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SCHWEIZERISCHER BUNDESRAT
CONSEIL FÉDÉRAL SUISSE
CONSIGLIO FEDERALE SVIZZERO

Beschluss
Décision
Decisione

-6 NOV. 1991

Accord de promotion et de protection réciproque des investissements (APPI) avec la République du Chili

Vu la proposition du DFEP du 1 novembre 1991

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

décidé:

1. Le texte de l'accord négocié entre la Suisse et le Chili relatif à la promotion et à la protection réciproque des investissements entre la Confédération suisse et la République du Chili est approuvé.

2. Etant donné que l'accord est susceptible de recevoir quelques modifications rédactionnelles, le DFEP est autorisé à y apporter, d'entente avec le DFAE, lesdites modifications, pour autant que les dispositions conernées ne s'écartent pas des dispositions correspondantes d'APPI déjà approuvés.

3. Le Conseiller fédéral Jean-Pascal Delamuraz, le Secrétaire d'Etat Franz Blankart ou son suppléant ou l'Ambassadeur Nicolas Imboden, Délégué aux accords commerciaux, est chargé de signer l'accord.

4. La Chancellerie fédérale est chargée d'établir les pouvoirs pour la signature de l'accord.

5. Le DFAE est chargé de procéder à la notification prévue à l'article 12, alinéa (1) de l'accord.

6. La Chancellerie fédérale est chargée d'entente avec le DFAE de publier l'accord au recueil officiel des lois.

Pour extrait conforme:

Hanna Muraro

Protokollauszug an:
☒ ohne / ☐ mit Beilage

V.	z.K.	Dep.	Anz.	Akten
	X	EDA	10	–
		EDI		
	X	EJPD	10	–
		EMD		
	X	EFD	10	–
		EVD	15	–
		EVED		
	X	BK	6	–
	X	EFK	2	–
	X	Fin.Del.	2	–

EIDGENÖSSISCHES VOLKSWIRTSCHAFTSDEPARTEMENT
DÉPARTEMENT FÉDÉRAL DE L'ÉCONOMIE PUBLIQUE
DIPARTIMENTO FEDERALE DELL'ECONOMIA PUBBLICA
2310.1 DEPARTAMENT FEDERAL DA L'ECONOMIA PUBLICA

Berne, le 1 novembre 1991

Au Conseil fédéral

Accord de promotion et de protection réciproque des investissements (APPI) avec la République du Chili

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 juridicieux 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 accord 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 près de 50 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 négociations et 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 réciproque des investissements avec la République du Chili

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 République du Chili retient les principes fondamentaux défendus par la Suisse dans ce domaine. Ainsi, les principes fixés dans la délégation de compétence à conclure des APPI 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:

90 15000 51969/4

Article 1er, alinéa (1)

Définition de l'investisseur

Pour une société, la qualité d'investisseur de l'une ou l'autre Partie Contractante est fonction des deux critères alternatifs suivants: son incorporation et son siège, d'une part, son contrôle, d'autre part.

Article 2, alinéa (2)

Champs d'application

L'accord ne s'applique pas, quant aux personnes physiques, aux investisseurs possédant à la fois les nationalités suisse et chilienne, sauf si ces investisseurs ont leur domicile effectif hors du territoire du pays de l'investissement.

Article 3, 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 4

Traitement des investissements

Chaque Partie Contractante assume sur une base non discriminatoire la protection des investissements effectués conformément à ses lois et règlements par un investisseur de l'autre Partie Contractante et assure sur son territoire un traitement juste et équitable à ces investissements. Ce traitement ne doit pas être moins favorable que celui accordé aux investissements effectués sur son territoire par ses propres investisseurs ou par les investisseurs de la nation la plus favorisée, si ce dernier traitement est plus favorable.

Le traitement de la nation la plus favorisée ne s'appliquera pas aux avantages accordés en vertu d'accords en matière d'imposition ou d'accords établissant une zone d'intégration par une Partie Contractante aux investisseurs d'un Etat tiers.

Article 5

Libre transfert

Le transfert des paiements afférents à un investissement aura lieu sans retard injustifié et dans une monnaie librement convertible.

