

Cameroun

USA - Cameroon treaty concerning the reciprocal encouragement and protection of investment

Treaty signed February 26, 1986 - Entered into Force April 6, 1989

The United States of America and the Republic of Cameroon (each hereinafter referred to as a "Party"),

Desiring to promote greater mutual economic cooperation between them, particularly with respect to investments by nationals and companies of one Party in the territory of the other Party ; and

Recognizing that agreement upon the treatment to be accorded such investments will stimulate the flow of private capital and the economic development of both Parties,

Aware that fair and equitable treatment would contribute to maintaining a stable framework for investment in order to facilitate the maximum effective utilization of economic resources,

Have resolved to conclude a treaty concerning the encouragement and reciprocal protection of investments, and

Have agreed as follows :

Art.1.- Definitions

1) For the purpose of this Treaty,

- a) "Company of a Party means any kind of juridical entity including any

corporation, company, association, or other organization, legally constituted under the laws and regulations of a Party or a political subdivision thereof whether or not organized for pecuniary gain, or privately or governmentally owned ;

- b) "Investment" means every kind of asset in the territory of either Party, owned or controlled directly or indirectly by nationals or companies of either party, including equity, debt, service and investment contracts ; and includes :
 - i) tangible and intangible property, including rights, such as mortgages, liens and pledges ;
 - ii) all or part of the shares of stock or other interests in a company or interests in the assets thereof ;
 - iii) a claim to money or a claim to performance having economic value, and associated with an investment ;
 - iv) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets and know-how, and goodwill ; and
 - v) any right conferred by law or contract and all permits and licenses

such as those required for the exploitation of natural resources ;

- c) "Return" means any amount derived directly or indirectly from an investment, including profits ; dividends ; interest ; capital gains ; royalty payment ; management, technical assistance or other fee ; and payments in kind ;
- d) "National" of a Party means a natural person who is a national of a Party under its laws and regulations ;
- e) "Own or control" means ownership or control that is direct or indirect, including ownership or control exercised through subsidiaries of, affiliates, wherever located ;
- f) "Territory" means all the territory of country recognized by international law.

2) Any assets or returns invested or reinvested are also considered as investment.

3) Each Party reserves the right to deny to any of its own companies or to a company of the other Party the advantages of this Treaty ; if nationals of any third country own or control such company. However, if one Party believes that the benefits of this Treaty should not be extended to a company of the other Party for this reason, it shall promptly consult with the other Party to seek a mutually satisfactory resolution.

Art.2.- Encouragement and Treatment of Investment

1) Each Party shall endeavor to maintain a favorable environment for existing or new investments in its territory by nationals and companies of the other Party and shall permit such investments be acquired and established on terms and conditions that accord treatment no less favorable than the treatment it accords in like situations to investment of its own nationals or companies or to nationals and companies of any third country, whichever is most favorable.

2) Each Party shall accord existing or new investments in its territory, and associated activities related to these investments, of nationals or companies of the other Party treatment no less favorable than that which it accords in like situations to investments and associated activities of its own nationals or companies, or nationals or companies of any third country, whichever is the most favorable. Associated activities related to an investment include, but are not limited to :

- i) the establishment, control and maintenance of branches, agencies, offices, factories or other facilities for the conduct of business ;
- ii) the organization of companies under applicable laws and regulations ; the acquisition of companies or interests in companies or in their property ; and the management, control, maintenance, use, enjoyment and expansion and the sale, liquidation, dissolution or other disposition, of companies organized or acquired
- iii) the making, performance and enforcement of contracts related to investment ;
- iv) the acquisition (whether by purchase, lease or any other legal means), ownership and disposition (whether by sale, testament or any other legal means) of personal property of all kinds, both tangible and intangible.

3) a) Notwithstanding the preceding provisions of this Article, each Party reserves the right to maintain limited exceptions to the standard of treatment otherwise required if such exceptions fall within one of the sectors or matters listed in the Annex to this Treaty. Each Party agrees to notify the other Party of any future exceptions falling within the sectors or matters listed in the Annex, and to limit as much as possible the number of exceptions. It is understood the treatment accorded pursuant to this subparagraph shall not be less favorable than that accorded in like situations to invest-

ments and associated activities of nationals or companies of any third country, except with respect to ownership of real property. Rights to engage in mining on the public domain shall dependent on reciprocity.

b) No exception introduced after the date of entry into force of this treaty shall apply to investments of nationals or companies of the other Party existing in that sector at the time the exception becomes effective.

