

# **AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of Canada and the Government of the Kingdom of the Thailand, hereinafter referred to as the "Contracting Parties",

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

Have agreed as follows:

## **Article I. Definitions**

For the purpose of this Agreement:

(a) "enterprise" means:

(i) Any entity constituted or organized under applicable law, whether or not for profit, whether privately-owned or governmentally-owned or controlled through ownership interests by a government in accordance with its applicable laws (state enterprise), including any corporation, trust, partnership, sole proprietorship, joint venture or other association; and

(ii) A branch of any such entity.

(b) "financial service" means a service of a financial nature, and a service incidental or auxiliary to a service of a financial nature;

(c) "financial institution" means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Contracting Party in whose territory it is located;

(d) "freely convertible currency" means any currency that is widely used to make payments for international transactions and widely traded in principal international exchange markets;

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

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

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

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

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

(iv) Goodwill;

(v) Intellectual property rights;

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

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

Any change in the form of an investment does not affect its character as an investment. In the case of Thailand, this shall not be construed so as to relieve investors of any obligation to obtain such approvals as may be required by the competent authorities of Thailand established under the Thai Cabinet's decision of 26 July 1994 (as contained in the Secretariat of the Cabinet's Note No. 0201/9549 dated 28 July 1994) a copy of which is attached hereto as Annex II .

(g) "investor" means

In the case of Canada:

- (i) Any natural person possessing the citizenship of or permanently residing in Canada in accordance with its laws; or
- (ii) Any enterprise incorporated or duly constituted in accordance with applicable laws of Canada,

Who makes the investment in the territory of the Kingdom of Thailand, in accordance with its laws and regulations, applied in a manner consistent with paragraph 2 of Article IV; and

In the case of the Kingdom of Thailand:

- (i) Any natural person possessing the nationality of or permanently residing in the Kingdom of Thailand in accordance with its laws; or
- (ii) Any corporation, partnership, trust, joint venture, organization, association or enterprise incorporated or duly constituted in accordance with applicable laws of the Kingdom of Thailand

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

(h) "measure" includes any law, regulation, procedure, requirement, or practice. "Existing measure" means any measure existing on the date of entry into force of this Agreement.

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

(j) "territory" means:

- (i) In respect of Canada, the territory of Canada, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which Canada exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas;
- (ii) In respect of the Kingdom of Thailand, the national territory of the Kingdom of Thailand including the maritime areas, seabed and subsoil, over which the Kingdom of Thailand exercises, in accordance with international law, sovereign rights or jurisdiction.

## **Article II. Establishment, Acquisition and Protection of Investments**

(1) Each Contracting Party shall encourage the creation of favourable conditions for investment in its territory by investors of the other Contracting Party.

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

- (a) Fair and equitable treatment in accordance with principles of international law, and
- (b) Full protection and security.

(3) Each Contracting Party shall, in accordance with its applicable measures in existence on the date of entry into force of this Agreement, permit establishment of a new business enterprise or acquisition of an existing enterprise or a share of such enterprise by investors or prospective investors of the other Contracting Party on a basis no less favourable than that which, in like circumstances, it permits such acquisition or establishment by:

- (a) Its own investors or prospective investors; or
- (b) Investors or prospective investors of any third state.

(4) A decision by Canada, following a review under the , with respect to whether or not to permit an acquisition that is

subject to review, shall not be subject to the dispute settlement provisions of or Articles XIII of this Agreement.

(5) A Canadian natural person or enterprise as defined in XV shall be considered an investor under this Agreement only if it obtains such approvals as may be required by the competent authorities of Thailand as established under the Thai cabinet's decision of July 28, 1994, a copy of which is attached hereto as Article I(g).

### **Article III. Most-favoured-nation (MFN) Treatment after Establishment and Exceptions to MFN**

(1) Investments of investors of one Contracting Party in the territory of the other Contracting Party, or returns therefrom, shall receive treatment from the latter Contracting Party which, in like circumstances, is no less favourable than that accorded in respect of the investments or returns of investors of any third State.

