instrumentos de ratificación. Su validez será de diez años y se prolongará después por tiempo indefinido, a menos que una de las Partes Contratantes comunicara por escrito a la otra su intención de darlo por

terminado doce meses antes de su expiración. Transcurridos diez años, el Tratado podrá denunciarse en cualquier momento, con un preaviso de doce meses.

(3) Para inversiones realizadas antes de la fecha de terminación del presente Tratado, las disposiciones de los artículos 1 a 11 seguirán rigiendo durante los quince años subsiguientes a dicha fecha.

Hecho en Bonn el día 9 de Abril de 1991 en dos originales, en idiomas alemán y español, siendo ambos textos igualmente auténticos.

Por la República  
Federal de Alemania:

GENSCHER

Por la República  
Argentina:

GUIDO DI TELLA

## PROTOCOLO

En el acto de la firma del Tratado entre la República Federal de Alemania y la República Argentina sobre promoción y protección recíproca de inversiones, los plenipotenciarios abajo firmantes han adoptado las siguientes disposiciones, que se consideran como parte integrante del Tratado:

## (1) Ad artículo 1

- a) En lo que concierne al artículo 1, apartado 1, este Tratado no se aplicará a las inversiones realizadas en la República Argentina por personas físicas que sean nacionales de la otra Parte Contratante si tales personas, a la fecha de la inversión original, han estado domiciliadas desde hace más de dos años en la República Argentina, salvo cuando se pruebe que las inversiones provienen del extranjero.
- b) Las ganancias derivadas de inversiones y, en el caso que sean revertidas, las ganancias derivadas de éstas, gozarán de la misma protección que la inversión original.
- c) Por "otros tipos de participaciones", según el apartado 1 inciso b) del artículo 1, se entenderán en particular aquellas inversiones de capital que no otorgan a su titular derechos de voto o control.
- d) Los derechos a fondos mencionados en el apartado 1 inciso c) del artículo 1 comprenden derechos de préstamos relacionados con una participación y que tengan por su causa y cuantía el carácter de una participación (préstamos cuasi participativos). Sin embargo, no comprenden créditos de terceros, como por ejemplo créditos bancarios con condiciones comerciales.
- e) Sin perjuicio de otros procedimientos para determinar la nacionalidad, se considerará en especial como nacional de una Parte Contratante a toda persona que posea un pasaporte nacional extendido por las autoridades competentes de la respectiva Parte Contratante. Este Tratado no se aplicará a los inversores que sean nacionales de ambas Partes Contratantes.
- f) Para determinar si el concepto de "sociedades" de acuerdo a lo dispuesto en el apartado 4 del artículo 1 es aplicable, se atenderá a su sede, la cual se entenderá como lugar en el que la sociedad tenga su administración principal.

- g) El Tratado se aplicará también a las áreas de la Zona Económica Exclusiva y de la Plataforma Continental sobre las cuales el Derecho Internacional conceda a la Parte Contratante correspondiente derechos de soberanía o jurisdicción.

(2) Ad artículo 3

- a) Por «actividades» en el sentido del apartado 2 del artículo 3 se considerarán en especial pero no exclusivamente, la administración, la utilización, el uso y el aprovechamiento de una inversión. Se considerarán en especial pero no exclusivamente como «trato menos favorable» en el sentido del artículo 3 a las medidas menos favorables que afecten la adquisición de materias primas y otros insumos, energía y combustibles, así como medios de producción y de explotación de toda clase o la venta de productos en el interior del país y en el extranjero. No se considerarán como «trato menos favorable» en el sentido del artículo 3 las medidas que se adopten por razones de seguridad interna o externa y orden público, sanidad pública o moralidad.
- b) Las disposiciones del artículo 3 no obligan a una Parte Contratante a extender las ventajas, exenciones y reducciones fiscales que, según las leyes tributarias sólo se conceden a las personas naturales y sociedades residentes en su territorio, a las personas naturales y sociedades residentes en el territorio de la otra Parte Contratante.
- c) Las Partes Contratantes, de acuerdo con sus disposiciones legales internas, tramitarán con benevolencia las solicitudes de inmigración y residencia de personas de una de las Partes Contratantes que, en relación con una inversión, quieran entrar en el territorio de la otra Parte Contratante; la misma actitud deberá ser observada con respecto a los asalariados de una Parte Contratante que, en relación con una inversión, quieran entrar y residir en el territorio de la otra Parte Contratante para ejercer su actividad como asalariados. Igualmente se tramitarán con benevolencia las solicitudes de permiso de trabajo.

(3) Ad artículo 4

El derecho a indemnización existirá asimismo en el caso de que se adopte alguna de las medidas definidas en el artículo 4 respecto de la empresa donde se halla situada la inversión y se produzca como consecuencia de aquélla un severo perjuicio para la inversión.

(4) Ad artículo 5

Una transferencia se considera realizada «sin demora» en el sentido del apartado 2 del artículo 5 cuando se ha efectuado dentro del plazo normalmente necesario para el cumplimiento de las formalidades de transferencia. El plazo, que en ningún caso podrá exceder de dos meses, comenzará a correr en el momento de presentación de la correspondiente solicitud formalmente completa.

(5) Ad artículo 8

El presente Tratado en ningún caso se aplicará a las reclamaciones o litigios surgidos antes de su vigencia.

(6) Respecto de los transportes de mercancías y personas en relación con inversiones, ninguna de las Partes Contratantes excluirá ni pondrá trabas a las empresas de transporte de la otra Parte Contratante y, en caso necesario, concederá autorizaciones para la realización de los transportes condicionados a las normas de los acuerdos internacionales vigentes entre las Partes Contratantes.

Hecho en Bonn el día 9 de Abril de 1991 en dos ejemplares, en lengua alemana y española, siendo ambos textos igualmente auténticos.

Por la República  
Federal de Alemania:

GENSCHER

Por la República  
Argentina:

GUIDO DI TELLA

## EXCHANGES OF NOTES — ÉCHANGES DE NOTES

[SPANISH TEXT — TEXTE ESPAGNOL]

1 a

EMBAJADA DE LA REPÚBLICA ARGENTINA

Señor Ministro,

Con motivo de la firma del Tratado sobre la Promoción y Protección Recíproca de Inversiones del 9 de Abril de 1991, el Gobierno de la República Argentina tiene el honor de comunicarle al Gobierno de la República Federal de Alemania lo siguiente:

En base al Tratado de Amistad y Cooperación de 1988, o bien, al Tratado para el Establecimiento de una Relación Asociativa Particular de 1987 respectivamente, el Reino de España y la República Italiana otorgan a la República Argentina líneas de crédito concesionales con el objeto de financiar inversiones para la ejecución de inversiones, especialmente con el fin de crear joint ventures en el sector de la pequeña y mediana empresa.

Las solicitudes de financiación para cada proyecto deben ser autorizadas de conformidad con regulaciones argentinas especiales y posteriormente acordadas con la contraparte española o italiana, según el caso.

Como contrapartida la República Argentina se ha comprometido a:

- otorgar la exención arancelaria e impositiva para las importaciones de bienes destinados a inversiones que se financian con los créditos concesionales previstos por los respectivos Tratados.
- no adoptar ninguna medida que impida la repatriación del capital invertido o la libre transferencia de ganancias a partir de inversiones de riesgo para aquellos proyectos que hayan sido financiados según las disposiciones de los citados Tratados.

Estas condiciones especiales se otorgan con el objeto de posibilitar nuevas inversiones para el desarrollo económico de la Argentina en ámbitos cuya promoción es especialmente necesaria.

Las Partes Contratantes interpretan el artículo 3 del Tratado sobre la Promoción y Protección Recíproca de Inversiones de forma tal que la cláusula de la nación más favorecida no se refiere a las condiciones y los privilegios especiales que la República Argentina otorga a inversores extranjeros para los proyectos arriba mencionados.

La República Argentina procurará que aquellos inversores alemanes y sus inversiones, que no están sujetos a las condiciones especiales arriba mencionadas, no resulten afectados substancialmente en su capacidad competitiva.

Reciba Ud., Sr. Ministro, las seguridades de mi más alta y distinguida consideración.

Bonn, 9 de Abril de 1991

GUIDO DI TELLA  
Ministro de Relaciones Exteriores y Culto

Sr. Ministro de Asuntos Exteriores  
de la República Federal de Alemania  
Hans D. Genscher  
Bonn

## [GERMAN TEXT — TEXTE ALLEMAND]

## II a

## DER BUNDESMINISTER DES AUSWÄRTIGEN

Bonn, den 9. April 1991

422-413.35 ARG

Herr Minister,

ich beehre mich, den Empfang der Note der Regierung der Argentinischen Republik vom 9. April 1991 mit folgendem Inhalt zu bestätigen:

„Das Königreich Spanien und die Italienische Republik gewähren aufgrund des Freundschafts- und Kooperationsabkommens von 1988 bzw. des Abkommens zur Herstellung einer besonderen Assoziationsbeziehung von 1987 der Argentinischen Republik zur Durchführung gewerblicher Kapitalanlagen insbesondere zwecks Gründung von Gemeinschaftsunternehmen mit klein- und mittelständischen Unternehmen konzessionäre Kreditlinien für die Finanzierung solcher Investitionen.

Die Finanzierungsanträge für jedes Projekt müssen in Übereinstimmung mit besonderen argentinischen Vorschriften genehmigt und anschließend mit den zuständigen italienischen und spanischen Behörden abgestimmt werden.

Im Gegenzug hat sich die Argentinische Republik zu folgendem verpflichtet:

- Sie gewährt Zoll- und Steuerfreiheit für die Einfuhr von Gütern für Kapitalanlagen, die mit den in den jeweiligen Verträgen vorgesehenen konzessionären Krediten finanziert werden;
- es werden keine Maßnahmen ergriffen, die die Repatriierung des eingesetzten Kapitals oder den freien Transfer der Erträge aus Risikoinvestitionen für jene Projekte behindern, die gemäß den Bestimmungen dieser Verträge finanziert wurden.

Diese besonderen Bedingungen werden mit dem Ziel gewährt, neue Kapitalanlagen für die wirtschaftliche Entwicklung Argentiniens in besonders förderungsbedürftigen Bereichen zu ermöglichen.

Die Vertragsparteien legen Artikel 3 des Vertrags über die Förderung und den gegenseitigen Schutz von Kapitalanlagen dahingehend aus, daß die Verpflichtung zur Meistbegünstigung sich nicht auf die besonderen Bedingungen und Vorrechte bezieht, die die Argentinische Republik ausländischen Kapitalanlegern für die zuvor genannten Projekte gewährt.

Die Argentinische Republik wird dafür sorgen, daß deutsche Investoren und ihre Kapitalanlagen, die den oben genannten besonderen Bedingungen nicht unterliegen, in ihrer Wettbewerbsfähigkeit nicht wesentlich beeinträchtigt werden.“

Genehmigen Sie, Herr Minister, die Versicherung meiner ausgezeichneten Hochachtung.

GENSCHER

Seiner Exzellenz  
dem Minister für Auswärtige Beziehungen und Kultus  
der Argentinischen Republik  
Herrn Guido di Tella

[GERMAN TEXT — TEXTE ALLEMAND]

*I b*

DER BUNDESMINISTER DES AUSWÄRTIGEN

Bonn, den 9. April 1991

422-413.35 ARG

Herr Minister,

ich beehre mich, Ihnen unter Bezugnahme auf den heute zwischen der Bundesrepublik Deutschland und der Argentinischen Republik geschlossenen Vertrag über die Förderung und den gegenseitigen Schutz von Kapitalanlagen folgendes mitzuteilen:

Nach Inkrafttreten des Vertrags über die Förderung und den gegenseitigen Schutz von Kapitalanlagen zwischen unseren beiden Staaten und unter Berücksichtigung des in Artikel 5 dieses Vertrags niedergelegten Prinzips des freien Transfers von Kapital und Erträgen, haben die deutschen Behörden die Möglichkeit, aufgrund eines Antrags potentieller Investoren für deutsche Investitionen in der Argentinischen Republik in vollem Umfange Kapitalanlagegarantien gemäß unseren jeweils geltenden Richtlinien und Allgemeinen Bedingungen zu gewähren. Vom Inkrafttreten des Vertrags an sind zusätzlich zu den bisher bereits gewährten Garantien auch solche Beträge Gegenstand der Garantien, die für einen bestimmten Zeitraum auf Kapitalanlagen entfallen, wie z. B. Gewinnanteile, Dividenden und Zinsen.

Genehmigen Sie, Herr Minister, die Versicherung meiner ausgezeichneten Hochachtung.

