

# PROTOCOL OF COOPERATION AND FACILITATION OF INTRA MERCOSUR INVESTMENTS

The Republic of Argentina, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, States Parties of MERCOSUR, hereinafter designated as "States Parties" or individually as "State Party", which sign this Protocol;

Desiring to strengthen and deepen the bonds of friendship and the spirit of continuous cooperation among the States Parties;

Seeking to stimulate intra-MERCOSUR investments, opening new integration initiatives among the States Parties;

Recognizing the fundamental role of investment in the promotion of sustainable development, in economic growth, in the reduction of poverty, in the creation of employment, in the expansion of productive capacity and in human development;

Seeking that their investors and their respective investments have a socially responsible behavior and contribute to the sustainable development of the States Parties;

Attending the establishment of a strategic association among the States Parties in matters of investment, which provides broad and mutual benefits;

Recognizing the importance of establishing an intra-MERCOSUR normative framework to foster a transparent, agile and favorable environment for investment in the States Parties;

Guaranteeing the inherent right of the States Parties to regulate their public policies;

Desiring to promote and strengthen contacts between investors and the Governments of the States Parties; and

Taking into account the advisability of creating a technical dialogue mechanism with governmental initiatives that contribute to the significant increase of mutual investment.

AGREE AS FOLLOWS:

## **Part I. Scope of Application and Definitions**

### **Article 1. Object**

The purpose of this Protocol is to promote cooperation among the States Parties in order to facilitate direct investment that facilitates the sustainable development of the States Parties.

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

1. This Protocol shall apply to all investments made, before or after its entry into force, by investors of a State Party in the territory of another State Party.
2. The provisions set forth in this Protocol shall not apply to any act or event that has taken place or any situation that ceased to exist before the date of entry into force of this Protocol.
3. This Protocol shall apply without prejudice to the rights and benefits that an investor of a State Party has in accordance with national legislation or international law in the territory of the State Host Party.
4. The States Parties reaffirm that this Protocol will be applied without prejudice to the rights and obligations derived from the Agreements of the World Trade Organization.

## Article 3. Definitions

For the purposes of this Protocol:

1. "Company" means any entity constituted or organized according to the applicable legislation, whether privately or governmentally owned, including companies, sole owner companies and joint ventures.
2. "Host State Party" means the State Party receiving the investment.
3. "Investment" means a company, including an interest in the same company, in the territory of a State Party, that an investor of another State Party owns or controls or over which it exercises a significant degree of influence, that has the characteristics of an investment, including the capital commitment, the objective of establishing a lasting interest, the expectation of profit or utility and the assumption of risks. The following assets of the company, among others, are covered by this Protocol:
  - (a) Social participations ("equity") or other types of participations in a company;
  - (b) Property rights, tangible or intangible, movable or immovable and any another real right;
  - (c) Existing exploration, exploitation and use rights under a license, a permit or a concession granted and governed in accordance with the legislation in subject of the Host State Party and / or in a contract;
  - (d) Debt instruments or loans of a company when they are directly linked to a specific investment; and
  - (e) Intellectual property rights as defined or referenced in the Agreement on the Aspects of Intellectual Property Rights Related with the Trade of the World Trade Organization (TRIPS).
- 3.1. For greater certainty, "investment" does not include:
  - (i) Debt instruments, such as bonds, debentures and loans, which, State Party treat as public debt;
  - (ii) Portfolio investments;
  - (iii) Pecuniary claims derived exclusively from commercial contracts for the sale of goods or services by a company in the territory of a State Party to a company in the territory of another State Party, or granting of credit in connection with a business transaction, or any other claim pecuniary not covered in the provisions of paragraphs (a) to (e) above; and
  - (iv) Any cost or other financial obligations assumed by the investor or your investment before the establishment of the investment, even to meet those regulations on the admission of foreign capital or other limits and conditions specific, under the terms of the legislation on the admission of investments in a State Party.
- 3.2. A change in the way assets have been invested or reinvested does not affects its investment nature in accordance with this Protocol, provided that the new form is included in the definitions of this Article and is made of conformity with the domestic legal order of the Host State Party.
4. "Investor" means a natural or legal person of a State Party who has made an investment in the territory of another State Party.
  - (a) Natural person means every national or permanent resident of a State Party, in accordance with its national legislation, which has made an investment in another State Party; and
  - (b) Legal entity means any entity constituted in accordance with the national legislation of a State Party that has its domicile as well as substantial business activities in the territory of that State Party, and that it has an investment in another State Party.
5. "National" means a physical person who has the nationality of a State Party, according to its legislation.
6. "Measure" means any measure adopted by a State Party, whether by law, regulation, rule, procedure, decision or administrative provision or in any other way.
7. "Returns" means the values obtained for an investment and in particular, although not exclusively, it includes the profit, interest, capital gains, dividends, royalties or fees.
8. "Territory" means:

