

AGREEMENT BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF THE UNITED MEXICAN STATES FOR THE PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS

The Government of the Italian Republic and the Government of the United Mexican States, hereinafter referred to as the Contracting Parties,

Intending to establish favourable conditions for investors of one Contracting Party to invest in the territory of the other Contracting Party,

Bearing in mind that the promotion and the mutual protection of these investments require that favourable economic and legal conditions be maintained, and

Considering that the promotion and the mutual protection of these investments will contribute towards the development of economic-commercial and technical-scientific co-operation of mutual benefit and will stimulate economic initiatives in the field of investments,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall be construed to mean any kind of assets invested, before or after the entry into force of this Agreement, by an investor of one Contracting Party in the territory of the other Contracting Party, in conformity with the legislation of that Contracting Party, in any legal form. It shall, however, not be applicable to divergences of disputes which have arisen prior to its entry into force. The term "investment" comprises in particular, but not exclusively:

a) Movable and immovable property, acquired or used for economic purposes, and any right "in rem", such as pledges, liens and mortgages;

b) Shares, debentures and other securities as well as stocks and other forms of participation;

c) Claims to money or to any performance having an economic value, strictly connected to an investment, with the exclusion of:

- the extension of credit in connection with a commercial transaction, such as trade financing,
- credits with a maturity of less than 3 years,
- a contract obligation with, or the granting of a credit to, the State or a State enterprise;

d) Intellectual property rights including, in particular, copyright and industrial property rights such as patents, trademarks, industrial designs, trade names, as well as know-how, trade secrets and goodwill;

e) Rights conferred by law, contract or by virtue of any licenses and permits pursuant to legislation, to carry out economic activities, including turnkey or construction contracts or rights deriving from a concession; and

f) Rights derived from licenses or concessions agreed with and by a State enterprise.

2. The term "investor" shall be construed, with regard to each Contracting Party, to mean any natural or legal person entitled, in accordance with the legislation of that Contracting Party, to make investments in the territory of the other Contracting Party.

"Natural person" means any natural person holding the nationality of a Contracting Party in accordance with its legislation.

"Legal person" means a State enterprise, a company, a firm, an association or any other entity having a seat in the territory of a Contracting Party and recognised in accordance with its legislation as legal person, regardless of whether its liability is limited or otherwise.

3. The term "investment returns" shall be construed to mean the money accruing to an investment including, in particular, profits, interest income, capital gains, dividends, royalties or payments for assistance and technical services as well as any payment in kind.

4. The term "territory" shall mean:

- for the Italian Republic: in addition to the zones contained within the land boundaries, the "maritime zones". The latter also comprises the marine and submarine zones over which Italy exercises sovereignty and sovereign or jurisdictional rights under international law.
- for the United Mexican States: in addition to the zones contained within the land boundaries, the "maritime zones". The latter also comprises the marine zones and the continental shelf over which Mexico exercises sovereignty and sovereign or jurisdictional rights under international law.

Article 2. Promotion and Mutual Protection of Investments

1. Each Contracting Party will encourage investors of the other Contracting Party to invest in its territory and admit investments in accordance with its own legislation.

2. Each Contracting Party shall accord to investments made in its territory by investors of the other Contracting Party fair and equitable treatment and shall refrain from adopting discriminatory measures which might impair the operation, management, maintenance, use, disposal, transformation or liquidation of the investment. Such investments shall enjoy full legal protection and security.

3. In case of reinvestment of the returns of an investment or increase of the invested capital, such reinvestment or such increase shall enjoy the same protection and treatment as the initial investment.

4. Each Contracting Party shall, in accordance with its legislation, permit investors of the other Contracting Party, who have made investments in its territory, to employ top managerial personnel regardless of their nationality.

5. The nationals of one Contracting Party who are authorised to work in the territory of the other Contracting Party in connection with investments subject to this Agreement, shall enjoy appropriate conditions under which to perform their professional activities in accordance with the legislation of the latter.

6. Each Contracting Party shall, in accordance with its legislation and its international obligations relating to the entry and stay of foreigners, permit the nationals of the other Contracting Party, working in connection with an investment under this Agreement, as well as members of their families, to enter into, remain and leave its territory.

Article 3. Treatment

1. Each Contracting Party shall accord to the investors of the other Contracting Party as well as to the investments effected by and investment returns accruing to such investors, treatment not less favourable than that it accords to its own investors as well as to investments effected by and investment returns accruing to its own investors or investors of any third State.

