AGREEMENT

BETWEEN

THE GOVERNMENT OF CANADA

AND

THE GOVERNMENT OF THE

EASTERN REPUBLIC OF URUGUAY

FOR THE PROMOTION AND PROTECTION

OF INVESTMENTS

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE EASTERN REPUBLIC OF URUGUAY, hereinafter referred to as the "Contracting Parties",

RECOGNIZING that the promotion and the protection of investments of investors of one Contracting Party in the territory of the other Contracting Party will be conducive to the stimulation of business initiative and to the development of economic cooperation between them,

HAVE AGREED as follows:

ARTICLE I

Definitions

For the purpose of this Agreement:

(a) "enterprise" means:

(i) any entity constituted or organized under applicable law, whether or not for profit, whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association; and

(ii) a branch of any such entity;

(b) "existing measure" means a measure existing at the time this Agreement enters into force;

(c) "intellectual property rights" means copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breeders' rights, rights in geographical indications and industrial design rights;

(d) "investment" means any kind of asset owned or controlled either directly, or indirectly through an investor of a third State, by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and, in particular, though not exclusively, includes:

(i) movable and immovable property and any related property rights, such as mortgages, liens or pledges;

(ii) shares, stock, bonds and debentures or any other form of participation in a company, business enterprise or joint venture;

(iii) money, claims to money, and claims to performance under contract having a financial value;

(iv) goodwill;

(v) intellectual property rights;

(vi) rights, conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources.

but does not mean real estate or other property, tangible or intangible, not acquired in the expectation or used for the purpose of economic benefit or other business purposes.

For further certainty, an investment shall be considered to be controlled by an investor if the investor controls, directly or indirectly, the enterprise which owns the investment.

Any change in the form of an investment does not affect its character as an investment.

(e) "investor" means

in the case of Canada:

(i) any natural person possessing the citizenship of or permanently residing in Canada in accordance with its laws; or

(ii) any enterprise incorporated or duly constituted in accordance with applicable laws of Canada,

who makes the investment in the territory of Uruguay and who does not possess the citizenship of Uruguay;

in the case of Uruguay:

(i) any natural person possessing the citizenship of Uruguay in accordance with its laws; or

(ii) any enterprise incorporated or duly constituted in accordance with applicable laws of Uruguay,

who makes the investment in the territory of Canada and who does not possess the citizenship of Canada;

(f) "measure" includes any law, regulation, procedure, requirement, or practice;

(g) "returns" means all amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties, fees or other current income;

(h) "state enterprise" means an enterprise that is governmentally-owned or controlled through ownership interests by a government;

(i) "territory" means, in respect of a Contracting Party, the territory of that Contracting Party, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which that Contracting Party exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas.

ARTICLE II

Promotion and Protection of Investments

1. Each Contracting Party shall encourage the creation of favourable conditions for investors of the other Contracting Party to make investments in its territory.

2. Each Contracting Party shall accord investments or returns of investors of the other Contracting Party

   (a) fair and equitable treatment in accordance with principles of international law, and

   (b) full protection and security.

ARTICLE III

Establishment of Investment

Each Contracting Party shall permit establishment of a new enterprise or acquisition of an existing business enterprise or a share of such enterprise by investors or prospective investors of the other Contracting Party on a basis no less favourable than that which, in like circumstances, it permits such acquisition or establishment by:

(a) investors or prospective investors of any third state;

(b) its own investors or prospective investors.

ARTICLE IV

Treatment of Established Investment

1. Each Contracting Party shall grant to investments and to returns of investors of the other Contracting Party treatment no less favourable than that which, in like circumstances, it grants to investments and returns of:

   (a) investors of any third State;

   (b) its own investors.

2. Each Contracting Party shall grant investors of the other Contracting Party, as regards the enjoyment, use, management, conduct, operation, expansion, and sale or other disposition of their investments or returns, treatment no less favourable than that which, in like circumstances, it grants to:

   (a) investors of any third State;

   (b) its own investors.

ARTICLE V

Management, Directors and Entry of Personnel

1. A Contracting Party may not require that an enterprise of that Contracting Party, that is an investment under this Agreement, appoint to senior management positions individuals of any particular nationality.

2. A Contracting Party may require that a majority of the board of directors, or any committee thereof, of an enterprise that is an investment under this Agreement be of a particular nationality, or resident in the territory of the Contracting Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

3. Subject to its laws, regulations and policies relating to the entry of aliens, each Contracting Party shall grant temporary entry to citizens of the other Contracting Party employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial or executive or requires specialized knowledge.