4) Investment of nationals and companies of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party. The treatment, protection and security of investment shall be in accordance with applicable national laws and international law. Neither Party shall in any way impair by arbitrary and discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investment made by nationals or companies of the other Party. Each Party shall observe any obligation it may have entered into with regard to investment of nationals or companies of the other Party.

5) a) Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, directing, administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

b) Nationals and companies of either Party shall be permitted to engage, within the territory of the other Party, professional, technical and managerial personnel of their choice, for the particular purpose of rendering professional, technical and managerial assistance necessary for the planning and operation of investments. Companies

which are incorporated, constituted, or otherwise organized under the applicable laws or regulations of one Party, and which are owned or controlled by nationals or companies of the other Party, shall be permitted to engage, within the territory of the first Party, top managerial personnel of their choice, regardless of nationality, subject to the provisions of paragraph 5(a) above.

6) Neither Party shall impose performance requirements as a condition of establishment, expansion or maintenance of investments owned by nationals or companies of the other Party, which require or enforce commitments to export goods produced locally, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

7) Each Party recognizes that in order to maintain a favorable environment for investments in its territory by nationals or companies of the other Party, it shall provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorizations and properties. Each Party shall grant to nationals or companies of the other Party, on terms and conditions no less favorable than those which it grants in like situations to its own nationals or companies or to nationals and companies of any third country, whichever is the most favorable treatment, the right of access to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority, and the right to employ persons of their choice, who otherwise qualify under applicable laws and regulations of the forum for the purpose of asserting claims, and enforcing rights, with respect to their investments.

8) Each Party and its political or administrative subdivisions shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions

that pertain to or affect investments in its territory of nationals or companies of the other Party.

9) The treatment accorded by a Party to nationals or companies of the other Party under the provisions of paragraphs 1 and 2 of this article shall in any State, Territory, possession, or political or administrative subdivision of the Party be the treatment accorded therein to companies incorporated, constituted or otherwise duly organized in other States, Territories, possessions, or political or administrative subdivisions of the said Party.

Art.3.- Compensation for Expropriation

1) Investments shall not be expropriated or nationalized either directly or indirectly except for a public purpose and in accordance with due process of law and the principles enunciated in paragraph 4 of Article II. Such expropriations or nationalizations give right to prompt, adequate and effective compensation corresponding to the fair market value of the investments as of the day before the measures were taken, or, as the case may be, as of the day before the measures contemplated were made public. Such compensation shall include interest at a rate equivalent to current international rates from the date of expropriation or nationalization ; it shall be paid without delay and be freely transferable at the rate of exchange generally used by the IMF on that date.

2) A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate administrative or judicial authorities of the other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and compensation therefore, conforms to the provisions of the preceding paragraph.

Art.4.- Compensation for Damages Due to War and Similar Events

1) Nationals or companies of one Party whose investments in the territory of the other Party suffer

- a) damages due to war or other armed conflict between such other Party and a third country or
- b) damages due to revolution, state of national emergency, revolt, insurrection, riot or act of terrorism in the territory of such other Party,

shall be accorded treatment no less favorable than that which the other Party accords to its own nationals or companies or to nationals or companies of any third country, whichever is the most favorable treatment, when making restitution, indemnification, compensation or other appropriate settlement with respect to such damages. Both Parties agree that no compensation is owed to nationals or companies responsible for damage to their own investments.

2) In the event that such damages result from :

- a) a requisitioning of property by the other Party's forces or authorities, or
- b) destruction of property by the other Party's forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

the national or company shall be accorded restitution or adequate compensation consistent with Article III.

3) The payment of any indemnification, compensation or other appropriate settlement pursuant to this Article shall be freely transferable.

Art.5.- Transfers

1) Each Party shall permit all transfers related to an investment in its territory of a

national or company of the other Party to be made freely and without delay into and out of its Territory. Such transfers include, among others, the following: returns; compensation; payments made arising out of a dispute concerning an investment; payments made under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement; amounts to cover expenses relating to the management of the investment; royalties and other payments derived from licenses; franchises or other grants of rights or from administrative or technical assistance agreements, including management fees; proceeds from the sale of all or any part of an investment and from the partial or complete liquidation of the company concerned, including any incremental value; additional contributions to capital necessary or appropriate for the maintenance or development of an investment.

2) Except as provided in Article III paragraph 1, transfers shall be at the prevailing rate of exchange generally used by the IMF on the date of transfer in the currency or currencies to be transferred.

- a) The Republic of Cameroon assures that such transfers shall be permitted in the currency or currencies, in which the investment was constituted, or in the absence of such currency or currencies in any other freely convertible currency.
- b) The United States assures that such transfers shall be permitted in any freely convertible currency.

3) Notwithstanding the preceding paragraphs, either Party may maintain laws and regulations:

- a) prescribing transfers procedures provided such procedures are carried out expeditiously and do not derogate from the provisions in paragraphs 1 and 2;

- b) requiring reports of currency transfer; and
- c) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable and nondiscriminatory application of its law.

Art.6.- Consultations and Exchange of Information

1) The Parties, upon the written request of one of them, shall promptly hold consultations for the purpose of discussing the interpretation of application of the Treaty or to resolve any disputes in connection therewith. Consultations shall be held should one Party request consultations on grounds that its international interests are or are likely to be adversely affected by laws, regulations, administrative practices or procedures, adjudicatory decisions, or policies of the other Party that pertain to or affect investments of its nationals or companies in the territory of such other Party, including conditions imposed on establishment.

2) If one Party requests in writing that the other Party supply information in its possession concerning investments in its territory by nationals or companies of the Party making the request, then the other Party shall, consistent with its applicable laws and regulations and with due regard for business confidentiality, endeavor to establish appropriate procedures and arrangements for the provision of any such information.

3) Furthermore, in order to assess the effectiveness of this Treaty in encouraging and protecting investments, consultations could take place periodically between the two parties.

Art.7.- Settlement of Investment Disputes Between One Party and a National or Company of the Other Party

1) For purposes of this Article, an investment dispute is defined as a dispute involving :

- i) the interpretation or application of an investment agreement between one Party and a national or company of the other Party ;
- ii) the interpretation or application of any investment authorization granted by the foreign investment authorities of one Party to the national or company of the other Party ;
- iii) an alleged breach of any right conferred or created by this Treaty with respect to an investment.

2) In the event of an investment dispute between a Party and a national or company of the other Party, the parties shall first seek to resolve the dispute by consultation and negotiation.

The parties may, upon the initiative of either of them and during the course of their consultation and negotiation, agree to rely upon non-binding, third party procedures.

If the dispute cannot be resolved through consultation and negotiation, the dispute settlement procedures agreed upon in advance shall be used.

With respect to expropriation by either Party, any dispute settlement procedures specified in the investment agreement between such Party and the national or company of the other Party shall remain binding and shall be enforceable in accordance with the terms of the investment agreement and the relevant provisions of the domestic laws of such Party and treaties and other international agreements regarding enforcement of arbitral awards to which such Party has subscribed.

3) If the dispute has not been resolved in accordance with the aforementioned procedures, the national or company concerned has the option to submit the dispute in writing to the International Center for the Settlement of Investment Disputes (ICSID) for settlement by conciliation or binding arbitration at any time, provided that within six months from the date on which the dispute arose, the dispute has not, for any reason, been submitted by the national or company for resolution in accordance with any Applicable dispute-settlement procedure previously agreed to by the parties to the dispute, or, the national or company concerned has not brought the dispute before the administrative agencies or competent courts of the Party concerned.

Each Party hereby consents to the submission of an investment dispute to ICSID for settlement by conciliation or binding arbitration.

Conciliation or binding arbitration of such disputes shall be done in accordance with the provisions of the Convention of the Settlement of Investment Disputes Between States and nationals of other States and the Regulations and Rules of ICSID.

4) In any proceeding, judicial, arbitral, or otherwise, concerning an investment dispute between it and a national or company of the other Party, a Party shall not assert, as a defense, counterclaim, right of set-off or any other right, that the national or company concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of the alleged damages from any third party whatsoever, including such other Party and its political subdivision, agencies, or instrumentalities. Nevertheless, a national or company of the said Party shall not be entitled to compensation for more than the value of its affected investments, taking into account all sources of compensation within the territory of the other Party liable for compensation.

5) For the purpose of any proceedings initiated before ICSID in accordance with this Article, any company of either Party that, before the occurrence of the event or events giving rise to the dispute, was owned or controlled by nationals or companies of the other Party, shall be treated as a national or company of such other Party.

The provisions of this Article shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States or (b) under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes.

Art.8.- Settlement of Disputes Between the Parties Concerning the Interpretation or Application of This Treaty

1) Any dispute between the Parties concerning the interpretation or application of this treaty shall be resolved through consultations between the representatives of the two Parties and, if this should fail, through other diplomatic channels.