En ce qui concerne la République du Chili, elle garantit le rapatriement du capital investi au Chili après une période de trois ans. Le transfert d'investissements effectués sous le programme chilien de conversion de la dette extérieure est garanti après une période de dix ans, le transfert de bénéfices afférents à de tels investissements après une période de quatre ans.

Les personnes physiques qui sont des nationaux d'une Partie Contractante et qui ont leur domicile sur le territoire de la Partie Contractante où l'investissement est situé pourront, en ce qui concerne le libre transfert, seulement se prévaloir du traitement national, à moins que leur investissement initial n'ait consisté en une entrée de capital provenant de l'extérieur du territoire respectif.

Article 6

Dépossesssion et indemnisation

Toute mesure d'expropriation ou de nationalisation doit être conforme aux prescriptions légales, prise dans l'intérêt publique et donner lieu au paiement d'une indemnité effective et adéquate. Le montant de l'indemnité sera réglé dans une monnaie librement convertible au choix de l'investisseur et sera versé à l'ayant droit sans retard et sans égard à son domicile ou siège.

Article 9

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

Au cas où un différend relatif à un investissement n'ait pas pu être réglé à l'amiable, l'investisseur pourra soumettre ce différend à la juridiction interne du pays d'investissement ou à une procédure d'arbitrage internationale. Le fait qu'un investisseur ait soumis un différend à la juridiction interne ne l'empêche pas de recourir par la suite à un tribunal d'arbitrage international si les tribunaux nationaux n'auront pas rendu de jugement en la matière dans un délai de dix-huit mois ou si un éventuel jugement viole une disposition de cet accord. Pour l'arbitrage international, l'investisseur pourra choisir entre un tribunal d'arbitrage ad hoc établi, faute d'accord entre les parties au différend, selon les règles d'arbitrage de la CNUDCI (Commission des Nations Unies pour le Droit Commercial International) ou bien 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.

La procédure d'arbitrage internationale ne peut pas être invoquée, d'une part, par des nationaux d'une Partie Contractante qui ont leur domicile sur le territoire de la Partie Contractante où l'investissement est situé, à moins que leur investissement ait consisté en une entrée de capital provenant de l'extérieur du territoire respectif, et, d'autre part, par des nationaux qui détiennent leur investissement par une entité juridique située dans un pays tiers, à moins que ces personnes aient été domiciliées au moment de l'investissement et depuis lors sur le territoire d'une des Parties Contractantes.

Article 10

Différends entre Parties Contractantes

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

3. Adaptations éventuelles

Le texte de l'accord qui vous est soumis a été paraphé dans sa version anglaise par les chefs de délégation, le 22 octobre 1991. Il n'est pas exclus que certaines dispositions fassent encore l'objet de modifications rédactionnelles lors de la préparation des versions allemande et espagnole de l'accord. Nous vous demandons, d'une part, d'autoriser le DFEP à procéder, le cas échéant et d'entente avec le DFAE, à ces modifications et, d'autre part, d'approuver l'accord annexé, avec les eventuelles modifications. Si, contre toute attente, de telles modifications devaient sensiblement s'écarter des dispositions de l'accord, le Conseil fédéral serait appelé à se prononcer de nouveau.

4. Constituionnalité 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.

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

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

6. 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 présente proposition.

7. Proposition

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

DEPARTEMENT FEDERAL DE L'ECONOMIE PUBLIQUE

Pour publication:

dans le Recueil officiel

Annexes

- Projet de décision du Conseil fédéral
- Accord de promotion et de protection réciproque des investissements avec la République du Chili (en anglais, langue dans laquelle l'accord a été négocié; les versions allemande et espagnole de l'accord sont 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.

Accord de promotion et de protection réciproque des investissements (APPI) avec la République du Chili

Vu la proposition du DFEP du 1 novembre 1991

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

décidé:

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Pour extrait conforme:

COMITE DE INVERSIONES EXTRANJERAS
CHILE

ECRETARIA EJECUTIVA

AGREEMENT

BETWEEN

THE SWISS CONFEDERATION

AND

THE REPUBLIC OF CHILE

ON THE PROMOTION AND RECIPROCAL PROTECTION

OF INVESTMENTS

COMITE DE INVERSIONES EXTRANJERAS
CHILE

SECRETARIA EJECUTIVA

Preamble

The Swiss Confederation and the Republic of Chile,

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

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

Have agreed as follows:

Article 1

Definitions

For the purpose of this Agreement:

(1) The term "investor" refers with regard to either Contracting Party to

(a) natural persons who, according to the law of that Contracting Party, are considered to be its nationals;

(b) legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party;

(c) legal entities established under the law of any country which are effectively controlled by nationals of that Contracting Party or by legal entities having their seat, together with real economic activities, in the territory of that Contracting Party.