For Argentina, the territory subject to the sovereignty of the Argentine Republic, in accordance with its constitutional

provisions, its internal legislation and applicable international law.

For Brazil, the territory, including its land and air spaces, the exclusive economic zone, the territorial sea, the continental shelf, the soil and subsoil within which Brazil exercises its sovereign or jurisdictional rights, in accordance with international law and with your national legislation.

For Paraguay, it refers to the territorial extension over which the State exercises its sovereignty or jurisdiction in accordance with international and national law, and the National Constitution.

For Uruguay, the terrestrial space, the internal waters, the territorial sea and the air space under its sovereignty, the exclusive economic zone and the continental shelf, over which it exercises sovereign rights and jurisdiction in accordance with international law and national legislation.

## **Part II. Treatment Provisions and Regulation Measures**

### **Article 4. Treatment**

1. States Parties shall not deny investors of another State Party the right to access to justice and administrative procedures, in accordance with the national legislation of the Host State Party.
2. Each State Party shall grant to investors of another State Party and their investments a treatment adjusted to due legal process.
3. For greater certainty, the standards of "fair and equitable treatment", of "full protection and security" and the pre-establishment phase are not covered by this Protocol.

### **Article 5. Non-discrimination**

1. Subject to its legislation in force on the date of entry into force of this Protocol a State Party shall grant to investors of another State Party and their investments, a treatment no less favorable than that granted, in similar circumstances, to its own investors and their investments. A treatment will be considered less favorable if it modifies the conditions of competition in favor of its own investors and their investments, in comparison with the investors of other States Parties and their investments.
2. Subject to its legislation in force on the date of entry into force of this Protocol, and with respect to the provisions contemplated in this Protocol, each State Party shall grant investors of another State Party and their investments treatment no less favorable than the one that grants, in similar circumstances, to the investors of a non-Party State and to its investments. A treatment is considered less favorable if it modifies the conditions of competition in favor of the investors of a non-Party State and its investments, in comparison with the investors of other States Parties and their investments.
3. The provisions of this Article do not prevent the adoption and application of new legal requirements or restrictions to investors and their investments provided they are not discriminatory, in accordance with paragraphs 1 and 2 of this Article.
4. The provisions of this Article also do not prevent a State Party from amending a discriminatory measure, in accordance with paragraphs 1 and 2 of this Article, making it less discriminatory.
5. For greater certainty, this Protocol shall apply to investments of investors of a State Party made in the territory of another State Party even if they have not begun to operate their business in that territory.
6. The provisions of this Article shall not apply to invoke more favorable treatment granted by a State Party by virtue of investment treaties, double taxation agreements or other agreements containing investment provisions, subscribed prior to the date of entry into force of this Protocol.
7. For greater certainty, the provisions of this Article shall not apply to incorporate substantive or dispute settlement provisions not contained in this Protocol.
8. This Article shall not be construed as requiring States Parties to elimination of any procedure for the admission of an investment, provided that said procedure is not discriminatory, in accordance with paragraphs 1 and 2 of this Article.
9. Nothing in this Protocol prevents a State Party from applying, to an investor, sanctions provided for in its legal system for non-compliance with applicable legislation, as long as they are not discriminatory in accordance with paragraphs 1 and 2 of this Article.

