

No. 54935*

**Argentina
and
United States of America**

Treaty between the United States of America and the Argentine Republic concerning the reciprocal encouragement and protection of investment (with protocol and note). Washington, 14 November 1991

Entry into force: *20 October 1994, in accordance with article XIV*

Authentic texts: *English and Spanish*

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Note: *See also annex A, No. 54935.*

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**Argentine
et
États-Unis d'Amérique**

Traité entre les États-Unis d'Amérique et la République argentine relatif à la promotion et à la protection réciproque des investissements (avec protocole et note). Washington, 14 novembre 1991

Entrée en vigueur : *20 octobre 1994, conformément à l'article XIV*

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Note : *Voir aussi annexe A, No. 54935.*

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TREATY BETWEEN UNITED STATES OF AMERICA AND THE ARGENTINE
REPUBLIC CONCERNING THE RECIPROCAL ENCOURAGEMENT AND
PROTECTION OF INVESTMENT

The United States of America and the Argentine Republic, hereinafter referred to as the Parties-

Desiring to promote greater economic cooperation between them, with respect to investment by nationals and companies of one Party in the territory of the other Party;

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Parties;

Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective use of economic resources;

Recognizing that the development of economic and business ties can contribute to the well-being of workers in both Parties and promote respect for internationally recognized worker rights and having resolved to conclude a Treaty concerning the encouragement and reciprocal protection of investment;

Have agreed as follows:

ARTICLE I:

(1) For the purposes of this Treaty,

a) "investment" means every kind of investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party, such as equity, debt, and service and investment contracts; and includes without limitation:

(i) tangible and intangible property, including rights, such as mortgages, liens and pledges;

(ii) a company or shares of stock or other interests in a company or interests in the assets thereof;

(iii) a claim to money or a claim to performance having economic value and directly related to an investment;

(iv) intellectual property which includes, inter alia, rights relating to:

literary and artistic works, including sound

recordings,

inventions in all fields of human endeavor,

industrial designs,

semiconductor mask works,

trade secrets, know-how, and confidential

business information, and

trademarks, service marks, and trade names; and

(v) any right conferred by law or contract, and any licenses and permits pursuant to law;

b) "company" of a Party means any kind of corporation, company, association, state enterprise, or other organization, legally constituted under the laws and regulations of a Party or a political subdivision thereof whether or not organized for pecuniary gain, and whether privately or governmentally owned;

c) "national" of a Party means a natural person who is national of a Party under its applicable law;

d) "return" means an amount derived from or associated with an investment, including profit; dividend; interest; capita gain; royalty payment; management, technical assistance or other fee; or returns in kind;

e) -associated activities- include the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kinds including intellectual and industrial property rights; and the borrowing of funds, the purchase, issuance, and sale of equity shares and other securities, and the purchase of foreign exchange for imports.

f) "territory" means the territory of the United States or the Argentine Republic, including the territorial sea established in accordance with international law as reflected in the 1982 United Nations Convention on the Law of the Sea. This Treaty also applies in the seas and seabed adjacent to the territorial sea in which the United States or the Argentine Republic has sovereign rights or jurisdiction in accordance with international law as reflected in the 1982 United Nations Convention on the Law of the Sea.

(2) Each Party reserves the right to deny to any company of the other Party the advantages of this Treaty if (a) nationals of any third country, or nationals of such Party, control such company and the company has no substantial business activities in the territory of the other Party, or (b) the company is controlled by nationals of a third country with which the denying Party does not maintain normal economic relations.

(3) Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

ARTICLE II:

- (1) Each Party shall permit and treat investment, and activities associated therewith, on a basis no less favorable than that accorded in like situations to investment or associated activities of its own nationals or companies, or of nationals or companies of any third country, whichever is the more favorable, subject to the right of each Party to make or maintain exceptions falling within one of the sectors or matters listed in the Protocol to this Treaty. Each Party agrees to notify the other Party before or on the date of entry into force of this Treaty of all such laws and regulations of which it is aware concerning the sectors or matters listed in the Protocol. Moreover, each Party agrees to notify the other of any future exception with respect to the sectors or matters listed in the Protocol, and to limit such exceptions to a minimum. Any future exception by either Party shall not apply to investment existing in that sector or matter at the time the exception becomes effective. The treatment accorded pursuant to any exceptions shall, unless specified otherwise in the Protocol, be not less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country.

- (2)
 - a) Investment shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less than that required by international law.
 - b) Neither Party shall in any way impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. For the purposes of dispute resolution under Articles VII and VIII, a measure may be arbitrary or discriminatory notwithstanding the opportunity to review such measure in the courts or administrative tribunals of a Party.
 - c) Each Party shall observe any obligation it may have entered into with regard to investments.

- (3) Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources

- (4) Companies which are legally constituted under the applicable laws or regulations of one Party, and which are investments, shall be permitted to engage top managerial personnel of their choice, regardless of nationality.

- (5) Neither Party shall impose performance requirements as a condition of establishment, expansion or maintenance of investments, which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

(6) Each Party shall provide effective means of asserting claims and enforcing rights with respect to investments, investment agreements, and investment authorizations.

(7) Each Party shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments.

(8) The treatment accorded by the United States of America to investments and associated activities of nationals and companies of the Argentine Republic under the provisions of this Article shall in any State, Territory or possession of the United States of America be no less favorable than the treatment accorded therein to investments and associated activities of nationals of the United States of America resident in, and companies legally constituted under the laws and regulations of, other States, Territories or possessions of the United States of America.

(9) The most favored nation provisions of this Article shall not apply to advantages accorded by either Party to nationals or companies of any third country by virtue of that Party's binding obligations that derive from full membership in a regional customs union or free trade area, whether such an arrangement is designated as a customs union, free trade area, common market or otherwise.

ARTICLE III:

This Treaty shall not preclude either Party from prescribing laws and regulations in connection with the admission of investments made in its territory by nationals or companies of the other Party or with the conduct of associated activities, provided, however, that such laws and regulations shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE IV:

(1) Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ('expropriation-') except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II(2). Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known, whichever is earlier; be paid without delay; include interest at a commercially reasonable rate from the date of expropriation; be fully realizable; and be freely transferable at the prevailing market rate of exchange on the date of expropriation.

(2) A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of the other Party to determine whether any such expropriation