



Treaty Series No. 41 (1993)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Republic of Argentina

for the Promotion and Protection of Investments

London, 11 December 1990

[The Agreement entered into force on 19 February 1993]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 1993*

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**AGREEMENT
BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF THE REPUBLIC OF ARGENTINA
FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Argentina;

Desiring to create favourable conditions for greater investment by investors of one State in the territory of the other State;

Recognising that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

(a) "investment" means every kind of asset 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 Agreement and in particular, though not exclusively, includes:

- (i) movable and immovable property and any other property rights such as mortgages, liens or pledges;
- (ii) shares in and stock and debentures of a company and any other form of participation in a company, established in the territory of either of the Contracting Parties;
- (iii) claims to money which are directly related to a specific investment or to any performance under contract having a financial value;
- (iv) intellectual property rights, goodwill, technical processes and know-how;
- (v) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments. The term "investment" includes all investments, whether made before or after the date of entry into force of this Agreement, but the provisions of this Agreement shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled, before its entry into force;

(b) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

(c) "investor" means:

(i) in respect of the United Kingdom:

(aa) natural persons deriving their status as United Kingdom nationals from the law in force in the United Kingdom; and

(bb) companies, corporations, firms and associations incorporated or constituted under the law in force in any part of the United Kingdom or in any territory to which this Agreement is extended in accordance with the provisions of Article 12;

(ii) in respect of the Republic of Argentina:

(aa) any natural person, who is a national of the Republic of Argentina in accordance with its laws on nationality; and

(bb) any legal person constituted according to the laws and regulations of the Republic of Argentina or having its seat in the territory of the Republic of Argentina;

- (d) "territory" means the territory of the United Kingdom of Great Britain and Northern Ireland or of the Republic of Argentina, as well as the territorial sea and any maritime area situated beyond the territorial sea of the State concerned which has been or might in the future be designated under the national law of the State concerned in accordance with international law as an area within which the State concerned may exercise rights with regard to the sea-bed and subsoil and the natural resources; and any territory to which this Agreement may be extended in accordance with the provisions of Article 12.

ARTICLE 2

Promotion and Protection of Investment

- (1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest capital in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such capital.
- (2) Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy protection and constant security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

ARTICLE 3

National Treatment and Most-favoured-nation Provisions

- (1) Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State.
- (2) Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or to investors of any third State.

ARTICLE 4

Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot or resulting from arbitrary action by the authorities in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

ARTICLE 5

Expropriation

- (1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Contracting Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, be

effectively realizable and be freely transferable. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, the provisions of paragraph (1) of this Article shall apply.

ARTICLE 6

Repatriation of Investment and Returns

(1) Each Contracting Party shall in respect of investments guarantee to investors of the other Contracting Party the unrestricted transfer of their investments and returns to the country where they reside.

(2) Transfers shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed between the investor and the Contracting Party in whose territory the investment was made and in accordance with the procedures established by that Contracting Party. Unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

(3) Each Contracting Party shall have the right in exceptional balance of payments difficulties and for a limited period to exercise equitably and in good faith powers conferred by its laws and procedures to limit the free transfer of investments and returns. Such limitations shall not exceed a period of eighteen months in respect of each application to transfer and shall allow the transfer to be made in instalments within that period but the transfer of at least fifty per cent of the capital and of the returns shall be permitted by the end of the first year. In no circumstances may such limitations be imposed on the same investor after a period of three years from the start of the first such limitation. Pending the transfer of his capital and returns, the investor shall have the opportunity to invest them in a manner which will preserve their real value until the transfer occurs.

(4) Notwithstanding the provisions of paragraph (3) of this Article, each Contracting Party shall, in any event, guarantee to the investors of the other Contracting Party, the unrestricted transfer of dividends, which have been distributed to shareholders and paid out of the export earnings of the company concerned.

ARTICLE 7

Exceptions

The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of either Contracting Party or to the investors of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from

- (a) any existing or future customs union, regional economic integration agreement or similar international agreement to which either of the Contracting Parties is or may become a party, or
- (b) the bilateral agreements providing for concessional financing concluded by the Republic of Argentina with Italy on 10 December 1987 and with Spain on 3 June 1988 respectively, or
- (c) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

ARTICLE 8

Settlement of Disputes Between an Investor and the Host State

- (1) Disputes with regard to an investment which arise within the terms of this Agreement between an investor of one Contracting Party and the other Contracting Party, which have not been amicably settled shall be submitted, at the request of one of the Parties to the dispute, to the decision of the competent tribunal of the Contracting Party in whose territory the investment was made.
- (2) The aforementioned disputes shall be submitted to international arbitration in the following cases:
- (a) if one of the Parties so requests, in any of the following circumstances:
- (i) where, after a period of eighteen months has elapsed from the moment when the dispute was submitted to the competent tribunal of the Contracting Party in whose territory the investment was made, the said tribunal has not given its final decision;
 - (ii) where the final decision of the aforementioned tribunal has been made but the Parties are still in dispute;
- (b) where the Contracting Party and the investor of the other Contracting Party have so agreed.
- (3) Where the dispute is referred to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to refer the dispute either to:
- (a) the International Centre for the Settlement of Investment Disputes (having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington DC on 18 March 1965¹ (provided that both Contracting Parties are Parties to the said Convention) and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings); or
 - (b) an international arbitrator or *ad hoc* arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

If after a period of three months from written notification of the claim there is no agreement to one of the above alternative procedures, the Parties to the dispute shall be bound to submit it to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. The Parties to the dispute may agree in writing to modify these Rules.

- (4) The arbitral tribunal shall decide the dispute in accordance with the provisions of this Agreement, the laws of the Contracting Party involved in the dispute, including its rules on conflict of laws, the terms of any specific agreement concluded in relation to such an investment and the applicable principles of international law. The arbitration decision shall be final and binding on both Parties.
- (5) The provisions of this Article shall not apply where an investor of one Contracting Party is a natural person who has been ordinarily resident in the territory of the other Contracting Party for a period of more than two years before the original investment was made and the original investment was not admitted into that territory from abroad. But, if a dispute should arise between such an investor and the other Contracting Party, the Contracting Parties agree to consult together as soon as possible so that they can reach a mutually acceptable solution.

ARTICLE 9

Disputes between the Contracting Parties

- (1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.

¹ Treaty Series No. 25 (1967), Cmnd. 3255.

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

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall in principle be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

ARTICLE 10

Subrogation

(1) If one Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated Agency by law or by legal transaction of all the rights and claims of the Party indemnified and that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the Party indemnified.

(2) The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the Party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payments received in non-convertible currency by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the territory of the latter Contracting Party.

ARTICLE 11

Application of other Rules

If the provision of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement or if any agreement between an investor of one Contracting Party and the other Contracting Party contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

ARTICLE 12

Territorial Extension

At the time of the entry into force of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to such territories for whose international relations the Government of the United Kingdom are responsible, as may be agreed between the Contracting Parties in an Exchange of Notes.

ARTICLE 13

Entry into Force

Each Contracting Party shall notify the other in writing of the completion of the constitutional formalities required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later of the two notifications.

ARTICLE 14

Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of fifteen years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in two originals at London this 11th day of December 1990 in the English and Spanish languages, both texts being equally authoritative.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

DOUGLAS HURD

For the Government of the Republic of
Argentina:

D. CAVALLO