

No. 33126

**SPAIN
and
EL SALVADOR**

**Agreement on the reciprocal promotion and protection of
investments. Signed at San Salvador on 14 February
1995**

Authentic text: Spanish.

Registered by Spain on 30 August 1996.

**ESPAGNE
et
EL SALVADOR**

**Accord relatif à la promotion et à la protection réciproque des
investissements. Signé à San Salvador le 14 février 1995**

Texte authentique : espagnol.

Enregistré par l'Espagne le 30 août 1996.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF EL SALVADOR ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Kingdom of Spain and the Republic of El Salvador, hereinafter referred to as the “Contracting Parties”,

Desiring to strengthen economic cooperation for the mutual benefit of the two countries,

Intending to create favourable conditions for investments made by investors of one Contracting Party in the territory of the other,

Recognizing that the promotion and protection of investments under this Agreement will encourage initiatives in this field,

Have agreed as follows:

Article I

DEFINITIONS

For the purposes of this Agreement,

1. The term “investor” means:

(a) Natural persons who in accordance with the national legislation of each Contracting Party are considered to be nationals;

(b) Legal persons, including companies, associations of companies, firms, subsidiaries and other organizations which are constituted or, in any event, duly organized under the law of one of the Contracting Parties and make investments in the territory of the other Contracting Party.

2. The term “investment” means any kind of asset and, in particular, though not exclusively, the following:

Shares, bonds, debentures and other forms of participation in a company;

Rights derived from any kind of contribution made with the intention of creating economic value, expressly including any loans granted for that purpose, whether or not capitalized;

Movable and immovable property, and such other property rights as mortgages, pledges, usufructs and similar rights;

All intellectual property rights, expressly including patents for inventions, trade marks, manufacturing licences, know-how and goodwill;

Rights to engage in economic and commercial activities conferred by law or under a contract, especially concessions to search for, cultivate, extract or exploit natural resources.

¹ Came into force on 20 February 1996 by notification, in accordance with article XII.

No modification in the form in which assets have been invested or reinvested shall affect their status as investments.

3. The term “returns on an investment” refers to the amounts yielded by an investment and includes in particular, though not exclusively, profits, dividends, interest, capital gains, royalties and fees.

4. The term “territory” means the territory over which each of the Contracting Parties has jurisdiction and sovereignty in accordance with international law and its own internal law.

Article II

PROMOTION AND ACCEPTANCE

1. Each Contracting Party shall promote investments in its territory by investors of the Contracting Party and shall accept such investments in accordance with its laws.

2. This Agreement shall also apply to investments made before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws of the latter Contracting Party. It shall not, however, apply to disputes which pre-date its entry into force or which relate to incidents or events that occurred prior to its entry into force.

3. With a view to increasing reciprocal investment, each Contracting Party shall keep the other Contracting Party informed of investment opportunities in its territory.

Article III

PROTECTION

1. Each Contracting Party shall protect within its territory the investments made in accordance with its laws by investors of the other Contracting Party and shall not obstruct by unreasonable or discriminatory measures the management, maintenance, development, use, enjoyment, extension, sale or, where appropriate, liquidation of such investments.

2. Each Contracting Party shall grant the necessary permits in connection with such investments and, within the framework of its laws, shall permit the execution of contracts relating to employment, manufacturing licences and technical, commercial, financial and administrative assistance.

3. Each Contracting Party shall also grant, as required, the necessary permits in connection with the activities of consultants or experts engaged by investors of the other Contracting Party.

Article IV

TREATMENT

1. Each Contracting Party shall guarantee within its territory fair and equitable treatment, in accordance with international law, for the investments made by investors of the other Contracting Party and for the returns on those investments.

2. Such treatment shall be no less favourable than that accorded by each Contracting Party to the investments and returns on investments of investors of any third State.

3. The treatment shall not, however, extend to the privileges which a Contracting Party may grant to the investors of a third State by virtue of its current or future association with or participation in a free-trade area, customs union or common market or under any other similar international arrangement.

4. The treatment accorded under this article shall not extend to tax deductions and exemptions or other similar privileges granted by either Contracting Party to investors of a third country under an agreement for the avoidance of double taxation or any other taxation agreement.

