

# **Agreement between the Swiss Confederation and the United Mexican States on the Promotion and Reciprocal Protection of Investments**

The Swiss Federal Council and the Government of the United Mexican States, hereinafter the Parties;

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Party in the territory of the other Party,

Recognizing the need to promote and protect foreign investments with the aim to foster their economic prosperity,

Have agreed as follows;

## **Article 1. Definitions**

For the purposes of this Agreement:

(1) Enterprise means any entity constituted or organized under applicable law, whether or not for profit, including any corporation, branch, trust, partnership, sole proprietorship, joint venture or other association;

(2) Enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party carrying out business activities there.

(3) Investment means every kind of asset and particularly:

(a) Movable property, immovable property acquired or used for economic purposes, as well as any other rights in rem, such as servitudes, mortgages, liens, pledges;

(b) Shares, parts or any other kind of participation in companies;

(c) Claims to money or to any performance having an economic value, except for claims to money that arise solely from commercial contracts for the sale of goods or services, and the extension of credit in connection with a commercial transaction, which maturity date is less than three years, such as trade financing;

(d) Copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;

(e) Interests arising from the commitment of capital or other resources in the territory of one Party to economic activity in such territory, such as under contracts involving the presence of an investor's property in the territory of such Party, including turnkey or construction contracts, or concessions.

A payment obligation from, or the granting of a credit to, the State or a state enterprise is not considered an investment.

(4) Investment of an investor of a Party means an investment that is owned or controlled, directly or indirectly, by an investor of such a Party;

(5) Investor of a Party means a national or an enterprise of such Party, that seeks to make, is making or has made an investment.

(6) Territory means the territory of each Party and includes the maritime areas adjacent to the coast of the State concerned, i.e. the exclusive economic zone and the continental shelf, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

## **Article 2. Scope of Application**

The present Agreement shall apply to investments of investors of one Party, made in the territory of the other Party in accordance with its laws and regulations, whether prior to or after the entry into force of the Agreement, as well as to investors of a Party. It shall, however, not be applicable to divergencies or disputes which have arisen prior to its entry into force.

## **Article 3. Promotion and Admission**

(1) Each Party, with the aim to significantly increase investment flows by investors of the other Party, may make available detailed information regarding:

- (a) Investment opportunities in its territory;
- (b) The laws, regulations or provisions that, directly or indirectly, affect foreign investment including, among others, currency exchange and fiscal regimes; and,
- (c) Foreign investment statistics.

(2) Each Party shall admit the entry and the expansion of investments by investors of the other Party in accordance with its laws and regulations as well as with Article 5 of this Agreement.

(3) Each Party shall grant, in accordance with its laws and regulations, the necessary permits in connection with such investments, including permits for the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance, as well as authorizations required for the activities of consultants or experts.

## **Article 4. Protection and Treatment**

(1) Investments of investors of each Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party in accordance with international law. Neither Party shall in any way impair by discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Party.

(2) Each Party shall in its territory accord investments of investors of the other Party treatment not less favourable than that which it accords, in like circumstances, to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.

(3) Each Party shall in its territory accord investors of the other Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords, in like circumstances, to its own investors or to investors of any third State, whichever is more favourable to the investor concerned.

(4) If a Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union, a common market or a similar regional organization or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors or investments of investors of the other Party.

## **Article 5. Performance Requirements**

(1) No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with any investment of an investor of the other Party in its territory:

- (a) To export a given level or percentage of goods or services;
- (b) To achieve a given level or percentage of domestic content;
- (c) To purchase, use or accord a preference to goods produced 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;
- (e) To restrict sales of goods or services in its territory that such investment respectively produces or provides, by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) To transfer technology, a production process or other type of know-how to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or

(g) To act as exclusive supplier of the goods it produces or the services it provides to a specific region or world market.

(2) No Party may condition the receipt or continued receipt of an advantage in connection with an investment in its territory of an investor of the other Party, on compliance with any of the following requirements:

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

(b) To purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;

(c) 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 an investment; or

(d) To restrict sales of goods or services in its territory that such an investment respectively produces or provides, by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

(3) Paragraphs (1) and (2) shall not be construed to prevent a Party from conditioning the admission of an investment of an investor of the other Party on compliance of requirements other than those set out thereof.

