



31 OCT. 1990

Bern, le 18 octobre 1990

Accord de promotion et de protection réciproques des investissements (APPI) avec la Jamaïque

Vu la proposition du DFEP du 18 octobre 1990

Vu les résultats de la procédure de co-rapport, il est

décidé:

1. Le texte de l'accord entre la Suisse et la Jamaïque relatif à la promotion et à la protection réciproques des investissements entre le Gouvernement de la Confédération suisse et le Gouvernement de la Jamaïque est approuvé.
2. Le Secrétaire d'Etat Franz Blankart ou, en cas d'empêchement, l'Ambassadeur Pierre-Louis Girard, Délégué aux accords commerciaux, ou M. Paul André Ramseyer, Ambassadeur Suisse au Mexique, est chargé de signer l'accord.
3. La Chancellerie fédérale est chargée d'établir les pouvoirs pour la signature de l'accord.
4. Le DFAE est chargé de procéder à la notification prévue à l'article 12, alinéa (1) de l'accord.
5. La Chancellerie fédérale est chargée de publier l'accord dans le recueil des lois.

Pour extrait conforme:

Le secrétaire:

Protokollauszug an:				
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EIDGENÖSSISCHES VOLKSWIRTSCHAFTSDEPARTEMENT
 DÉPARTEMENT FÉDÉRAL DE L'ÉCONOMIE PUBLIQUE
 DIPARTIMENTO FEDERALE DELL'ECONOMIA PUBBLICA
 DEPARTAMENT FEDERAL DA L'ECONOMIA PUBLICA

Berne, le 18 octobre 1990

Au Conseil fédéral

Accord de promotion et de protection réciproques des investissements (APPI) avec la Jamaïque

1 Contexte général

Comme le souligne le Message concernant la conclusion de traités relatifs à la protection et à l'encouragement des investissements de capitaux du 17 novembre 1982 (FF 1982 III 973), les investissements de capitaux privés dans les pays en développement représentent un complément judicieux aux diverses mesures de coopération au développement relevant du secteur public. En assurant une garantie juridique fondée sur un accord de droit international public l'investissement de capitaux privés suisses sera encouragé. De tels accords peuvent influencer de manière positive une décision d'investissement dans la mesure où ils contribuent à clarifier et à améliorer le statut de l'investisseur. Le fait qu'un Etat conclue un traité encourageant et protégeant les investissements peut être considéré comme l'expression de sa volonté d'assurer un climat d'investissements favorable aux placements de capitaux privés étrangers.

Jusqu'à présent la Suisse a conclu avec plus de 40 Etats des accords de promotion et de protection des investissements ou des accords comportant une clause relative à la protection des investissements. En outre, des pourparlers sont en cours avec d'autres pays désireux de conclure un tel traité bilatéral.

2 Contenu de l'accord de promotion et de protection réciproques des investissements avec la Jamaïque

Dans la stratégie globale de l'extension du réseau d'accords de promotion et de protection réciproques des investissements de notre pays, un accord avec la Jamaïque constitue un jalon non négligeable au coeur de l'environnement particulièrement difficile que représentent les Caraïbes et l'Amérique Latine. Cet accord, le premier à être conclu par la Jamaïque - si l'on excepte celui signé avec le Royaume-Uni, cas spécial vu les relations privilégiées entretenues par ces deux pays -, revêt une importance incontestable, eu égard surtout à l'appartenance de la Jamaïque à un Caricom (Caribbean Common Market) de plus en plus soucieux de s'affirmer.

Les accords de promotion et de protection des investissements conclus jusqu'ici et envisagés par la Suisse concordent dans une large mesure quant à leur contenu. Le texte conventionnel négocié avec la Jamaïque retient les principes fondamentaux défendus par la

Suisse dans ce domaine. Ainsi, les principes fixés dans la délégation de compétence à conclure des accords de promotion et de protection des investissements du Parlement au Conseil fédéral (Arrêté fédéral du 27 septembre 1963, RS 975) sont-ils respectés.