2) If the dispute between the Parties cannot be resolved through the aforesaid means, and unless there is agreement between the Parties to submit the dispute to the International Court of Justice, both Parties hereby agree to submit it upon the request of either Party to an arbitral tribunal for binding decision in accordance with the applicable rules and principles of international law.

3) The tribunal shall be established for each case as follows : within two months of receipt of a request for arbitration, each Party shall appoint an arbitrator ; the two arbitrators so appointed shall select a third arbitrator as chairman, who is a national of a third state ; the chairman shall be appointed within two months of the date of appointment of the other two arbitrators.

4) If the required appointments have not been made within the time specified in paragraph 3 of this Article, either of the Parties may, in the absence of any other agreement, request that the President of the International Court of Justice make the required appointments. If the President is a national of one of the Parties or if he is unable to act, the Vice President shall be asked to make the required appointments. If the Vice President is unable to act, the next most senior member of the International Court of Justice who is not a national of one of the Parties and is able to act shall be asked to make the required appointments.

5) In the event that an arbitrator resigns or is for any reason unable to perform his duties, a replacement shall be appointed within thirty days, utilizing the same method as described above.

6) Unless otherwise agreed to by the Parties, all submissions shall be made and all hearings shall be held within six months of the date of the selection of the third arbitrator, and the tribunal shall render its decision within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

7) The tribunal shall decide in all matters by majority vote. All decisions shall be binding on both Parties. Each Party shall bear the extent of its own representation in the arbitration proceedings. The costs of the proceeding shall be paid for equally by the Parties. The tribunal may, however, decide that a higher proportion of the costs be paid by the losing Party. Such a decision shall be binding.

8) The Parties may agree to specific arbitral procedures. In the absence of such agreement, the Model Rules on Arbitral Procedures adopted by the United Nations International Law Commission in 1958 and commended to member states by the

United Nations General Assembly in Resolution 1262 (XII) shall govern.

9) This Article shall not be applicable to a dispute submitted to ICSID pursuant to Article VII(3). Recourse to the procedures set forth in this Article is not precluded, however, in the event an award rendered in such dispute is not honored by a Party, or an issue exists related to a dispute submitted to the Center but not argued or decided.

10) The provisions of this Article shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States or (b) under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes.

Art.9.- Preservation of Rights

This Treaty shall not supersede, prejudice or otherwise derogate from

- a) laws, regulations, administrative practices or procedures, or administrative or adjudicatory decisions of either Party,
- b) international legal obligations, or
- c) obligations assumed by either Party, including those contained in an investment agreement or an investment authorization, whether extant at the time of entry into force of the Treaty or thereafter, that entitle investments or associated activities of nationals or companies of the other Party to treatment more favorable than that accorded by this Treaty in like situation.

Art.10.- Measures Not Precluded by This Treaty

1) This Treaty shall not preclude the application by either Party or any political subdivision thereof of any and all measures necessary in its territory for the maintenance of public order and morals, the fulfillment of its obligations with respect to

the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2) This Treaty shall not preclude either Party from prescribing special formalities in connection with the establishment of investments in its territory of nationals and companies of the other Party, but such formalities shall not impair the substance of any of the rights set forth in this Treaty.

Art.11.- Taxation

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

2) The provisions of Articles II and VI of this treaty do not apply to taxation matters.

Art.12.- Application of This Treaty to Political Subdivisions of the Parties

This treaty shall apply to political subdivisions of the Parties.

Art.13.- Entry into Force, Duration, and Termination

1) This Treaty shall be subject to ratification by each of the Parties, and the instruments of ratification shall be exchanged as soon as possible.

2) This treaty shall enter into force thirty days following the date on which the Parties have notified each other that the constitutional procedures required for ratification in their respective countries have been completed. It shall remain in force for a period of ten years and shall continue in force, unless otherwise terminated in accordance with the provisions of paragraph 3 of this Article. It shall apply to investment existing at the time of entry into force as well as to investments made or acquired thereafter.

3) This Treaty shall be renewed by tacit agreement for another ten-year period unless one of the Parties notifies the other Party in writing of its intention to terminate it, one year prior to the expiration of the initial ten year period.

If the Treaty is not renewed, its termination shall become effective one year after the other Party receives notification thereof.

4) With respect to investments made prior to the effective date of termination, the provisions of this Treaty shall remain in effect for a further period of ten years from such date of termination.

5) The Annex to this Treaty shall be an integral part thereof.