SCHWEIZERISCHER BUNDESRAT
CONSEIL FÉDÉRAL SUISSE
CONSIGLIO FEDERALE SVIZZERO

Beschluss
Décision
Decisione

21 OCT. 1987

1888

Accord de promotion et de protection réciproques des investissements avec la Bolivie

Vu la proposition du DFEP du 9 octobre 1987

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

d é c i d é :

1. Le texte de l'accord paraphé, dans sa version anglaise, le 8 septembre 1987 entre la Suisse et la Bolivie relatif à la promotion et à la protection réciproques des investissements entre le gouvernement de la Confédération suisse et le gouvernement de la République de Bolivie est approuvé.

2. L'Ambassadeur David de Pury, Délégué aux accords commerciaux, ou, en cas d'empêchement, l'Ambassadeur de Suisse à la Paz, est chargé de signer l'accord dans ses versions originales française et espagnole.

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

4. La Chancellerie fédérale est chargée de publier l'accord dans le recueil des lois.

Protokollauszug an:
☒ ohne / ☐ mit Beilage

z.V.	z.K.	Dep.	Anz.	Akten
	X	EDA	10	–
		EDI		
	X	EJPD	10	–
		EMD		
	X	EFD	10	–
X		EVD	15	–
		EVED		
	X	BK	5	–
		EFK		
		Fin.Del.		

Pour extrait conforme
Le secrétaire:

EIDGENÖSSISCHES VOLKSWIRTSCHAFTSDEPARTEMENT
DÉPARTEMENT FÉDÉRAL DE L'ÉCONOMIE PUBLIQUE
DIPARTIMENTO FEDERALE DELL'ECONOMIA PUBBLICA

2310.1

Berne, le 9 octobre 1987

Non distribué à la presse

Au Conseil fédéral

Accord de promotion et de protection réciproques des investissements avec la République de Bolivie

1. Contexte général

Comme le souligne le Message concernant la conclusion de traités relatifs à la protection et à l'encouragment 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.

L'investissement de capitaux privés suisses doit être encouragé en assurant une garantie juridique suffisante fondée sur un accord de droit international public. 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 37 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 divers autres pays désireux de conclure un tel traité bilatéral.

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

Les accords de promotion et de protection réciproques 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 Bolivie 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 3, paragraphe (1) Protection, non-discrimination

Une fois un investissement étranger admis sur le territoire d'une Partie Contractante, celle-ci en assume la protection et s'efforce de délivrer les autorisations nécessaires en relation avec lui, le tout sur une base non discriminatoire.

Article 3, paragraphe (2) Traitement

Chaque Partie Contractante assure sur son territoire un traitement juste et équitable aux investissements de ressortissants ou sociétés de l'autre Partie Contractante. Ce traitement ne doit pas être moins favorable que celui qui est accordé aux investissements effectués sur son territoire par ses propres ressortissants ou sociétés. En outre, si le traitement accordé aux ressortissants ou sociétés de la nation la plus favorisée devait être plus favorable encore, c'est ce traitement qui serait accordé.

Article 4 Libre transfert

"Libre transfert" signifie qu'un transfert des paiements afférents aux investissements doit être effectif, avoir lieu sans retard injustifié et dans une monnaie convertible.

Article 5 Expropriation, compensation

Toute mesure d'expropriation ou de nationalisation doit être conforme aux prescriptions légales et non discriminatoire. Elle ne saurait être motivée par des raisons autres que l'intérêt public et entraînera le paiement d'une indemnité effective et adéquate, dont le montant sera réglé dans une monnaie convertible.

Article 9 Arbitrage entre une Partie Contractante et un investisseur de l'autre Partie Contractante

La Bolivie n'est pas encore Partie à la Convention de Washington du 18 mars 1965 pour le règlement des différends relatifs aux investissements (Conv. CIRDI).

En attendant cette adhésion - qui, conformément à l'accord, entraînera l'application de la Convention CIRDI -, la Suisse a pu obtenir, pour la première fois, que soit inscrite dans un accord de ce type la possibilité de soumettre un différend entre Partie Contractante et investisseur à un tribunal arbitral ad hoc dont la cognition n'est pas limitée, moyennant le consentement écrit dudit investisseur.

Article 10 Arbitrage 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 fédéral 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 Bolivie 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 présente proposition.

6. Proposition

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

DEPARTEMENT FEDERAL DE L'ECONOMIE PUBLIQUE

Delamuraz

Annexes: - Projet de décision du Conseil fédéral
- Accord de promotion et de protection réciproques des investissements avec la République de Bolivie (en anglais, langue dans laquelle l'accord a été négocié puis paraphé; les versions française et espagnole de l'accord sont en préparation, de concert avec les autorités boliviennes).

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.

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4. La Chancellerie fédérale est chargée de publier l'accord dans le recueil des lois.

