

# AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF MEXICO AND THE GOVERNMENT OF THE REPUBLIC OF ARGENTINA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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

Desiring to enhance the bonds of friendship between their peoples and seeking to expand and enhance economic relations between the contracting parties, in particular with regard to investments of investors of one Contracting Party in the territory of the other contracting party;

Recognizing that a bilateral agreement on the promotion and protection of investments needed to promote economic development and to stimulate the flow of capital and technology between the Contracting Parties;

To create favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the principle of international reciprocity.

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. "**Investment**" means, in accordance with the laws and regulations of the host Contracting Party, every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the legislation of the latter. Includes in particular, though not exclusively:

- a) ownership of movable and immovable property as well as any other rights in rem such as mortgages, bonds and pledges;
- b) shares, stocks, and any other kind of participation in companies, corporations or associations;
- c) claims and rights to performance having an economic value; loans shall be included only when they are granted by the investor to the exploitation of their investment or which constitutes a financial transaction are retained for a period exceeding three years;
- d) intellectual property rights, including copyrights, patents, industrial designs, trademarks, trade names, technical know-how, processes and goodwill;
- e) interest or rights deriving from the contribution of capital or other resources in the territory of a Contracting Party for the purpose of carrying on economic activity in the territory of the other Contracting Party, as a result of the granting of a concession;
- f) that made by associations, companies or enterprises of one Contracting Party, the majority of whose capital is held by investors of the other Contracting Party;
- g) the participation of investors of one Contracting Party in activities and acts covered by the foreign investment legislation of the other Contracting Party, such as trusts.

2. - "investment" does not include:

- a) a payment obligation or a credit granted by the State or a state enterprise;
- b) monetary claims arising solely from commercial contracts for the sale of goods or services by a national or company or

firm, partnership in the territory of a contracting party to an association, a company or enterprise in the territory of the other Contracting Party.

3. - "**investor**" refers to any natural or legal person who carries out or has made an investment, and that is:

a) a natural person who is a national of one of the Contracting Parties, in accordance with its laws, or

b) a legal person which is constituted in accordance with the laws and regulations of one Contracting Party and having its seat in the territory of that Contracting Party.

4. - "**transfers**" means transfers and international payments.

5. - "**proceeds**" means all amounts produced by an investment, such as profits, dividends, interest, royalties and other current income.

6. - "**territory**" includes the territory of each Contracting Party, including the territorial sea, as well as the exclusive economic zone and the continental shelf, provided that the International Law of the respective Contracting Party accords to exercise sovereign rights or jurisdiction in these areas.

7. - "**days**" means calendar days or continuous days.

## **Article 2. Scope**

1. This Agreement applies to measures taken or maintained by a Contracting Party in respect of investors of one Contracting Party in relation to their investments and to investments of such investors made in the territory of the other Contracting Party.

2. This Agreement shall apply to the entire territory of the Contracting Parties as defined in article 1, paragraph (6). The provisions of this Agreement shall prevail over any inconsistent that may exist in the domestic laws of the Contracting Parties.

3. Subject to the provisions of articles 4 and 10, natural persons who are nationals of a Contracting Party and having its registered office in the territory of the other Contracting Party where the investment is located, may only take advantage of treatment accorded by that Contracting Party to its own nationals.

4. This Agreement shall apply to all investments made before or after the date of its entry into force, but the provisions of this Agreement shall not apply to any dispute or difference claim, which arose before its entry into force.

5. This Agreement shall not apply to:

a) economic activities reserved for the State in accordance with the legislation of each Contracting Party;

b) measures by a Contracting Party for reasons of national security or public order;

c) financial services except to the extent permitted by the laws of each Contracting Party.

6. Article Three shall not apply to any measure which is still maintained by a Contracting Party under its laws in force at the time of entry into force of that Agreement. Thereafter, any incompatible measure taken by a Contracting Party shall not be more restrictive than those existing at the time of the entry into force of this Agreement.

## **Article 3. National Treatment and Most-favoured-nation Treatment**

1. Each Contracting Party shall at all times ensure fair and equitable treatment of investors and investments of investors of the other Contracting Party and shall not impair their management, maintenance, use, enjoyment or disposition through arbitrary or discriminatory measures.

2. Each Contracting Party shall, once it has admitted into its territory investments of investors of the other Contracting Party, shall afford full legal protection to such investors and their investments and shall accord them treatment no less favourable than that accorded to investors and investments of its own investors or investors of third States.

If a Contracting Party accords special treatment to investors or investments of investors from a third State under agreements which provide for the avoidance of double taxation; the creation of free trade areas, customs unions, common markets, regional agreements, economic or monetary unions and similar institutions, that Contracting Party shall not be obliged to accord such treatment to investors or investments of investors of the other Contracting Party.