2. The most favoured nation treatment granted in accordance with paragraph 1. of this Article shall not apply to advantages and privileges which the Contracting Party is providing or will provide in the future by virtue of:

- its participation in Free Trade Areas, Custom or Economic Unions;
- agreements to avoid double taxation or other arrangements relating to taxation issues;
- agreements to facilitate cross border trade.

Article 4. Compensation for Losses

If the investors of either Contracting Party incur losses on their investments in the territory of the other Contracting Party as a result of war or other armed conflicts, state of emergency or similar events, the latter Contracting Party shall, in accordance with its legislation, offer the investors the same treatment as to its own investors and, at all events, a treatment which is not less favourable than that granted to investors of any other third country.

Article 5. Expropriation

1. Investments of investors of one Contracting Party shall not be, "de jure" or "de facto", totally or partially, nationalised, expropriated, requisitioned or subjected to any measures having an equivalent effect (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for public purposes or national interest, on payment of compensation, on condition that these measures are taken on a non-discriminatory basis and in accordance with the procedures established by its legislation.
 2. The compensation provided for in paragraph 1. of this Article shall be equivalent to the fair market value of the expropriated investments on the date immediately prior to the date on which the expropriation was made or the decision to expropriate was officially announced. The assessment of the fair market value will take into account the declared tax value of the expropriated assets.
 3. Compensation shall be paid without undue delay and in a reasonable period of time, and be fully realisable and freely transferable.
- To compensation shall be added interests from the date of expropriation until the date of payment at a normal commercial rate, including LIBOR.
4. Compensation shall be paid in convertible currency at the market exchange rate applicable on the date immediately prior to the date on which the expropriation was made or the decision to expropriate was officially announced. Such compensation will be freely transferable.
 5. The provisions of this Article shall also apply to any investment returns and, in the event of winding-up of the investment, to the proceeds of liquidation to be paid to the investor, only in the case that any of them were nationalised or expropriated.
 6. If, after the dispossession, the investment has not been wholly or partially utilised for the purpose of the expropriation in question, the former owner or his assignees shall be entitled to recover the investment at the fair market value, according to the legal procedures envisaged in the legislation in force of the respective expropriating Contracting Party.

Article 6. Transfer of Funds

1. Each Contracting Party shall assure to the investors of the other Contracting Party the free transfer abroad of:
 - a) The initial capital and additional amounts to maintain or increase the investment;
 - b) Any investment returns;
 - c) Amounts deriving from the total or partial sale or the total or partial liquidation of an investment;
 - d) Funds to repay loans connected to an investment;
 - e) Remuneration and other indemnities received by nationals of the other Contracting Party in respect of paid employment and services supplied in implementing the investment in its territory, in the amount and under the procedures provided for in its legislation;
 - f) Payments of compensation for losses; and
 - g) Payments pursuant to the application of provisions related to the settlement of disputes.
2. Taking into account the provisions of Article 3 of this Agreement, the Contracting Parties undertake to apply to the transfers mentioned in paragraph 1 of this Article, the Most Favoured Nation Treatment.
3. Notwithstanding paragraphs 1 and 2 above, each Contracting Party may prevent a transfer through the equitable, non-discriminatory and in good faith application of measures to protect the rights of creditors, relating to or ensuring compliance with laws and regulations on the issuing, trading and dealing in securities, futures and derivatives, reports or records of transfers, or in connection with criminal offences and orders or judgements in administrative and adjudicatory proceedings, provided that such measures and their application shall not be used as a means of avoiding the Contracting Party's commitments or obligations under this Agreement.
4. In case of serious balance of payments difficulties or the threat thereof, each Contracting Party may temporarily restrict transfers, provided that such a Contracting Party implements measures or a programme in accordance with the International Monetary Fund standards. These restrictions would be imposed on an equitable, non-discriminatory and in good faith basis.

Article 7. Subrogation

1. If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance against non-commercial risks given in respect of an investment by an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or claim of such investor to the former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as its predecessor in title.

However, in case of a dispute, only the investor or a privately owned legal person to which the Contracting Party or its designated agency has assigned its rights may initiate or participate in proceedings before a national tribunal or submit the case to international arbitration in accordance with the provision of Section 2 (two) of the Annex of this Agreement.

2. In relation to the transfer of payments to the Contracting Party or its designated Agency by virtue of this assignment, the provisions of Articles 4., 5. and 6. of this Agreement shall apply.

Article 8. Transfer of Funds Procedures

The transfer of funds referred to in Articles 4., 5., 6. and 7. of this Agreement shall be effected without undue delay and, after all fiscal obligations have been met by the investor, according to the proceedings provided for by the legislation of the Contracting Party on the territory of which the investment has been carried out.

