

Annex A: U.S.-Argentina BIT

TREATY BETWEEN  
THE 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 a national of a Party under its applicable law;

(d) "return" means an amount derived from or associated with an investment, including profit; dividend; interest; capital 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

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 has occurred and, if so, whether such expropriation, and any compensation therefor, conforms to the provisions of this Treaty and the principles of international law.

3. Nationals or companies of either Party whose investments suffer losses in the territory of the other Party owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance or other similar events shall be accorded treatment by such other Party no less favorable than that accorded to its own nationals or companies or to nationals or companies of any third country, whichever is the more favorable treatment, as regards any measures it adopts in relation to such losses.

3. (a) Provided that the national or company concerned has not submitted the dispute for resolution under paragraph 2 (a) or (b) and that six months have elapsed from the date on which the dispute arose, the national or company concerned may choose to consent in writing to the submission of the dispute for settlement by binding arbitration:

- (i) to the International Centre for the Settlement of Investment Disputes ("Centre") established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965 ("ICSID Convention"), provided that the Party is a party to such Convention; or
- (ii) to the Additional Facility of the Centre, if the Centre is not available; or
- (iii) in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNICTRAL); or
- (iv) to any other arbitration institution, or in accordance with any other arbitration rules, as may be mutually agreed between the parties to the dispute.

(b) Once the national or company concerned has so consented, either party to the dispute may initiate arbitration in accordance with the choice so specified in the consent.

4. Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice specified in the written consent of the national or company under paragraph 3. Such consent, together with the written consent of the national or company when given under paragraph 3 shall satisfy the requirement for:

(a) written consent of the parties to the dispute for purposes of Chapter II of the ICSID Convention (Jurisdiction of the Centre) and for purposes of the Additional Facility Rules; and

(b) an "agreement in writing" for purposes of Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 ("New York Convention").

5. Any arbitration under paragraph 3(a)(ii), (iii) or (iv) of this Article shall be held in a state that is a party to the New York Convention.

6. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Party undertakes to carry out without delay the provisions of any such award and to provide in its territory for its enforcement.

7. In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counterclaim, right of set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

that entitle investments or associated activities to treatment more favorable than that accorded by this Treaty in like situations.

#### ARTICLE XI

This Treaty shall not preclude the application by either Party of measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

#### ARTICLE XII

1. With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investment of nationals and companies of the other Party.

2. Nevertheless, the provisions of this Treaty, and in particular Article VII and VIII, shall apply to matters of taxation only with respect to the following:

- (a) expropriation, pursuant to Article IV;
- (b) transfers, pursuant to Article V; or
- (c) the observance and enforcement of terms of an investment agreement or authorization as referred to in Article VII(1)(a) or (b),

to the extent they are not subject to the dispute settlement provisions of a Convention for the avoidance of double taxation between the two Parties, or have been raised under such settlement provisions and are not resolved within a reasonable period of time.

#### ARTICLE XIII

This Treaty shall apply to the political subdivisions of the Parties.

#### ARTICLE XIV

1. This Treaty shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2 of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.

2. Either Party may, by giving one year's written notice to the other Party, terminate this Treaty at the end of the initial ten year period or at any time thereafter.

3. With respect to investments made or acquired prior to the date of termination of this Treaty and to which this Treaty otherwise applies, the provisions of all of the other Articles of this Treaty shall thereafter continue to be effective for a further period of ten years from such date of termination.

7. The Parties acknowledge and agree that, to the extent of any conflict or inconsistency between the terms of this Treaty, and the terms of the Treaty of Friendship, Commerce, and Navigation between the Parties, entered into force December 20, 1854 (the "FCN Treaty"), the terms of this Treaty shall supersede the terms of the FCN Treaty, and shall control the resolution of such conflict.

8. The Parties confirm their mutual understanding that the provisions of this Treaty do not bind either Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of this Treaty.

9. Notwithstanding Article II(5) and in accordance with the terms of this paragraph, the Government of the Argentine Republic may maintain, but not intensify, existing performance requirements in the automotive industry. The Government of the Argentine Republic shall exert best efforts to eliminate all such requirements within the shortest possible period, and shall ensure their elimination within eight years of the date of the entry into force of this Treaty. The Government of the Argentine Republic shall further ensure that such performance requirements are applied in a manner which does not place existing investments at a competitive disadvantage against new entrants in this industry. The Parties shall consult at the request of either on any matter concerning the implementation of these undertakings. For the purposes of this paragraph, "existing" means extant at the time of signature of this Treaty.

10. The Parties note that the Argentine Republic has had and may have in the future a debt-equity conversion program under which nationals or companies of the United States may choose to invest in the Argentine Republic through the purchase of debt at a discount.

The Parties agree that the rights provided in Article V, paragraph 1, with respect to the transfer of returns and of proceeds from the sale or liquidation of all or any part of an investment, remain or may be, as such rights would apply to that part of an investment financed through a debt-equity conversion, modified by the terms of any debt-equity conversion agreement between a national or company of the United States and the Government of the Argentine Republic, or any agency or instrumentality thereof.