GENSCHER

Seiner Exzellenz  
dem Minister für Auswärtige Beziehungen und Kultus  
der Argentinischen Republik  
Herrn Guido di Tella



[SPANISH TEXT — TEXTE ESPAGNOL]

II b

MINISTRO DE RELACIONES EXTERIORES Y CULTO

Señor Ministro,

Tengo el honor de acusar recibo de la nota del Gobierno de la República Federal de Alemania, de fecha 9 de abril de 1991, cuyo contenido es el siguiente:

«Con motivo del Tratado sobre Promoción y Protección Recíproca de Inversiones suscrito entre nuestros dos países con fecha 9 de abril de 1991, tengo el honor de comunicarle a Usted lo siguiente:

A partir de la entrada en vigor de dicho Tratado y teniendo en cuenta el principio establecido en su Artículo 5 sobre la libre transferencia de capital y ganancias, las autoridades alemanas cuentan con la posibilidad, después de la presentación por parte de los inversores interesados de una solicitud para garantizar una inversión en Argentina, de otorgar la cobertura total de tales inversiones de acuerdo con las directivas y condiciones generales vigentes. Por lo tanto, a partir de la entrada en vigor de este Tratado dichas autoridades podrán, en adición a las actualmente disponibles, otorgar garantías respecto de las sumas obtenidas de una inversión durante un período determinado, tales como las participaciones en los beneficios, los dividendos y los intereses.

Permitame, Señor Ministro, hacerle llegar las seguridades de mi más alta consideración.»

Reitero a Usted, Señor Ministro, las seguridades de mi mayor consideración.

Bonn, 9 de abril de 1991

GUIDO DI TELLA  
Ministro de Relaciones Exteriores y Culto

Sr. Ministro de Asuntos Exteriores  
de la República Federal de Alemania  
Hans D. Genscher  
Bonn

## [TRANSLATION — TRADUCTION]

TREATY<sup>1</sup> BETWEEN THE FEDERAL REPUBLIC OF GERMANY  
AND THE ARGENTINE REPUBLIC ON THE ENCOURAGEMENT  
AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Federal Republic of Germany and the Government of the Argentine Republic,

Desiring to intensify economic cooperation between both States,

Intending to create favourable conditions for investments by nationals and companies of either State in the territory of the other State,

Recognizing that the encouragement and contractual protection of such investment are apt to stimulate private business initiative and to increase the prosperity of both nations,

Have agreed as follows:

*Article 1*

For the purposes of this Treaty,

(1) The term “investments” shall apply to assets of any category defined in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made and admitted in accordance with this Treaty and particularly, but not exclusively, to:

(a) Movable and immovable property as well as any other rights *in rem*, such as mortgages, liens and pledges;

(b) Shares, stocks in companies and other forms of participation in companies;

(c) Claims to money which has been used to create an economic value or claims to any performance having an economic value;

(d) Intellectual property rights, such as copyrights, patents, utility models, industrial and commercial designs and models, trade marks and trade names, industrial and commercial secrets, technical processes, know-how and goodwill;

(e) Business concessions under public law, including concessions to search for, extract and exploit natural resources.

(2) The term “returns” shall mean the amounts yielded by an investment such as profits, dividends, interest, licence fees and other remuneration.

(3) The term “nationals” shall mean:

(a) In respect of the Federal Republic of Germany: Germans within the meaning of the Basic Law of the Federal Republic of Germany;

(b) In respect of the Argentine Republic: Argentines within the meaning of the legal provisions in force in Argentina.

<sup>1</sup> Came into force on 8 November 1993, i.e., one month after the exchange of the instruments of ratification, which took place at Buenos Aires on 8 October 1993, in accordance with article 12 (2).

(4) The term “companies” shall mean any juridical person as well as any commercial or other company or association with or without legal personality having its seat in the territory of either Contracting Party whether or not its activities are directed at profit.

#### *Article 2*

(1) Each Contracting Party shall encourage investments by nationals or companies of the other Contracting Party in its territory and shall admit such investments in accordance with its laws and regulations. In any case each Party shall accord fair and equitable treatment to investments.

(2) Investments made by nationals or companies of either Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Party shall enjoy full protection under this Treaty.

(3) Neither Contracting Party shall subject the management, utilization, use or enjoyment of investments of nationals or companies of the other Contracting Party in its territory to arbitrary or discriminatory measures.

#### *Article 3*

(1) Neither Contracting Party shall subject investments in its territory by or with the participation of nationals or companies of the other Contracting Party to treatment less favourable than it accords to investments of its own nationals or companies or to investments of nationals or companies of any third State.

(2) Neither Contracting Party shall subject nationals or companies of the other Contracting Party, as regards their activity in connection with investments in its territory, to treatment less favourable than it accords to its own nationals or companies or to nationals or companies of any third State.

(3) Such treatment shall not include privileges which may be extended by either Contracting Party to nationals or companies of third States on account of its membership in a customs or economic union, common market or free trade area.

(4) The treatment under this article shall not extend to privileges accorded by a Contracting Party to nationals or companies of a third State by virtue of an agreement for the avoidance of double taxation or other tax agreements.

#### *Article 4*

(1) Investments by nationals or companies of either Contracting Party shall enjoy full protection as well as juridical security in the territory of the other Contracting Party.

(2) Investments by nationals or companies of either Contracting Party shall not be expropriated, nationalized or subject to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party, except for reasons of public interest and against compensation. Such compensation shall be equivalent to the value of the investment expropriated immediately before the effective or impending expropriation, nationalization or equivalent measure became public knowledge. The compensation shall be paid without delay and shall carry the usual bank interest until the date of payment; it shall be readily convertible and freely transferable. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

(3) Nationals or companies of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency or insurrection shall be accorded by the latter Contracting Party treatment which is no less favourable than that accorded to its own nationals or companies, as regards restitution, compensation, indemnification or other valuable consideration. Such payments shall be freely transferable.

(4) Nationals or companies of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in this article.

#### Article 5

(1) Each Contracting Party shall guarantee to nationals or companies of the other Contracting Party the free transfer of payments in connection with an investment, including:

- (a) The capital and additional amounts to maintain or increase the investments;
- (b) The returns;
- (c) Repayment of loans defined in article 1, paragraph 1 (c);
- (d) The proceeds from the sale of the whole or any part of the investment;
- (e) The compensation provided for by article 4.

(2) The transfer shall be effected without delay at the rate of exchange applicable in each case and in accordance with the procedures established in the territory of each Contracting Party. Such exchange rate shall not differ substantially from the cross rate resulting from the exchange rate that the International Monetary Fund would apply if the currencies of the countries concerned were converted to special drawing rights on the date of payment.

#### Article 6

If either Contracting Party makes payments to its nationals or companies under a guarantee it has assumed 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 9, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim from such national or company to the former Contracting Party. The latter Contracting Party shall also recognize the reasons for and extent of the subrogation of the former Contracting Party to any such right or claim which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments by virtue of such assignment, article 5 shall apply *mutatis mutandis*.

#### Article 7

(1) If the legislation of either Contracting Party or obligations under international law existing at present or established hereinafter between the Contracting Parties in addition to this Treaty contain a regulation, whether general or specific, entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by this Treaty, such regulation shall, to the extent that it is more favourable, take precedence over this Treaty.

(2) Each Contracting Party shall observe any other obligation it may have entered into with regard to investments in its territory by nationals or companies of the other Contracting Party.

#### Article 8

This Treaty shall also apply to matters arising after its entry into force in connection with investments by nationals or companies of either Contracting Party consistent with the laws and regulations of the other Contracting Party in the territory of the latter prior to the entry into force of the Treaty.

#### Article 9

(1) Disputes between the Contracting Parties relating to the interpretation or application of this Treaty shall, as far as possible, be settled by negotiations between the Governments of both Contracting Parties.

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

(3) The arbitral tribunal shall be established on an *ad hoc* basis. Each Contracting Party shall appoint one member and these two members shall, by agreement, designate a national of a third State as chairman who shall be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months and the chairman within three months after either Contracting Party informed the other Party of its intention to submit the dispute to an arbitral tribunal.

(4) If the time-limits provided for under paragraph 3 are not met, and in the absence of any other agreement, either Contracting Party may request the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the appointments shall be made by the Vice-President. If the Vice-President is also a national of either Contracting Party or is also prevented from discharging the said function, the appointments shall be made by the member of the Court next in seniority who is not a national of either Contracting Party.

(5) The arbitral tribunal shall take its decisions by a majority of votes. Its decisions shall be binding. Each Contracting Party shall defray the costs of the arbitrator it has appointed and of its representation in the arbitral proceedings. The costs of the chairman and the remaining costs shall be defrayed in equal parts by the two Contracting Parties. In all other respects, the tribunal shall determine its own procedure.

(6) If both Contracting Parties are also parties to the Convention on the settlement of investment disputes between States and nationals of other States of 18 March 1965,<sup>1</sup> the arbitral tribunal provided for above may, in consideration of the provisions of article 27, paragraph 1, of the said Convention, not be appealed to insofar as agreement has been reached between the national or company of one Contracting Party and the other Contracting Party under article 25 of the Convention. This shall not affect the possibility of appealing to such arbitral tribunal in the

<sup>1</sup> United Nations, *Treaty Series*, vol. 575, p. 159.

event that a decision of the arbitral tribunal established under the said Convention (article 27) is not complied with.

#### Article 10

(1) Disputes concerning investments within the meaning of this Treaty between one of the Contracting Parties and a national or company of the other Contracting Party shall as far as possible be settled amicably between the parties to the dispute.

(2) If a dispute within the meaning of paragraph 1 cannot be settled within six months from the date on which one of the parties concerned gave notice of the dispute, it shall, at the request of either party, be submitted to the competent courts of the Contracting 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 one of the parties to the dispute where, after a period of 18 months has elapsed from the moment when the judicial process provided for by paragraph 2 of this article was initiated, no final decision has been given or where a decision has been made but the Parties are still in dispute;

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

(4) In the cases provided for by paragraph 3 above, disputes between the Parties within the meaning of this article shall be referred by mutual agreement, when the parties to the dispute have not agreed otherwise, either to arbitral proceedings under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 or to an *ad hoc* arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law.

If there is no agreement after a period of three months has elapsed from the moment when one of the Parties requested the initiation of the arbitration procedures, the dispute shall be submitted to arbitration procedures under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 provided that both Contracting Parties are parties to the said Convention. Otherwise, the dispute shall be submitted to the above-mentioned *ad hoc* arbitral tribunal.

(5) The arbitral tribunal shall issue its ruling in accordance with the provisions of this Treaty, with those of other treaties existing between the Parties, with the laws in force in the Contracting Party in which the investments were made, including its rules of private international law, and with the general principles of international law.

(6) The arbitration decision shall be binding and both Parties shall implement it in accordance with their legislation.

#### Article 11

The provisions of this Treaty shall remain fully in force even in the cases provided for by article 63 of the Vienna Convention on the law of treaties of 23 May 1969.<sup>1</sup>

<sup>1</sup> United Nations, *Treaty Series*, vol. 1155, p. 331.

*Article 12*

(1) This Treaty shall be ratified; the instruments of ratification shall be exchanged as soon as possible in Buenos Aires.

(2) This Treaty shall enter into force one month after the date of the exchange of instruments of ratification. It shall remain in force for a period of 10 years and shall be extended thereafter for an unlimited period unless either Contracting Party gives written notification to the other of its intention to terminate the Treaty 12 months before its expiration. After 10 years, the Treaty may be denounced at any time by giving 12 months' notice.

(3) Investments made prior to the date of termination of this Treaty shall continue to be protected by the provisions of articles 1 to 11 for an additional period of 15 years from such date.

DONE at Bonn on 9 April 1991 in two originals in the German and Spanish languages, both texts being equally authentic.

For the Federal Republic  
of Germany:

GENSCHER

For the Argentine  
Republic:

GUIDO DI TELLA

## PROTOCOL

With the signing of the Treaty between the Federal Republic of Germany and the Argentine Republic on the Encouragement and Reciprocal Protection of Investments, the undersigned plenipotentiaries have agreed on the following provisions, which shall be regarded as an integral part of the said Treaty:

(1) *Ad* article 1:

(a) As far as article 1, paragraph 1 is concerned, this Treaty shall not apply to investments in the Argentine Republic by individuals who are nationals of the other Contracting Party if such individuals, on the date of the original investment, have been domiciled for more than two years in the Argentine Republic, unless it is proved that such investments originate from abroad.

(b) Returns from an investment and, in the event of their re-investment, the returns therefrom shall enjoy the same protection as the original investment.

(c) The other forms of participation mentioned in article 1, paragraph 1 (b), shall refer in particular to those capital investments which do not confer voting or controlling rights on their holder.

(d) The claims to money referred to in article 1, paragraph 1 (c), include claims arising from loans relating to an investment that, by virtue of its purpose and amounts, has the nature of a participation (quasi-participatory loans). However, they shall not include third-party loans such as bank loans at market rates.

(e) Without prejudice to any other methods of determining nationality, in particular, any person in possession of a national passport issued by the competent authorities of the Contracting Party concerned shall be deemed to be a national of that Party. This Treaty shall not apply to investors who are nationals of both Contracting Parties.