4. Each Contracting Party shall accord to investors of the other Contracting Party for investments that suffer losses in their territory due to conflicts armed, state of national emergency or insurrection, a treatment that is no less favourable than that granted to its own investors or to investors from a third State, in as regards restitution, compensation, indemnification or another redress.

## **Article 4. Transfers**

1. - Each Contracting Party shall permit all transfers relating to an investment of an investor of the other Contracting Party in its territory to be made freely and without delay. Such transfers include:

- a) Proceeds, dividends, interests, capital reinvestment payments of royalties, fees, management technical assistance and other fees and other amounts derived from the investment;
- b) Proceeds from the sale or the total or partial liquidation of the investment;
- c) Payments made under a contract of which is a party to an investor or its investment as well as the funds in repayment of loans as set out in article 1, paragraph (1) (c);
- d) Payments arising out of compensation for the concepts referred to in articles 3, paragraph (4) and 5; and
- e) Payments arising out of the implementation of the provisions relating to the settlement of disputes.

2. Each Contracting Party shall permit transfers to be made in a freely convertible currency at the applicable exchange rate prevailing on the date of transfer without delay and in accordance with the procedures established by the Contracting Party in whose territory the investment was made, which shall not affect the substance of the rights under this article.

3. Without prejudice to the provisions of paragraphs (1) and (2), each Contracting Party may maintain laws and regulations requiring reports of transfers of currency. In addition, through a fair, non-discriminatory and in good faith of such laws and regulations, a Contracting Party may protect the rights of creditors or ensuring compliance with decisions issued in judicial or arbitral proceedings.

4. In case of a fundamental imbalance balance of payments, a Contracting Party may establish temporary controls on currency transactions subject to measures or implement a programme in accordance with the generally accepted international standards. these restrictions shall be for a limited period of a fair, non-discriminatory and in good faith.

## **Article 5. Expropriation and Compensation**

1. Neither Contracting Party shall expropriate or nationalize directly or indirectly an investment of an investor of the other contracting party in its territory or take any measure equivalent to expropriation or nationalization of such investment, unless:

- a) for a public purpose;
- b) on a non-discriminatory basis;
- c) in accordance with due process of law; and
- d) through compensation pursuant to paragraphs (2) to (4).

2. The compensation shall be equivalent to the market value of the expropriated investment immediately before the expropriation measure was carried out ("date of expropriation") or before the expropriation measure was made public. Valuation criteria shall include current value, declared tax value of the tangible property, as well as other criteria that are appropriate for determining market value.

3. The compensation shall be paid without delay and shall be fully realized and freely transferable.

4. The amount paid shall be no less than the amount of compensation paid on the date of expropriation in a free of currency convertibility in the international financial market and that currency shall be made at the market rate prevailing on the date of valuation, plus interest at a commercially reasonable rate for that currency until the date of payment.

## **Article 6. Subrogation**

Where a Contracting Party or its designated entity has granted any financial guarantee for non-commercial risks in relation to an investment made by its investors in the territory of the other Party and from the time when the first Contracting Party

or its entity The first payment to be made from the guarantee granted, the first payment to be made from the guarantee granted Contracting Party or designated entity shall be the direct beneficiary of any payments to which the investor may be entitled. In the event of a dispute, only the investor may initiate or participate in proceedings before the national courts or to the international arbitration tribunals of in accordance with the provisions of Article Ten and the Annex to this Agreement

## **Article 7. Exchange of Information**

With the intention to significantly increase the participation of reciprocal investments, the Contracting Parties shall inform each other and detailed in particular on:

- a) investment opportunities;
- b) the laws, regulations or measures which directly or indirectly affect foreign investment including, inter alia, exchange and tax regimes; and
- c) the conduct of foreign investment in their respective territories.

## **Article 8. More Favourable Terms**

If the provisions of the legislation of any Contracting Party or the obligations of international law existing or to be established between the Contracting Parties in addition to this Agreement which accord investments made by investors of the other Contracting Party further treatment favourable than that provided for in this Agreement, such rules, whether general or specific, shall prevail over this Agreement to the extent that are more favorable.

## **Article 9. Information Requirements**

Notwithstanding the provisions of this Agreement, the Contracting Parties may require an investor of the other Contracting Party or its investment in its territory to provide routine information concerning that investment solely for purposes of statistical information. The Contracting Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment.

## **Article 10. Settlement of Disputes between an Investor and the Host Contracting Party of the Investment**

1. Any dispute concerning the provisions of this agreement between an investor of one Contracting Party and the other Contracting Party, it shall, as far as possible, be settled by friendly consultation or negotiation.
2. This Article and the corresponding Annex establish a mechanism for the settlement of investment disputes arising from the entry into force of this Agreement that ensures both equal treatments between investors of the Contracting Parties in accordance with the principle of international reciprocity and the due exercise of the guarantee of a hearing and defence in legal proceedings before an impartial arbitral tribunal, where appropriate.
3. If the dispute could not be settled within six months from the time it was raised by the disputing party in question, it may be submitted, at the request of the investor:
  - to the competent courts of the Contracting Party in whose territory the investment was made; or
  - to international arbitration under the conditions described in paragraph (4).