ARTICLE VI

Performance Requirements

Neither Contracting Party may impose any of the following requirements in connection with permitting the establishment or acquisition of an investment or enforce any of the following requirements in connection with the subsequent regulation of that investment:

(a) to export a given level or percentage of goods;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(e) to transfer technology, a production process or other proprietary knowledge to a person in its territory unaffiliated with the transferor, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority, either to remedy an alleged violation of competition laws or acting in a manner not inconsistent with other provisions of this Agreement.

ARTICLE VII

Compensation for Losses

Investors of one Contracting Party who suffer losses because their investments or returns on the territory of the other Contracting Party are affected by an armed conflict, a national emergency or a natural disaster on that territory, shall be accorded by such latter Contracting Party, in respect of restitution, indemnification, compensation or other settlement, treatment no less favourable than that which it accords to its own investors or to investors of any third State.

ARTICLE VIII

Expropriation

1. Investments or returns of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for a public purpose, under due process of law, in a non-discriminatory manner and against prompt, adequate and effective compensation. Such compensation shall be based on the fair market value of the investment or returns expropriated immediately before the expropriation or at the time the proposed expropriation became public knowledge, whichever is the earlier, shall be payable from the date of expropriation with interest at a normal commercial rate, shall be paid without delay and shall be effectively realizable and freely transferable. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

2. 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 Party, of its case and of the valuation of its investment or returns in accordance with the principles set out in this Article.

3. The provisions of this Article apply to taxation measures unless the taxation authorities of the Contracting Parties, no later than six months after being notified by an investor that he disputes a taxation measure, jointly determine that the measure in question is not an expropriation.

ARTICLE IX

Transfer of Funds

1. Each Contracting Party shall guarantee to an investor of the other Contracting Party the unrestricted transfer of investments and returns. Without limiting the generality of the foregoing, each Contracting Party shall also guarantee to the investor the unrestricted transfer of:

   (a) funds in repayment of loans related to an investment;

   (b) the proceeds of the total or partial liquidation of any investment;

   (c) wages and other remuneration accruing to a citizen of the other Contracting Party who was permitted to work in connection with an investment in the territory of the other Contracting Party;

(d) any compensation owed to an investor by virtue of Articles VII or VIII of the Agreement.

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 by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer.

ARTICLE X

Subrogation

1. If a Contracting Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance it has entered into in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of such Contracting Party or agency thereof to any right or title held by the investor.

2. A Contracting Party or any agency thereof which is subrogated to the rights of an investor in accordance with Paragraph 1 of this Article, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment concerned and its related returns. Such rights may be exercised by the Contracting Party or any agency thereof or by the investor if the Contracting Party or any agency thereof so authorizes.

ARTICLE XI

Taxation Measures

1. Except where express reference is made thereto, nothing in this Agreement shall apply to taxation measures. For further certainty, nothing in this Agreement shall affect the rights and obligations of the Contracting Parties under any tax convention. In the event of any inconsistency between the provisions of this Agreement and any such convention, the provisions of that convention shall apply to the extent of the inconsistency.

2. A claim by an investor that a tax measure of a Contracting Party is in breach of an agreement between the central government authorities of a Contracting Party and the investor concerning an investment shall be considered a claim for breach of this Agreement unless the taxation authorities of the Contracting Parties, no later than six months after being notified of the claim by the investor, jointly determine that the measure does not contravene such agreement.

ARTICLE XII

Settlement of Disputes between an Investor and the Host Contracting Party

1. Any dispute between one Contracting Party and an investor of the other Contracting Party, relating to a claim by the investor that a measure taken or not taken by the former Contracting Party is in breach of this Agreement, and that the investor has incurred loss or damage by reason of, or arising out of, that breach, shall, to the extent possible, be settled amicably between them. The investor may submit the dispute to any competent court or administrative tribunal of the Contracting Party in whose territory the investment was made.

2. If a dispute has not been settled amicably within a period of six months from the date on which it was initiated, it may be submitted by the investor to arbitration in accordance with Paragraph 4. For the purposes of this paragraph, a dispute is considered to be initiated when the investor of one Contracting Party has delivered notice in writing to the other Contracting Party alleging that a measure taken or not taken by the latter Contracting Party is in breach of this Agreement, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

3. An investor may submit a dispute as referred to in Paragraph 1 to arbitration in accordance with Paragraph 4 only if:

   (a) the investor has consented in writing thereto;

   (b) the investor has waived its right to initiate or continue any other proceedings in relation to the measure that is alleged to be in breach of this Agreement before the courts or tribunals of the Contracting Party concerned or in a dispute settlement procedure of any kind;

   (c) not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

4. The dispute may, at the election of the investor concerned, be submitted to arbitration under:

   (a) The International Centre for the Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington 18 March, 1965 (ICSID Convention), provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the ICSID Convention; or

   (b) the Additional Facility Rules of ICSID, provided that either the disputing Contracting Party or the Contracting Party of the investor, but not both, is a party to the ICSID Convention; or

   (c) an international arbitrator or ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

5. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of this Article.