Les dispositions les plus importantes du présent accord règlent les points suivants:

Article 1er, lettre (b)

Définitions

La nationalité d'une société se détermine par de différents critères: en ce qui concerne la Suisse par le critère du contrôle, en ce qui concerne la Jamaïque par celui de l'incorporation et du siège d'une société.

Article 2, alinéa (2)

Promotion et admission des investissements

Une fois un investissement étranger admis sur le territoire d'une Partie Contractante, celle-ci s'efforcera, conformément à sa législation, de délivrer les autorisations nécessaires en relation avec cet investissement.

Article 3

Traitement des investissements

Chaque Partie Contractante assure sur son territoire en tout temps un traitement juste et équitable aux investissements des investisseurs de l'autre Partie Contractante. Ce traitement ne doit pas être moins favorable que celui accordé aux investissements effectués sur son territoire par ses propres investisseurs ou aux investissements ou revenus des nationaux ou sociétés de tout Etat tiers.

Le respect des réalités l'emportant et dans la mesure où l'on se trouve dans le cadre d'une politique nationale de développement, le principe du traitement national souffre dans cette disposition d'une exception en faveur des industries locales (jamaïquaines), comme celle des cottages. Cette exception est considérée comme étant compatible avec l'article 3 de cet accord, pour autant qu'elle n'affecte pas de façon significative la compétitivité de l'investisseur suisse.

Article 4

Transferts

La garantie du libre transfert est assortie des modalités suivantes:

- dans la phase d'admission des investissements, l'investisseur peut être amené à satisfaire à des procédures nationales d'approbation, s'il ne veut pas mettre en danger le transfert des revenus courants et le rapatriement du capital. Les investissements effectués avant l'existence d'une procédure d'approbation sont réputés admis.

- le transfert des revenus courants - définis de façon particulièrement large dans l'article 1^{er}, lettre (d) de l'accord - ne souffre d'aucune restriction;
- en matière de prêts ou d'obligations contractuelles liés à un investissement, le transfert peut dépendre du consentement préalable des autorités compétentes lorsque des prestations doivent être effectuées périodiquement;
- quant au rapatriement du produit de la vente ou de la liquidation partielle ou totale de l'investissement, le transfert de ces capitaux pourra être limité jusqu'au minimum d'un tiers de la somme totale par an à condition que la Partie Contractante demandant de bénéficier de cette mesure connaisse une période de difficultés exceptionnelles de balance de paiements et qu'il s'agisse de sommes importantes.

Article 5

Acquisition contraignante

Toute mesure d'expropriation ou de nationalisation doit être conforme aux prescriptions légales, prise dans l'intérêt public et donner lieu au paiement d'une indemnité adéquate. Celle-ci doit être effectivement réalisable, versée sans retard et librement transférable.

Quant au transfert du montant de la compensation, la Partie Contractante en proie de difficultés exceptionnelles de balance des paiements a la possibilité d'étaler ce transfert - sur trois ans au maximum -, pour autant qu'il s'agisse d'une somme importante.

Article 9

Différends entre une Partie Contractante et un investisseur de l'autre Partie Contractante

L'investisseur peut porter une contestation relative à un investissement devant le Centre international pour le règlement des différends relatifs aux investissements (CIRDI) institué par la Convention de Washington pour le règlement des différends relatifs aux investissements entre Etats et ressortissants d'autres Etats. Pour autant qu'il s'agisse de soumettre le différend à l'arbitrage selon l'article 36 de la Convention la Partie Contractante partie au différend peut exiger, comme condition de consentement à l'arbitrage, l'épuisement des voies internes de recours conformément au droit international public. C'est dire que l'investisseur pourra se tourner vers le CIRDI en cas, par exemple, de déni de justice formel ou matériel commis par une instance administrative ou judiciaire nationale.

Article 10

Différends entre Parties Contractantes

Une procédure d'arbitrage est prévue en cas de différends sur l'interprétation ou l'application de l'accord.

3. Constitutionnalité de l'accord

L'article 8 de la constitution fédérale donne à la Confédération la compétence de conclure des traités internationaux.

En vertu de l'article premier de l'arrêté du 27 septembre 1963 (RS 975), le conseil fédéral est autorisé à conclure de sa propre compétence des accords de protection et d'encouragement des investissements de capitaux.