(f) In order to determine whether the term “companies” is applicable in accordance with the provisions of article 1, paragraph 4, account shall be taken of the seat of such companies, which shall mean the place where the company has its main place of management.

(g) The Treaty shall also apply to areas of the exclusive economic zone and continental shelf over which international law grants to the Contracting Party concerned rights of sovereignty or jurisdiction.

(2) *Ad* article 3:

(a) The following shall more particularly, though not exclusively, be deemed “activity” within the meaning of article 3, paragraph 2: the management, utilization, use and enjoyment of an investment. The following shall more particularly, though not exclusively, be deemed “treatment less favourable” within the meaning of article 3: less favourable measures that affect the purchase of raw materials and other inputs, energy or fuel, or means of production or operation of any kind or the marketing of products inside or outside the country. Measures that are adopted for reasons of internal or external security or public order, public health or morality shall not be deemed “treatment less favourable” within the meaning of article 3.

(b) The provisions of article 3 do not obligate a Contracting Party to extend tax privileges, exemptions and relief accorded only to natural persons and companies



resident in its territory, in accordance with its tax laws, to natural persons and companies resident in the territory of the other Contracting Party.

(c) The Contracting Parties shall within the framework of their national legislation give favourable consideration to applications for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to nationals of either Contracting Party who, in connection with an investment, wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications for work permits shall also be given favourable consideration.

(3) *Ad* article 4:

A claim to compensation shall also exist when, as a result of the adoption of any one of the measures referred to in article 4 against the company in which the investment is made, such investment is severely impaired.

(4) *Ad* article 5:

A transfer shall be deemed to have been made “without delay” within the meaning of article 5, paragraph 2, if effected within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been formally submitted and may on no account exceed two months.

(5) *Ad* article 8:

This Treaty shall in no case apply to complaints or litigation which arose before it entered into force.

(6) Whenever goods or persons connected with an investment are to be transported, neither Contracting Party shall exclude or hinder transport companies of the other Contracting Party. Permits to carry out such transport in accordance with the rules of international agreements in force between the two Contracting Parties shall be issued as required.

DONE at Bonn on 9 April 1991, in duplicate in the German and Spanish languages, both texts being equally authentic.

For the Federal Republic  
of Germany:

GENSCHER

For the Argentine  
Republic:

GUIDO DI TELLA

[TRANSLATION — TRADUCTION]

EXCHANGES OF NOTES

I a

EMBASSY OF THE ARGENTINE REPUBLIC

Bonn, 9 April 1991

Sir,

With the signing of the Treaty on the Encouragement and Reciprocal Protection of Investments of 9 April 1991, the Government of the Argentine Republic has the honour to inform the Government of the Federal Republic of Germany of the following:

Under the General Treaty of cooperation and friendship of 1988<sup>1</sup> and the Treaty for the establishment of a special associative relationship of 1987,<sup>2</sup> respectively, the Kingdom of Spain and the Italian Republic grant to the Argentine Republic concessional lines of credit for financing investments, especially for the purpose of creating joint ventures in the small and medium-size business sector.

Financing applications for each project shall be authorized in accordance with special Argentine regulations and shall later be decided with the Spanish or Italian counterpart, as the case may be.

In return, the Argentine Republic has undertaken:

- To grant customs and tax exemptions for imports of goods for investment financed with concessional lines of credit provided for by the respective Treaties.
- Not to take any measures to prevent the repatriation of invested capital or the free transfer of returns from venture capital for any projects financed in accordance with the provisions of the aforementioned Treaties.

These special conditions are granted for the purpose of facilitating new investments for Argentina's economic development in areas which it is deemed especially vital to promote.

The Contracting Parties shall interpret article 3 of the Treaty on the Encouragement and Reciprocal Protection of Investments to mean that the most-favoured-nation clause shall not refer to the special conditions and privileges that the Argentine Republic grants to foreign investors in respect of the aforementioned projects.

The Argentine Republic shall ensure that the competitiveness of those German investors and their investments that are not subject to the aforementioned special conditions is not substantially affected.

<sup>1</sup> United Nations, *Treaty Series*, vol. 1546, p. 3.

<sup>2</sup> *Ibid.*, vol. 1537, p. 307.

Accept, Sir, etc.

GUIDO DI TELLA  
Minister for Foreign Affairs and Worship

His Excellency  
Mr. Hans D. Genscher  
Minister for Foreign Affairs  
Federal Republic of Germany  
Bonn

## II a

Bonn, 9 April 1991

## THE MINISTER FOR FOREIGN AFFAIRS

422-413.35 ARG

Sir,

I have the honour to acknowledge receipt of the note dated 9 April 1991 from the Argentine Government, which reads as follows:

[*See note I a*]

Accept, Sir, etc.

GENSCHER

His Excellency

The Minister for Foreign Affairs and Worship  
Mr. Guido di Tella

*I b*

THE MINISTER FOR FOREIGN AFFAIRS

Bonn, 9 April 1991

422-413.35 ARG

Sir,

With the signing of the Treaty on the Encouragement and Reciprocal Protection of Investments between our two countries dated 9 April 1991, I have the honour to inform you of the following:

Following the entry into force of the aforementioned Treaty and taking into account the principle established in article 5 thereof on the free transfer of capital and returns, the German authorities have the option, upon the submission by interested investors of a request for guaranteeing an investment in Argentina, of providing full coverage for such investments in accordance with the prevailing guidelines and general conditions. Therefore, starting from the entry into force of this Treaty, such authorities may, in addition to the guarantees already available, grant guarantees with respect to the sums derived from investments during a given period such as shares in profits, dividends and interests.

Accept, Sir, etc.

GENSCHER

His Excellency  
The Minister for Foreign Affairs and Worship  
of the Argentine Republic  
Mr. Guido di Tella

*II b*

## MINISTER FOR FOREIGN AFFAIRS AND WORSHIP

Bonn, 9 April 1991

Sir,

I have the honour to acknowledge receipt of the note of the Government of the Federal Republic of Germany dated 9 April 1991, the text of which reads as follows:

[*See note I b*]

Accept, Sir, etc.

GUIDO DI TELLA  
Minister for Foreign Affairs and Worship

His Excellency  
Mr. Hans D. Genscher  
Minister for Foreign Affairs  
of the Federal Republic of Germany  
Bonn

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[TRADUCTION — TRANSLATION]

TRAITÉ<sup>1</sup> ENTE LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE ET  
LA RÉPUBLIQUE ARGENTINE RELATIF À LA PROMOTION  
ET À LA PROTECTION RÉCIPROQUE DES INVESTISSEMENTS

La République fédérale d'Allemagne et la République argentine,

Désireuses d'intensifier la coopération économique entre les deux Etats,

Entendant créer des conditions favorables aux investissements des nationaux et des sociétés de chacun deux sur le territoire de l'autre,

Reconnaissant que la promotion et la protection de ces investissements par voie de traité sont de nature à stimuler l'initiative économique privée et à accroître la prospérité des deux peuples,

Sont convenues de ce qui suit :

*Article 1<sup>er</sup>*

Aux fins du présent Traité :

1. Le terme « investissements » désigne tout type d'activité défini en accord avec les lois et réglementations de la Partie contractante sur le territoire de laquelle l'investissement a été réalisé conformément au présent Traité; en particulier sont compris, non limitativement

a) La propriété des biens meubles et immeubles, ainsi que tous autres droits réels tels qu'hypothèques et gages;

b) Les actions, droits de participation à des sociétés et autres formes de participation à des sociétés;

c) Les créances portant sur des sommes d'argent servant à créer une valeur économique ou portant sur toute prestation à valeur économique;

d) Les droits de la propriété intellectuelle, en particulier les droits d'auteur, les brevets, les modèles d'utilité, les dessins et modèles industriels et commerciaux, les marques, les noms commerciaux, les secrets industriels et commerciaux, les procédés techniques, les savoir-faire et la survaleur incorporelle (« goodwill »);

e) Les concessions accordées par des entités de droit public, y compris les concessions de prospection et d'exploitation.

2. Le terme « revenus » désigne les sommes rapportées par un investissement, en particulier participations aux bénéfices, dividendes, intérêts, droits de licence et autres rémunérations.

3. Le terme « nationaux » désigne :

a) En ce qui concerne la République fédérale d'Allemagne : les Allemands aux sens de la Loi fondamentale de la République fédérale d'Allemagne;

<sup>1</sup> Entré en vigueur le 8 novembre 1993, soit un mois après l'échange des instruments de ratification, qui a eu lieu à Buenos Aires le 8 octobre 1993, conformément au paragraphe 2 de l'article 2.

b) En ce qui concerne la République argentine : les Argentins au sens des dispositions légales en vigueur en Argentine.

4. Le terme « sociétés » désigne toutes les personnes morales ainsi que toutes les sociétés commerciales et autres sociétés ou associations dotées ou non de la personnalité juridique dont le siège est situé sur le territoire de l'une des Parties contractantes, que leur activité soit lucrative ou non.

#### *Article 2*

1) Chacune des Parties contractantes encouragera les investissements sur son territoire par des nationaux ou des sociétés de l'autre Partie contractante et les admettra conformément à ses lois et réglementations. En tout état de cause, elle traitera les investissements de manière juste et équitable.

2) Les investissements effectués par des nationaux ou des sociétés de l'une des Parties contractantes sur le territoire de l'autre Partie contractante en accord avec les lois et réglementations de cette dernière bénéficieront de la pleine protection du présent Traité.

3) Aucune des Parties contractantes ne préjudiciera sur son territoire, par des mesures arbitraires ou discriminatoires, à l'administration, à l'utilisation, à l'usage ou à la jouissance des investissements de nationaux ou sociétés de l'autre Partie contractante.

#### *Article 3*

1) Aucune des Parties contractantes ne soumettra sur son territoire les investissements des nationaux ou sociétés de l'autre Partie contractante ou les investissements auxquels ceux-ci participent à un traitement moins favorable que celui consenti aux investissements de ses propres nationaux et sociétés ou de ceux d'Etats tiers.

2) Aucune des Parties contractantes ne soumettra sur son territoire les investissements des nationaux ou sociétés de l'autre Partie contractante, s'agissant de leurs activités liées aux investissements, à un traitement moins favorable que celui accordé à ses propres nationaux et sociétés ou aux nationaux et sociétés d'Etats tiers.

3) Ce traitement ne couvrira pas les avantages ou privilèges qu'une Partie contractante accorde aux nationaux ou aux sociétés d'Etats tiers en raison de leur appartenance à une union douanière ou économique, à un marché commun ou à une zone de libre-échange.

4) Le traitement prévu dans le présent article ne s'appliquera pas aux avantages que l'une des Parties contractantes accorde aux nationaux et sociétés d'Etats tiers en conséquence d'un accord visant à éviter la double imposition ou autre accord fiscal.

#### *Article 4*

1) Les investissements des nationaux ou sociétés de chacune des Parties contractantes bénéficieront d'une pleine protection et d'une pleine sécurité juridique sur le territoire de l'autre Partie contractante.

2) Les investissements de nationaux ou sociétés d'une Partie contractante ne pourront pas, sur le territoire de l'autre Partie contractante, être expropriés ou natio-



nalisés, ou faire l'objet d'autres mesures dont les effets équivaldraient à une expropriation ou à une nationalisation, sauf pour cause d'utilité publique, et alors avec indemnisation. L'indemnisation devra correspondre à la valeur de l'investissement exproprié immédiatement avant la date de l'annonce publique de l'expropriation « effective ou imminente », de la nationalisation ou de la mesure équivalente. L'indemnité devra être versée sans retard et portera intérêts jusqu'à la date du paiement au taux d'intérêt bancaire usuel; elle devra être effectivement réalisable et librement transférable. La légalité de l'expropriation, de la nationalisation ou autre mesure équivalente, ainsi que le montant de l'indemnisation, devront pouvoir être revues dans le cadre des procédures judiciaires ordinaires.

3) Les nationaux ou sociétés d'une Partie contractante dont les investissements subissent des pertes à cause d'une guerre ou autre conflit armé, d'une révolution, d'un état d'urgence nationale ou d'une insurrection qui se produit sur le territoire de l'autre Partie contractante ne seront pas traités par celle-ci moins favorablement que ses propres nationaux ou sociétés quant à la restitution, à la compensation, à l'indemnisation ou autre forme de dédommagement. Les versements correspondants devront être librement transférables.

4) S'agissant des questions régies par le présent article, les nationaux ou sociétés de chacune des Parties contractantes bénéficieront sur le territoire de l'autre du traitement de la nation la plus favorisée.

#### *Article 5*

1) Chaque Partie contractante garantira aux nationaux ou sociétés de l'autre Partie contractante le libre transfert des paiements liés à un investissement, s'agissant en particulier :

- a) Du capital et des fonds additionnels nécessaires au maintien ou à l'augmentation de l'investissement;
- b) Des revenus;
- c) De l'amortissement des prêts définis à l'alinéa c du paragraphe 1<sup>er</sup> de l'article 1<sup>er</sup>;
- d) Du produit de la vente ou liquidation totale ou partielle de l'investissement;
- e) Des indemnités visées à l'article 4.