Once an investor has submitted the dispute to the jurisdiction of the Contracting Party concerned or to international arbitration, the choice of either procedure shall be final.

4. The investor shall give written notice to the Contracting Party of its intention to submit the dispute to international arbitration, with at least 90 days of anticipation, which may run in parallel with the second half of the term referred to in paragraph (3).

In the event of recourse to international arbitration, the investor may submit the controversy, according to:

- (a) the Convention on the Settlement of Investment Disputes between States and Nationals of other States, held in Washington on 18 March 1965 ("ICSID Convention"), where both Contracting Parties have adhered to it;
- (b) the Rules of the Additional Facility of the International Centre for Settlement of Investment Disputes ("ICSID"), where a

Contracting Party has acceded to the ICSID Convention; or

(c) the arbitration rules of the United Nations Commission on International Trade Law ("UNCITRAL"), adopted by the General Assembly of the United Nations on 15 December 1976.

5. The arbitral body shall decide disputes submitted to it on the basis of the provisions of this Agreement and the rules and principles of international law on the subject.

The interpretation given by the Contracting Parties in writing and by common consent to a provision of this Agreement shall be binding on any arbitration body established under this Agreement.

6. The arbitral award shall be limited to determining whether there has been a breach of this Agreement by the Contracting Party, if such failure has caused a damage to the investor and, if that were the case:

(a) to fix the amount of compensation for the damage suffered;

(b) restitution of property or corresponding compensation compensatory, in case that one is impossible;

(c) any applicable interest.

The arbitral body may not order the payment of compensation of a punitive nature.

The award shall not affect any rights that any third party may have under applicable local law.

7. The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party shall enforce them in accordance with its laws; otherwise, the investor may seek enforcement of an arbitral award under the ICSID Convention, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 ("New York Convention") or the Inter-American Convention on International Commercial Arbitration, done at Panama, January 30, 1975 ("Inter-American Convention"). For the purposes of Article One of the New York Convention, a claim submitted to arbitration shall be deemed to arise out of a commercial relationship or transaction.

8. In any arbitral proceedings relating to a dispute concerning investment, a Contracting Party may not invoke, either as a defence or as a counterclaim, set-off defence or any other action, which the investor received or will receive, in accordance with an insurance or guarantee contract, a indemnification or other compensation for all or part of the alleged damage.

## **Article 11. Settlement of Disputes between the Contracting Parties**

1. The Contracting Parties agree to consult and negotiate any matter relating to the interpretation or application of this agreement arises in any case of disagreement in respect thereto. The Contracting Parties shall grant the necessary care and opportunities to carry out such consultations and negotiations.

2. In case the consultations and negotiations not settle the dispute within a period of six months from the start, either Contracting Party may, without prejudice to agree otherwise, to submit the dispute to an arbitral tribunal composed of three members. Each Contracting Party shall appoint an arbitrator. These two arbitrators shall elect a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. If any of the arbitrators is not available to perform its functions, it shall appoint an arbitrator substitute as provided for in this article.

3. The Contracting Parties shall appoint their respective arbitrators within two months from the date on which a Party has notified the other in writing of its wish to submit the dispute to an arbitral tribunal. The President of the tribunal shall be appointed within two months from the last date of the appointment of arbitrators referred to above.

4. If within the periods specified in paragraph (3) of this article shall not make the necessary appointments, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to proceed with the necessary appointments. If the President is a national of one of the contracting parties or, if for any reason, is 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 of the contracting parties or if he is also prevented from discharging the function, the member of the International Court of Justice who is next in seniority and is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The tribunal shall determine its own procedures unless the parties agree otherwise and shall decide the dispute in accordance with the provisions of this Agreement and the applicable rules of international law. The arbitral tribunal shall decide by a majority of votes and that decision shall be final and binding on both Contracting Parties.

6. Each Contracting Party shall bear the costs of the member of the Tribunal and of its representation in the arbitral

proceedings. The cost of the Chairman and the remaining costs shall be borne in principle in equal parts by the Contracting Parties. However, the arbitral tribunal shall determine its decision that a higher proportion of costs be borne by one of the Contracting Parties, and this award shall be binding on the same.

## **Article 12. Entry Into Force**

1. Each Contracting Party shall be notified in writing on the fulfilment of 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 on which the last notification referred to in paragraph (1) of this Article has been received by the Contracting Party in question.

## **Article 13. Duration and Termination**

1. This Agreement shall remain in force for a period of ten years and shall continue in force unless it is terminated in accordance with paragraph (2) of this article.
2. Each Contracting Party may terminate this Agreement at the end of the initial ten year period or at any time thereafter, through upon notification within twelve months notice in writing.
3. With respect to investments made while this agreement is in force, its provisions shall continue in effect with respect to such investments for a further period of ten years from the date of termination thereof.

Done at the City of Buenos Aires, on November 13, 1996, in two original copies in the Spanish language, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES

Herminio Blanco Mendoza

Secretary of Commerce and Industrial Development

FOR THE GOVERNMENT OF THE ARGENTINE REPUBLIC

Armando Caro Figueroa

Acting Minister of Foreign Affairs, International Trade and Worship

## **ANNEX. Settlement of disputes between an investor and the contracting party receiving the investment**

### **1. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. An investor of one Contracting Party may, for its own account or on behalf of an association, company or enterprise of the other Contracting Party which is a legal person owned or controlled directly or indirectly by it, in accordance with the laws and regulations of the Contracting Parties, submit a claim to arbitration on the grounds that the other Contracting Party has failed to fulfil an obligation under this Agreement.
2. An investor may submit a claim pursuant to this Agreement, as soon as he had knowledge of the alleged breach and the loss or damage, or within a period of four years from the date on which ought to have had knowledge thereof.
3. A partnership, corporation or firm that is an investment may not submit a claim to arbitration under this Agreement.
4. The investor may not make a claim under this Agreement on behalf of an association, society or company, if the latter has initiated proceedings before any judicial or administrative tribunal with respect to the measure alleged to have been violated. However, the above does not apply to the exercise of administrative appeals to the implementing authorities themselves alleged to be a violation, provided for in the legislation of the Contracting Party.

An investor making a claim under this Agreement or the association, company or firm on whose behalf the complaint is made by way of an investor, may not initiate proceedings before a court of law or The Commission has not yet adopted any administrative decision regarding the allegedly violating measure.

## **2. Applicable Arbitration Rules**

The applicable arbitration rules referred to in Article 10 of the Agreement shall govern the arbitration and be supplemented by the amendments provided for in this annex.

## **3. Number of Arbitrators and Method of Appointment**

1. Without prejudice to the parties to the dispute otherwise agree, the Tribunal shall be composed of three arbitrators. Each Party to the dispute shall appoint one arbitrator; the third arbitrator who shall be the Chair of the arbitral tribunal shall be appointed by mutual agreement of the Parties.

2. The arbitrators to be designated under this Annex shall have experience in International Law and investment.

3. Where an arbitral body established under this Agreement fails to meet within 90 days from the date on which the claim is submitted to arbitration, either because a party to the dispute fails to appoint an arbitrator or because the parties fail to agree on the appointment of the chairman of the arbitral body, the Secretary-General of ICSID ("Secretary-General") shall, at the request of either party, appoint, at his own discretion, the arbitrator or arbitrators not yet appointed. In the event of the appointment of the Chairman of the arbitral body, the Secretary-General shall ensure that the President is not a national of any of those parties.

## **4. Consolidation of Procedures**

1. The consolidation tribunal shall be set up and proceed in accordance with the UNCITRAL arbitration rules, in all relevant

2. Procedures will be consolidated in the following cases:

(a) where a claim is made by an investor on behalf of an association, company or enterprise that is under his direct or indirect control and, in parallel, another investor or investors having an interest in the same association, company or enterprise, but not having control over it, make claims for their own account as a result of the same defaults; or

(b) where two or more claims are submitted to arbitration that raise questions of fact and law in common.

3. The consolidation tribunal shall rule on the jurisdiction to which to submit the complaints and examine them as a whole.

## **5. Publication of Awards**

The final award shall be published only in the event that a written agreement between the parties to the dispute.

## **Protocol**

On the occasion of the signing of the Agreement between the Government of the United States Mexicans and the Government of the Republic of Argentina for the Promotion and Protection In return for the investments, the undersigned have also agreed to The following clauses are part of this Agreement:

### **With Reference to Article 3, Paragraph 2:**

The Contracting Parties shall not interpret this paragraph as extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege, resulting from bilateral agreements that provide concessional financing subscribed between the Argentine Republic and the Republic of Italy on 10 December 1987 and with the Kingdom of Spain on 3 June from 1988.

### **With Reference to Article 10 and the Annex to this Agreement**

For the United Mexican States, the provisions relating to the shall not apply to any decision issued by the National

Commission of Foreign Investments.

Done at the City of Buenos Aires, on November 13, 1996, in two original copies in Spanish, the two texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES

Herminio Blanco Mendoza

Secretary of Commerce and Industrial Development

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