4. Conséquences financières et effets sur l'état du personnel

La conclusion du présent accord avec la Jamaïque n'impose aucune charge à la Confédération et n'entraîne pas d'augmentation de personnel.

5. Prise de position des offices intéressés

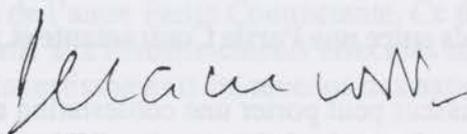
La Chancellerie fédérale, l'Office fédéral de la justice, la Direction du droit international public et l'Administration fédérale des contributions

sont d'accord avec la proposition.

6. Proposition

Nous fondant sur ces considérations, nous vous soumettons la proposition ci-jointe.

DEPARTEMENT FEDERAL DE L'ECONOMIE PUBLIQUE



Annexes

- Projet de décision du Conseil fédéral
- Accord de promotion et de protection réciproques des investissements avec la Jamaïque (en anglais, langue dans laquelle l'accord a été négocié; la version française de l'accord est en préparation).

Pour co-rapport à:

- CHf
- DFJP
- DFAE
- DFF

Extrait du procès-verbal à:

- DFEP en 15 ex. (7 ex. SG, 8 ex. OFAEE)
- DFJP en 10 ex.
- DFAE en 10 ex.
- DFF en 10 ex.

1. Le texte de l'accord entre le Royaume de la Jamaïque relatif à la promotion et à la protection réciproques des investissements entre le Gouvernement de la Confédération suisse et le Gouvernement de la Jamaïque est approuvé.
2. Le Secrétaire d'Etat Tréma Baudert est, en cas d'empêchement, l'Ambassadeur Pierre-Louis Girard, Député aux affaires commerciales, ou M. Paul André Ramstein, Ambassadeur à Saint-Jacques, en charge de signer l'accord.
3. La Chancellerie fédérale est chargée d'établir les pouvoirs pour la signature de l'accord.
4. La DFF est chargée de procéder à la notification prévue à l'article 12, alinéa (1) de l'accord.
5. La Chancellerie fédérale est chargée de publier l'accord dans le recueil des lois.

Pour extrait confidentiel

Le secrétaire

Accord de promotion et de protection réciproques des investissements (APPI) avec la Jamaïque

Vu la proposition du DFEP du 18 octobre 1990

Vu les résultats de la procédure de co-rapport, il est

décidé:

1. Le texte de l'accord entre la Suisse et la Jamaïque relatif à la promotion et à la protection réciproques des investissements entre le Gouvernement de la Confédération suisse et le Gouvernement de la Jamaïque est approuvé.
2. Le Secrétaire d'Etat Franz Blankart ou, en cas d'empêchement, l'Ambassadeur Pierre-Louis Girard, Délégué aux accords commerciaux, ou M. Paul André Ramseyer, Ambassadeur Suisse au Mexique, est chargé de signer l'accord.
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4. Le DFAE est chargé de procéder à la notification prévue à l'article 12, alinéa (1) de l'accord.
5. La Chancellerie fédérale est chargée de publier l'accord dans le recueil des lois.

Pour extrait conforme:

Le secrétaire:

Agreement

between

the Government of the Swiss Confederation

and

the Government of Jamaica

for

the reciprocal promotion and protection

of investments

- 2 -

Preamble

The Swiss Federal Council and the Government of Jamaica,

Desiring to strengthen the economic cooperation between both States on the basis of international law and mutual trust,

Intending to create and maintain favourable conditions for capital investments in both States,

Recognizing the need to promote and to protect foreign investments with the aim of fostering the economic prosperity of both States,

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

- (a) "Nationals" of a Contracting Party are physical persons who, according to the law of that State, are considered to be its citizens.
- (b) "Companies" are:
 - (i) with respect to the Swiss Confederation, juridical persons or business associations which are effectively controlled by Swiss nationals having a substantial part in the ownership.
 - (ii) with respect to Jamaica, corporations, firms or associations incorporated or constituted under the law in force in Jamaica.
- (c) The term "investments" shall include every kind of assets and particularly:
 - (i) movable and immovable property as well as any other rights in rem, such as charges on real estate, mortgages, liens, pledges;
 - (ii) shares, certificates or other kinds of participation in companies;
 - (iii) claims to money or to any performance under contract having a financial value;

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- (iv) copyrights, industrial property rights (such as patents for inventions, utility models, industrial designs or models, trade or service marks, trade names, indications of source or appellations of origin), know-how and goodwill;
 - (v) concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.
- (d) The term "returns" means the amounts yielded by an investment and in particular though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees.