5. Each Contracting Party shall, in conformity with its national law, accord to the investments of investors of the other Contracting Party treatment no less favourable than that accorded to its own investors.

Article V

NATIONALIZATION AND EXPROPRIATION

1. Nationalization, expropriation or any other measure having similar characteristics or effects (hereinafter referred to as "expropriation") that may be applied by the authorities of one Contracting Party against the investments in its territory of investors of the other Contracting Party must be effected exclusively for reasons of public interest or social benefit, in accordance with the law, shall in no case be discriminatory and shall be accompanied by payment to the investor or his or its legal beneficiary of prompt, appropriate and effective compensation.

2. Such compensation shall be equivalent to the actual value of the expropriated investment immediately before the expropriation is announced or published, whichever comes first. Compensation shall be paid without delay in convertible currency and shall be effectively realizable and freely transferable.

3. If a Contracting Party takes one of the measures referred to earlier in this article, with respect to the assets of a company constituted in accordance with the law in force in any part of its territory, in which investors of the other Contracting Party are invested, it must ensure that the provisions of the preceding paragraphs of this article are applied in such a way as to guarantee the prompt, effective and adequate payment of compensation to those investors.

4. The investor affected shall have the right, in accordance with the law of the Contracting Party responsible for the expropriation, to prompt review of his or its case by the competent judicial or administrative body of that Contracting Party in order to determine whether the expropriated investment and the amount of compensation were determined in accordance with the provisions of this article. The exercise of that right shall not prevent the investor from having recourse to the arbitral procedure provided for in article XI of this Agreement.

Article VI

COMPENSATION FOR LOSSES

Investors of one Contracting Party whose investments or returns on investments in the territory of the other Contracting Party suffer losses owing to war, other armed conflict, a state of national emergency, rebellion, mutiny or other similar circumstance, including losses due to requisitioning, shall be accorded, by way of restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Any payment made under this article shall be prompt, adequate, effective and freely transferable.

Article VII

TRANSFERS

1. Each Contracting Party shall guarantee to investors of the other Contracting Party in respect of investments made in its territory the unrestricted transfer of returns on those investments and of other related payments, including in particular, though not exclusively, the following:

Returns on an investment as defined in article I;

Indemnities as provided for in article V;

Compensation as provided for in article VI;

Proceeds from the sale or liquidation, in full or in part, of an investment;

Amounts necessary for the reimbursement of loans obtained for investment purposes;

The initial capital and any additional amounts necessary for the purchase of raw or other materials, semi-manufactured or finished products or for the replacement of capital goods, or any other amount necessary for the maintenance and development of an investment;

Salaries, wages and other remuneration received by nationals of one Contracting Party for work or services performed in the other Contracting Party in connection with an investment.

2. The host Contracting Party of the investment shall enable an investor of the other Contracting Party, or the company in which the investor is invested, to have access to the foreign-exchange market on a non-discriminatory basis in order to purchase the necessary currency to make the transfers referred to in this article.

3. The transfers described in this Agreement shall be made without delay, in freely convertible currencies and at the rate of exchange applicable on the day of transfer.

4. The Contracting Parties undertake to facilitate the procedures necessary for such transfers to be made without delay or restrictions, in accordance with the practices of international financial centres. In particular, no more than three months shall elapse between the date on which the investor duly submits the necessary applications for making the transfer and the date on which the transfer actually takes place. Accordingly, each Contracting Party undertakes to carry out the formalities

required both for the purchase of the currency and for its actual transfer abroad within the above-mentioned period.

5. The Contracting Parties shall accord to the transfers referred to in this article treatment no less favourable than that accorded to transfers by investors of any third State.

Article VIII

MORE FAVOURABLE TERMS

1. If the law of either Contracting Party or the current or future obligations under international law outside the framework of the present Agreement between the Contracting Parties should give rise to general or special rules by virtue of which the investments of investors of the other Contracting Party are accorded treatment more favourable than that provided for in this Agreement, those rules shall, to the extent that they are more favourable, prevail over this Agreement.

2. Where one Contracting Party has agreed with investors of the other Contracting Party to terms more favourable than those of this Agreement, those terms shall not be affected by this Agreement.