## **Article 6. Transfers**

(1) Each Party shall grant investors of the other Party the transfer without delay in a freely convertible currency of payments in connection with an investment, particularly of:

(a) Profits, dividends, interests, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;

(b) Proceeds from the sale of all or any part of the investment, or from the partial or complete liquidation of the investment;

(c) Payments made under a contract entered into by the investor, or its investment, including payments pursuant to a loan agreement;

(d) Payments arising from the compensation for expropriation or losses, and

(e) Payments pursuant to the application of provisions relating to the settlement of disputes.

(2) Transfers shall be made at the market rate of exchange prevailing on the date of transfer.

## **Article 7. Expropriation and Compensation**

(1) No Party may directly or indirectly nationalize or expropriate an investment of an investor of the other Party in its territory or take measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:

(a) For a public purpose;

(b) On a non-discriminatory basis;

(c) In accordance with due process of law; and

(d) On payment of compensation in accordance with paragraphs (2) through (4).

(2) Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include the going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

(3) Compensation shall be paid without delay and be fully realizable.

(4) The amount paid on the date of payment shall be no less than if the amount of compensation owed had been converted into hard currency in the international financial market on the date of expropriation, and this currency had been converted

at the market rate of exchange prevailing on the date of expropriation, plus the interest that had accrued at a commercially reasonable rate for such currency until the date of payment.

## **Article 8. Compensation for Losses**

Each Party shall accord to the investors of the other Party, with respect to the investments that suffer losses in its territory due to armed conflicts or civil disturbance, acts of God or force majeure, treatment, as regards any valuable consideration, not less favourable than would be accorded to its own investors or to investors of any third State, whichever is more favourable to the investor concerned.

## **Article 9. Subrogation**

If a Party or its designated Agency has granted a financial guarantee against non-commercial risks concerning an investment by one of its investors in the territory of the other Party, the Party or its designated Agency becomes the direct beneficiary of any kind of payment due to the investor from the moment in which it has covered the investor's presumed loss. In case of a dispute, only the investor may initiate, or participate in, proceedings before a national tribunal or submit the case to international arbitration in accordance with the provisions of Article 11 of this Agreement.

## **Article 10. Other Obligations**

(1) If provisions in the legislation of either Party or in international agreements entitle investments by investors of the other Party to treatment more favourable than is provided for by this Agreement, such provisions shall to the extent that they are more favourable prevail over this Agreement.

(2) Each Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Party.

## **Article 11. Settlement of Disputes between a Party and an Investor of the other Party**

As regards the settlement of disputes between a Party and an investor of the other Party, the provisions of the Schedule to this Agreement shall be fully applicable.

## **Article 12. Settlement of Disputes between the Parties Concerning the Interpretation or Application of this Agreement**

(1) Where a dispute arises concerning this Agreement, the Parties agree to consult and negotiate on any matter related to its interpretation or application. The Parties shall accord the necessary consideration and opportunity for such consultations and negotiations. Should the Parties agree on the controversial issue, a written agreement shall be concluded between the Parties.

(2) In the event that the consultations and negotiations fail to resolve the dispute within a period of six months from the date of request for consultations, any of the Parties may, unless they have otherwise agreed, submit the dispute to an arbitral tribunal composed of three members. Each Party shall appoint one arbitrator. The third arbitrator, who will be the Chairman of the arbitral tribunal and a national of a third State, shall be appointed by agreement of the other two arbitrators. If any of the arbitrators are unable to perform their duties, a substitute shall be appointed as provided for in this Article.

(3) Should one of the Parties fail to appoint its arbitrator within two months after the other Party has submitted the dispute to arbitration and has appointed its arbitrator, the latter Party may request the President of the International Court of Justice to make the necessary appointment. If the latter is prevented from making such an appointment or is a national of either Party, the Vice-President shall make the appointment. If, for one of those same reasons, the Vice-President is unable to do so, the appointment shall be made by the next senior member of the Court.

(4) In the event that the two arbitrators appointed by the Parties are unable to reach an agreement within two months after their appointment concerning the Chairman, either Party may request the President of the International Court of Justice to make the corresponding appointment. If the latter is prevented from making such an appointment or is a national of either Party, the Vice-President shall make the appointment. If, for one of those same reasons, the Vice-President is unable to do so, the appointment shall be made by the next senior member of the Court.

(5) The tribunal shall determine its own procedures, unless the Parties agree otherwise. It shall decide the dispute according

to this Agreement and to the other rules of international law. The tribunal shall reach its decision by a majority of votes. Such a decision shall be final and binding for both Parties.

## **Article 13. Entry Into Force**

(1) The Parties shall notify each other in writing on the compliance with their constitutional requirements in relation to the approval and entry into force of this Agreement.

(2) This Agreement shall enter into force 30 days after the date in which the last notification referred to in paragraph (1) above has been received by the Party in question.

## **Article 14. Duration and Termination**

(1) This Agreement shall be in force for an initial period of ten years and shall remain in force thereafter for an indefinite period of time, unless terminated in accordance with paragraph (2) of this Article.

(2) Either Contracting Party may terminate this Agreement at the end of the initial ten year period or at any time thereafter, by giving a twelve month written notice to the other.

(3) With respect to investments made before termination of this Agreement, its provisions shall continue to be effective with respect to such investments for a period of ten years after the date of termination.

Done in duplicate, at \_\_\_\_\_, on \_\_\_\_\_, in the French, Spanish and English languages, each text being equally authentic. In case of any divergency of interpretation, the English text shall prevail.

For the Swiss Federal Council

For the Government of the United Mexican States

## **Schedule**

### **Settlement of Disputes between a Party and an Investor of the Other Party**

#### **Article 1 - Definitions**

For the purposes of this Schedule:

Disputing investor means an investor that makes a claim under this Agreement;

Disputing parties means the disputing investor and the disputing Party;

Disputing party means the disputing investor or the disputing Party;

Disputing Party means a Party against which a claim is made under this Agreement;

ICSID means the International Centre for the Settlement of Investment Disputes;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965;

New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958;

Secretary-General means the Secretary-General of ICSID;

Tribunal means an arbitration tribunal established under Article Five of this Schedule;

Tribunal of consolidation means an arbitration tribunal established under Article Six of this Schedule; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976.

## **Article 2 - Settlement of Disputes between a Party and an Investor of Another Party**

(1) This Schedule establishes a mechanism for the settlement of investment disputes arising from the date the Agreement enters into force, that assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process of law before an impartial tribunal.

(2) An investor of a Party, either on its own or on behalf of an enterprise of the other Party that is a legal person owned or controlled, directly or indirectly, by such an investor, may submit to arbitration a claim based on the fact that the other Party has breached an obligation under this Agreement, provided the investor has incurred loss or damage by reason of, or arising out of, that breach. An enterprise that is an investment may not submit a claim to arbitration under this Schedule.

(3) If an investor submits a claim to arbitration under this Schedule, neither he nor his investment that is an enterprise may initiate proceedings before a national tribunal; if an investor or his investment that is an enterprise initiates proceedings before a national tribunal, the investor may not submit a claim to arbitration under this Schedule.

(4) An investor may not submit a claim to arbitration under this Schedule if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the loss or damage suffered by him.

## **Article 3 - Settlement of a Claim Through Consultation and Negotiation**

The disputing parties should first attempt to settle a claim through consultation or negotiation.

## **Article 4 - Submission of a Claim to Arbitration**

(1) If six months have elapsed from the events giving rise to a claim and if the disputing investor has given the disputing Party written notice of his (her) intention to submit a claim to arbitration at least three months in advance, the disputing investor may submit the claim to arbitration under:

(a) The ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;

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

(c) An ad-hoc tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the UNCITRAL Arbitration Rules.

(2) The arbitration rules applicable under paragraph (1) of this Article shall govern the arbitration except to the extent modified by this Schedule.

## **Article 5 - Number of Arbitrators and Method of Appointment**

(1) Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by the agreement of the disputing parties.

(2) The arbitrators appointed under this Schedule shall have experience in international law and investment matters.

(3) If a tribunal established under this Schedule has not been constituted within three months from the date of submission of a claim to arbitration, either because a disputing party fails to appoint an arbitrator or the disputing parties are unable to agree on a presiding arbitrator, the Secretary-General, at the request of any disputing party, shall appoint, in his discretion, the arbitrator or the arbitrators not yet appointed. Nevertheless, the Secretary-General, in the case of the appointment of the presiding arbitrator, shall assure that the said presiding arbitrator is neither a national of the disputing Party nor a national of the Party of the disputing investor.

## **Article 6 - Consolidation**

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

(2) Proceedings will be consolidated in the following cases:

(a) When a disputing investor submits a claim to arbitration on behalf of an enterprise that he effectively controls and, simultaneously, other investor or investors participating in the same enterprise, but not controlling it, submit claims to arbitration on their own behalf as a consequence of the same breaches; 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 on the jurisdiction over the claims and will jointly review such claims, unless it determines that the interests of either disputing party are harmed.

#### **Article 7 - Governing Law**

(1) A tribunal established under this Schedule shall decide the issues submitted in accordance with this Agreement and the other applicable rules of international law.

(2) Any interpretation of a provision of this Agreement jointly formulated and agreed on by the Parties shall be binding on any tribunal established under this Schedule.

#### **Article 8 - Final Award**

(1) Where a tribunal established under this Schedule makes a final award, it may only award, separately or jointly:

(a) Pecuniary damages and any applicable interest;

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

(2) Where a claim is made by an investor on behalf of an enterprise:

(a) An award of restitution of property shall provide that the restitution be made to the enterprise;

(b) An award of pecuniary damages and any applicable interest shall provide that the payment be made to the enterprise.

(3) The award shall provide that it is made without prejudice to any right to relief that any third person with a legal interest may have under applicable domestic law.

(4) A tribunal established under this Schedule may not order a Party to pay punitive damages.

#### **Article 9 - Finality and Enforcement of an Award**

(1) An award made by a tribunal established under this Schedule shall solely be binding on the disputing parties and only with respect to the case decided.

(2) Subject to the applicable review procedure for interim awards, disputing parties shall promptly comply with awards.

(3) Each Party shall provide for the enforcement of awards in its territory.

(4) Disputing investors may seek the enforcement of an arbitral award under the ICSID Convention or the New York Convention.

(5) For the purposes of Article 1 of the New York Convention, a claim submitted to arbitration under this Schedule shall be deemed to have arisen from a commercial relationship or a transaction.

#### **Article 10 - Compensation Received Under Insurance or Guarantee Contracts**

In an arbitration under this Schedule, a Party shall not assert as a defense, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of the alleged damage.

#### **Article 11 - Publication of Awards**

Final awards will only be published if there is written agreement by the disputing parties.

#### **Article 12 - Exclusions**

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

### **Protocol**

On signing the Agreement between the United Mexican States and the Swiss Confederation on the Promotion and Reciprocal Protection of Investments, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which shall be regarded as an integral part of the said Agreement.

#### **Ad Article 1**

The exclusion of certain items from the definition of the term "investment" is without prejudice to the rights and obligations connected with such items.

#### **Ad Article 3**

The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, neither Party should waive or otherwise derogate from, or offer to waive or derogate, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If either Party considers that the other Party has offered such an encouragement, it may request consultations.

The Parties recognize that the entry and the expansion of investments in their territory by investors of the other Party shall be subject to relevant instruments of the Organization for Economic Cooperation and Development (OECD) in the field of international investments.

#### **Ad Article 4**

(1) Notwithstanding the provisions of paragraphs (2) and (3), either Party may grant to its own investors, within the framework of its development policy, special incentives in order to stimulate the creation of local industries, provided they do not significantly affect the investment and activities of investors of the other Party in connection with an investment.

(2) Notwithstanding the principle of national treatment, either Party may require an investor of the other Party, or an enterprise in its territory, owned or controlled by such investor, to provide routine information for statistical purposes concerning its investment.

#### **Ad Article 5**

(1) Notwithstanding paragraphs (1) and (2), the Mexican Government may impose requirements in connection with an investment in its territory in the following sectors: Entertainment Services, Automotive Industry, Water Transportation, Maquiladora Industry ("Maquiladora Decree") and Export Manufacturing ("ALTEX Decree", "PITEX Decree"), provided that such requirements are foreseen in the domestic legislation as of the date of entry into force of this Agreement. Swiss investors shall not be treated less favourably than investors of any third State.

(2) To the extent that any requirement according to paragraph (1) above will be liberalized in the context of NAFTA or otherwise, Swiss investors shall be granted most favoured nation treatment.

(3) Paragraph (2) shall not be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory, on compliance with a requirement related to the geographic location of the production facilities, or to the creation of employment or the training of workers.

#### **Ad Article 6**

The Parties recognize that this Article shall be applied in accordance with the provisions of relevant instruments of the OECD as accepted by the Parties, including, in particular, provisions on temporary derogations from the principle of free transfer.

Done in duplicate, at \_\_\_\_\_, on, in the French, Spanish and English languages, each text been equally authentic. In case of any divergency of interpretation, the English text shall prevail.

For the Swiss Federal Council

For the Government of the United Mexican States