## **Article 6. Direct Expropriation**

1. The States Parties may not expropriate the investments covered by this Protocol, unless it is:

- (a) For public utility, public interest or social interest;
- (b) In a non-discriminatory manner;
- (c) Through the payment of effective compensation (1), in accordance with paragraphs 2 to 4 of this Article; and
- (d) In accordance with due process of law.

2. The compensation must:

- (a) Be paid without undue delay, in accordance with the legal framework of the Host State Party;
- (b) Be equivalent to the fair market value of the expropriated investment immediately prior to the actual expropriation or before the imminence of the same was public knowledge, whichever comes first, hereinafter "date of expropriation"; and
- (c) Be payable and freely transferable, in accordance with Article 9 (Transfers).

3. If the fair market value is calculated in a currency that is internationally convertible or not, the compensation to be paid shall not be less than the fair market value that the expropriated investment had immediately before the date of the expropriation, or that this is publicly known, what happens before, plus interest at a commercial rate fixed according to market criteria for that currency accrued from the date of expropriation until the date of payment, in accordance with the legislation of the Host State Party.

4. The States Parties shall cooperate to improve their knowledge of their respective national laws on expropriation.

5. The States Parties confirm that the issuance of compulsory licenses in compliance with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization (TRIPS) can not be questioned under the provisions of this article.

6. For greater certainty, this Protocol only provides for direct expropriation, in which an investment is directly expropriated through the formal transfer of the title or the right of ownership, and does not cover indirect expropriation.

(1) For greater certainty, when Brazil is the expropriating State Party, for the expropriation of property that is not fulfilling its social function, according to the Constitution and the applicable legislation, the compensation may be paid in the form of debt securities.

## **Article 7. Compensation for Losses**

1. Investors of a State Party whose investments in the territory of another State Party suffer losses due to war or other armed conflict, revolution, national emergency, insurrection, riot or any other similar event shall enjoy restitution, compensation, compensation or other, of no less favorable treatment than the State Party in question grants to its own investors or foreigners, in accordance with Article 5 (Non-Discrimination).

2. Each State Party shall provide the investor of another State Party with restitution, compensation or both, as appropriate, in accordance with the criteria set forth in Article 6 (Direct Expropriation) of this Protocol, in the event that the investments suffer losses in the territory of the Host State Party, in any location referred to in paragraph 1, resulting from:

- (a) The requisition of an investment or part of it by the forces or authorities of the Host State Party; or
- (b) The destruction of an investment or part of it by the forces or authorities of the Host State Party.

## **Article 8. Transparency**

1. In accordance with the principles of this Protocol, each State Party shall ensure that all measures that affect the investment are administered reasonably, objectively and impartially, in accordance with its legal system.

2. Each State Party shall ensure that its laws, regulations and administrative rulings of general application on any matter covered by this Protocol are published and shall use its best efforts to make them available in electronic format, in such a manner as to allow interested persons the other States Parties have knowledge of these.

3. Each State Party shall endeavor to allow reasonable opportunities for those interested in expressing their opinion on measures that it may intend to adopt, in accordance with its national legislation.

4. The States Parties shall give due publicity of this Protocol to their respective public and private financial agents, responsible for the technical evaluation of the risks and the approval of the loans, credits, guarantees and insurance related to the investment in the territory of other States Parties.