Article 2

Promotion and Admission of Investments

- (1) Each Contracting Party shall in its territory promote as far as possible investments by nationals or companies of the other Contracting Party and admit such investments in accordance with its law and regulations.
- (2) When a Contracting Party shall have admitted an investment on its territory, it shall endeavour, consistent with its legislation, to grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.

Article 3**Treatment of Investments**

- (1) Investments of nationals or companies of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension or disposal of investments in its territory of nationals or companies of the other Contracting Party.
- (2) Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.
- (3) If a Contracting Party accords special advantages to nationals or companies of any third State by virtue of agreements establishing customs unions, economic unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to nationals or companies of the other Contracting Party.
- (4) Special incentives granted by one Contracting Party only to its nationals and companies within the framework of its development policy in order to stimulate the creation of local industries, such as cottage industries, are considered compatible with this Article provided they do not significantly affect the investment or the activities of nationals and companies of the other Contracting Party in connection with an investment.

Article 4

Transfers

(1) Each Contracting Party in whose territory investments have been made by nationals or companies of the other Contracting Party shall grant those nationals or companies the free transfer of:

- (i) returns on investments;
- (ii) amounts relating to loans incurred, or other contractual obligations undertaken, for the investment;
- (iii) the proceeds, including possible capital appreciation, arising from the sale or the partial or total liquidation of the investment.

(2) Notwithstanding the provisions of paragraph (1) of this Article the free transfer shall be subject to the following modalities:

- (i) the free transfer of the items mentioned in sub-paragraphs, (i), (ii) and (iii) of that paragraph depends on the approval of the investments in accordance with the law in force at the time the investment was made, if at that time such approval was required;
- (ii) in relation to sub-paragraph (ii) of that paragraph where the discharge of the loans or other contractual obligations is to be

effected over a period of time, the prior consent of the competent authorities may be required;

- (iii) in relation to sub-paragraph (iii) of that paragraph in cases of exceptional balance of payments difficulties, and where large sums are involved, transfers may be limited to a minimum of 33 1/3 per cent per year.

Article 5

Compulsory Acquisition

- (1) Neither of the Contracting Parties shall compulsorily acquire, that is, shall take measures of expropriation or nationalization or any other measures having the same nature or the same effect against investment belonging to nationals or companies of the other Contracting Party, unless the measures are taken in the public interest, under due process of law, and provided that provisions be made for adequate compensation. The amount of compensation which shall be effectively realisable, shall include interest, be paid without delay and be freely transferable.
- (2) Notwithstanding the provisions of paragraph (1) as regards the transferability of the compensation, in cases of exceptional balance of payments difficulties and where the compensation constitutes a large sum, a Contracting Party may limit the transfer to a minimum of 33 1/3 per cent a year.

Article 6

Compensation for losses

The nationals or companies of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place on the territory of the other Contracting Party shall benefit on the part of this latter from a treatment in accordance with Article 3 of this Agreement as regards restitution, indemnification, compensation, or other valuable consideration.

Article 7

Pre-agreement investments

The present Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its laws and regulations by nationals or companies of the other Contracting Party prior to the entry into force of this Agreement.

Article 8

Principle of subrogation

If a Contracting Party makes a payment to a national or company pursuant to a guarantee it has granted in respect to an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or title of such national or company to the former Contracting Party and the subrogation of the former Contracting Party to any such right or title.

