

Agreement

between

the Swiss Confederation

and

the Republic of Venezuela

on the Reciprocal Promotion and Protection

of Investments

Preamble

The Swiss Federal Council and the Government of the Republic of Venezuela, hereinafter referred to as the Contracting Parties,

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

Intending to assure favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party, particularly through fair and equitable treatment of such investments,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States,

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

- (1) The term "investor" refers with regard to either Contracting Party to
 - a) natural persons who, according to the law of that Contracting Party, are considered to be its nationals;
 - b) legal entities, including companies, corporations, business associations and other organizations which are constituted or otherwise duly organised under the law of that Contracting Party;
 - c) legal entities not established under the law of that Contracting Party but effectively controlled by natural persons as defined in (a) above or by legal entities as defined in (b) above.

- (2) The term "investment" comprises every kind of asset and more particularly, though not exclusively:
 - a) movable and immovable property as well as any other rights in rem;
 - b) shares, parts or any other kinds of participation in a company;
 - c) claims to money or to any performance under a contract;

- d) intellectual property rights, technical processes, know-how and goodwill;
- e) concessions and other rights granted under public law.

(3) The term "territory" shall mean the territory of each Contracting Party including the maritime areas adjacent to the coast of the State concerned, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

Article 2

Scope of application

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

Article 3

Promotion, admission

- (1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

- (2) Each Contracting Party shall facilitate the issuing, in accordance with its laws and regulations, of the necessary permits in connection with such an investment, including permits for the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance, as well as authorizations required for the activities of consultants or experts.

Article 4

Treatment

- (1) Each Contracting Party shall provide, in accordance with the rules and principles of International Law, investments in its territory of investors of the other Contracting Party fair and equitable treatment and full protection and security; neither of them shall impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, expansion, disposal or liquidation of such investments.

- (2) The treatment accorded by each Contracting Party to the investment by investors of the other Contracting Party in its territory, or to the investors themselves as regards their investments, shall not be less favourable than that accorded to investments of their own investors or those of any third State, or to the investors concerned as regards their investments.
- (3) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union or a common market or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article 5

Free transfer

Each Contracting Party shall allow investors of the other Contracting Party the transfer without delay in a freely convertible currency of payments in connection with an investment, particularly of:

- a) profits, dividends, interest, royalties and other income derived from an investment;
- b) sums required for the repayment of loans or other debt, or for the payment of royalties or any other payment relating to intellectual property or similar rights;

- c) sums required for the acquisition of goods and services to be used for the maintenance, operation or expansion of the investment;
- d) proceeds from the sale or the total or partial liquidation of the investment;
- e) any sums received as compensation.

Article 6

Expropriation

Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, on a non discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriatory action was taken or became public knowledge, whichever is earlier, shall include interest from the date of expropriation, be paid without delay in a freely convertible currency to the person entitled thereto and be freely transferable.

Article 7

Compensation for losses

Where investments of an investor of one Contracting Party in the territory of the other Contracting Party suffer loss owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, the investor concerned shall be accorded treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than would be accorded in the same circumstances to an investor of the latter Contracting Party or of any third State.

Article 8

Subrogation

If a Contracting Party, or a duly authorized governmentally or privately owned legal person of that Contracting Party, pays an indemnity to one of its investors in relation with an investment in the territory of the other Contracting Party under a guarantee against non commercial risks, the latter Contracting Party shall recognize the subrogation of the former or its duly authorized legal person in all the rights of the investor under this Agreement.

Article 9

**Disputes between a Contracting Party
and an investor of the other Contracting Party**

- (1) With a view to an amicable solution of disputes between a Contracting Party and an investor of the other Contracting Party consultations will take place between the parties concerned.
- (2) If these consultations do not result in a solution within six months from the date of request for consultations, the investor may submit the dispute to the arbitration of the International Center for Settlement of Investment Disputes (I.C.S.I.D.) instituted by the Convention on the settlement of investment disputes between States and nationals of other States, opened for signature at Washington, on 18th March, 1965.
- (3) As an alternative to I.C.S.I.D. arbitration the parties to the dispute may, by mutual consent, have recourse to an ad hoc arbitral tribunal which unless otherwise agreed upon by the parties to the dispute shall be established under the arbitration rules of the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.). Such arbitration shall in any case take place if for whatever reason I.C.S.I.D. arbitration is not available.
- (4) The arbitral award shall limit itself to determine whether the Contracting Party concerned has failed to comply with an obligation under this Agreement, whether such failure has resulted in damages to the investor, and, if this is the case, the amount to be

paid by the Contracting Party to the investor as compensation for such damages.

- (5) Each Contracting Party hereby consents to the submission of an investment dispute to international arbitration in accordance with the provisions of this article.
- (6) The Contracting Party which is a party to the dispute shall not at any time during the procedures, assert as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.
- (7) The arbitral award shall be final and binding for the parties involved in the dispute.

Article 10

Disputes between Contracting Parties

- (1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.
- (2) If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral

tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.

- (3) If one of the Contracting Parties has not appointed its arbitrator and, having been invited to do so by the other Contracting Party, has failed to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.
- (4) If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.
- (5) If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.
- (6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.

- (7) The decisions of the tribunal are final and binding for each Contracting Party.

Article 11

Other obligations

- (1) If provisions in the legislation of either Contracting Party or obligations under International Law entitle investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such provisions or obligations shall to the extent that they are more favourable prevail over this Agreement.
- (2) Each Contracting Party shall observe any obligation it has assumed regarding the treatment of investments in its territory by investors of the other Contracting Party.

Article 12

Entry into force and duration

- (1) The Contracting Parties shall notify each other of the completion of their domestic procedures for the entry into force of this Agreement. The Agreement shall enter into force on the date of such notification by the second Contracting Party.

- (2) This Agreement shall remain in force for an initial period of ten years, and thereafter shall continue to be effective indefinitely. Either Contracting Party may terminate the Agreement at the end of the initial period or at any time thereafter by notifying the other Contracting Party not less than one year in advance of the date of termination.
- (3) In case of termination, the provisions of this Agreement shall remain in force for an additional period of ten years in respect of investments made before the date of termination.

Done in duplicate, at *Caracas*, on *the 18th of November 1993*, in French, Spanish and English, each text being equally authentic. In case of any divergence of interpretation, reference shall be made to the English text.

For the Swiss Federal
Council

Ernst Henn

For the Government of the
Republic of Venezuela

F. A.