Pour extrait conforme
Le secrétaire:

Agreement between the Swiss Confederation

and

the Republic of Bolivia

on the Reciprocal Promotion and Protection

of Investments

Bd

Preamble

The Swiss Federal Council and the Government of the Republic of Bolivia

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

Recognizing the important complementary role of foreign investment in the economic development process and the right of either Contracting Party to determine this role and to define the conditions under which foreign investment would participate in this process,

Recognizing that the key to achieving and maintaining an adequate flow of capital lies in the maintenance of an appropriate mutually created investment climate and in the respect by foreign investors of the sovereignty and the laws of the host country having jurisdiction on them and in their acting consistently with the declared policies and the priorities of the host countries and in their endeavoring to substantially contribute to the development of the country,

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

Desiring to intensify the cooperation between nationals and companies, private as well as public, of both States in the field of technology, industrialization and productivity,

Recognizing the need to protect investments by nationals and companies of both States with the aim to foster the economic prosperity of both States,

Have agreed as follows:

Article 1

For the purpose of this Agreement:

Nationals a) "Nationals" are:

aa) with respect to the Swiss Confederation physical persons who, according to the law of the Swiss Confederation and its Cantons, are considered to be Swiss citizens.

bb) with respect to the Republic of Bolivia physical persons who, according to its Political Constitution and the laws based thereon, are considered to be Bolivian citizens.

Companies b) "Companies" are:

aa) with respect to the Swiss Confederation juridical persons or business associations without legal personality but able to possess assets, in which there exists, directly or indirectly, a preponderant Swiss interest.

bb) with respect to the Republic of Bolivia societies, corporations and firms constituted according to the laws valid in its territory.

Investments c) The term "investments" shall include every kind of assets and particularly:

aa) movable and immovable property as well as any other rights in rem, such as charges on real estate, mortgages, liens, pledges;

bb) shares, certificates or other kinds of participation in companies;

cc) claims to money which has been used to create an economic value or entitlements of economic value;

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

ee) 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;

Article 2

Promotion, admission

(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 legislation, rules and regulations.

Permits

(2) When a Contracting Party shall have admitted an investment on its territory, it shall 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. Each Contracting Party shall, whenever needed, issue, as far as possible, the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

Article 3

Protection, non discrimination

(1) Each Contracting Party shall protect within its territory investments made in accordance with its legislation by nationals or companies 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. In particular, each Contracting Party shall issue the necessary authorizations mentioned in Article 2, paragraph 2 of this Agreement.

Treatment

(2) Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the nationals or companies 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 nationals or companies, or than that granted by each Contracting Party to the investments made within its territory by nationals or companies of the most favoured nation, if this latter treatment is more favourable.

Area of economic integration

(3) The treatment of the most favoured nation shall not apply to privileges which either Contracting Party accords to nationals or companies of a third State because of its membership in, or association with a free trade area, a customs union or a common market.

Article 4

Free transfer (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 the payments relating to these investments, namely:

(a) of interests, dividends, benefits and other current returns;

(b) of repayments of loans;

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

(d) of royalties and other payments deriving from rights enumerated in Article 1, letter c), paragraphs cc), dd) and ee) of this Agreement;

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

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

Article 5

Dispossession, compensation

1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalisation or any other measure having the same nature or the same effect against investments belonging to nationals or companies of the other Contracting Party, unless the measures are taken in the public interest, and for the social benefit, on a nondiscriminatory basis, under due process of law, and provided that provisions be made for effective and adequate compensation. The amount of the compensation, interest included, shall be settled in a freely convertible currenc and paid without delay to the person entitled thereto, whithout regard to its residence or domicile.

Extraordinary situations

2) 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. They shall, in all events, be entitled to compensation.

Article 6

Investments made prior to this Agreement

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

2) This Agreement shall in no event be applicable to disputes which have arisen prior to its entry into force.

Article 7

More favourable provisions

1) Notwithstanding the terms setforth in the present Agreement, more favourable provisions which have been or would be agreed upon by either of the Contracting Parties with nationals or companies of the other Contracting Party are applicable.

Article 8

Principle of subrogation

1) Where one Contracting Party has granted any financial guarantee against non-commercial risks in regard to an investment by a national or company 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) For the purpose of solving disputes with respect to investments between a Contracting Party and a national or 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 12 months and if the national or company concerned gives a written consent, the dispute shall be submitted to an arbitral tribunal.

(3) The arbitral tribunal shall be constituted for each individual case. Unless the parties in dispute have agreed otherwise, each of them shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State. The arbitrators are to be appointed within two months and the chairman is to be nominated within three month after the national or company concerned gave the consent according to para. 2 of this article.

(4) If the periods specified in para. 3 above have not been observed, either party to the dispute may, in the absence of any other arrangements, invite the President of the Court of Arbitration of the International Chamber of Commerce in Paris to make the necessary appointments. If the President is prevented from carrying out the said

function or if he is a national of either party to the dispute the provisions in para. 5 of article 10 of this agreement shall be applied mutatis mutandis.

(5) The tribunal shall determine its procedure. Its decisions are final and binding.

(6) In the event of both Conctracting Parties having become members of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States, disputes under this article shall be submitted according to the provisions of the aforementioned Convention to the International Center for Settlement of Investment Disputes.

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.

(Article 10)

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) 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 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 international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of two years, and so forth.

(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.

* * *

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

For the Swiss Federal Council

For the Government of the Republic of Bolivia