## **Article 9. Transfers**

1. The States Parties shall allow the free transfer of funds related to the investment made in their territory by an investor of another State Party, namely:

(a) The initial contribution to capital or any addition to it in relation to the maintenance or expansion of that investment;

(b) The returns directly related to the investment;

(c) The proceeds of the sale or total or partial liquidation of the investment;

(d) Payments of any loan, including interest on it, directly related to the investment; and

(e) The amount of compensation, in case of expropriation or temporary use of the investment of an investor of another State Party by authorities of the Host State Party. When the compensation is paid in bonds of the public debt to the investor of another State Party, the latter may transfer the value of the proceeds from the sale of said bonds in the market.

2. Transfers will be made, at the discretion of the investor, in the currencies of the States Parties or in freely convertible currency according to the exchange rate applicable in the market at the date of the transfer, in accordance with the domestic law of the Host State Party.

3. Notwithstanding what is established in this Article, a State Party may condition or impede a transfer through the equitable, non-discriminatory and good faith application of the norms of its domestic legal system relating to:

(a) Insolvency proceedings, restructuring of companies, bankruptcy, insolvency or protection of the rights of creditors;

(b) Compliance with judicial, arbitral or administrative final decisions;

(c) Compliance with labor or tax obligations; or

(d) Prevention of money or assets laundering and financing of terrorism.

4. Nothing in this Protocol shall affect the right of a State Party to adopt regulatory measures regarding the balance of payments during a balance of payments crisis, nor affect the rights and obligations of the members of the International Monetary Fund contained in the Agreement Establishing the Fund in particular the use of exchange measures that are of conformity with the provisions of the Convention.

5. The adoption of temporary restrictive measures for transfers in the case of the existence of serious balance of payments difficulties must be non-discriminatory and in accordance with the Articles of the Agreement Establishing the International Monetary Fund.

## **Article 10. Tax Measures**

1. Nothing in this Protocol shall be construed as an obligation of a State Party to give an investor of another State Party, in relation to its investments, the benefit of any treatment, preference or privilege resulting from a current or future agreement to avoid double taxation, of which one of the arts states is a party or becomes a party.

2. Nothing in this Protocol shall be construed in a manner that prevents the adoption or execution of any measure aimed at guaranteeing the equitable or effective imposition or collection of taxes in accordance with the provisions of the legislation of the States Parties.

## **Article 11. Prudential Measures**

Nothing in this Protocol shall apply to measures that any of the States Parties, in accordance with their national legislation, adopt with respect to the financial sector for prudential reasons, including those that seek the protection of investors, depositors, policyholders insurance or trustees, or to ensure the integrity and stability of the financial system. When such measures do not conform to the provisions of this Protocol, they shall not be used as a means to circumvent the

commitments or obligations of the State Party under this Protocol.

## **Article 12. Security Exceptions**

1. Nothing in this Protocol shall be construed as preventing a State Party from adopting or maintaining measures designed to preserve public order, fulfill its obligations for the maintenance or restoration of international peace or security, the protection of their own essential security interests, or apply the provisions of their criminal laws.

2. The measures that a State Party adopts pursuant to paragraph 1 of this Article, nor the decision based on its national security or public order laws that at any time prohibit or restrict the realization of an investment in its territory by an investor of another State Party, shall be subject to the dispute settlement mechanism provided for in this Protocol.

## **Article 13. Obligations of the Investors**

1. Investors must comply with all laws and regulations, as well as with the policies established by the Host State Party regarding the investment. Likewise, investors must comply with tax regulations and provide information related to the history and practices of the company that the Host State Party requires, in accordance with its legislation. Investors should not commit acts of corruption.

2. Nothing in this Protocol shall be construed as holding a State Party liable for violations of the legislation of the Host State Party by an investor.

## **Article 14. Corporate Social Responsibility**

1. Investors and their investments will strive to achieve the highest possible level of contribution to the sustainable development of the Host State Party and the local community, through the adoption of a high degree of socially responsible practices, based on the principles and voluntary standards established in this Article.