Such transfer of funds shall be made in a convertible currency at the prevailing exchange rate applicable on the date on which the investor applies for it.

Article 9. Settlement of Disputes Mechanisms

Any dispute arising from the interpretation and/or application of this Agreement between the Contracting Parties and disputes between one Contracting Party and an investor of the other Contracting Party, shall be settled amicably.

If a controversy cannot be solved in such a manner, the respective settlement of disputes mechanism, as provided for in the Annex which is integral part of this Agreement, shall apply.

Article 10. Application of other Provisions

1. If a matter is governed both by this Agreement and by another International Agreement to which both Contracting Parties are signatories, the most favourable provisions shall be applied to the Contracting Parties and to their investors.

2. Whenever the treatment accorded by one Contracting Party under its legislation to the investors of the other Contracting Party, is more favourable than that provided under this Agreement, the most favourable treatment shall apply.

Article 11. Entry Into Force

This Agreement shall enter into force on the receiving date of the last written notification confirming the fulfilment by the Contracting Parties of all Constitutional procedures.

Article 12. Duration and Expiry of the Agreement

1. This Agreement shall remain in force for ten (10) years from the date on which the procedures provided by Article 11 of this Agreement have been performed, and shall be extended for subsequent periods of five (5) years thereafter, unless one of the two Contracting Parties denounces it in writing at least one year before each expiry date.

2. With regard to investments made before the expiry dates of this Agreement, the provisions of Articles 1 to 10, inclusive, shall remain in force for ten (10) years following those expiry dates.

In WITNESS WHEREOF, the undersigned, Representatives being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE IN....., this 24th day of November 1999, in two originals, in the Italian, Spanish and English languages, all texts

being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES

On the settlement of disputes mechanisms

Section 1. Settlement of Disputes Mechanism between the Contracting Parties

1. Any dispute which may arise between the Contracting Parties relating to the interpretation and application of this Agreement shall, as far as possible, be settled amicably.
2. In the event that the dispute cannot be settled within six months from the date on which one of the Contracting Parties notifies, in writing, the other Contracting Party of his intention to go to arbitration, the dispute shall be laid before an ad hoc Arbitration Tribunal as provided for in this Article.
3. The Arbitration Tribunal shall be constituted as follows: within two months from the moment on which the request for arbitration is received, each of the two Contracting Parties shall appoint a member of the Arbitration Tribunal. The two members shall then choose a national of a third State to serve as President. The President shall be appointed within three months from the date on which the other two members are appointed.
4. If, within the period specified in paragraph 3. of this Article, the appointments have not been made, each of the two Contracting Parties can, in default of other arrangement, ask the President of the International Court of Justice to make the appointment. In the event that the President of the Court is a national of one of the Contracting Parties or it is, for any reason, impossible for him to make the appointment, the application shall be made to the Vice President of the Court. If the Vice-President of the Court is a national of one of the Contracting Parties, or is unable to make the appointment for any reason, the senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be invited to make the appointment.
5. The Arbitration Tribunal shall rule with a majority vote. Its decisions shall be binding on both Contracting Parties. Each Contracting Party shall pay the costs of its own member of the Arbitration Tribunal and of its representative at the hearings. The President's costs and any other cost shall be divided equally between the Contracting Parties.

The Arbitration Tribunal shall lay down its own procedures.

6. A Contracting Party shall not initiate proceedings under this Section for a dispute regarding the infringement of rights of an investor which that investor has submitted to proceedings under Section 2 of this Annex (Investor-State), unless the other Contracting Party has failed to abide by or comply with the award rendered in that dispute. In this case, the arbitral tribunal established under this Article, on delivery of a request by a Contracting Party whose investor was a party to the dispute, may award:

- a) a declaration that the failure to abide by or comply with the final award is in contravention of the obligations of the other Contracting Party under this Agreement; and
- b) a recommendation that the other Contracting Party abide by or comply with the final award.

Section 2. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Scope and Standing

1. This Section applies to disputes between a Contracting Party and an investor of the other Contracting Party arising from the date the Agreement enters into force, concerning an alleged breach of an obligation of the former under this Agreement which causes loss or damage to the investor or its investment. A company that is an investment in the territory of a Contracting Party made by an investor of the other Contracting Party, may not submit a claim to arbitration under this Section.
2. If an investor of a Contracting Party or his investment that is a company in the territory of the other Contracting Party

initiates proceedings before a national tribunal with respect to a measure that is alleged to be a breach of this Agreement, the dispute may only be submitted to arbitration under this Section if the competent national tribunal has not rendered judgement in the first instance on the merits of the case. The foregoing does not apply to administrative proceedings before the administrative authorities executing the measure that is alleged to be a breach.