(2) The term "investment" shall include every kind of assets and particularly:

(a) movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges;

(b) shares, parts or any other kinds of participation in companies;

(c) claims to money or to any performance having an economic value;

(d) copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;

(e) concessions under public law, 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.

(3) The term "territory" includes the areas of the exclusive economic zone and the continental shelf insofar as international law permits the Contracting Party concerned to exercise sovereign rights or jurisdiction in these areas.

Article 2

Scope of application

(1) The present Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its legislation, prior to or after the entry into force of the Agreement, by investors of the other Contracting Party. It shall however not be applicable to divergencies or disputes which have arisen prior to its entry into force.

(2) This Agreement shall not apply to investments of natural persons who are nationals of both Contracting Parties unless such persons have at the time of the investment and ever since been domiciled outside the territory of the Contracting Party in which the investment was made.

Article 3

Promotion, admission

(1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

(2) When a Contracting Party has admitted an investment on its territory, it shall grant in accordance with its laws and regulations 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. In the same way it shall facilitate the issue of the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

Article 4

Protection, treatment

(1) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and, should it so happen, liquidation of such investments.

(2) Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made within its territory by its own investors, or than that granted by each Contracting Party to the investments made within its territory by investors of the most favoured nation, if this latter treatment is more favourable.

(3) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union or a common market or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article 5

Free transfer

(1) Each Contracting Party shall grant the investors of the other Contracting Party the transfer without delay in a freely convertible currency of payments in connection with an investment, particularly of:

(a) interests, dividends, profits and other current returns;

(b) repayments of loans;

(c) amounts assigned to cover expenses relating to the management of the investment;

(d) royalties and other payments deriving from rights enumerated in Article 1, paragraph (2), letters (c), (d) and (e) of this Agreement;

(e) additional contributions of capital necessary for the maintenance or development of the investment;

(f) the proceeds of the sale or of the partial or total liquidation of the investment, including possible increment values.

(2) A transfer shall be deemed to have been made without delay if carried out within such period as is normally required for the completion of transfer formalities. The said period shall start on the day on which the relevant request has been submitted in due form and may in no case exceed two months.

Article 6

Dispossession, compensation

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken for the public benefit *, in a non discriminatory manner, and by authorization of a formal law, and provided that provisions be made for effective and adequate compensation. The amount of compensation, interest included, shall be settled in a freely convertible currency accepted by the investor and paid without delay to the person entitled thereto without regard to its residence or domicile. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

(2) The investors 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 in the territory of the other Contracting Party shall benefit, on the part of this latter, from a treatment in accordance with Article 4, paragraph (2) of this Agreement. They shall, in all events, be entitled to compensation.

(*) (in Spanish: en favor del bien común)
(in German: zum allgemeinen Wohl)

Article 7

More favourable provisions

Notwithstanding the terms set forth in the present Agreement, more favourable provisions of national legislation or which have been or may be agreed upon by either of the Contracting Parties with an investor of the other Contracting Party are applicable.

Article 8

Principle of subrogation

Where one Contracting Party has granted any financial guarantee against non-commercial risks in regard to an investment by one of

its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party.

Article 9

Disputes between a Contracting Party and an investor of the other Contracting Party

(1) With a view to an amicable solution of disputes between a Contracting Party and an investor 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 six months from the date of request for settlement, the investor may submit the dispute either to the national jurisdiction of the Contracting Party in whose territory the investment has been made or to international arbitration. In the latter event the investor has the choice between

(a) the International Centre for Settlement of Investment Disputes (I.C.S.I.D.) instituted by the Convention on the settlement of investment disputes between States and nationals of other States, opened for signature at Washington, on 18 March 1965;

(b) an ad hoc arbitral tribunal which unless otherwise agreed upon by the parties to the dispute shall be established under the arbitration rules of the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.).