2. Investors and their investments must develop their best efforts to comply with the following voluntary principles and standards for responsible business conduct consistent with the laws applied by the Host State Party:

- (a) Stimulate economic, social and environmental progress, with a view to achieving sustainable development;
- (b) Respect the human rights of the persons involved in the activities of the companies, in accordance with the obligations and international commitments of the Host State Party;
- (c) Promote the strengthening of the construction of local capacities through close collaboration with the local community;
- (d) Promote the development of human capital, especially through the creation of employment opportunities, and facilitate the access of workers to vocational training;
- (e) Refrain from seeking or accepting exemptions that are not established in the legislation of the Host State Party, in relation to the environment, health, safety, work, financial incentives or other issues;
- (f) Support and maintain principles of good corporate governance and develop and add good corporate governance practices;
- (g) Develop and apply self-regulatory practices and effective management systems that promote a relationship of mutual trust between the companies and the society in which the operations are conducted;
- (h) Promote workers' knowledge of the company's policy through the adequate dissemination of the same, including professional training programs;
- (i) Refrain from taking discriminatory measures or discipline against employees who submit to the board of directors or, where appropriate, the competent public authorities, reports of violations of the law or of corporate governance standards to which the company is subject;
- (j) Encourage, when possible, business partners, including suppliers and subcontractors of services, to apply the principles of business conduct compatible with the principles set forth in this Article; and
- (k) Respect local activities and political system.

## **Article 15. Measures on Investments and the Fight Against Corruption and Illegality**

1. Each State Party shall ensure that measures are taken and that efforts are made to prevent and combat corruption, the laundering of assets or money and the financing of terrorism in relation to the matters covered by this Protocol in accordance with its laws and regulations.

2. Nothing in this Protocol:

(a) Oblige any of the States Parties to protect investments made with capital or assets of illicit origin or investments in which acts of corruption or illegal acts punishable by the legislation of the States Parties in which the investments have been made and which have been sanctioned with the loss of assets;

(b) Prevent the adoption of measures by judicial or administrative authorities, in the framework of investigations for alleged unlawful acts, provided that such measures are not adopted in a discriminatory manner in accordance with the provisions of Article 5 (Non-Discrimination).

## **Article 16. Provisions on Investments and the Environment, Labor Matters and Health**

1. Nothing in this Protocol shall be construed as an impediment for a State Party to adopt, maintain or enforce any measure it deems appropriate to ensure that investment activities in its territory are carried out in accordance with labor, environmental legislation or health in that State Party, as long as that measure is not applied in a way that constitutes a means of arbitrary or unjustifiable discrimination or a disguised restriction.

2. The States Parties recognize that it is not appropriate to stimulate investment by lowering the standards of their labor and environmental legislation or their health measures. Therefore, each State Party guarantees that it will not modify or repeal, nor offer the modification or repeal of this legislation to stimulate an investment in its territory, to the extent that such modification or repeal involves the reduction of its labor or environmental standards. If a State Party considers that another State (s) Party (ies) has (n) offered this type of incentives, it may request consultations with the other State (s) Party (ies).

## **Part III. Institutional Governance and Prevention of Controversies**

### **Article 17. Administration of the Protocol**

1. This Protocol shall be administered by a Commission composed of the representatives of the States Parties.

2. The Commission shall meet at times, places and through the means agreed by the States Parties, and must meet at least once a year. The Commission will be chaired by the State Party that is exercising the Pro Tempore Presidency of MERCOSUR, unless the Commission decides otherwise.

3. The Commission shall have the following functions and responsibilities:

(a) Monitor the implementation and execution of this Protocol and, if necessary, make recommendations to the States Parties for their modification.

(b) Discuss issues relevant to investment in the States Parties and combat opportunities for the expansion of mutual investment;

(c) Coordinate the implementation of mutually agreed cooperation and facilitation programs;

(d) Consult the private sector and civil society, where appropriate, their points of view on specific issues related to the work of the Commission;

(e) Prevent investment differences of the States Parties with the objective to resolve them amicably; and

(f) Coordinate the implementation of the "Agenda for Cooperation and Facilitation of Investments".