(2) Each Contracting Party shall, in its territory, accord to investors of the other Contracting Party, as regards their management, use, enjoyment or disposal of their investments or returns, treatment no less favourable than that which, in like circumstances, it grants to investors of any third State.

(3) Subparagraph (3)(b) of Article II and paragraphs (1) and (2) of this Article do not apply to treatment by a Contracting Party pursuant to any existing or future bilateral or multilateral agreement:

(a) Establishing, strengthening or expanding a free trade area, common external tariff area, monetary union, regional association for economic cooperation or customs union;

(b) Negotiated within the framework of the GATT or its successor organization and liberalizing trade in services; or

(c) Any arrangement with a third country or countries in the same geographical region designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields within the framework of specific projects; or

(d) Relating to:

(i) Aviation;

(ii) Telecommunications transport networks and telecommunications transport services;

(iii) Fisheries;

(iv) Maritime matters, including salvage;

(v) Financial services; or

(vi) Taxation.

### **Article IV. National Treatment after Establishment and Exceptions to National Treatment**

(1) Each Contracting Party shall, subject to paragraphs (2) and (3) below, grant to investments or returns of investors of the other Contracting Party treatment no less favourable than that which, in like circumstances, it grants to investments or returns of its own investors with respect to the expansion, management, conduct, operation and sale or disposition of investments.

(2) A Contracting Party may maintain, within its territory, measures that are inconsistent with the provisions of subparagraph (3)(a) of Article II, paragraph (1) above, and paragraphs (1) and (2) of Article V if such measures are in accordance with the following:

(a) Such measures are existing measures; or

(b) Such measures are maintained or adopted after the date of entry into force of this Agreement at the time of sale or other disposition of a government's equity interests in, or the assets of, an existing state enterprise or an existing governmental entity, and which prohibit or impose limitations on the ownership of equity interests or assets or impose nationality requirements relating to senior management or members of the board of directors;

(c) Such measures result from the continuation or prompt renewal of any existing measures; or

(d) Such measures are an amendment to any existing measures, to the extent that the amendment does not decrease the

conformity of the measures, as they existed immediately before the amendment, with the obligations in paragraphs (a), (b) and (c) above and paragraphs (1) and (2) of Article V.

(3) Each Contracting Party may make or maintain measures that are inconsistent with subparagraph (3)(a) of Article II, paragraph (1) above and paragraphs (1) and (2) of Article V within the sectors or matters listed in the Annex to this Agreement.

## **Article V. Other Measures**

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

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

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

(a) Requirements as set forth in the Agreement on Trade-Related Investment Measures contained in the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, done at Marrakesh on 15th April 1994;

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

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

## **Article VI. Miscellaneous Exceptions**

(1)(a) In respect of intellectual property rights, a Contracting Party may derogate from Articles III and IV in a manner that is consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights contained in the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, done at Marrakesh on 15th April, 1994.

(b) The provisions of Article VIII do not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights contained in the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, done at Marrakesh on 15th April, 1994.

(2) The provisions of Articles II, III, IV and V of this Agreement do not apply to:

(a) Procurement by a government or state enterprise;

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

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

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

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

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

- (b) The production, distribution, sale or exhibition of film or video recordings;
- (c) The production, distribution, sale or exhibition of audio or video music recordings;
- (d) The publication, distribution, sale or exhibition of music in print or machine readable form; or
- (e) Radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television or cable broadcasting undertakings and all satellite programming and broadcast network services.

## **Article VII. Compensation for Losses**

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

## **Article VIII. Expropriation**

(1) Investments or returns of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures, including taxation measures, having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for a public purpose, under due process of law, in a non-discriminatory manner and against prompt, adequate and effective compensation. Such compensation shall be based on the fair market value of the investment or returns expropriated immediately before the expropriation or at the time the proposed expropriation became public knowledge, whichever is the earlier.

(2) Such compensation shall be payable:

(a) In Canada, from the date of expropriation at a commercial rate of interest; and

(b) In Thailand:

(i) In the case of immovable property, from the date compensation is determined by the committee established under Article 23 of the at the highest rate of interest for the fixed deposit of the Government Savings Bank;

(ii) In the case of movable property, as determined by the ; ;

Without delay and shall be effectively realizable and freely transferable in a freely convertible currency.

