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Geneva, March 5th, 1920.

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**Treaty**

*for the*  
Promotion and Encouragement of Socially Responsible Investment

*between*  
Countries Liberated from Imperialistic Reign

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between the Union of Soviet Socialist Republics, Canada, the United States of America, Argentina, Brazil, Uruguay, and Colombia

# **TREATY FOR THE PROMOTION AND ENCOURAGEMENT OF SOCIALLY RESPONSIBLE INVESTMENT BETWEEN COUNTRIES LIBERATED FROM IMPERIALISTIC REIGN.**

RECOGNIZING that the promotion and the protection of investments of investors of one Party in the area of the other Party are conducive to the stimulation of mutually beneficial business activities and to the development of economic cooperation between them,

RECOGNIZING the need to promote investments based on the principles of sustainable development,

HAVE AGREED as follows:

## Section A – Definitions

### Article 1

#### Definitions

1. For the purpose of this Treaty: “area” means:

the land territory, internal waters and territorial sea, including the air space above these areas, over which each Party exercises sovereignty;

2. “covered investment” means, with respect to a Party, an investment in its area that is owned or controlled, directly or indirectly, by an investor of the other Party, and exists on the date of entry into force of this Treaty or is made or acquired thereafter;

3. “investment” means:

(a) an enterprise;

(b) a share, stock or other form of equity participation in an enterprise;

(c) a bond, debenture or other debt instrument of an enterprise;

(d) a loan to an enterprise;

(i) a contract involving the presence of an investor’s property in the territory of

But “investment” does not mean:

○ a claim to money that arises solely from:

○ a commercial contract for the sale of a good or service by a national or

enterprise in the territory of a Party to an enterprise in the territory of the other Party, or

- the extension of credit, including bank loans, in connection with a commercial transaction, such as trade financing; or
- any other claim to money, that does not involve the kinds of assets set out in subparagraphs (a) to (i);

## **Section B – Substantive Obligations**

### **Article 2**

#### **Scope**

1. This Treaty shall apply to measures adopted or maintained by a Party relating to:

- (a) an investor of the other Party; and
- (b) a covered investment.

2. The obligations in Section B (Substantive Obligations) apply to a person of a Party when it exercises a regulatory, administrative or other governmental authority delegated to it by that Party.

### **Article 3**

#### **Promotion of Investment**

Each Party shall encourage the creation of favourable conditions for investment in its area by investors of the other Party and shall admit those investments in accordance with its laws, regulations, and rules.

### **Article 4**

#### **Non-discriminatory Treatment as Compared with a Party's Own Investors**

1. Each Party shall accord to an investor of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the expansion, management, conduct, operation and sale or other disposition of an investment in its area.

2. Each Party shall accord to a covered investment treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the expansion, management, conduct, operation and sale or other disposition of an investment in its area.

### **Article 5**

## **Non-discriminatory Treatment as Compared with a Non-Party's Investors**

1. Each Party shall accord to an investor of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its area.

2. Each Party shall accord to a covered investment treatment no less favourable than that it accords, in like circumstances, to investments of investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its area.

## **Article 6**

### **Minimum Standard of Treatment**

1. Each Party shall accord to a covered investment treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.

2. The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

3. A breach of another provision of this Treaty, or of a separate international Treaty, does not establish that there has been a breach of this Article.

## **Article 7**

### **Compensation for Losses**

Notwithstanding Article 16(5)(b) (Reservations and Exceptions), each Party shall accord to an investor of the other Party, and to a covered investment, non-discriminatory treatment with respect to measures it adopts or maintains relating to compensation for losses incurred by investments in its area as a result of war or other armed conflict, revolution, revolt, insurrection, riot, civil strife, a state of national emergency or a natural disaster. Any resulting monetary compensation shall be made in a freely convertible currency.

## **Article 8**

### **Expropriation**

1. A Party may not expropriate a covered investment either directly or indirectly through measures having an effect equivalent to expropriation, except for a public purpose, in accordance with due process of law, in a non-discriminatory manner and on payment of compensation in accordance with

paragraphs 2 and 3. For greater certainty, this paragraph shall be interpreted in accordance with Annex I.