4. The Commission may invite the private sector to participate in its meetings those instances that are subordinated to it, in accordance with the MERCOSUR regulations in force.

### **Article 18. Focal Points or 'ombudsmen'**

1. Each State Party shall designate, in accordance with the provisions of its domestic legal system, a National Focal Point or "Ombudsman" shall have as its main responsibility the support to investors of the other States Parties in its territory.

(a) In Argentina, the National Focal Point will be the Under secretariat of Foreign Trade, under the Ministry of Commerce of the Ministry of Production.

(b) In Brazil, the Ombudsman will be the Ombudsman for Direct Investments within the scope of the Chamber of Foreign Trade - CAMEX

(c) In Paraguay, the National Focal Point will be the Ministry of Industry and Commerce.

(d) In Uruguay, the National Focal Point will be the Ministry of Economy and Finance.

2. Each State Party may modify its Focal Point designated in this Protocol, and in such case, must communicate it in writing to the other States Parties as soon as possible. Until said communication is made, the notifications made to the previous Focal Point will be valid.

3. The National Focal Point, among other responsibilities:

(a) Will interact with the National Focal Points of the other States Parties of in accordance with this Protocol;

(b) Evaluate, in dialogue with the competent governmental authorities of the Host State Party, any suggestions and proposals from another State Party regarding investments or investors of this State Party and recommend, where appropriate, actions to improve the environment of the investments;

(c) Seek to prevent investment disputes in coordination with the competent government authorities;

(d) Provide information on regulations of general scope in relation to investments;

(e) Inform the Commission about its activities and actions, when it deems it necessary and will endeavor to comply with the guidelines thereof.

4. The States Parties shall adopt the necessary measures, in accordance with the form provided in their domestic legal systems, to enable the institutional access of the National Focal Point to the governmental agencies and establish the pertinent procedures for the National Focal Point to carry out its functions, once this Protocol enters into force.

5. Without prejudice to paragraph 3 of Article 4 (Treatment), the National Focal Point shall exercise its responsibilities in relation to investments of investors of a State Party even if they have not begun to operate their business in the territory of the Host State Party.

## **Article 19. Exchange of Information between the States Parties**

1. The States Parties, through the Commission and their Focal Points Nations or Ombudsmen, will exchange information on business opportunities, procedures and requirements for investments, whenever possible for the State Party to which such information is requested, in accordance with its domestic legal system and provided that it is relevant for the State Party that requests them.

2. For the purposes of the provisions of paragraph 1 of this Article, the State Party shall provide, upon request, with the speed and respect for the level of protection granted to the information requested in the terms of paragraph 1, provided that it is feasible for the State Party to which it is requested and subject to its national legislation, in particular, information on the following points:

(a) Government investment programs and any specific incentives;

(b) Public policies and legal frameworks that may affect investment;

(c) Legal framework for investment, including legislation on the creation of companies, businesses and joint ventures;

(d) International treaties related to the investment;

(e) Customs procedures and tax regimes;

(f) Statistics on the market for goods and services;

(g) Available infrastructure and public services;

(h) Public concessions;

(i) Social, labor, migration and exchange legislation;



(j) Legislation on the specific economic sectors previously identified by the States Parties;

(k) Regional projects and

(l) Public-Private Partnerships (PPP).

## **Article 20. Treatment of Protected Information**

1. The States Parties shall respect the level of protection of the information established by the State Party that has submitted it, observing the respective national legislations on the subject.

2. Nothing in this Protocol shall be construed as requiring any of the States Parties to disclose the protected information, which could hinder the application of the law, be contrary to the public interest or could harm privacy or legitimate business interests. For the purposes of this paragraph, protected information includes confidential business information or information whose disclosure is prohibited by the applicable laws of a State Party.