2) Le transfert s'effectuera sans retard en accord avec les procédures établies sur le territoire de chaque Partie contractante et selon les modalités de change applicables dans chaque cas. Ces modalités de change ne devront pas différer substantiellement du taux de change croisé (cross rate) résultant des modalités de change qu'appliquerait le Fonds monétaire international si, à la date du paiement considéré, il était amené à convertir en droits de tirage spéciaux des sommes libellées dans la monnaie des pays intéressés.

#### *Article 6*

Si l'une des Parties contractantes fait des paiements au bénéfice de ses nationaux ou de ses sociétés en vertu d'une garantie accordée pour un investissement effectué sur le territoire de l'autre Partie contractante, celle-ci, sans préjudice des droits conférés à la première Partie contractante par l'article 9 du présent Traité, reconnaîtra la cession de tous les droits ou créances de ces nationaux ou sociétés à la première Partie contractante, par voie soit de disposition légale, soit d'acte juri-

dique. De même, l'autre Partie contractante reconnaîtra, en substance et en portée, la subrogation de la première Partie contractante dans tous les droits du précédent titulaire. S'agissant de transfert des paiements au titre de droits transférés, l'article 5 s'appliquera *mutatis mutandis*.

#### Article 7

1) Si les dispositions légales de l'une ou l'autre Partie contractante ou des obligations résultant du droit international et non envisagées dans le présent Traité, actuelles ou futures, entre les Parties contractantes, conduisent à une réglementation générale ou spéciale imposant d'accorder aux investissements des nationaux ou sociétés de l'autre Partie contractante un traitement plus favorable que celui prévu dans le présent Traité, cette réglementation prévaudra sur le présent Traité pour autant qu'elle soit plus favorable.

2) Chacune des Parties contractantes s'acquittera de tout autre engagement qu'elle aura éventuellement contracté en rapport avec les investissements de nationaux ou sociétés de l'autre Partie contractante sur son territoire.

#### Article 8

Le présent Traité s'appliquera également aux questions qui pourraient se poser après son entrée en vigueur en rapport avec des investissements effectués par les nationaux ou sociétés d'une des Parties contractantes conformément aux lois et règlements de l'autre Partie contractante sur le territoire de cette dernière avant l'entrée en vigueur du Traité.

#### Article 9

1) Les différends éventuels entre les Parties contractantes concernant l'interprétation ou l'application du présent Traité devront, dans la mesure du possible, être réglés par les gouvernements des deux Parties contractantes.

2) A supposer qu'un différend entre les Parties contractantes ne puisse pas être réglé de cette manière, il sera soumis à un tribunal arbitral sur demande de l'une des Parties contractantes.

3) Le tribunal arbitral sera constitué sur une base *ad hoc* : chaque Partie contractante nommera un membre du tribunal, et les deux membres ainsi nommés choisiront d'un commun accord comme président un national d'un Etat tiers qui sera nommé par les gouvernements des deux Parties contractantes. Les membres seront nommés dans le délai de deux mois et le président dans le délai de trois mois après que l'une des Parties contractantes aura communiqué à l'autre son désir de soumettre le différend à un tribunal arbitral.

4) Si les délais spécifiés au paragraphe 3 n'ont pas été observés et faute d'autre arrangement, chacune des Parties contractantes pourra inviter le Président de la Cour internationale de Justice à procéder aux nominations nécessaires. Au cas où le Président serait un national de l'une des Parties contractantes ou s'il était empêché pour une autre raison de s'acquitter de cette fonction, il reviendrait au Vice-Président de la Cour de procéder aux nominations. Si ce dernier lui-même est un national de l'une des Parties contractantes ou s'il est empêché, il reviendra au membre de la Cour venant immédiatement à la suite dans l'ordre hiérarchique et qui n'est pas un national de l'une des deux Parties contractantes de procéder aux nominations.

5) Le tribunal arbitral prendra ses décisions à la majorité des voix. Les décisions seront obligatoires. Chaque Partie contractante prendra à sa charge les frais découlant des activités de son arbitre, ainsi que les frais de sa représentation dans la procédure arbitrale; les frais du président et les autres frais seront pris en charge à parts égales par les Parties contractantes. Pour le reste, le tribunal arbitral arrêtera sa propre procédure.

6) Si les deux Parties contractantes ont en outre la qualité d'Etat contractant par rapport à la Convention du 18 mars 1965<sup>1</sup> pour le règlement des différends relatifs aux investissements entre Etats et ressortissants d'autres Etats<sup>1</sup>, il ne pourra, eu égard au paragraphe 1 de l'article 27 de cette Convention, être recouru au tribunal arbitral visé plus haut quand le national ou la société d'une Partie contractante et l'autre Partie contractante seraient arrivés à un accord conformément à l'article 25 de la Convention. Il ne sera affecté la possibilité de recourir au tribunal arbitral visé plus haut au cas où une décision du Tribunal arbitral institué par ladite Convention (article 27) ne serait pas respectée.

#### Article 10

1) Les différends qui pourraient surgir entre une Partie contractante et un national ou une société de l'autre Partie contractante en rapport avec les investissements au sens du présent Traité devront, autant que possible, être réglés à l'amiable par les parties au différend.

2) Si un différend au sens du paragraphe 1 ne peut être réglé dans le délai de six mois à compter de la date à laquelle une des parties au différend l'a soulevé, il sera soumis à la demande de l'une des parties aux tribunaux compétents de la Partie contractante sur le territoire de laquelle l'investissement a été effectué.

3) Le différend pourra être soumis à un tribunal arbitral international dans l'un quelconque des cas suivants :

a) A la demande de l'une des parties au différend, en l'absence d'une décision au fond dans le délai de dix-huit mois à compter de la mise en route de la procédure judiciaire visée au paragraphe 2 du présent article, ou bien lorsqu'une décision a été rendue mais que le différend persiste entre les parties;

b) Lorsque les deux parties au différend en ont ainsi convenu.

4) Dans les cas prévus au paragraphe 3 du présent article, les différends entre les parties, au sens du présent article, seront soumis d'un commun accord, sauf convention contraire entre les parties au différend, soit à une procédure arbitrale dans le cadre de la Convention du 18 mars 1965 pour le règlement des différends relatifs aux investissements entre Etats et ressortissants d'autres Etats, soit à un tribunal *ad hoc* institué conformément aux règles de la Commission des Nations Unies pour le droit commercial international (CNUDCI).

Si, dans le délai de trois mois à compter du moment où l'une des parties a demandé la mise en route de la procédure arbitrale, un accord n'est pas intervenu, le différend sera soumis à une procédure arbitrale dans le cadre de ladite Convention du 18 mars 1965 pour autant que les deux Parties contractantes soient également parties à cette convention. Dans l'hypothèse contraire, le différend sera soumis au tribunal arbitral visé plus haut.

<sup>1</sup> Nations Unies, *Recueil des Traités*, vol. 575, p. 159.

5) Le tribunal arbitral rendra sa décision sur la base du présent Traité et, le cas échéant, sur la base des autres traités en vigueur entre les Parties contractantes, du droit interne de la Partie contractante sur le territoire de laquelle l'investissement a été effectué, y compris ses normes de droit international privé, et des principes généraux du droit international.

6) La sentence arbitrale sera obligatoire et chaque Partie l'exécutera conformément à sa législation.

#### *Article 11*

Les dispositions du présent Traité resteront pleinement applicables y compris dans les cas prévus à l'article 63 de la Convention de Vienne sur le droit des traités en date du 23 mai 1969<sup>1</sup>.

#### *Article 12*

1) Le présent Traité sera ratifié; les instruments de ratification en seront échangés dès que possible à Buenos Aires.

2) Le présent Traité entrera en vigueur un mois après la date à laquelle il aura été procédé à l'échange des instruments de ratification. La durée de sa validité sera de dix ans et il sera ensuite indéfiniment prorogé, sauf notification écrite adressée par une Partie contractante à l'autre Partie contractante de son intention d'y mettre fin, effectuée douze mois avant la date d'expiration. Au bout de dix ans, le Traité pourra être dénoncé à tout moment sur préavis de douze mois.

3) Pour ce qui est des investissements effectués avant la date de l'abrogation du présent Traité, les dispositions des articles 1<sup>er</sup> à 11 leur resteront applicables pendant les quinze années suivant cette date.

FAIT à Bonn le 9 avril 1991 en deux originaux, en langues allemande et espagnole, les deux textes faisant également foi.

Pour le Gouvernement  
de la République fédérale d'Allemagne :

GENSCHER

Pour le Gouvernement  
de la République argentine :

GUIDO DI TELLA

<sup>1</sup> Nations Unies, *Recueil des Traités*, vol. 1155, p. 331.

## PROTOCOLE

Au moment de signer le Traité entre la République fédérale d'Allemagne et la République argentine relatif à la promotion et à la protection réciproque des investissements, les plénipotentiaires soussignés ont adopté les dispositions ci-après, considérées comme faisant partie intégrante du Traité.

1) *Ad* article premier :

a) En ce qui concerne le paragraphe 1 dudit article, le présent Traité ne s'appliquera pas aux investissements réalisés en République argentine par des personnes physiques ayant la qualité de national de l'autre Partie contractante si les intéressés étaient, à la date de l'investissement originel, domiciliés depuis plus de deux ans en République argentine, sauf à prouver que l'investissement provient de l'étranger.

b) Les revenus des investissements et, le cas échéant, du réinvestissement de ces revenus bénéficieront de la même protection que l'investissement initial.

c) Par « autres formes de participation », au sens de l'alinéa b du paragraphe 1 de l'article 1<sup>er</sup>, seront entendus en particulier les apports de capitaux qui ne confèrent aux intéressés ni droit de vote, ni contrôle.

d) Les créances sur les sommes visées à l'alinéa c du paragraphe 1 de l'article 1<sup>er</sup> couvrent les créances au titre de prêts liés à une participation et qui, par leur cause et leur montant, ont le caractère d'une participation (prêts quasi participatifs). Elles ne s'entendent pas toutefois des crédits accordés par des tiers (par exemple, des crédits bancaires à clauses commerciales).

e) Sans préjudice des autres modes de détermination de la nationalité, sera notamment considérée national d'une Partie contractante toute personne détentrice d'un passeport national délivré par les autorités compétentes de ladite Partie contractante. Le présent Traité ne s'appliquera pas aux investisseurs qui ont la nationalité des deux Parties contractantes.

f) Pour déterminer si la notion de « société » au sens des dispositions du paragraphe 4 de l'article 1<sup>er</sup> est applicable, il sera tenu compte du siège, à savoir le lieu où se trouve l'administration principale de la société.

g) Le Traité s'appliquera également aux secteurs de la zone économique exclusive et du plateau continental sur lesquelles le droit international confère à la Partie contractante concernée des droits de souveraineté ou de juridiction.

2) *Ad* article 3 :

a) Par « activités » au sens du paragraphe 2 de l'article 3, sont notamment, mais non limitativement, entendus l'administration, l'utilisation, l'usage et la jouissance d'un investissement. Sera notamment, mais non limitativement, considérée « traitement moins favorable » au sens de l'article 3 une mesure moins favorable affectant l'acquisition de matières premières et d'autres facteurs de production, d'énergie ou de combustibles, ainsi que les moyens de production ou d'exploitation de toute catégorie ou la vente de produits dans le pays même et à l'étranger. Ne seront pas considérées « traitement moins favorable » au sens de l'article 3 les mesures prises pour des motifs de sécurité intérieure ou extérieure et d'ordre public, de santé publique ou de moralité.

b) Les dispositions de l'article 3 ne font pas obligation à une Partie contractante d'accorder aux personnes physiques et aux sociétés résidant sur le territoire

de l'autre Partie contractante les avantages, exemptions et abattements fiscaux qui, en vertu du droit fiscal, sont accordés aux seules personnes physiques et sociétés résidant sur le territoire de la première Partie contractante.

c) Les Parties contractantes, en se conformant à leurs dispositions légales, instruiront avec bienveillance les demandes de permis d'entrée et de séjour sur leur territoire présentées par des ressortissants de l'une des Parties contractantes qui, en rapport avec un investissement, souhaitent entrer sur leur territoire; il sera procédé de même pour les salariés ressortissants d'une Partie contractante qui, en rapport avec un investissement, souhaitent entrer et séjourner sur le territoire de l'autre Partie contractante pour y exercer leur activité salariée. De même, les demandes de permis de travail seront instruites avec bienveillance.

3) *Ad* article 4 :

Il y aura également droit à indemnisation au cas où serait prise une quelconque mesure visée à l'article 4 à l'égard de l'entreprise dans laquelle l'investissement est situé et si l'investissement subit un préjudice grave en conséquence de cette mesure.