6. (a) The consent given under Paragraph 5, together with either the consent given under Paragraph 3, or any relevant provision of Annex II, shall satisfy the requirements for:

   (i) written consent of the parties to a dispute for purposes of Chapter II (Jurisdiction of the Centre) of the ICSID Convention and for purposes of the Additional Facility Rules; and

   (ii) an "agreement in writing" for purposes of Article II of the United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 ("New York Convention").

   (b) Any arbitration under this Article shall be held in a State that is a party to the New York Convention, and claims submitted to arbitration shall be considered to arise out of a commercial relationship or transaction for the purposes of Article 1 of that Convention.

7. A tribunal established under this Article shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

8. A tribunal may award, separately or in combination, only:

   (a) monetary damages and any applicable interest;

   (b) restitution of property, in which case the award shall provide that the disputing Contracting Party may pay monetary damages and any applicable interest in lieu of restitution.

   A tribunal may also award costs in accordance with the applicable arbitration rules.

9. An award of arbitration shall be final and binding and shall be enforceable in the territory of each of the Contracting Parties.

10. Any proceedings under this Article are without prejudice to the rights of the Contracting Parties under Article XIII.

ARTICLE XIII

Disputes between the Contracting Parties

1. Either Contracting Party may request consultations on the interpretation or application of this Agreement. The other Contracting Party shall give sympathetic consideration to the request. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, whenever possible, be settled amicably through consultations.

2. If a dispute cannot be settled through consultations, it shall, at the request of either Contracting Party, be submitted to an arbitral panel for decision.

3. An arbitral panel shall be constituted for each dispute. Within two months after receipt through diplomatic channels of the request for arbitration, each Contracting Party shall appoint one member to the arbitral panel. The two members shall then select a national of a third State who, upon approval by the two Contracting Parties, shall be appointed Chairman of the arbitral panel. The Chairman shall be appointed within two months from the date of appointment of the other two members of the arbitral panel.

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 the necessary appointments. If the President is a national of either Contracting Party or 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 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 panel shall determine its own procedure. The arbitral panel shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Unless otherwise agreed, the decision of the arbitral panel shall be rendered within six months of the appointment of the Chairman in accordance with Paragraphs 3 or 4 of this Article.

6. Each Contracting Party shall bear the costs of its own member of the panel and of its representation in the arbitral proceedings; the costs related to the Chairman and any remaining costs shall be borne equally by the Contracting Parties. The arbitral panel 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.

7. The Contracting Parties shall, within 60 days of the decision of a panel, reach agreement on the manner in which to resolve their dispute. Such agreement shall normally implement the decision of the panel or shall otherwise determine compensation. If the Contracting Parties fail to reach agreement, the Contracting Party bringing the dispute shall be entitled to suspend benefits of equivalent effect to those awarded by the panel.

ARTICLE XIV

Transparency

1. Each Contracting Party shall, to the extent practicable, ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Contracting Party to become acquainted with them.

2. Upon request by either Contracting Party, information shall be exchanged on the measures of the other Contracting Party that may have an impact on new investments, investments or returns covered by this Agreement.

ARTICLE XV

Application and Entry into Force

1. This Agreement shall apply to any investment made by an investor of one Contracting Party in the territory of the other Contracting Party before or after the entry into force of this Agreement. The Agreement shall not apply to disputes between an investor of one Contracting Party and the other Contracting Party that have been submitted to a claim before the effective date of this Agreement.

2. The two Annexes hereto shall form integral parts hereof.

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

4. This Agreement shall remain in force unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate it. The termination of this Agreement shall become effective one year after notice of termination has been received by the other Contracting Party. In respect of investments or commitments to invest made prior to the date when the termination of this Agreement becomes effective, the provisions of Articles I to XIV inclusive, as well as Paragraphs 1 and 2 of this Article, shall remain in force for a period of fifteen years.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Ottawa, this 29th day of October 1997, in the English, French and Spanish languages, each text being equally authentic.