## **Article 21. Interaction with the Private Sector**

Recognizing the key role played by the private sector, States Parties will disseminate, to the extent possible, relevant business sectors, general information on investment, regulatory frameworks and business opportunities in the territory of the States Parties.

## **Article 22. Cooperation between Organizations Responsible for the Promotion of Investments**

1. The States Parties, insofar as possible and in accordance with their domestic legal system, will encourage their agencies or entities competent in the promotion of investment to:

(a) Share non-confidential information among the agencies or entities competent in matters of investment of the States Parties, in order to encourage investment;

(b) Collaborate among the agencies or competent entities of the States Parties, identifying areas of mutual cooperation and exchanging information, experience and best practices regarding the development of investment attraction policies;

(c) Identify areas of mutual cooperation and reciprocal business, in order to provide investors with advice on business opportunities;

(d) Exchange, to the extent of their budget availability, and provided that the competent agencies or entities deem it appropriate, their experiences in terms of promotion, internalization and attraction of investment, which may include visits and training of the personnel of said agencies or entities ; and

(e) Conduct events in conjunction with the agencies or competent entities of the other States Parties, with the objective of attracting extra-regional investments together and / or disclosing reciprocal business opportunities and investment benefits.

2. The agencies or entities competent in matters of investment promotion of the States Parties are:

(a) In Argentina, the Argentine Agency for Investment and International Trade.

(b) In Brazil, the Brazilian Agency for the Promotion of Exports and Investments - Apex Brazil.

(c) In Paraguay, the Investment and Exports Network - REDIEX.

(d) In Uruguay: Institute Uruguay XXI.

## **Article 23. Procedure for the Prevention of Disputes**

1. If a State Party considers that a specific measure adopted by another State Party constitutes a violation of this Protocol, it may initiate a procedure for the prevention of disputes within the scope of the Commission, in accordance with the provisions of this Article.

2. The following rules will apply to the aforementioned procedure:

(a) In order to initiate the procedure, the State Party concerned shall submit to the Commission an initial brief that allows it

to evaluate the difference, sending a copy to the other States Parties. The writing must contain at least the following elements, without prejudice to its subsequent complementation:

- (i) Indication of the States Parties involved;
  - (ii) Preliminary statement of the purpose of the dispute;
  - (iii) Description of the background that gives rise to the difference;
  - (iv) Legal grounds for the allegation of violation, with precise indication of the applicable provisions of this Protocol; and
  - (v) Evidence of the alleged facts, if applicable.
- (b) The Chair of the Commission, even if it is exercised by a State Party involved in the dispute, will convene a meeting that will take place within a maximum period of thirty (30) days, counted from the date of presentation of the initial brief.
- (c) The Commission will have a term of sixty (60) days, counted from the date of the first meeting, extendable by common agreement between the States Parties involved, to evaluate the initial brief, try to arrive at a solution and prepare a report.
- (d) The report mentioned in the previous paragraph will include, among other elements:
- (i) Identification of the States Parties directly involved;
  - (ii) Description of the measure in question and the alleged violations of this Protocol; and
  - (iii) A summary of the conclusions arrived at by the States Parties directly involved.
- (e) In the event that the difference is not resolved after the deadlines established in this Article have been met or if there is no participation of a State Party involved in the meetings of the Commission convened pursuant to this Article, the dispute may be submitted to the procedures and dispute resolution mechanisms in force in MERCOSUR, in accordance with Article 24 (Dispute Settlement among the States Parties) of this Protocol.

3. If the measure in question affects a specific investor, the following additional rules will apply:

- (a) The initial brief of the State Party that initiates the proceeding must identify the investor directly affected;
- (b) The Commission may invite the representatives of the affected investor to participate in its meetings, in accordance with the MERCOSUR regulations in force;
- (c) Any violations by the investor of the legal system of the Host State Party will be recorded in the Report; and
- (d) A State Party may deny that a dispute previously submitted to a dispute settlement mechanism provided for in other agreements is presented again to the mechanisms established in this Protocol.

