

[TRANSLATION — TRADUCTION]

TREATY¹ 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.

¹ 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 1965,¹ 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

¹ 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 1969.¹

¹ 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 1988¹ and the Treaty for the establishment of a special associative relationship of 1987,² 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.

¹ United Nations, *Treaty Series*, vol. 1546, p. 3.

² *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