(3) The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of its case and of the valuation of its investment or returns in accordance with the principles set out in this Article.

## **Article IX. Transfer of Funds**

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

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

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

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

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

(2) Transfers shall be effected without delay in the freely convertible currency in which the capital was originally invested or in any other freely convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer.

(3) Notwithstanding paragraphs 1 and 2, a Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) Bankruptcy, insolvency or the protection of the rights of creditors;
- (b) Issuing, trading or dealing in securities;
- (c) Criminal or penal offenses;
- (d) Reports of transfers of currency or other monetary instruments; or
- (e) Ensuring the satisfaction of judgments in adjudicatory proceedings.

## **Article X. Subrogation**

- (1) If a Contracting Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance of non-commercial risks it has entered into in respect of an investment, the said Contracting Party or agency thereof shall be subrogated to any right or title held by the investor.
- (2) A Contracting Party or any agency thereof which is subrogated to the rights of an investor in accordance with paragraph (1) of this Article, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment concerned and its related returns. Such rights may be exercised by the Contracting Party or any agency thereof or by the investor if the Contracting Party or any agency thereof so authorizes.
- (3) The transfer outside the territory of the amounts and credits shall be subject to the provisions of Article IX .

## **Article XI. Prudential Measures**

- (1) Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining reasonable measures for prudential reasons, such as:
  - (a) The protection of investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution;
  - (b) The maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and
  - (c) Ensuring the integrity and stability of a Contracting Party's financial system.
- (2) Notwithstanding paragraphs (1) and (2) of Article IX, and without limiting the applicability of paragraph (3) of Article IX, a Contracting Party may prevent or limit transfers by a financial institution to, or for the benefit of, an affiliate of or person related to such institution or provider, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions.
- (3)(a) Where an investor submits a claim to arbitration under Article XIII , and the disputing Contracting Party invokes paragraphs (1) or (2) above, the tribunal established pursuant to Article XIII shall, at the request of that Contracting Party, seek a joint report in writing from both Contracting Parties on the issue of whether and to what extent the said paragraphs are a valid defence to the claim of the investor. The tribunal may not proceed pending receipt of a report under this Article.
- (b) Pursuant to a request received in accordance with subparagraph 3(a), both Contracting Parties shall proceed in accordance with Article XV, to prepare a joint written report, either on the basis of agreement following consultations, or by means of an arbitral panel. The consultations shall be between the financial services authorities of the Contracting Parties. The report shall be transmitted to the tribunal, and shall be binding on the tribunal.
- (c) Where, within 70 days of the referral by the tribunal, no request for the establishment of a panel pursuant to subparagraph 3(b) has been made and no report has been received by the tribunal, the tribunal may proceed to decide the matter. subparagraph 3(b) has been made and no report has been received by the tribunal, the tribunal may proceed to decide the matter.
- (4) Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service in dispute.
- (5) Sub-paragraph 3(b) of Article II does not apply in respect of financial services. Sub-paragraph 3(b) of Article II does not apply in respect of financial services.

## **Article XII. Taxation Measures**

- (1) Except as set out in this Article and Article VIII , nothing in this Agreement shall apply to taxation measures.

(2) Nothing in this Agreement shall affect the rights and obligations of the Contracting Parties under any tax convention. In the event of any inconsistency between the provisions of this Agreement and any such convention, the provisions of that convention apply to the extent of the inconsistency.

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

(1) Any dispute between one Contracting Party and an investor of the other Contracting Party, relating to a claim by the investor that a measure taken or not taken by the former Contracting Party is in breach of this Agreement, and that the investor has incurred loss or damage by reason of, or arising out of, that breach, shall, to the extent possible, be settled amicably through consultations between them.