Sergio Marchi

FOR THE GOVERNMENT OF OF CANADA

FOR THE GOVERNMENT OF THE EASTERN REPUBLIC OF URUGUAY

ANNEX I

GENERAL AND SPECIFIC EXCEPTIONS

Special Provisions

I. **MFN Exceptions:**

1. Articles III(1)(a), IV(1)(a) and IV(2)(a) shall not apply to treatment by a Contracting Party pursuant to any existing or future bilateral or multilateral agreement:

   (a) establishing, strengthening or expanding a free trade area or customs union;

   (b) negotiated within the framework of the GATT (including in particular the General Agreement on Trade in Services (GATS)), the World Trade Organization, or any successor organization), and containing obligations and rights relating to trade in services; or

   (c) relating to:

      (i) aviation;

      (ii) telecommunications transport networks and telecommunications transport services;

      (iii) fisheries;

      (iv) maritime matters, including salvage; or

      (v) financial services.

2. Article III(1)(a) does not apply in respect of financial services.

3. For the purposes of this Agreement, the term "financial service" means a service of a financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature;

II. **National Treatment Exceptions:**

1. Articles III(1)(b), IV(1)(b), IV(2)(b), V(1), V(2) and VI do not apply to:

   (a) any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition of a government's equity interests in, or the assets of, an existing state enterprise or an existing governmental entity, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality requirements relating to senior management or members of the board of directors;

(b) any existing non-conforming measures maintained within the territory of a Contracting Party; the continuation or prompt renewal of any such non-conforming measure or any measure referred to in paragraph (a) above; any amendment to such non-conforming measure or any measure referred to in paragraph (a) above, to the extent that such amendment does not decrease the conformity of the measure as it existed immediately before the amendment with those obligations;

(c) the right of each Contracting Party to make or maintain exceptions within the following sectors or matters:

Canada:

- social services (i.e. public law enforcement; correctional services; income security or insurance; social security or insurance; social welfare; public education; public training; health and child care);

- residency requirements for ownership of oceanfront land;

- measures implementing the Northwest Territories Oil and Gas Accord;

- government securities - as described in Standard Industrial Classification number 8152 as set out in Statistics Canada *Standard Industrial Classification*, fourth edition, 1980.

Uruguay:

- social services (i.e. public law enforcement; correctional services; income security or insurance; social security or insurance; social welfare; public education; public training; health and child care).

2. The Contracting Parties shall, within a two year period after the entry into force of this Agreement, exchange letters listing, to the extent possible any existing measures that it may rely on to limit national treatment obligations in accordance with Paragraph (1)(b) hereof.

3. Notwithstanding any other provision of this Agreement, the Contracting Parties agree that in respect of services, nothing in this Agreement shall oblige a Contracting Party to accord to investors, prospective investors, or to investments of investors of the other Contracting Party any treatment or right under Articles III(1)(b), IV(1)(b), IV(2)(b), V(1), V(2) or VI more favourable than that which the Contracting Party is required to accord to such investor, prospective investor, or investment pursuant to the General Agreement on Trade in Services ("GATS"), as it may from time to time be amended or replaced.

III. <u>General Exceptions and Exemptions</u>:

1. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining or enforcing any measure otherwise consistent with this Agreement that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

2. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining measures, including environmental measures:

   (a) necessary to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

   (b) necessary to protect human, animal or plant life or health; or

   (c) relating to the conservation of living or non-living exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

3. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining reasonable measures for prudential reasons, such as:

   (a) the protection of investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution;

   (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and

   (c) ensuring the integrity and stability of a Contracting Party's financial system.

4. Investments in cultural industries are exempt from the provisions of this Agreement. "Cultural industries" means natural persons or enterprises engaged in any of the following activities:

   (a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;

   (b) the production, distribution, sale or exhibition of film or video recordings;

   (c) the production, distribution, sale or exhibition of audio or video music recordings;

   (d) the publication, distribution, sale or exhibition of music in print or machine readable form; or

   (e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television or cable broadcasting undertakings and all satellite programming and broadcast network services.

5. The provisions of Articles II, III, IV, V and VI of this Agreement do not apply to:

   (a) procurement by a government or state enterprise;

(b) subsidies or grants provided by a government or a state enterprise, including government-supported loans, guarantees and insurance;

(c) any measure denying investors of the other Contracting Party and their investments any rights or preferences provided to the aboriginal peoples of Canada; or

(d) any current or future foreign aid program to promote economic development, whether under a bilateral agreement, or pursuant to a multilateral arrangement or agreement, such as the OECD Agreement on Export Credits.