(3) In case the investor has submitted the dispute to national jurisdiction he may have recourse to one of the arbitral tribunals mentioned in paragraph (2) of this Article, only if after a period of 18 months there is no decision on the subject matter by the competent national court, or if, existing such a decision, the investor takes the view that it infringes a provision of this Agreement. In the latter case the arbitration proceeding shall be initiated within one year after notification of the written decision.

(4) Each Contracting Party hereby consents to the submission of an investment dispute to international arbitration.

(5) The Contracting Party which is a party to the dispute shall not at any time during the procedures, assert as a defence its

immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.

(6) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the award rendered by such an arbitral tribunal.

(7) The arbitral tribunal shall decide on the basis of the present Agreement and other relevant agreements between the Contracting Parties; the terms of any particular agreement that has been concluded with respect to the investment; the law of the Contracting State party to the dispute, including its rules on the conflict of laws; such principles and rules of international law as may be applicable.

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, it 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 chairman within two months after their appointment, he 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. Furthermore each Contracting Party shall bear the cost of the arbitrator it has appointed and of its representation in the arbitral proceedings. The cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties unless agreed otherwise.

(7) The decisions of the tribunal are final and binding for each Contracting Party.

Article 11

Observance of commitments

Either Contracting Party shall constantly guarantee the observance of the commitments it has entered into with respect to the investments of the investors of the other Contracting Party.

Article 12

Final provisions

(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 international agreements. It shall remain in force for a period of ten years and shall be extended thereafter for an unlimited period. After the expiry of the period of ten years this Agreement may be denounced at any time by either Contracting Party giving twelve months notice.

(2) 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 further period of twenty years for investments made before official notice was given.

(3) The present Agreement shall be applicable irrespective of whether diplomatic or consular relations exist between the Contracting Parties.

COMITE DE INVERSIONES EXTRANJERAS
C H I L E

SECRETARIA EJECUTIVA

Done at , on , in six originals, two in German, two in Spanish and two in the English language, each text being equally authentic. In case of divergencies the English text shall prevail.

For the Swiss Federal Council

For the Government of the Republic of Chile

COMITE DE INVERSIONES EXTRANJERAS
CHILE

SECRETARIA EJECUTIVA

PROTOCOL

On signing the Agreement between the Swiss Confederation and the Republic of Chile on the Promotion and Reciprocal Protection of investments, the undersigned plenipotentiaries have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the said Agreement.

Ad Article 5

(a) Notwithstanding the provisions in Article 5, the Republic of Chile retains the right to allow the repatriation of capital only after three years have elapsed from the date it was brought in by the investor.

(b) While the Chilean program of foreign debt equity swaps is still in force, the Republic of Chile grants the right to Swiss investors to repatriate any investment made under this program once 10 years have elapsed from the date it was brought in as well as the transfer of the profits once 4 years have elapsed. Profits of the first 4 years will be transferable from the fifth year in annual quotas of 25% respectively. This does not affect the right of the investor to opt for the reduced timelimits provided for in the special regulations established by the Central Bank of Chile.

(c) In no case shall Swiss investors in transfer matters be treated less favourably than investors of any third State.

Ad Articles 5 and 9

Nationals of one or the other Contracting Party having their residence in the territory of the Contracting Party in which their investment is located may with respect to Articles 5 and 9 of this Agreement only claim such treatment as is granted to nationals of that Contracting Party, unless their investment constituted a capital inflow from outside the respective territory.

Ad Article 9

Nationals of one or the other Contracting Party who are holding their investment in the territory of the other Contracting Party through a legal entity located in a third State (i.e. nationals in their capacity as investors within the meaning of Article 1

paragraph (1) letter c) of this Agreement) may not, when claiming rights under the present Agreement, have recourse to an international arbitral tribunal in accordance with Article 9, unless such persons have at the time of the investment and ever since been domiciled in the territory of one of the Contracting Parties.

Done at , on , in six originals, two in German, two in Spanish and two in the English language, each text being equally authentic. In case of divergencies the English text shall prevail.

For the Swiss Federal Council	For the Government of the Republic of Chile