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

(3) An investor may submit a dispute as referred to in paragraph (1) to arbitration in accordance with paragraph (4) only if:

(a) The investor has consented in writing thereto; and

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

The investor has a maximum of three years to submit a dispute to arbitration under this Article from the time it first acquired, or should have first acquired, knowledge of the alleged breach and loss or damage incurred.

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

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

(b) The Additional Facility Rules of ICSID, provided that only one of the Contracting Parties is a party to the ICSID Convention; or Additional Facility Rules of ICSID, provided that only one of the Contracting Parties is a party to the ICSID Convention; or

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

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

(6)(a) The consent given under paragraph (5), together with either the consent given under paragraph (3), or the consents given under paragraph (11), shall satisfy the requirements for:

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

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

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

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

(8) In the case of Canada, a tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach of this Agreement. For purposes of this paragraph, an order includes a recommendation.

(9) A tribunal may award, separately or in combination, only:

(a) Monetary damages and any applicable interest;

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

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

(10)(a) In the case of Canada, an award of arbitration shall be final and binding and shall be enforceable in the territory of Canada.

(b) In the case of Thailand, an award of arbitration shall be final and binding and shall be enforceable in accordance with and any amendment or successor legislation. and any amendment or successor legislation.

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

(i) Any award shall be made to the affected enterprise;

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

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

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

(b) Notwithstanding subparagraph 11(a), where a disputing Contracting Party has deprived a disputing investor of control of an enterprise, the following shall not be required:

(i) A consent to arbitration by the enterprise under subparagraph 11(a); and

(ii) A waiver from the enterprise under subparagraph 11(a)(ii).

## **Article XIV. Consultations and Exchange of Information**

Either Contracting Party may request consultations on the interpretation or application of this Agreement. The other Contracting Party shall give sympathetic consideration to the request. Upon request by either Contracting Party, information shall be exchanged on the measures of the other Contracting Party that may have an impact on new investments, investments or returns covered by this Agreement.

## **Article XV. Disputes between the Contracting Parties**

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, whenever possible, be settled amicably through consultations.

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

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

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or is prevented from discharging the said function, the Member of the International



Court of Justice next in seniority, who is not a national of either Contracting Party, shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall determine its own procedure. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Unless otherwise agreed, the decision of the tribunal panel shall be rendered within six months of the appointment of the Chairman in accordance with paragraphs (3) or (4) of this Article.

(6) Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings; the costs related to the Chairman and any remaining costs shall be borne equally by the Contracting Parties. The arbitral tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties.

(7) The Contracting Parties shall, within 60 days of the decision of a tribunal, reach agreement on the manner in which to resolve their dispute. Such agreement shall normally implement the decision of the tribunal. Such agreement shall also be considered part of the arbitral tribunal's decision. If the Contracting Parties fail to reach agreement, the Contracting Party bringing the dispute shall be entitled to compensation or to suspend benefits of equivalent value to those awarded by the panel.

## **Article XVI. Transparency**

(1) The Contracting Parties shall, within a two year period after the entry into force of this Agreement, exchange letters listing, to the extent possible, any existing measures that do not conform to the obligations in subparagraph (3)(a) of Article II, Article IV or paragraphs (1) and (2) of Article V.

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

## **Article XVII. Application and General Exceptions**

(1) This Agreement shall apply to any investment made by an investor of one Contracting Party in the territory of the other Contracting Party before or after the entry into force of this Agreement.

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

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

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

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

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

(d) Imposed for the protection of national treasures of artistic, historic or archaeological value;

(e) Essential to the acquisition or distribution of products in general or local short supply, provided that any such measures shall be consistent with the principle that all investors are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

(4) The Annexes shall form an integral part of this Agreement.

## **Article XVIII. Entry Into Force**

(1) Each Contracting Party shall notify the other in writing of the completion of the procedures required in its territory for the

entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications for an initial period of ten years.

(2) Thereafter, this Agreement shall remain in force indefinitely unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate it. The termination of this Agreement shall become effective one year after notice of termination has been received by the other Contracting Party. In respect of investments or legally-binding commitments to invest made prior to the date when the termination of this Agreement becomes effective, the provisions of Articles I to XVII inclusive of this Agreement shall remain in force for a period of fifteen years.