2. The compensation referred to in paragraph 1 must be equivalent to the real value of the expropriated investment immediately before the expropriation took place (“date of expropriation”), and must not reflect a change in value occurring because the intended expropriation had become known earlier. Valuation criteria must include going concern value, asset value including the declared tax value of tangible property, and other criteria, as appropriate, to determine the real value.

3. Compensation shall be paid without delay and shall be fully realizable and freely transferable. Compensation shall be paid in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency accrued from the date of expropriation until the date of payment.

4. The affected investor shall have a right under the law of the expropriating Party to prompt review of its case and of the valuation of its investment by a judicial or other independent authority of that Party in accordance with the principles set out in this Article.

## **Article 9**

### **Transfers**

1. Each Party shall permit all transfers relating to a covered investment to be made freely, and without delay, into and out of its territory. Those transfers include:

(a) contributions to capital;

(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the covered investment;

(c) proceeds from the sale of all or part of the covered investment or from the partial or complete liquidation of the covered investment;

(d) payments made under a contract entered into by the investor or the covered investment, including payments made pursuant to a loan agreement;

(e) payments made under Articles 7 (Compensation for Losses) and 10 (Expropriation);

and

(f) payments arising under Section C (Settlement of Disputes between an Investor and the Host Party).

2. Each Party shall permit transfers relating to a covered investment to be made in the convertible currency in which the capital was originally invested, or in another convertible currency agreed to by the investor and the Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the market rate of exchange in effect on the date of transfer.

## **Article 10**

### **Transparency**

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting a matter covered by this Treaty are promptly published or otherwise made available to interested persons and the other Party.

2. To the extent possible, each Party shall:

(a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on that proposed measure.

3. Upon request by a Party, the other Party shall provide information on a measure that may have an impact on a covered investment.

## **Article 11**

### **Health, Safety and Environmental Measures**

The Parties recognize that it is inappropriate to encourage investment by relaxing their health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, those measures to encourage the establishment, acquisition, expansion or retention in its area of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding the encouragement.

## **Article 17**

### **General Exceptions**

1. 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 Treaty shall be construed to prevent a 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 Treaty;

(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 if

such measures are made effective in conjunction with restrictions on domestic production or consumption.

2. This Treaty does not prevent a Party from adopting or maintaining measures for prudential reasons, such as:

(a) protecting investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution;

(b) maintaining the safety, soundness, integrity or financial responsibility of financial institutions; and

(c) ensuring the integrity and stability of a Party's financial system. Where such measures do not conform with the provisions of this Treaty, they shall not be used as a means of avoiding the Party's obligations under such provisions.

4. This Treaty does not:

(a) require a Party to furnish or allow access to information if that Party determines that the disclosure of this information would be contrary to its essential security interests;

(b) prevent a Party from taking an action that it considers necessary to protect 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,

## **Section C – Settlement of Disputes Between an Investor and the Host Party**

### **Article 18**

## **Submission of a Claim to Arbitration**

1. An investor may submit a claim to arbitration under the UNCITRAL or ICSID Arbitration Rules.
2. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Treaty.