3. In case an investor of a contracting Party submits a claim to arbitration, neither the investor nor his company that is an investment in the territory of the other Contracting Party, may initiate or continue proceedings before a national tribunal.

2. Means of Settlement, Time Periods

1. Such a dispute should, if possible, be settled by negotiation or consultation. If it is not so settled, the investor may choose to submit it for resolution:

a) To the competent courts or tribunals of the Contracting Party to the dispute;

b) In accordance with any applicable previously agreed dispute settlement procedure, or

c) In accordance with this Article to:

i) The International Centre for Settlement of Investment Disputes ("the Centre"), established pursuant to the Convention of the Settlement of Investment disputes between States and nationals of other States ("the ICSID Convention"), if the Contracting Party of the investor and the Contracting Party to the dispute are both parties to the ICSID Convention;

ii) The Centre under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre, if the Contracting Party of the investor or the Contracting Party to the dispute, but not both, is a party to the ICSID Convention;

iii) And ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL");

iv) The International Chamber of Commerce, by and ad hoc tribunal under its rules of arbitration.

2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

3. A dispute may be submitted for resolution pursuant to paragraph (1) c), provided that six months have elapsed since the events giving rise to the claim occurred and provided that the investor has delivered to the Contracting Party, party to the dispute, written notice of his intention to submit a claim to arbitration at least 60 days in advance, but not later than 3 years from the date the investor first acquired or should have acquired knowledge of the events which gave rise to the dispute.

3. Contracting Party Consent

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

4. Formation of the Arbitral Tribunal

1. Unless the parties to the dispute agree otherwise, the arbitral tribunal shall comprise three members. Each party to the dispute shall appoint one member and these two members shall agree upon a third member as their chairman.

2. If an arbitral tribunal has not been constituted within 90 days from the date the claim was submitted to arbitration, either because a party to the dispute failed to appoint a member or the elected members failed to agree upon a chairman, the Secretary General of ICSID, on the request of any of the parties to the dispute, shall be invited to appoint, in his discretion, the member or members not yet appointed. Nevertheless, the Secretary General of ICSID, when appointing a chairman, shall assure that the chairman is a national of neither of the Contracting Parties.

5. Consolidation

1. A tribunal of consolidation established under this Article shall be installed under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.

2. Proceedings may be consolidated upon request of one of the Contracting Parties in the following cases:

a) When an investor submits a claim on behalf of a company that he owns or controls and, simultaneously, another investor

or other investors participating in the same company, but not controlling it, submit claims on their own behalf as a consequence of the same breaches of this Agreement; or

b) When two or more claims are submitted to arbitration arising from common legal and factual issues.

3. The tribunal of consolidation will decide the jurisdiction of the claims and, upon request, will jointly review such claims, unless it determines that the interests of any party to the dispute are harmed.

6. Place of Arbitration

Any arbitration under this Section shall, at the request of any party to the dispute, be held in a State that is party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Claims submitted to arbitration under this Schedule shall be considered to arise out of a commercial relationship or transaction for purpose of Article 1 of the New York Convention.

7. Indemnification

A Contracting Party shall not assert as a defence, counter-claim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged losses or damages has been received or will be received pursuant to an indemnity, guarantee or insurance contract.

8. Applicable Law

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

9. Awards and Enforcement

1. Arbitration awards may provide the following forms of relief:

a) Pecuniary compensation, which shall include interest from the time the loss or damage was incurred until the time of payment; and

b) Restitution in kind in appropriate cases, provided that the Contracting Party may pay pecuniary compensation in lieu thereof where restitution is not practicable.

2. Arbitration awards shall be final and binding only upon the parties to the dispute and only with respect to the particular case.

3. The final award will only be published if there is written agreement by both parties to the dispute.

4. An arbitral tribunal shall not order a Contracting Party to pay punitive damages.

5. Each Contracting Party shall, in its territory, make provision for the effective enforcement of awards made pursuant to this Article and shall carry out without delay any such award issued in a proceeding to which it is party.

6. An investor may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention.

10. Exclusions

The dispute settlement provisions of this Section shall not apply to the resolutions adopted by a Contracting Party which, for national security reasons, prohibit or restrict the acquisition by investors of the other Contracting Party of an investment in the territory of the former Contracting Party, owned or controlled by its nationals.

In WITNESS WHEREOF, the undersigned, Representatives being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE IN....., this 24th day of November 1999, in two originals, in the Italian, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES