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

Arthur C. Eggleton

Minister for International Trade

Prachuab Chaiyasarn

Minister of Foreign Affairs

## **ANNEX I**

(1) In accordance with Article IV, paragraph (3), Canada reserves the right to make and maintain exceptions in the sectors or matters listed below:

- social services (i.e. public law enforcement; correctional services; income security or insurance; social security or insurance; social welfare; public education; public training; health and child care);
- government securities - as described in SIC 8152;
- residency requirements for ownership of oceanfront land;
- measures implementing the Northwest Territories and the Yukon Oil and Gas Accords.

(2) In accordance with Article IV, paragraph (3), the Kingdom of Thailand reserves the right to make and maintain exceptions in the sectors or matters listed below:

- business in agriculture, i. e. rice farming, salt farming including manufacture of efflorescent salt but excluding rock salt mining, farming, gardening, livestock farming including cocoon raising, forestry, fishery;
- business in commerce, i.e., internal trade concerning local agricultural products, trade in real property;
- business in services, i. e., accountancy, attorneyship, architecture, advertisement, brokerage or agency, auction, haircutting, hair dressing, and beauty treatment;
- building construction;
- business in industry and handicrafts, i. e., rice mill, manufacture of flour from rice field crops, manufacture of sugar, manufacture of beverage, with and without alcoholic blending, manufacture of rice, manufacture of drugs, cold storage, wood processing, manufacture of products from gold, silver, niello or bronze, manufacture of casting of images of Buddha and manufacture of alms bowls, manufacture of wood carvings, manufacture of lacquerware, manufacture of all types of matches, manufacture of lime, cement or cement by-products, stone blasting or crushing.

(3) For the purpose of this Annex, "SIC" means, with respect to Canada, Standard Industrial Classification numbers as set out in Statistics Canada, Standard Industrial Classification, fourth edition, 1980.

(4) With regard to the definition of "investment" contained in Article I paragraph (f): in respect to the investment of an investor that is related to economic activities covered by the General Agreement on Trade in Services contained in the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations done at Marrakesh on 15th April 1994, a contracting party may decide to apply this Agreement only to an investment of an investor of the other Contracting Party in which more than fifty percent of the equity interest of such investment is beneficially owned by that investor, or in which

that investor has the power to name a majority of its directors or otherwise legally direct its action. On request of either contracting party this matter will be reconsidered five years after the entry into force of this Agreement.

(5) Notwithstanding any other provision of this Agreement, The Contracting Parties agree that in respect of services, nothing in this Agreement shall oblige either Contracting Party to accord to investors, prospective investors, or to investments of investors of the other Contracting Party any treatment or right under Articles (3) (a) of Article IL paragraph (1) above, or paragraphs (1) or (2) of Article VI more favourable than that which the first Contracting Party is required to accord to such investor, prospective investor or investment pursuant to the General Agreement on Trade in Services ("GATS") Final List of Article II (MFN) Exemption, as it may from time to time be amended or replaced.

## **ANNEX II**

28 July B.E. 2537 (1994)

No. 0201/9549

Secretariat of the Cabinet

Government House,

Bangkok 10300

Subject: Establishment of the Committee for Approval of Investments under the Agreement for the Promotion and Protection of Investments between Thailand and other Countries

To: Minister of Foreign Affairs

Reference: Ministry of Foreign Affairs' Note No. 0504/45710, dated 7 July B.E. 2537 (1994)

Reference is made to the Ministry of Foreign Affairs' proposal on the subject of an establishment of the Committee for Approval of Investments under the Agreement for the Promotion and Protection of Investments between Thailand and other Countries, submitted to the Cabinet for its consideration and approval.

The Cabinet, in its decision on 26 July B.E. 2537 (1994) approved the establishment of the said Committee, as proposed by the Ministry of Foreign Affairs.

This Note serves to confirm the above, which has also been conveyed for information to the Ministry of Finance and the Bureau of the Budget.

Nopadol Hengjaroen

Deputy Secretary-General, for the Secretary-General