

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FRANCE AND THE GOVERNMENT OF THE UNITED MEXICAN STATES ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to strengthen the economic cooperation between both States and to create favourable conditions for French investments in Mexico and Mexican investments in France,

Convinced that the promotion and protection of these investments would succeed in stimulating transfers of capital and technology between the two countries in the interest of their economic development,

Have agreed as follows.

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" means every kind of asset, such as goods, rights and interest of whatever nature, including property rights, acquired or used for the purpose of economic benefit or other business purposes, and in particular though not exclusively:

- a) Movable and immovable property as well as any other right in rem such as mortgages, liens, usufructs, pledges and similar rights;
- b) Shares, premium on share and other kinds of interest including minority or indirect forms, in companies constituted in the territory of one Contracting Party;
- c) Title to money or debentures, or title to any legitimate performance having an economic value;
- d) Intellectual, commercial and industrial property rights such as copyrights, patents, licenses, trademarks, industrial models and mockups, technical processes, Know-how, tradenames and goodwill;
- e) Rights derived from any concession conferred by any legal means;

In accordance with the definition hereabove, any alteration of the form in which assets are invested shall not affect their qualification as investments provided that such alteration is nor in conflict with the legislation of the Contracting Party in the territory or in the maritime area of which the investment is made.

But investment does not mean claims to money derived solely from commercial transactions designed exclusively for the sale of goods or services by a national or legal person in the territory of one Contracting Party to a national or legal person in the territory of the other Contracting Party, credits to finance commercial transactions such as trade financing, and other credits with a duration of less than three years, as well as credits granted to the State or to a State enterprise.

However, this shall not apply to credits or loans provided by an investor of a Contracting Party to an enterprise of the other Contracting Party which is owned or controlled by that investor.

2. The term "investor" means:

- a) Nationals, i.e. physical persons possessing the nationality of either Contracting Party;
- b) Any legal person constituted in the territory of one Contracting Party in accordance with the legislation of that Party and having its head office in the territory of that Party, or controlled directly or indirectly by the nationals of one Contracting

Party, or by legal persons having their head office in the territory of one Contracting Party and constituted in accordance with the legislation of that Contracting Party. A legal person will be considered as controlled if the majority of its shares having voting rights is held by a national or a legal person having its head office in the territory of one Contracting Party and constituted in accordance with the legislation of that Contracting Party.

3. The term "returns" means all amounts produced by an investment, such as profits, royalties and interests. Investment returns and, in case of re-investment, re-investment returns shall enjoy the same protection as the investment.

4. The term "territory" means the territory of each Contracting Party. The term "maritime area" means the exclusive economic zone and the continental shelf outwards the territorial sea of each Contracting Party over which they have sovereign rights or jurisdiction in accordance with International Law.

Article 2. Scope of the Agreement

1. It is understood that investments covered under the present Agreement are those which have already been made or may be made subsequent to the entering into force of this Agreement, in accordance with the legislation of the Contracting Party in the territory or in the maritime area of which the investment is made.

2. This Agreement shall apply to the territory and the maritime area of each Contracting Party.

3. Nothing in this Agreement shall be construed to prevent any Contracting Party to take any measure to regulate investment of foreign investors and the conditions of activities of these investors, in the framework of policies designed to preserve and promote cultural and linguistic diversity.

Article 3. Promotion and Admission of Investments

Each Contracting Party shall admit in its territory and in its maritime area investments made by investors of the other Contracting Party in accordance with its legislation, and promote them under the provisions of this Agreement.

Article 4. Protection and Treatment of Investments

1. Either Contracting Party shall extend and ensure fair and equitable treatment in accordance with the principles of International Law to investments made by investors of the other Contracting Party in its territory or in its maritime area, and ensure that the exercise of the right thus recognized shall not be hindered by law or in practice.

2. Each Contracting Party shall extend in its territory and in its maritime area to the investors of the other Contracting Party, with respect to their investments, and to the operation, management, maintenance, use, enjoyment or disposal of such investments, treatment not less favourable than that granted to its investors, or the treatment granted to the investors of the most favoured nation, if the latter is more favourable.

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

This treatment shall not include the privileges granted by one Contracting Party to investors of a third party State by virtue of its participation or association in a free trade zone, customs union, common market or any other form of regional economic organization.

The provisions of this article do not apply to tax matters.

3. The investment made by investors of one Contracting Party in the territory and in the maritime area of the other Contracting Party shall enjoy full and complete protection and safety in the said territory or maritime area.

4. Within the framework of their internal legislation, the Contracting Parties shall benevolently examine requests for entry and authorization to reside, work and travel made by the nationals of one Contracting Party in relation to an investment made in the territory or in the maritime area of the other Contracting Party.

Article 5. Expropriation and Compensation

1. Neither Contracting Party shall nationalize or expropriate directly or indirectly, or take any measure having a similar effect, on an investment of the other Contracting Party, in its territory and in its maritime area, except:

- i) In the public interest;
- ii) Provided that these measures are not discriminatory;
- iii) In accordance with due process of law;
- iv) On payment of a compensation in accordance with paragraphs 2 and 3 of the present Article.

2. Compensation shall be paid without delay, in a fully realizable and freely transferable manner.

Compensation shall be equivalent to the fair market value or, in the absence of such a value, to the genuine value of the expropriated or nationalized investment concerned immediately before the expropriation took place 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 criterias, as appropriate, to determine the fair market value. The said compensation, the amounts and conditions of payment, shall be set not later than the date of dispossession. Until the date of payment, the compensation shall produce interest calculated at the appropriate market rate of interest.

Article 6. Compensation for Losses

Investors of one Contracting Party whose investments have suffered losses due to war or any other armed conflict, revolution, national state of emergency or revolt occurring in the territory or in the maritime area of the other Contracting Party, shall enjoy treatment from the latter Contracting Party that is not less favourable than that granted to its own investors or to those of the most favoured nation.

Article 7. Free Transfer

Each Contracting Party, in the territory or in the maritime area of which the investments have been made by investor of the other Contracting Party, shall ensure to these investors the free transfer of:

- a) Interest, dividends, profits and other current income,
- b) Payments deriving from rights as defined in Article 1, Paragraph 1, letters (d) and (e).
- c) Repayments of loans which have been regularly contracted,
- d) Value of partial or total liquidation or disposition of the investment, including capital gains on the capital invested;
- e) Compensation in accordance with Article 5, Paragraphs 2 and 3,
- f) Earnings and other remuneration of personnel engaged from abroad in connection with an investment.

The transfers referred to in the foregoing paragraphs shall be promptly effected at the official exchange rate prevailing on the date of transfer.

In case of a serious balance of payments difficulties or the threat, each Contracting Party may temporarily restrict transfers, provided that such a Contracting Party implements measures or a program in accordance with the International Monetary Fund's standards. These restrictions would be imposed on an equitable, non-discriminatory and in good faith basis.

Article 8. Investment Guarantees and Subrogation

1. In the event that the regulations of one Contracting Party contain a guarantee for investments made abroad, this guarantee may be accorded, after examining case by case, to investments made by investors of this Contracting Party in the territory or in the maritime area of the other Contracting Party.

Investments made by investors of one Contracting Party in the territory or in the maritime area of the other Contracting Party may obtain the guarantee referred to in the foregoing paragraph only if they have been previously agreed to by the other Contracting Party.

2. Both Contracting Parties recognize the full rights of subrogation with regard to the rights or actions of an investor whose investment has been covered by a guarantee. In case of a dispute, only the investor or a privately managed company may initiate, or participate in, proceedings before a national tribunal or submit the case to international arbitration in accordance with the provisions of Article 9 of this Agreement.

Article 9. Settlement of Disputes between an Investor of One Contracting Party and the other Contracting Party

1. This Article only applies to disputes between a Contracting Party and an investor of the other contracting Party concerning an alleged breach of an obligation of the former under this Agreement which causes loss or damage to the investor or its investment.

2. With respect to the submission of a claim to arbitration:

a- An investor of one Contracting Part may not allege that the other Contracting Party has breached an obligation under this Agreement both [à la fois] in arbitration under this Article and in a proceeding before a competent court or administrative tribunal of the former Contracting Party, party to the dispute.

b- Likewise, where an enterprise of one Contracting Party that is a juridical person that an investor of the Contracting Party owns or controls alleges in proceedings before a competent court of administrative tribunal of the Contracting Party, party to the dispute, that the former Contracting Party has breached an obligation under this Agreement, the investor may not allege that breach in an arbitration under this article.

3. A dispute under this Article may be submitted for arbitration, 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 no latter than 4 years from the date the investor first acquired or should have acquired knowledge of the events which gave rise to the dispute, 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) An 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 an ad hoc tribunal under its rules of arbitration.

4. The applicable arbitration rules shall govern the arbitration except to the extent modified by the present Article.

5. 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.

i) Members of arbitral tribunals shall have experience in international law and investment matters.

ii) 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.

6. A tribunal established under this Article shall decide by a majority of votes the dispute in accordance with this Agreement and applicable rules and principles of international law.

7.

i) Arbitration awards may provide the following forms of relief:

a) A declaration that the contracting Party has failed to comply with its obligations under this Agreement;

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

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

d) With the agreement of the parties to the dispute, any other form of relief.

- ii) Arbitration awards shall be final and binding only upon the parties to the dispute and only with respect to the particular case.
- iii) The final award will only be published if there is written agreement by both parties to the dispute.
- iv) An arbitral tribunal shall not order a Contracting Party to pay punitive damages.

Article 10. Special Commitments

1. If legal provisions of either Contracting Party or obligations derived from International Law existing at present or established hereinafter between the Contracting Parties in addition to the present Agreement, contain a regulation, whether general or specific, according to which, a treatment more favourable than the provided for this Agreement shall be granted to investments by nationals or companies of the other Contracting Party, such regulation shall to the extent that is more favourable, prevail over this Agreement.
2. Each Contracting Party shall observe any other obligation it has assumed in writing, with regard to investments in its territory by investors of the other Contracting Party. Dispute arising from such obligations shall be settled under the terms of the contracts underlying the obligations.

Article 11. Disputes between the Contracting Parties

1. Disputes relating to the interpretation or application of this Agreement shall be settled, if possible, by means of diplomatic consultations and negotiations.
2. If the dispute has not been settled within a period of six months from the date of the request for consultations raised by either Contracting Party, it may be submitted at the request of either Contracting Party to an Arbitral Tribunal.
3. The said Tribunal shall be created as follows for each specific case: each Contracting Party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint by mutual agreement a national of a third Country, who shall be designated as Chairman of the Tribunal by the two Contracting Parties. All the arbitrators must be appointed within two months from the date of notification by one Contracting Party to the other Contracting Party of its intention to submit the disagreement to arbitration.
4. If the periods specified in Paragraph 3 above have not been met, either Contracting Party, in the absence of any other agreement, shall invite the Secretary General of the United Nations Organization to make the necessary appointments. If the Secretary General is a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Under-Secretary next in seniority to the Secretary General, who is not a national of either Contracting Party, shall make the necessary appointments.
5. The tribunal shall reach its decisions by a majority of votes. These decisions shall be final and legally binding upon the Contracting Parties. It shall decide dispute according to this Agreement and to the other relevant rules of International Law.

The Tribunal shall set its own rules of procedure. It shall interpret the judgment at the request of either Contracting Party. Unless otherwise decided by the tribunal, the legal costs, including the fees of the arbitrators, shall be shared equally between the two Contracting Parties.

6. A Contracting Party shall not initiate proceedings under this article for a dispute regarding the infringement of rights of an investor which that investor has submitted to proceedings under article 9, unless the other Contracting Party has failed to abide by or comply with the award rendered in that dispute.

Article 12. Entry Into Force

Each Contracting Party shall notify the other Contracting Party of the completion of the constitutional procedures required concerning the entry into force of this Agreement, which shall enter into force one month after the date of receipt of the final notification.

Article 13. Duration and Termination

The Agreement shall be in force for an initial period of ten years. It shall remain in force thereafter, unless one of the Contracting Parties gives one year's written notice of termination through diplomatic channels.

The Present Agreement will be reexamined by both Contracting Parties, if an Agreement pursuing the same purpose is

adopted by the Contracting Parties on a multilateral basis.

In case of termination of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of fifteen years.

Signed in Mexico, on November 12th 1998 in duplicate in the French and Spanish languages, both texts being equally authentic.

For the Government of the Republic of France

Hubert Vedrine

Minister of Foreign Affairs

For the Government of the United Mexican States

Herminio Blanco

Minister of Commerce and Industrial Development