The transfer of returns and of proceeds from the sale or liquidation of all or any part of such an investment shall in no case be on terms less favorable than those accorded, in like circumstances, to nationals or companies of the Argentine Republic or any third country, whichever is more favorable.

11. The Parties note with satisfaction that the Argentine Republic is engaged in a process of privatization of various industries, including public utilities. They agree that they will undertake their best efforts, including through consultations, to avoid any misinterpretation regarding the scope of Article II(5) that would adversely affect this privatization process.

## Annex B

### Model Treaty of Friendship, Commerce and Navigation

#### *Article XXI*

1. The present Treaty shall not preclude the application of measures:
  - (a) regulating the importation or exportation of gold or silver;
  - (b) relating to fissionable materials, to radioactive by-products of the utilization or processing thereof or to materials that are the source of fissionable materials;
  - (c) regulating the production of or traffic in arms, ammunition and implements of war, or traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment;
  - (d) necessary to fulfill the obligations of a Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests; and
  - (e) denying to any company in the ownership or direction of which nationals of any third country or countries have directly or indirectly the controlling interest, the advantages of the present Treaty, except with respect to recognition of judicial status and with respect to access to courts.

....

3. The provisions of the present Treaty relating to the treatment of goods shall not preclude action by either Party which is required or specifically permitted by the General Agreement on Tariffs and Trade during such time as such Party is a contracting party to the General Agreement. Similarly, the most-favored-nation provisions of the present Treaty shall not apply to special advantages accorded by virtue of the aforesaid Agreement.

....

#### U.S.-Argentina BIT: Article XI

This treaty shall not preclude the application by either Party of measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

## ARTICLE XX GENERAL EXCEPTIONS

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the importation or exportation of gold or silver;
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
- (e) relating to the products of prison labour;
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved; \*
- (i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; *Provided* that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;
- (j) essential to the acquisition or distribution of products in general or local short supply; *Provided* that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960.

## Annex C: Canadian Model BIT 2004

### Article 10 General Exceptions

1. Subject to the requirement that such measures are not applied in a manner that would constitute arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures necessary:

- (a) to protect human, animal or plant life or health;
- (b) to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement; or
- (c) for the conservation of living or non-living exhaustible natural resources.

2. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:

- (a) the protection of investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution;
- (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and
- (c) ensuring the integrity and stability of a Party's financial system.

3. Nothing in this Agreement shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 7 (Performance Requirements) or Article 14 (Transfer of Funds);

4. Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;
- (b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests
  - (i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,
  - (ii) taken in time of war or other emergency in international relations, or
  - (iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or
- (c) to prevent any Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

5. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting Cabinet confidences, personal privacy or the confidentiality of the financial affairs and accounts of individual customers of financial institutions.

6. The provisions of this Agreement shall not apply to investments in cultural industries.

7. Any measure adopted by a Party in conformity with a decision adopted by the World Trade Organization pursuant to Article IX:3 of the WTO Agreement shall be deemed to be also in conformity with this Agreement. An investor purporting to act pursuant to Section C of this Agreement may not claim that such a conforming measure is in breach of this Agreement.

Annex D: Text of Preamble to Norway's Model BIT (withdrawn in 2009)

AGREEMENT BETWEEN THE KINGDOM OF NORWAY  
AND

.....  
FOR THE  
PROMOTION AND PROTECTION OF INVESTMENTS

The Kingdom of Norway and the....., hereinafter referred to as the "Parties";

*Desiring* to develop the economic cooperation between the Parties;

*Desiring* to encourage, create and maintain stable, equitable, favourable and transparent conditions for investors of one Party and their investments in the territory of the other Party on the basis of equality and mutual benefit;

*Desiring* to achieve these objectives in a manner consistent with the protection of health, safety, and the environment, and the promotion of internationally recognized labour rights;

*Desiring* to contribute to a stable framework for investment in order to maximize effective and sustainable utilization of economic resources and improve living standards;

*Conscious* that the promotion and reciprocal protection of investments in accordance with this Agreement will stimulate the business initiative;

*Emphasising* the importance of corporate social responsibility;

*Recognising* that the development of economic and business ties can promote respect for internationally recognised labour rights;

*Reaffirming* their commitment to democracy, the rule of law, human rights and fundamental freedoms in accordance with their obligations under international law, including the principles set out in the United Nations Charter and the Universal Declaration of Human Rights;

*Recognising* that the promotion of sustainable investments is critical for the further development of national and global economies as well as for the pursuit of national and global objectives for sustainable development, and understanding that the promotion of such investments requires cooperative efforts of investors, host governments and home governments;

*Recognising* that the provisions of this agreement and provisions of international agreements relating to the environment shall be interpreted in a mutually supportive manner;

*Determined* to prevent and combat corruption, including bribery, in international trade and investment;

*Recognising* the basic principles of transparency, accountability and legitimacy for all participants in foreign investment processes;

Have agreed as follows • • •