4. Where relevant for the consideration of the measure in question, the Commission may invite other interested parties to appear before the Commission and present its views on that measure.

5. The records of the meetings held within the scope of the Dispute Prevention Procedure and all related documentation shall be confidential, with the exception of the report submitted by the Commission pursuant to paragraph 2, clauses c) and d) of this Article, subject to the legislation of each State Party on the disclosure of information.

## **Article 24. Settlement of Disputes between the States Parties**

1. Once the procedure provided for in Article 23 (Procedure for the Prevention of Disputes) has been exhausted without the dispute having been resolved, any of the States Parties involved may submit it to the procedures and dispute resolution mechanisms in force in MERCOSUR, in accordance with the provisions of this Article.

2. This Protocol may be invoked to pay for a transaction related to investments provided that no more than five (5) years have elapsed since the date on which the State Party first had or should have known for the first time the events that gave rise to the controversy.

3. They may not be subject to the dispute resolution mechanism, Article 14 (Corporate Social Responsibility), paragraph 1 of Article 15 (Investment Measures and the Fight against Corruption and Illegality) and paragraph 2 of Article 16 (Provisions on Investments and Environment, Labor Issues and Health).

4. A dispute relating to an investment that has been submitted to the procedures established in Articles 23 (Procedure for

the Prevention of Disputes) and 24 (Settlement of Disputes between the States Parties) may not be submitted to the arbitration procedures established in bilateral treaties of investment or other agreement with provisions relating to investments of which the States Parties are or become a party.

## **Part IV. Agenda for Cooperation and Facilitation of Investments**

### **Article 25. Agenda for Cooperation and Investment Facilitation**

1. The Commission will develop and discuss an Agenda for Cooperation and Facilitation of Investments in the relevant topics for the promotion and increase of mutual investment. The topics that will be addressed initially are listed in the Annex "Agenda for Cooperation and Investment Facilitation".
2. The agenda will be discussed among the competent governmental authorities of the States Parties.
3. The results of such discussions may constitute additional protocols to this Protocol or specific legal instruments, which will be deposited with the Republic of Paraguay.
4. The Commission will establish the activities and schedules for greater cooperation and facilitation of investments and the eventual negotiation of specific commitments.
5. The States Parties shall submit to the Commission the names of the governing bodies and their official representatives involved in these activities.

## **Part V. Final Provisions**

### **Article 26. Final Provisions**

1. This Protocol, concluded within the framework of the Treaty of Asunción, shall be of indefinite duration and shall enter into force sixty (60) days after the date of deposit of the second instrument of ratification and its provisions shall be applicable to those States Parties that have it ratified. For States Parties that ratify it subsequently, this Protocol will enter into force sixty (60) days after the respective deposit of each instrument of ratification.
2. With regard to denunciation, the provisions of Article 21 of the Treaty of Asunción shall apply to this Protocol.
3. The States Parties, when they deem it opportune, may review this Protocol.
4. This Protocol and its instruments of ratification shall be deposited with the Republic of Paraguay, which shall notify the States Parties of the date of deposit of these instruments and of the entry into force of the Protocol, as well as send them a duly authenticated copy thereof.
5. Modifications and updates made to the Annex that forms part of this Protocol will be deposited with the Republic of Paraguay.

Done in the city of Buenos Aires, Argentine Republic, on the seventh day of the month of April, two thousand and seventeen, in two copies, in the Spanish and Portuguese languages, equally authentic.

For the Argentinian Republic

For the Federal Republic of Brazil

For the Republic of Paraguay

For the Oriental Republic of Uruguay

This agenda represents an initial effort to improve cooperation and facilitation of investments between the States Parties and may be extended and modified in at any time by the Commission, compliance with the provisions of the Article 26,

subsection 5.

(a) Payments and transfers

(b) Technical and environmental regulations

(c) Cooperation for Institutional Regulation and Exchange