Article IX

PRINCIPLE OF SUBROGATION

Where one Contracting Party or an agency designated by it has provided a financial guarantee against non-commercial risks in respect of an investment made by one of its investors in the territory of the other Contracting Party, the latter Contracting Party shall, once the former Contracting Party or its designee has made a first payment in connection with the financial guarantee, recognize the transfer to the former Contracting Party or its designee of the economic rights of the investor. Such transfer shall enable the former Contracting Party or its designee to be the direct beneficiary of any payments in compensation to which the investor might be entitled.

Subrogation shall apply in respect of rights of ownership, use or enjoyment or any other property right only if the relevant authorizations required under the laws in force in the Contracting Party in which the investment was made have first been obtained.

Article X

DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Any dispute between the Contracting Parties relating to the interpretation or application of this Agreement shall, to the extent possible, be settled through the diplomatic channel.

2. If a dispute cannot be thus settled within six months from the start of the negotiations, it shall, at the request of either of the two Contracting Parties, be submitted to an arbitral tribunal.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall select a national of a third State as president. The arbitrators shall be appointed within three months and the president within five months from the date on which either of the two Contracting Parties informs the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If either Contracting Party fails to appoint its arbitrator within the period specified, the other Contracting Party may invite the President of the International Court of Justice to make the necessary appointment. Where the two arbitrators are unable to agree on the appointment of the third arbitrator within the designated period, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointment.

5. If, in the cases provided for in paragraph 4 of this article, the President of the International Court of Justice is prevented from acting or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from acting or is a national of either Contracting Party the appointments shall be made by the most senior member of the Court who is not a national of either Contracting Party.

6. The arbitral tribunal shall issue its ruling in accordance with the law, the provisions of the present Agreement or of other agreements in force between the Contracting Parties and the universally recognized principles of international law.

7. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedures.

8. The tribunal shall take its decision by a majority of votes, and such decision shall be final and binding on both Contracting Parties.

9. Each Contracting Party shall defray the expenses of the arbitrator appointed by it and of its representation in the arbitral proceedings. The remaining expenses, including those of the president, shall be shared equitably by the two Contracting Parties.

Article XI

DISPUTES BETWEEN A CONTRACTING PARTY AND INVESTORS OF THE OTHER CONTRACTING PARTY

1. Any investment-related dispute which may arise between a Contracting Party and an investor of the other Contracting Party with respect to the issues regulated by this Agreement shall be notified in writing by the investor, together with a detailed report, to the host Contracting Party of the investment. The parties to the dispute shall, as far as possible, endeavour to settle such differences amicably.

2. If the dispute cannot be thus settled within six months from the date of the written notification mentioned in paragraph 1, it shall be submitted, at the choice of the investor, to:

The competent courts of the Contracting Party in whose territory the investment was made;

An *ad hoc* arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law; or

The International Centre for the Settlement of Investment Disputes (ICSID) established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which was opened for signature at Washington, D.C. on 18 March 1965,¹ provided that both Parties to the present Agreement have acceded to that Convention.

3. Arbitration shall be based on:

The provisions of the present Agreement and of other agreements concluded between the Contracting Parties;

The generally accepted rules and principles of international law; and

The national law of the Contracting Party in whose territory the investment was made, including the rules on conflict of laws.

4. The arbitral award shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to carry out the award in accordance with its national law.

Article XII

ENTRY INTO FORCE, EXTENSION AND TERMINATION

1. This Agreement shall enter into force on the date on which the Contracting Parties notify each other that their respective constitutional formalities for the entry into force of international agreements have been completed. It shall remain in force for an initial period of ten years and thereafter shall be renewed automatically for consecutive periods of two years.

Either Contracting Party may terminate this Agreement by giving written notice six months before the date of expiry.

2. In the event of termination, the provisions of articles I to XI of this Agreement shall continue to apply for a period of ten years to investments made prior to termination.

DONE at San Salvador on 14 February 1995 in duplicate, in the Spanish language, both texts being equally authentic.

For the Kingdom of Spain:
JAVIER GÓMEZ NAVARRO
Minister of Trade and Tourism

For the Republic of El Salvador:
OSCAR ALFREDO SANTAMARÍA
Minister for Foreign Affairs

¹United Nations, *Treaty Series*, vol. 575, p. 159.