IV. Exceptions to Specific Obligations:

1. In respect of intellectual property rights, a Contracting Party may derogate from Article IV in a manner that is consistent with the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, done at Marrakesh, April 15, 1994.

2. The provisions of Article VIII do not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, done at Marrakesh, April 15, 1994.

V. Special Provisions relating to Transfers:

1. Notwithstanding the provisions of Article IX, a Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

   (a) bankruptcy, insolvency or the protection of the rights of creditors;

   (b) issuing, trading or dealing in securities;

   (c) criminal or penal offenses;

   (d) reports of transfers of currency or other monetary instruments; or

   (e) ensuring the satisfaction of judgments in adjudicatory proceedings.

2. Neither Contracting Party may require its investors to transfer, or penalize its investors that fail to transfer, the returns attributable to investments in the territory of the other Contracting Party.

3. Paragraph 2 shall not be construed to prevent a Contracting Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in Paragraph 1.

4. Notwithstanding the provisions of Article IX and Paragraph 2 above, and without limiting the applicability of Paragraph 1 above, a Contracting Party may prevent or limit transfers by a financial institution to, or for the benefit of, an affiliate of or person related to such institution, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions.

5. For the purposes of this Agreement, "financial institution" means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Contracting Party in whose territory it is located;

VI. Exclusions from Dispute Settlement:

1. Decisions of a Contracting Party as to whether or not to permit establishment of a new business enterprise, or acquisition of an existing business enterprise or a share of such enterprise, by investors or prospective investors of the other Contracting Party shall not be subject to dispute settlement under Article XII of this Agreement.

2. Further to Paragraph 1, decisions by a Contracting Party pursuant to a pre-existing non-conforming measure described in Article II(1)(b) of this Annex as to whether or not to permit an acquisition shall, in addition, not be subject to dispute settlement under Article XIII of this Agreement.

ANNEX II

SPECIFIC RULES RE ARTICLE XII

Settlement of Disputes between an Investor and the Host Contracting Party

I. Prudential Measures:

1. Where an investor submits a claim to arbitration under Article XII, and the disputing Contracting Party invokes Article III(3) or V(4) of Annex I, the tribunal established pursuant to Article XII shall, at the request of that Contracting Party, seek a report in writing from the Contracting Parties on the issue of whether and to what extent the said paragraphs are a valid defence to the claim of the investor. The tribunal may not proceed pending receipt of a report under this Article.

2. Pursuant to a request received in accordance with Paragraph 1, the Contracting Parties shall proceed in accordance with Article XIII to prepare a written report, either on the basis of agreement following consultations, or by means of an arbitral panel. The consultations shall be between the financial services authorities of the Contracting Parties. The report shall be transmitted to the tribunal, and shall be binding on the tribunal.

3. Where, within 70 days of the referral by the tribunal, no request for the establishment of a panel pursuant to Paragraph 2 has been made and no report has been received by the tribunal, the tribunal may proceed to decide the matter.

4. Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service in dispute.

II. Taxation Measures:

1. An investor may submit a claim relating to taxation measures covered by this Agreement to arbitration under Article XII only if the taxation authorities of the Contracting Parties fail to reach the joint determinations specified in Article VIII(3) or XI(2) within six months of being notified in accordance with the relevant Article.

2. The taxation authorities referred to in Articles VIII(3) and XI(2) shall be the following until notice in writing to the contrary is provided to the other Contracting Party:

   for Canada:

   the Assistant Deputy Minister, Tax Policy, of the Department of Finance Canada;

   for Uruguay:

   the Minister of Economy and Finance.

III. Damage Incurred by a Controlled Enterprise:

1. A claim that a Contracting Party is in breach of this Agreement, and that an enterprise that is a juridical person incorporated or duly constituted in accordance with applicable laws of that Contracting Party has incurred loss or damage by reason of, or arising out of, that breach, may be brought by an investor of the other Contracting Party acting on behalf of an enterprise which the investor owns or controls directly or indirectly. In such a case

   (a) any award shall be made to the affected enterprise;

   (b) the consent to arbitration of both the investor and the enterprise shall be required;

   (c) both the investor and enterprise must waive any right to initiate or continue any other proceedings in relation to the measure that is alleged to be in breach of this Agreement before the courts or tribunals of the Contracting Party concerned or in a dispute settlement procedure of any kind; and

   (d) the investor may not make a claim if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that it has incurred loss or damage.

2. Notwithstanding Paragraph 1(a) above, where a disputing Contracting Party has deprived a disputing investor of control of an enterprise, the following shall not be required:

   (a) a consent to arbitration by the enterprise under 1(b); and

   (b) a waiver from the enterprise under 1(c).