

## 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 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;
  - (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;
  - (c) in any matter involving taxation, the conditions specified in paragraph 5 of Article XII have been fulfilled; and
  - (d) not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.
- (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 either the disputing Contracting Party or the Contracting Party of the investor, but not both, 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 unconditional 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 (12), shall satisfy the requirements for:
- (i) written consent of the parties to a dispute for purposes of Chapter 11 (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) A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. 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) An award of arbitration shall be final and binding and shall be enforceable in the territory of each of the Contracting Parties.

(11) Any proceedings under this Article are without prejudice to the rights of the Contracting Parties under Articles XIV and XV.

- (12) (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 12(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 12(a)ii); and
- ii) a waiver from the enterprise under 12(a)iii).

#### **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 panel for decision.
- (3) An arbitral panel 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 panel. 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 panel. The Chairman shall be appointed within two months from the date of appointment of the other two members of the arbitral panel.
- (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 panel shall determine its own procedure. The arbitral panel 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 arbitral 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 panel 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 panel 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 panel, reach agreement on the manner in which to resolve their dispute. Such agreement shall normally implement the decision of the panel. 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.

## ARTICLE XVIII

### Entry into Force and Termination of the Agreement

- (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.
- (2) This Agreement shall remain in force 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 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 ten years.

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

DONE in duplicate at Ottawa, this 24<sup>th</sup> day of October, 1994, in the English, French, and Ukrainian languages, all three texts being equally authentic.



**FOR THE GOVERNMENT  
OF UKRAINE**



**FOR THE GOVERNMENT  
OF CANADA**

## ANNEX

(1) In accordance with Article IV, subparagraph 2(d), 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);
- services in any other sector;
- 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, subparagraph 2(d), Ukraine reserves the right to make and maintain exceptions in the sectors or matters listed below:

- enterprises that build nuclear facilities;
- maritime transport, including coastal navigation;
- air transport;
- electrical energy from nuclear power;
- privatization of entities of education, sports, medicine and science, which are financed from the state budget;
- enterprises for salt extraction;
- enterprises for the extraction and processing of rare earths, and other radioactive elements;
- ownership and management of television and radio stations; and
- the ownership of land during the transition period to a market economy.

(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.