## **Article 29**

### **Transparency of Proceedings**

1. The UNCITRAL Transparency Rules shall apply in connection with proceedings under this Section except as modified by this Treaty.
2. Subject to Article 7 of the UNCITRAL Transparency Rules:
  - (a) the notice of intent and the decision on arbitrator challenge shall be included in the list of documents referred to in Article 3(1) of the UNCITRAL Transparency Rules; and
  - (b) exhibits shall be included in the list of documents referred to in Article 3(2) of the UNCITRAL Transparency Rules.
3. Notwithstanding Article 2 of the UNCITRAL Transparency Rules, prior to the constitution of the Tribunal, the respondent Party shall make publicly available in a timely manner relevant documents pursuant to paragraph 2, subject to the redaction of confidential information. Such documentation may be made publicly available by communication to the repository referred to in Article 8 of the UNCITRAL Transparency Rules.
4. A disputing party may disclose to other persons in connection with the arbitral proceedings, including witnesses and experts, such unredacted documents as it considers necessary in the course of proceedings under this Section. However, the disputing party shall ensure that those persons protect the confidential information in those documents as directed by the Tribunal.
5. A Party may share with government officials and sub-national government officials, if applicable, such unredacted documents as it considers necessary in the course of proceedings under this Section. However, such Party shall ensure that those persons protect the confidential information in those documents as directed by the Tribunal.
6. To the extent that a Tribunal's confidentiality order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information shall prevail. However, a Party shall endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.



## **Article 30**

### **Governing Law**

1. A Tribunal constituted under this Section shall decide the issues in dispute consistently with this Treaty and applicable rules of international law. A joint interpretation by the Parties of a provision of this Treaty shall bind a Tribunal constituted under this Section, and an award under this Section must be consistent with that interpretation.

2. On the request of a respondent Party that asserts as a defence that the measure alleged to be a breach is within the scope of a reservation or exception set out in Article 16(1) (Reservations and Exceptions), or Annex II or Annex III, the Tribunal shall request the joint interpretation of the Parties on the issue. Within 60 days of the delivery of the request, the Parties shall submit in writing their joint interpretation to the Tribunal. The joint interpretation is binding on the Tribunal. If the Parties fail to submit their joint interpretation within 60 days of the Tribunal's request, the Tribunal shall decide the issue.

## **Section D – Settlement of Disputes between the Parties**

### **Article 35**

#### **Settlement of Disputes between the Parties**

1. A Party may request consultations on the interpretation or application of this Treaty. The other Party shall give sympathetic consideration to the request. A dispute between the Parties concerning the interpretation or application of this Treaty shall, whenever possible, be settled amicably through consultations.

2. If a dispute cannot be settled through consultations, it shall, at the request of a Party, be submitted to an arbitral panel for decision.

3. Arbitrators shall have expertise or experience in public international law, international trade or international investment rules, or the resolution of disputes arising under international trade or international investment Treaties. They shall be independent of, and not be affiliated with or take instructions from, a Party.

4. Each Party shall bear the costs of its own member of the arbitral panel and of its representation in the arbitral proceedings. The costs related to the Chair and any remaining costs shall be borne equally by the Parties. The arbitral panel may, however, award that a higher proportion of costs be borne by one of the two Parties, and this award shall be binding on both Parties.

5. The Parties may submit requests for clarification of the decision within thirty days after it is received and the arbitral panel shall endeavour to issue such clarification within thirty days of such request.

6. Within 60 days of the decision of an arbitral panel or the issuance of a clarification of such decision, the Parties shall jointly decide on the manner in which to resolve their dispute. That decision must normally implement the decision of the arbitral panel. If the Parties fail to reach a decision, the Party bringing the dispute shall be entitled to compensation or to suspend benefits of equivalent value to those awarded by the arbitral panel.

## **Section E – Final Provisions**

### **Article 38**

#### **Application and Entry into Force**

All Annexes are an integral part of this Treaty.

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

DONE in seven originals in Geneva on this day of 1920, in the English and French languages, each version being equally authentic.

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/signatures/

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### **Annex I**

#### **Expropriation**

The Parties confirm their shared understanding that:

(a) indirect expropriation results from a measure or a series of measures of a Party that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure;

(b) the determination of whether a measure or a series of measures of a Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the measure or the series of measures, although the sole fact that a measure or a series of measures of a

Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred,

(ii) the extent to which the measure or the series of measures interferes with distinct, reasonable investment-backed expectations, and

(iii) the character of the measure or the series of measures;

(c) except in rare circumstances, such as when a measure or a series of measures is so severe in the light of its purpose that it cannot be reasonably viewed as having been adopted and applied in good faith, a non-discriminatory measure of a Party that is designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, does not constitute indirect expropriation.