Article 9**Disputes between a Contracting Party and
an investor of the other Contracting Party**

- (1) For the purpose of settling disputes with respect to investments between a Contracting Party and a national or a company of the other Contracting Party and without prejudice to Article 10 of this Agreement (disputes between Contracting Parties), consultations will take place between the parties concerned.
- (2) If these consultations do not result in a solution within a period of twelve months from the date of the request to enter into consultations the Contracting Party and the national or company of the other Contracting Party shall by mutual consent determine whether to submit the dispute to conciliation or arbitration under Article 28 or 36 respectively of the Convention of Washington of March 18, 1965, on the settlement of investment disputes between States and nationals of other States (hereafter called the Convention).
- (3) If pursuant to paragraph (2) the Contracting Party and the national or company of the other Contracting Party agree to submit the dispute to conciliation under Article 28 of the Convention, the dispute shall be so submitted.
- (4) If pursuant to paragraph (2) the Contracting Party and the national or company of the other Contracting Party agree to submit the dispute to arbitration under

Article 36 of the Convention, the Contracting Party may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration.

- (5) Where pursuant to paragraph (2) the Contracting Party and the national or company of the other Contracting Party fail to agree within a period of three months from the end of the period referred to in paragraph (2) on the submission of the dispute either to conciliation or arbitration under Article 28 or 36 respectively of the Convention, then for the purposes of Article 36 of the Convention, the Contracting party hereby gives its consent to the national or company of the other Contracting Party submitting the dispute to arbitration under that Article provided local remedies have been exhausted in accordance with international law.
- (6) The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the national or company which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.
- (7) A company which has been incorporated or constituted according to the law in force in the territory of the Contracting Party and which, prior to the origin of the dispute, was under the control of nationals or companies of the other Contracting Party, is considered, in terms of Article 25 (2) (b) of the Convention, as a company of the latter.

- (8) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to the arbitration of the Centre, unless
- (a) the Secretary-General of the Centre or a commission of conciliation or an arbitral tribunal decides that the dispute is beyond the jurisdiction of the latter, or
 - (b) the other Contracting Party does not abide by and comply with the award rendered by an arbitral tribunal.

Article 10

Disputes between Contracting Parties

- (1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.
- (2) If both Contracting Parties cannot reach an agreement within twelve months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.
- (3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment

within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

- (4) If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.
- (5) If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.
- (6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.
- (7) Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The costs of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal 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.
- (8) The decisions of the tribunal, which shall be taken by a majority of votes, are final and binding for each Contracting Party.

Article 11

Other obligations

- (1) If the legislation of either Contracting Party entitles investments by nationals or companies of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such legislation shall to the extent that it is more favourable prevail over this Agreement.
- (2) Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by nationals or companies of the other Contracting Party.

Article 12

Entering into force, renewal, termination

- (1) This Agreement shall enter into force on the day when both Governments have notified each other that they have complied with the constitutional requirements for the conclusion and entry into force of this Agreement, and shall remain binding for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other.
- (2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

Part	Year	Country	Notes
X	1954	USA	
		ED	
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		MD	
X	1970	FRG	*
		FRG	
X	1970	FRG	10
X	1971	FRG	
X	1971	FRG	

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Done at _____, on _____, in
four originals, two in French language and two in English language, each text being equally
authentic.

For the Swiss Federal
Council

For the Government of
Jamaica

It is, in the cases specified under paragraphs (3) and (4) of this Article, the President
of the Council of State who shall appoint and dismiss the judges of the Court. In the case of
the Vice-President of the Council of State, the appointment shall be made by the most senior
Judge of the Court who is not a national of either Contracting Party.

Article 11

Subject to the provisions of Article 10, the Tribunal shall
determine its procedure.

This Agreement shall enter into force on the day when both Governments have
expressed their consent to it. Each Contracting Party shall deposit a copy of the original
text of this Agreement with the Secretary-General of the United Nations, who shall
thereafter transmit certified copies thereof to all States which are or may become
Contracting Parties. The date on which this Agreement enters into force shall be
the date on which it has been ratified, approved or accepted by both Contracting
Parties. The date on which this Agreement enters into force shall be the date on which
it has been ratified, approved or accepted by both Contracting Parties.

In case of official notice as to the termination of the present Agreement, the
provisions of Article 1 to 11 shall continue to be effective for a period of
two years for investments made before official notice was given.