4) *Ad* article 5 :

Le transfert est tenu pour réalisé « sans retard » au sens du paragraphe 2 de l'article 5 quand il a eu lieu dans le temps normalement requis pour accomplir les formalités de transfert. Le délai, qui ne pourra en aucun cas excéder deux mois, courra à partir du moment de la présentation de la demande officiellement complète.

5) *Ad* article 8 :

Le Traité ne s'appliquera en aucun cas aux réclamations et litiges survenus avant son entrée en vigueur.

6) S'agissant des transports de marchandises et de personnes liés à des investissements, les Parties contractantes n'excluront pas et ne gêneront pas leurs entreprises de transport respectives et, en cas de besoin, elles délivreront les autorisations requises pour effectuer les transports dans des conditions répondant aux normes des accords internationaux en vigueur entre elles.

FAIT à Bonn le 9 avril 1991 en deux exemplaires en langues allemande et espagnole, les deux textes faisant également foi.

Pour le Gouvernement  
de la République fédérale d'Allemagne :

GENSCHER

Pour le Gouvernement  
de la République argentine :

GUIDO DI TELLA

## ÉCHANGES DE NOTES

I a

AMBASSADE DE LA RÉPUBLIQUE ARGENTINE

Bonn, le 9 avril 1991

Monsieur le Ministre,

A l'occasion de la signature du Traité du 9 avril 1991 relatif à la promotion et à la protection réciproque des investissements, le Gouvernement de la République argentine a l'honneur de communiquer ce qui suit au Gouvernement de la République fédérale d'Allemagne :

Sur la base, respectivement, du Traité d'amitié et de coopération de 1988<sup>1</sup> et du Traité de 1987 relatif à l'établissement de relations de collaboration particulières<sup>2</sup>, le Royaume d'Espagne et la République italienne accordent à la République argentine des lignes de crédit concessionnel dont l'objet est de financer les investissements tendant à la réalisation d'investissements, plus particulièrement en vue de créer des coentreprises dans le secteur de la petite et moyenne entreprise.

Les demandes de financement de chaque projet considéré doivent être autorisées conformément aux réglementations argentines spéciales et sont ensuite convenues avec la partie espagnole ou, le cas échéant, italienne.

En contrepartie, la République argentine s'est engagée :

- A exempter des droits de douane et de l'impôt les importations de biens destinées à des investissements financés au moyen des crédits concessionnels prévus dans les traités correspondants;
- A n'adopter aucune mesure propre à gêner le rapatriement du capital investi ou le libre transfert des revenus d'investissements à risque s'agissant des projets financés conformément aux dispositions desdits traités

Ce régime spécial vise à rendre possibles de nouveaux investissements tendant au développement économique de l'Argentine dans des domaines dont la promotion est particulièrement nécessaire.

Les Parties contractantes interprètent l'article 3 du Traité relatif à la promotion et à la protection réciproque des investissements dans le sens que la clause de la nation la plus favorisée ne couvre pas les conditions et privilèges spéciaux que la République argentine accorde aux investisseurs étrangers aux fins des projets susmentionnés.

La République argentine fera en sorte que les investisseurs et les investissements allemands qui ne relèvent pas des conditions spéciales dont il vient d'être question ne soient pas substantiellement affectés sur le plan concurrentiel.

<sup>1</sup> Nations Unies, *Recueil des Traités*, vol. 1546, p. 3.

<sup>2</sup> *Ibid.*, vol. 1537, p. 307.

Je saisis cette occasion, etc.

Le Ministre des relations extérieures  
et du culte,

GUIDO DI TELLA

Son Excellence  
Monsieur Hans D. Genscher  
Ministre des affaires étrangères  
de la République fédérale d'Allemagne  
Bonn



## II a

## LE MINISTRE DES AFFAIRES ÉTRANGÈRES

Bonn, le 9 avril 1991

422-413.35 ARG

Monsieur le Ministre,

J'ai l'honneur d'accuser réception de la note du Gouvernement de la République argentine en date du 9 avril 1991 qui se lit ainsi :

[*Voir note I a*]

Je saisis cette occasion, etc.

GENSCHER

Son Excellence  
Monsieur Guido di Tella  
Ministre des relations extérieures et du culte  
de la République argentine

## II b

## LE MINISTRE DES AFFAIRES ÉTRANGÈRES

Bonn, le 9 avril 1991

422-413.35 ARG

Monsieur le Ministre,

A l'occasion du Traité relatif à la promotion et à la protection réciproque des investissements signé ce jour entre nos deux pays, j'ai l'honneur de vous communiquer ce qui suit :

A partir de l'entrée en vigueur dudit Traité et compte tenu du principe établi par son article 5 au sujet du libre transfert des capitaux et des revenus, les autorités allemandes envisagent la possibilité, sur présentation de la part des investisseurs concernés d'une demande de garantie d'investissement en Argentine, de couvrir en totalité ces investissements conformément aux directives et conditions générales en vigueur. Cela étant, à partir de l'entrée en vigueur du Traité, ces autorités pourront, outre les garanties actuellement possibles, accorder des garanties couvrant les sommes résultant d'un investissement pendant une durée déterminée, en particulier les participations aux bénéficiaires, les dividendes et les intérêts.

Je saisis cette occasion, etc.

GENSCHER

Son Excellence

Monsieur Guido di Tella  
Ministre des relations extérieures et du culte  
de la République argentine

## - II b

## MINISTÈRE DES RELATIONS EXTÉRIEURES ET DU CULTTE

Bonn, le 9 avril 1991

Monsieur le Ministre,

J'ai l'honneur d'accuser réception de la note du Gouvernement de la République fédérale d'Allemagne en date du 9 avril 1991 qui se lit ainsi :

[Voir note I b]

Je saisis cette occasion, etc.

Le Ministre des relations extérieures  
et du cultte,  
GUIDO DI TELLA

Son Excellence  
Monsieur Hans D. Genscher  
Ministre des affaires étrangères  
de la République fédérale d'Allemagne  
Bonn

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## Appendix II

## **TRATADOS**

### **Ley 24.342**

**Apruébase el tratado sobre Promoción y Protección Recíprocas de Inversiones suscripto con la República de Chile y el Acuerdo por Canje de Notas Modificatorio.**

**Sancionada: Junio 9 de 1994.**

**Promulgada: Julio 4 de 1994.**

**B.O.: 11/07/97**

El Senado y Cámara de Diputados de la Nación Argentina reunidos en Congreso, etc. sancionan con fuerza de Ley:

**ARTICULO 1º -Apruébase el TRATADO ENTRE LA REPUBLICA ARGENTINA Y LA REPUBLICA DE CHILE SOBRE PROMOCION Y PROTECCION RECIPROCAS DE INVERSIONES, suscripto en Buenos Aires el 2 de agosto de 1991, que consta de once (11) artículos y un (1) Protocolo, y el ACUERDO POR CANJE DE NOTAS MODIFICATORIO DEL TRATADO ENTRE LA REPUBLICA ARGENTINA Y LA REPUBLICA DE CHILE SOBRE PROMOCION Y PROTECCION RECIPROCA DE INVERSIONES, suscripto en Buenos Aires el 13 de julio de 1992, cuyas fotocopias autenticadas forman parte de la presente ley.**

**ARTICULO 2º -Comuníquese al Poder Ejecutivo Nacional.-ALBERTO R. PIERRI.- FAUSTINO MAZZUCCO.- Esther H. Pereyra Arandia de Pérez Pardo. - Juan J. Canals**

**DADA EN LA SALA DE SESIONES DEL CONGRESO ARGENTINO, EN BUENOS AIRES, A LOS NUEVE DIAS DEL MES DE JUNIO DEL AÑO MIL NOVECIENTOS NOVENTA Y CUATRO.**

**TRATADO ENTRE**

**LA REPUBLICA ARGENTINA**

**Y**

**LA REPUBLICA DE CHILE**

**SOBREPROMOCION Y PROTECCION RECIPROCA DE INVERSIONES**

**La República Argentina y la República de Chile, denominadas en adelante "las Partes Contratantes".;**

**Animadas del deseo de intensificar la colaboración económica entre ambos Estados,**

**Con el propósito de crear condiciones favorables para las inversiones de los nacionales o sociedades de uno de los dos estados en el territorio del otro Estado, que impliquen transferencias de capitales,**

**Reconocimiento que la promoción y la protección de esas inversiones mediante un tratado pueden servir para estimular la iniciativa económica privada e incrementar el bienestar de ambos pueblos,**

Han convenido lo siguiente:

## ARTICULO 1

### Definiciones

Para los fines del presente Tratado:

(1) El concepto "inversiones" designa, de conformidad con el ordenamiento jurídico del país receptor, todo tipo de bienes que el inversor de una Parte Contratante invierte en el territorio de la otra Parte Contratante de acuerdo con la legislación de ésta, en particular, pero no exclusivamente:

a) la propiedad de bienes muebles e inmuebles y demás derechos reales, como hipotecas y derechos de prenda;

b) acciones, derechos de participación en sociedades y otros tipos de participaciones en sociedades, como también la capitalización de utilidades con derecho a ser transferidas al exterior;

c) obligaciones o créditos directamente vinculados a una inversión, regularmente contraídos y documentados según las disposiciones vigentes en el país donde esa inversión sea realizada;

d) derechos de propiedad intelectual como, en especial, derechos de autor, patentes, diseños y modelos industriales y comerciales, procedimientos tecnológicos, know how y valor llave;

e) concesiones otorgadas por entidades de derecho público, incluidas las concesiones de prospección y explotación.

Ninguna modificación de la forma jurídica según la cual los activos y capitales hayan sido invertidos o reinvertidos afectará su calificación de inversiones de acuerdo con el presente Tratado.

2. El concepto "ganancias o rentas" designa las sumas obtenidas de una inversión en un período determinado, tales como las participaciones en los beneficios, los dividendos, los intereses, los derechos de licencia u otras remuneraciones.

3. El concepto "nacionales" designa:

a) con referencia a la República de Chile:

los chilenos en el sentido de la Constitución Política de la República de Chile;

b) con referencia a la República Argentina:

los argentinos en el sentido de las disposiciones legales vigentes en la Argentina.

4. El concepto "sociedades" designa todas las personas jurídicas, constituidas conforme con la legislación de una Parte Contratante y que tengan su sede en el territorio de dicha Parte Contratante, independientemente de que su actividad tenga o no fines de lucro.

5. No obstante lo establecido en el apartado 3 de este artículo, las disposiciones de este Tratado solamente se aplicarán a los nacionales de una Parte Contratante que no estén

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OTONA PUBLICA  
DIONA INGLESA  
D.A. 7° Y 8° 20  
E. INBO. 8122

domiciliados por más de dos años en el territorio de la Parte Contratante donde la inversión se realizó y que prueben que las inversiones provienen del extranjero.

6. El término "territorio" designa, además de las áreas enmarcadas en los límites terrestres y marítimos, las zonas marinas y submarinas, en las cuales las Partes Contratantes ejercen derechos soberanos y jurisdicción conforme a sus respectivas legislaciones y al derecho internacional.

## ARTICULO 2

### Promoción y Protección de las inversiones

1. Cada una de las Partes Contratantes promoverá las inversiones dentro de su territorio de nacionales o sociedades de la otra Parte Contratante y las admitirá de conformidad con sus disposiciones legales vigentes. En todo caso tratará las inversiones justa y equitativamente.

2. Gozarán de la plena protección del Tratado las inversiones que, de acuerdo con las disposiciones legales de una de las Partes Contratantes, hayan sido realizadas en el ámbito de la ley de esta Parte Contratante por nacionales o sociedades de la otra Parte Contratante.

3. Ninguna de las Partes Contratantes perjudicará en su territorio la administración, la utilización, el uso o el goce de las inversiones de nacionales o sociedades de la otra Parte Contratante a través de medidas arbitrarias o discriminatorias.

## ARTICULO 3

### Trato nacional y cláusula de la Nación más favorecida

1. Ninguna de las Partes Contratantes someterá en su territorio a las inversiones de nacionales o sociedades de la otra Parte Contratante o a las inversiones en las que mantengan participaciones los nacionales o sociedades de la otra Parte Contratante, a un trato menos favorable que el que se conceda a las inversiones de los propios nacionales y sociedades o a las inversiones de nacionales y sociedades de terceros Estados.

2. Ninguna de las Partes Contratantes someterá en su territorio a los nacionales o sociedades de la otra Parte Contratante, en cuanto se refiere a sus actividades relacionadas con las inversiones, a un trato menos favorable que a sus propios nacionales y sociedades o a los nacionales y sociedades de terceros Estados.

3. Dicho trato no se refiere a los privilegios que una de las Partes Contratantes conceda a los nacionales y sociedades de terceros Estados por formar parte de una unión aduanera o económica, un mercado común o una zona de libre comercio, o a causa de su asociación con tales agrupaciones.

Dicho trato no se refiere tampoco a los privilegios acordados por una Parte Contratante a los nacionales o sociedades de un tercer Estado por una inversión realizada en el marco de un financiamiento concesional previsto por un tratado bilateral entre dicha Parte Contratante y el país al que pertenecen los citados inversores.

4. El trato acordado por el presente artículo no se refiere a las ventajas que una de las Partes Contratantes conceda a los nacionales o sociedades de terceros Estados como



consecuencia de un acuerdo para evitar la doble imposición o de otros acuerdos sobre asuntos tributarios.

#### ARTICULO 4

##### Expropiación, Nacionalización y situaciones extraordinarias

1. Las inversiones de nacionales o sociedades de una de las Partes Contratantes gozarán de plena protección y seguridad jurídica en el territorio de la otra Parte Contratante.

2. Las inversiones de nacionales o sociedades de una de las Partes Contratantes no podrán, en el territorio de la otra Parte Contratante, ser expropiadas, nacionalizadas, o sometidas a otras medidas que en sus efectos equivalgan a expropiación o nacionalización, salvo por ley fundada en causas de utilidad pública o de bien común, y deberán en tal caso ser previamente indemnizadas. La indemnización deberá corresponder al valor de la inversión expropiada inmediatamente antes de la fecha de hacerse pública la expropiación efectiva o inminente, la nacionalización o la medida equivalente.

La indemnización deberá ser efectivamente realizable y libremente transferible. La legalidad de la expropiación, nacionalización o medida equivalente, y el monto de la indemnización, deberán ser revisables en procedimiento judicial ordinario.

3. Los nacionales o sociedades de una de las Partes Contratantes que sufran pérdidas en sus inversiones por efecto de guerra u otro conflicto armado, revolución, estado de emergencia nacional o motín en el territorio de la otra Parte Contratante, no serán tratados por ésta menos favorablemente que sus propios nacionales o sociedades en lo referente a restituciones, compensaciones, indemnizaciones u otros resarcimientos. Estos pagos deberán ser libremente transferibles.

#### ARTICULO 5

##### Transferencias

1. Cada Parte Contratante garantizará a los nacionales o sociedades de la otra Parte Contratante la libre transferencia de los pagos relacionados con una inversión en particular:

- a) del capital y de las sumas adicionales para el mantenimiento o ampliación de la inversión de capital;
- b) de las ganancias o rentas;
- c) de la amortización de los préstamos definidos en el inciso c) del párrafo 1 del artículo 1;
- d) del producto de la venta o liquidación total o parcial de la inversión;
- e) de las indemnizaciones previstas en el artículo 4.

2. La transferencia se efectuará sin demora de acuerdo a los procedimientos establecidos en el territorio de cada parte Contratante, en moneda de libre convertibilidad y a la cotización vigente en cada caso, que deberá ser equivalente al tipo de cambio más favorable.

3. Una transferencia se considera realizada sin demora cuando se ha efectuado dentro del plazo normalmente necesario para el cumplimiento de las formalidades de transferencia. El plazo, que en ningún caso podrá exceder de dos meses, comenzará a correr en el momento de entrega de la correspondiente solicitud, debidamente presentada.

## ARTICULO 6

### Subrogación

1. En el caso de que una Parte Contratante o una de sus instituciones hubiera concedido una garantía contra riesgos no comerciales por inversiones efectuadas por uno de sus nacionales o sociedades en el territorio de la otra Parte Contratante y haya efectuado pagos a base de la garantía otorgada, dicha Parte Contratante o la institución será reconocida subrogada de derecho en la misma posición de crédito del inversor cubierto por la garantía. Para los pagos a realizarse en beneficio de la Parte Contratante o de su institución a base de dicha subrogación, se aplicarán respectivamente los artículos 4 y 5 del presente Tratado.

2. Los nacionales o sociedades tendrán derecho a demandar o hacerse parte en las acciones ya iniciadas, en orden a proteger los restantes derechos que puedan reclamar y que no hayan sido subrogados. De esta forma, habiéndose reclamado, se aplicará el procedimiento establecido en el Art. 10.

## ARTICULO 7

### Aplicación de otras normas más favorables

1. Si de las disposiciones legales de una de las Partes Contratantes o de las obligaciones emanadas del derecho internacional: no contempladas en el presente Tratado, actuales o futuras, entre las Partes Contratantes, resultare una reglamentación general o especial en virtud de la cual deba concederse a las inversiones de los nacionales o sociedades de la otra Parte Contratante un trato más favorable que el previsto en el presente Tratado, dicha reglamentación prevalecerá sobre el presente Tratado, en cuanto sea más favorable.

2. Cada Parte Contratante cumplirá cualquier otro compromiso que haya contraído con relación a las inversiones de nacionales o sociedades de la otra Parte Contratante en su territorio.

## ARTICULO 8

### Ambito de aplicación

1. El presente Tratado se aplicará a las inversiones que se realicen a partir de su entrada en vigor por nacionales o sociedades de una Parte Contratante en el territorio de la otra. No obstante, también beneficiará a las inversiones realizadas con anterioridad a su vigencia y que, según la legislación de la respectiva Parte Contratante, estuvieren registradas como inversión extranjera.

2. No se aplicará, sin embargo, a las controversias o reclamaciones surgidas o resueltas con anterioridad a su entrada en vigor, o relacionadas con hechos acaecidos con anterioridad a su vigencia o referidas a la mera permanencia de tales situaciones preexistentes.

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## ARTICULO 9

### Solución de controversias entre Estados

1. Las controversias que surgieren entre las Partes Contratantes sobre la interpretación o aplicación del presente Tratado deberán, en lo posible, ser dirimidas amigablemente por los Gobiernos de ambas Partes Contratantes.
2. Si una controversia no pudiere ser dirimida de esa manera, será sometida a un tribunal arbitral a petición de una de las Partes Contratantes.
3. El tribunal arbitral será constituido ad-hoc; cada Parte Contratante nombrará un miembro, y los dos miembros se pondrán de acuerdo para elegir como presidente a un nacional de un tercer Estado que será nombrado por los Gobiernos de ambas Partes Contratantes. Los miembros serán nombrados dentro de un plazo de dos meses, el Presidente dentro de un plazo de tres meses, después de que una de las Partes Contratantes haya comunicado a la otra que desea someter la controversia a una tribunal arbitral.
4. Si los plazos previstos en el párrafo 3 no fueren observados, y a falta de otro acuerdo, cada Parte Contratante podrá invitar al Presidente de la Corte Internacional de Justicia a proceder a los nombramientos necesarios. En caso de que el presidente sea nacional de una de las Partes Contratantes o se halle impedido por otra causa, corresponderá al vicepresidente efectuar los nombramientos. Si el Vicepresidente también fuere nacional de una de las dos Partes Contratantes o si se hallara también impedido, corresponderá al miembro de la Corte que siga inmediatamente en el orden jerárquico y no sea nacional de una de las Partes Contratantes, efectuar los nombramientos.
5. El tribunal arbitral tomará sus decisiones por mayoría de votos. Sus decisiones son obligatorias. Cada Parte Contratante sufragará los gastos ocasionados por la actividad de su árbitro, así como los gastos de su representación en el procedimiento arbitral; los gastos del presidente, así como los demás gastos, serán sufragados por partes iguales por las dos Partes Contratantes.

Por lo demás, el tribunal arbitral determinará su propio procedimiento.

6. Si ambas Partes Contratantes fueren también Estados Contratantes del Convenio sobre Arreglo de Diferencias Relativas a Inversiones entre Estados y Nacionales de otros Estados del 18 de marzo de 1965, no se podrá, en atención a la disposición del párrafo 1 del artículo 27 de dicho Convenio, acudir al tribunal arbitral arriba previsto cuando el nacional o la sociedad de una Parte Contratante y la otra Parte Contratante hayan llegado a un acuerdo conforme al artículo 25 del Convenio. No quedará afectada la posibilidad de acudir al tribunal arbitral arriba previsto en el caso de que no se respete una decisión del Tribunal de Arbitraje del mencionado Convenio (artículo 27), o en el caso de subrogación conforme a lo establecido en el artículo 6 del presente Tratado.

## ARTICULO 10

### Solución de controversias relativas a inversiones

1. Toda controversia relativa a las inversiones, en el sentido del presente Tratado, entre una Parte Contratante y un nacional o sociedad de la otra Parte Contratante será, en la

medida de lo posible, solucionada por consultas amistosas entre las dos partes en la controversia.

2. Si la controversia no hubiera podido ser solucionada en el término de seis meses a partir del momento en que hubiera sido planteada por una u otra de las partes, será sometida, a pedido del nacional o sociedad.

- o bien a las jurisdicciones nacionales de la Parte Contratante implicada en la controversia;

- o bien al arbitraje internacional en las condiciones descriptas en el párrafo 3.

Una vez que un nacional o sociedad haya sometido la controversia a las jurisdicciones de la Parte Contratante implicada o al arbitraje internacional, la elección de uno u otro de esos procedimientos será definitiva.

3. En caso de recurso al arbitraje internacional la controversia podrá ser llevada ante uno de los órganos de arbitraje designados a continuación a elección del nacional o sociedad:

- al Centro Internacional de Arreglo de Diferencias Relativas a Inversiones (C. I. A. D. I.), creado por el "Convenio sobre Arreglo de Diferencias Relativas a las Inversiones entre Estados y Nacionales de otros Estados", abierto a la firma en Washington el 18 de marzo de 1965, cuando cada Estado parte en el presente Convenio haya adherido a aquél. Mientras esta condición no se cumpla, cada Parte Contratante da su consentimiento para que la controversia sea sometida al arbitraje conforme con el Reglamento del Mecanismo Complementario del C. I. A. D. I.;

- a un tribunal de arbitraje ad-hoc establecido de acuerdo con las reglas de arbitraje de la Comisión de las Naciones Unidas para el Derecho Mercantil Internacional (C. N. U. D. M. I.).

4. El órgano arbitral decidirá en base a las disposiciones del presente Tratado, al derecho de la Parte Contratante que sea parte en la controversia -incluidas las normas relativas a conflictos de leyes- y a los términos de eventuales acuerdos particulares concluidos con relación a la inversión como así también a los principios del derecho internacional en la materia.

5. Las sentencias arbitrales serán definitivas y obligatorias para las partes en la controversia.

6. Las Partes Contratantes se abstendrán de tratar, a través de los canales diplomáticos, argumentos concernientes al arbitraje o a un proceso judicial ya en marcha hasta que los procedimientos correspondientes hubieren sido concluidos, salvo que las partes en la controversia no hubieren cumplido el laudo del tribunal arbitral o la sentencia del tribunal ordinario, según los términos de cumplimiento establecidos en el laudo o en la sentencia.

## ARTICULO 11

### Entrada en vigor, Duración y Vencimiento

1. El presente Tratado será ratificado; los instrumentos de ratificación serán canjeados lo antes posible en Santiago, Chile.

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REPÚBLICA  
ARGENTINA  
N.º X F.º 457  
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2. El presente Tratado entrará en vigor un mes después de la fecha en que se haya efectuado el canje de los instrumentos de ratificación. Su vigencia será de diez años y se prolongará después por tiempo indefinido, a menos que fuera denunciado por escrito por una de las Partes Contratantes doce meses antes de su expiración. Transcurridos diez años, el Tratado podrá denunciarse en cualquier

momento, con un preaviso de doce meses.

3. Las disposiciones del presente Tratado continuarán siendo plenamente aplicables aun en los casos previstos por el artículo 63 de la Convención de Viena sobre el Derecho de los Tratados del 23 de mayo de 1969.

4. Para las inversiones realizadas antes de la fecha de terminación del presente Tratado, las disposiciones de los artículos 1 a 10 seguirán rigiendo durante los quince años subsiguientes a la fecha de su terminación.

Hecho en Buenos Aires, el dos de agosto de mil novecientos noventa y uno en dos ejemplares originales, siendo ambos igualmente auténticos.

POR EL GOBIERNO DE LA REPUBLICA ARGENTINA

GÚIDO DI TELLA

DOMINGO F. CAVALLO

POR EL GOBIERNO DE LA RREPUBLOCA DE CHILE

ENRIQUE SILVA CIMMA

CARLOS OMINAMI

PROTOCOLO

En el acto de la firma del Tratado entre la República Argentina y la República de Chile sobre Promoción y Protección Recíprocas de Inversiones, los Plenipotenciarios han adoptado además las siguientes disposiciones, que se considerarán parte integrante del Tratado:

1) Ad Artículo 3, punto 3

En el caso que una de las Partes celebrare en el futuro un Acuerdo de asociación con una unión aduanera o económica, un mercado común o una Zona de Libre Comercio, se convendrá la introducción de una modificación a la excepción del artículo 3, punto 3, párrafo 1.

2) Ad Artículo 4

Para los efectos de las causas en que se puede fundar la ley que afecte la propiedad, las Partes entienden que el concepto de bien común comprende las causales previstas en sus respectivos ordenamientos jurídicos vigentes.

3) Ad Artículo 5

No obstante las disposiciones del artículo 5, la República de Chile garantizará el derecho de repatriación del capital invertido por inversionistas argentinos, después de

transcurrido el plazo de tres años, desde su internación, previsto en el Decreto Ley N° 600 de 1974.

Lo dispuesto en el inciso anterior estará vigente mientras lo esté el plazo previsto en el referido Decreto Ley.

Buenos Aires, 2 de agosto de 1991.

POR LA REPUBLICA ARGENTINA

GUIDO DI TELLA

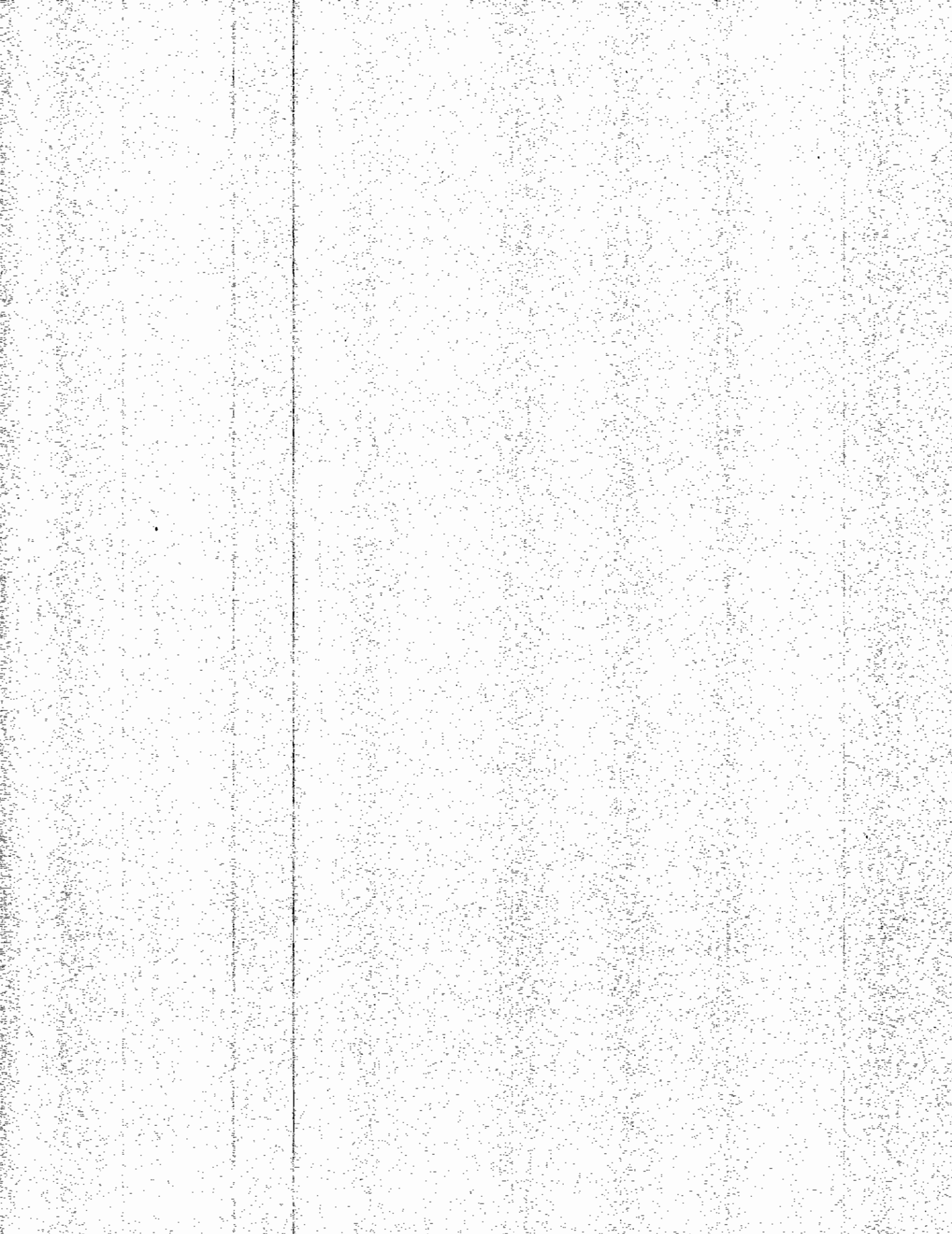
DOMINGO F. CAVALLO

POR LA REPUBLICA DE CHILE

ENRIQUE SILVA CIMMA

CARLOS OMINIMI

LIBRERIA VARELA  
OPERA PÚBLICA  
DOMA INGLÉS  
S.A. Y X F° 485  
E 125 C. 3125



TRADUCCIÓN PÚBLICA / CERTIFIED TRANSLATION.....

AGREEMENTS.....

Law 24,342 .....

An Agreement for the Reciprocal Promotion and Protection of Investments, entered into with the Republic of Chile and a Note Exchange Agreement are hereby approved.....

Enacted: June 9, 1994. ....

Promulgated: July 4, 1994. ....

Official Gazette: 07/11/97.....

The Senate and the House of Representatives of the Republic of Argentina, assembled in Congress, etc., enact as a Law: .....

ARTICLE I — The AGREEMENT BETWEEN THE REPUBLIC OF ARGENTINA AND THE REPUBLIC OF CHILE FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS, entered into in Buenos Aires on August 2, 1991, comprising eleven (11) articles and one (1) Protocol, and the NOTE EXCHANGE AGREEMENT, amending the AGREEMENT BETWEEN THE REPUBLIC OF ARGENTINA AND THE REPUBLIC OF CHILE FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS, entered into in Buenos Aires, on July 13, 1992, are hereby approved, authenticated copies of which are an integral part of this law. ....

ARTICLE 2 — Be it communicated to the National Executive Branch – ALBERTO R. PIERRI.- FAUSTINO MAZZUCCO.- Esther H. Percyra Arandia de Pérez Pardo.- Juan J. Canals.....

GIVEN AT THE SESSION ROOM OF THE ARGENTINE CONGRESS, IN BUENOS AIRES, ON THIS JUNE 9, 1994. ....

TREATY BETWEEN THE REPUBLIC OF ARGENTINA AND THE REPUBLIC OF CHILE ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS.....

The Republic of Argentina and the Republic of Chile, hereinafter referred to as the "Parties";.....

Willing to strengthen the economic cooperation between both States; .....

With the purpose of creating favorable conditions for the investments of the nationals or companies of one the two States in the territory of the other State, that may imply transfers of capitals; .....

Acknowledging that the promotion and protection of the said investments under an agreement can contribute to the encouragement of private economic initiative and increase in the welfare of both States. ....



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Have agreed as follows: .....

ARTICLE 1 Definitions.....

Under this Treaty: .....

(1) "Investments": means, under the laws of the receiving party, any kind of assets that the investor of one Party may invest in the territory of the other Party, pursuant to the laws of the latter, including but not limited to:.....

a) the ownership of real and personal property and further real rights, such as mortgages and pledges; .....

b) shares, corporate participation rights and other kinds of corporate interests, and also the capitalization of profits qualifying to be transferred abroad;.....

c) obligations or credits directly related to an investments, regularly assumed or taken and documented pursuant to the provisions in force in the country where the relevant investment is made;.....

d) intellectual property rights such as copyright, patents, industrial and commercial designs and models, know-how and goodwill;.....

e) economic concessions conferred by public law entities, including the concessions for the prospecting and exploitation;.....

No amendment to the legal manner under which the assets and capitals have been invested or reinvested shall affect their eligibility as investments under this Treaty. ....

2. "Income or profit": means all the amounts resulting from an investment within a certain period, such as profit sharing, dividends, interest, license fees or other compensation.....

3. "Nationals": means: .....

a) with reference to the Republic of Chile: .....

Chileans as the said word is defined under the Political Constitution of the Republic of Chile; with reference to the Republic of Argentina:.....

b) Argentines as defined by the legal provisions in force in the Republic of Argentina.....

4. "Companies": means any legal entity, organized under the laws of a Party and having its place of business in the territory of the said Party, whether its business is for profit or not.....

5. The provisions of subparagraph 3 of this article notwithstanding, the provisions of this Treaty shall only apply to the nationals of one Party who are not domiciled over two years in the territory

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TOMADA PÚBLICA  
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of the Party where the investment was made and who may prove that the investments originate abroad.....

6. "Territory": means, in addition to the areas falling under the land and maritime boundaries, the maritime and submarine zones, where the Parties may exercise, under their respective laws and the International Law, sovereign or jurisdictional rights.....

**ARTICLE 2 Promotion and Protection of Investments.....**

1. Each Party shall promote in its territory the investments of the nationals or companies of the other Party, and shall admit the said investments pursuant to its laws and regulations. Each Party shall at any time treat investments fairly and equitably. ....

2. Those investments which, under the legal provisions of one Party, shall have been made under the law of that Party by nationals or companies of the other Party shall be fully protected under this Treaty. ....

3. No Party shall impair in its territory the management, use, utilization or enjoyment of the investments of nationals or companies of the other Party through arbitrary or discriminatory measures.....

**ARTICLE 3 National treaty and most favored nation provision.....**

1. Neither Party shall treat in its territory the investments of the nationals or companies of the other Party or the investments in which the nationals or companies of the other Party may have interests, less favorably than the investments of its own nationals and companies or the investments of nationals and companies of third States.....

2. Neither Party shall in its territory treat the nationals or companies of the other Party, as regards their activities related to the investments, less favorably than its own nationals and companies or the nationals and companies of third States.....

3. The said treatment does not refer to the privileges that one of the Parties may grant to the nationals and companies of third States because they are party to a customs or economic union, or a common market or a free trade area, or because of their association with the said groups.....

The said treatment does not refer either to the privileges granted by a Party to the nationals or companies of a third State because of an investment made in under a concessional financing laid down in a bilateral treaty between the said Party and the country to which the investors belong to.  
.....

4. The treatment given under this article does not refer to the advantages that one of the Parties may grant to the nationals or companies of third States by virtue of an agreement to avoid double taxation or other tax-related agreements.....

**ARTICLE 4 Expropriation, nationalization and extraordinary situations.....**

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1. The investments of nationals or companies of one Party shall enjoy full protection and legal safety in the territory of the other Party. ....

2. The investments of nationals or companies of one Party may not, in the territory of the other Party, be expropriated, nationalized, or submitted to other measures whose effects are equivalent to expropriation or nationalization, save in case of a law founded on public good or common welfare, and must in that case be previously compensated. The compensation must match the value of the expropriated investment immediately before the date the public expropriation is made effective or the nationalization or the equivalent measure becomes imminent. ....

The compensation must be actually practical and freely transferable. The legality of the expropriation, nationalization or equivalent measure, and the amount of the compensation must subject to review in an ordinary judicial proceeding. ....

3. The nationals or companies of one Party whose investments may sustain losses as result of war or other armed conflict, revolution, national emergency or riot in the territory of the other Party, shall not be treated by the latter less favorably than its own nationals or companies as regards refunds, compensation, indemnification or any other redress. These payments must be made freely transferable. ....

ARTICLE 5 Transfers.....

1. Each Party shall guarantee the nationals or companies of the other Party the unrestricted transfer of the payments related to an investment, including but not limited to:.....

a) the capital and the additional amounts necessary for the maintenance and expansion of the capital investment; .....

b) the income or profits;.....

c) the repayment of the loans defined in Article 1, subparagraph c); .....

d) the proceeds derived from the sale or total or partial liquidation of an investment; .....

e) the compensation set forth in Article 4;.....

2. The transfer shall be made forthwith following the procedures set in the territory of each Party, in freely convertible currency and at the prevailing rate of exchange on a case by case basis, which must be equivalent to the most favorable rate of exchange. ....

3. A transfer shall be considered to have been made forthwith when it has been made within the time frame normally required for the compliance with the transfer formalities. The time frame, which in no case may exceed two months, shall begin upon delivery of the duly submitted relevant application.....

ARTICLE 6 Subrogation.....

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1. If one Party or one of its entities shall have granted a guaranty against non-business risks for investments made by one of its nationals or companies in the territory of the other Party and shall have made payments on the basis of the guaranty granted, the said Party or entity shall be admitted as a law subrogate ranking for claim purposes in the same position as the investor covered by the guaranty. For payments to be made for the benefit of the Party or its entity on the basis of the said subrogation, articles 4 and 5 of this Treaty shall be respectively applied. ....

2. The nationals or companies shall be entitled to sue or become a party to the actions already filed, so as to protect the remaining rights that they may claim and that have not been subrogated. In this case, if claims have been filed, the procedure set forth in article 10 shall be followed. ....

**ARTICLE 7 Application of other most favorable rules.....**

1. If under the provisions of the laws of one Party or the obligations of both Parties arising from International Law that are not provided by this Treaty, now existing or that may be adopted in future, there arises a general or special regulation by virtue of which the investments of the nationals or companies of the other Party must be given a treatment more favorable than the one set forth in this Treaty, the said regulation shall prevail on this Treaty, to the extent it is more favorable. ....

**ARTICLE 8 Application .....**

1. This Treaty shall apply to the investments made as from its effective date by nationals or companies of one Party in the territory of the other Party. However, it shall also benefit those investments made prior to its effective date and which, under the laws of the respective Party, may be registered as foreign investment.....

2. It shall not apply, however, to the disputes or claims arising or settled prior to its effective date, or related to events occurred prior to its effective date or related to the mere continuation of such preexisting situations. ....

**ARTICLE 9 Settlement of disputes between States .....**

1. Any dispute that may arise between the Parties regarding the interpretation or application of this Treaty shall, as far as practical, be settled in a friendly manner by the Governments of both Parties.

2. If a dispute may not be settled as mentioned above, it shall be submitted, upon the request of one Party, to an arbitration panel.....

3. The said arbitration panel shall be organized ad hoc; each Party shall appoint one member, and the two members shall, upon mutual agreement, appoint a national of a third State, to be appointed by the governments of both Parties, as chairman. The members shall be appointed within a period of two months; the chairman, within a period of three months, following notice from one Party to the other of its decision to submit the dispute to an arbitration panel. ....

4. If the time periods laid down in paragraph 3 above are not met, and in the absence of any other agreement, each Party may invite the President of the International Court of Justice to proceed with

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the necessary appointments. If the President were a national of one of the Parties or when, he is otherwise prevented from serving as such, the Vice President shall be invited to proceed with the necessary appointments. If the Vice President were also a national of any of the Parties, or if he were also prevented from serving as such, the member of the International Court of Justice that ranks immediately junior to him and is not a national of any of the Parties, shall be invited to proceed with the necessary appointments.....

5. The arbitration panel shall adopt its decisions by majority of votes. Its decision shall be binding upon both Parties. Each Party shall pay the expenses arising from the performance of its arbitrator, as well as the expenses of its representation in the arbitration. The expenses of the Chairman, and the other expenses shall be paid in principle in equal shares by both Parties. In other respects, the arbitration panel shall determine its own procedure. ....

6. If both Parties were also Member States under the Agreement on the Settlement of Differences related to investments between States and Nationals of other States dated March 18, 1965, it shall not be possible, by virtue of the provisions of paragraph 1, article 27 of the said Agreement, to resort to the arbitration mentioned above when the national or the company of a Party and the other Party shall have reached an agreement under article 25 of the Agreement. The possibility to resort to the arbitration panel provided above shall not be impaired if a decision of the Arbitration Panel under the aforementioned Agreement (article 27) is not observed, or in the case of subrogation pursuant to the provisions of article 6 of this Treaty. ....

ARTICLE 10 Settlement of disputes regarding investments.....

1. Any dispute related to the investments under this Treaty, between a Party and a national or company of the other Party shall, as far as possible, be settled by friendly negotiations between the two parties to the dispute. ....

2. If the dispute shall not have been settled within the term of six months as from the time it has been raised by either party, it may be submitted upon request of the national or company: .....

- to the national jurisdictions of the Party involved in the dispute; .....

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

Once a national or company has submitted the dispute to the jurisdiction of the Party involved or to international arbitration, the election of either procedure shall be final. ....

3. In case of election of international arbitration, the dispute may be submitted, at the election of the national or company, to one of the arbitration entities mentioned below:.....

To the International Center for the Settlement of Investment Disputes (I.C.S.I.D.) created under the "Convention on the Settlement of Investment Disputes between States and Nationals of other States", opened to the signature in Washington on March 18, 1965, when each Member State which is a party to this Agreement has signed the said Convention. While this condition is not met, each Party may give its consent for the dispute to be submitted to arbitration pursuant to the Rules of the

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supplementary Mechanism of I.C.S.I.D. for the management of conciliation, arbitration or investigation proceedings; .....

To an "ad hoc" arbitration panel organized pursuant to the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).....

4. The arbitration panel shall render an award on the basis of this Treaty, the right of the Party that is a party to the dispute, including the rules regarding conflicts of laws and the terms and conditions of occasional private agreements reached in connection with the investment and also the principles of international law in that respect. ....

5. Arbitration awards shall be final and binding upon the parties to the dispute. ....

6. The Parties shall refrain from trying, through the diplomatic channels, arguments regarding arbitration or a judicial proceeding already pending until the relevant proceedings shall have been completed, unless the parties to the dispute shall have not discharged the arbitration award or the judgment rendered by the common court, pursuant to the terms for the discharge laid down in the award or the judgment. ....

ARTICLE 11 Effective date, duration and termination.....

1. This Treaty shall be ratified; the ratification documents shall be exchanged as soon as possible in Santiago, Chile. ....

2. This Treaty shall become in full force and effect one month after the date on which the exchange of the ratification instruments has been completed. It shall be in full force and effect during ten years and shall be renewed indefinitely, unless it is waived by either Party twelve months before its expiration. After the lapse of ten years, the Treaty may be waived at any time, upon twelve month notice. ....

3. The provisions of this Treaty shall continue to be applicable even in the cases set forth in article 63 of the Vienna Convention on the Law of Treaties dated May 23, 1969. ....

4. In connection with those investments made prior to the termination date of this Treaty, the provisions of Articles 1 to 10 shall continue in full force and effect during a period of 15 years following its termination date. ....

Granted in Buenos Aires, on the 2nd day of August, 1991, in two originals counterparts, both of them authentic. ....

ON BEHALF OF THE REPUBLIC OF ARGENTINA.....  
Guido Di Tella .....  
Domingo F. Cavallo.....

ON BEHALF OF THE REPUBLIC OF CHILE.....  
Enrique Silva Cimma.....  
Carlos Ominami.....

BUENOS AIRES  
A. PÚBLICA  
A INGLÉS  
T° X F° 457  
S.C. 3125

PROTOCOL .....

Upon the execution of the Treaty between the Republic of Argentina and the Republic of Chile on Reciprocal Promotion and Protection of Investments, the plenipotentiaries have further adopted the following provisions, which are an integral part of this Treaty:.....

1) In Article 3, item 3. ....

If either Party enters into in the future an Association Agreement with a customs or economic union, a common market or a Free Trade Zone, the introduction of an amendment to the exception set forth in article 3 item 3, paragraph 1 shall be agreed. ....

2) In article 4.....

For purposes of the cases to support the law that may affect property, the Parties understand that the concept of common welfare comprises the grounds set forth in their respective legal systems. ....

3) In article 5.....

The provisions of article 5 notwithstanding, the Republic of Chile shall guarantee the right of repatriation of the capital invested by Argentine investors, after the lapse of three years, following entrance, set forth in Decree Law No. 600 dated 1974.....

The provisions of the foregoing subparagraph shall be in full force and effect during the period laid down in the aforementioned Decree-Law.....

Buenos Aires, August 2, 1991 .....

ON BEHALF OF THE REPUBLIC OF ARGENTINA.....

Guido Di Tella .....

Domingo F. Cavallo.....

ON BEHALF OF THE REPUBLIC OF CHILE.....

Enrique Silva Cimma.....

Carlos Ominimi.....

THIS IS A TRUE TRANSLATION into English in 8 pages of the original document in Spanish language which I have had before and attach hereto, in Buenos Aires, on this July 21, 2004.....

ES TRADUCCIÓN FIEL al idioma inglés en 8 fojas del documento original en castellano que tuve ante mí y adjunto a la presente, en Buenos Aires, a los 21 días del mes de julio de 2004.....

COLEGIO DE TRADUCTORES PUBLICOS  
DE LA CIUDAD DE BUENOS AIRES  
Corresponde a la Legalización  
Nº 22.1624/040  
MAXIMILIANO DAMIAN VARGAS

*[Handwritten Signature]*  
MARCELA ALLIANDRA I. VARGAS  
TRADUCTORA PÚBLICA  
EN IDIOMA INGLÉS  
C.T.P.C.B.A. T° X F° 457  
° DE INSC. 3125



N° 00742144

**COLEGIO DE TRADUCTORES PÚBLICOS  
DE LA CIUDAD DE BUENOS AIRES**

REPÚBLICA ARGENTINA  
LEY 20.305

**LEGALIZACIÓN**



Por la presente, el COLEGIO DE TRADUCTORES PÚBLICOS DE LA CIUDAD DE BUENOS AIRES, en virtud de la facultad que le confiere el artículo 10, inc. d) de la Ley 20.305, certifica únicamente que la firma y el sello que aparecen en la traducción adjunta, concuerdan con los correspondientes

al Traductor Público

**VARELA, MARCELA ALEJANDRA IRENE**

que obran en los registros de esta institución en el folio

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Buenos Aires, Legalización Número: 16124 / 2004 / T2

Fecha: 21/07/2004



**MARCELO F. SIGALOFF**  
Eficarado Dtd. de Lega-z iones  
Colegio de Traductores Públicos  
de la Ciudad de Buenos Aires

ESTA LEGALIZACIÓN NO SE CONSIDERARÁ VÁLIDA SIN EL CORRESPONDIENTE  
TIMBRADO EN LA ÚLTIMA HOJA DE LA TRADUCCIÓN ADJUNTA



Pursuant to Section 10, Paragraph D of Act 20.305, the *COLEGIO DE TRADUCTORES PÚBLICOS DE LA CIUDAD DE BUENOS AIRES* (Sworn Translators Association of the City of Buenos Aires) hereby certifies that the signature and seal affixed hereto appear to match the specimen signature and seal of the *Traductor Público* (Sworn Translator) whose name is subscribed to the attached translation, as such specimen signature and seal are kept on file in our office.

**THIS CERTIFICATION IS NOT VALID WITHOUT THE STAMP ON THE LAST PAGE OF THE ATTACHED TRANSLATION.**

Vu par le *COLEGIO DE TRADUCTORES PÚBLICOS DE LA CIUDAD DE BUENOS AIRES* (Ordre de Traducteurs Officiels de la ville de Buenos Aires), en vertu des attributions qui lui ont été accordées par l'article 10, alinéa d) de la Loi n° 20.305, pour la seule légalisation matérielle de la signature et du sceau du *Traductor Público* (Traducteur Officiel) apposés sur la traduction du document ci-joint, qui sont conformes à ceux déposés aux archives de cette Institution.

**LE TIMBRE APPOSÉ SUR LA DERNIÈRE PAGE DE LA TRADUCTION FERA PREUVE DE LA VALIDITÉ DE LA LÉGALISATION.**

Con la presente il *COLEGIO DE TRADUCTORES PÚBLICOS DE LA CIUDAD DE BUENOS AIRES* (Collegio dei Traduttori Giurati della Città di Buenos Aires) al sensi della facoltà conferitagli dall'articolo 10, comma d), della Legge 20.305, CERTIFICA, esclusivamente, la firma ed il timbro del *Traductor Público* (Traduttore Giurato), apposti in calce alla qui unita traduzione, in conformità alla firma ed al timbro depositati nei propri registri.

**LA PRESENTE LEGALIZZAZIONE SARÀ PRIVA DI VALIDITÀ OVE NON VENGA TIMBRATA NELL'ULTIMO FOGLIO DELLA TRADUZIONE.**

Através da presente o *COLEGIO DE TRADUCTORES PÚBLICOS DE LA CIUDAD DE BUENOS AIRES* (Colégio de Tradutores Públicos da Cidade de Buenos Aires), em virtude das atribuições conferidas pelo art. 10 inc. d) da Lei 20.305, certifica unicamente que a assinatura e o carimbo do *Traductor Público* (Tradutor Público) que subscreve a tradução adjunta conferem com a assinatura e o carimbo arquivados nos registros desta instituição.

**A PRESENTE LEGALIZAÇÃO SÓ SERÁ CONSIDERADA VÁLIDA COM A CORRESPONDENTE CHANCELA MECÂNICA APOSTA NA ÚLTIMA FOLHA DA TRADUÇÃO.**

Kraft der Befugnis, die ihr durch Art. 10, Abs. d) im Gesetz 20.305 verliehen wird, bestätigt hiermit der *COLEGIO DE TRADUCTORES PÚBLICOS DE LA CIUDAD DE BUENOS AIRES* (Kammer der Vereidigten Übersetzer der Stadt Buenos Aires) lediglich, dass Unterschrift und Siegel, des *Traductor Público* (Vereidigten Übersetzers), mit denen die beigelegte Übersetzung versehen ist, mit den entsprechenden Registereintragungen dieser Institution übereinstimmen.

**VORLIEGENDE BEGLAUBIGUNG IST UNGÜLTIG OHNE DEN ENTSPRECHENDEN GEBÜHRENSTEMPEL AUF DEM LETZTEN BLATT DER BEIGESCHLOSSENEN ÜBERSETZUNG.**