

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND
THE GOVERNMENT OF THE UNITED MEXICAN STATES ON THE
PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS,
AND PROTOCOL,
DONE AT MEXICO CITY ON 23 AUGUST 2005**

[2005] ATNIF 16

Documents tabled on 20 June 2006:

National Interest Analysis [2006] ATNIA 24

with attachment on consultation

Text of the Proposed Treaty Action

Background Information:

Country Political Brief and Fact Sheet

List of Other Treaties with Mexico

List of Treaties of the Same Type with Other Countries

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the United Mexican States on the Promotion and Reciprocal Protection of Investments, and Protocol, done at Mexico City on 23 August 2005 [2005] ATNIF 16

Nature and timing of proposed treaty action

1. It is proposed that Australia bring into force, by an exchange of notes, the Agreement between the Government of Australia and the Government of the United Mexican States (the “Parties”) on the Promotion and Reciprocal Protection of Investments (the “Agreement” or the “IPPA”).
2. In accordance with Article 23, the Agreement will enter into force 60 days after the date on which the last notification referred to in paragraph 1 of the article has been received by the Party in question. The Mexican Government has sent its Note to the Australian Government, and it is proposed to send the Australian note as soon as practicable after consideration by JSCOT.
3. The Agreement was signed on 23 August 2005 in Mexico City.

Overview and national interest summary

4. The Australian Government recognises the importance of promoting the flow of capital for economic activity and its role in expanding economic relations and technical cooperation between countries. The Agreement, by guaranteeing certain treatment for investments, will encourage and facilitate bilateral investment by citizens, permanent residents and companies of Australia and Mexico, in accordance with the internationally accepted principles of mutual respect for sovereignty, equality, mutual benefit, non-discrimination and mutual confidence. The Agreement will put Australian investors in a better position to benefit from the investment opportunities in Mexico by providing them with a range of guarantees relating to non-commercial risk.
5. Mexico is Australia’s largest trading partner in Latin America with potential for significant expansion given the complementary trade profiles of both countries. While bilateral direct investment between Mexico and Australia is modest at present, Mexico attracts significant direct investment due to its North American Free Trade Agreement (NAFTA) membership and its generally liberal and transparent investment laws. Mexico is keen to increase the level of Australian investment in Mexico (in particular in its mining sector) and the Agreement will assist this process.
6. The Agreement will assist in promoting Australia as a destination for Mexican investment, possibly as an entry point into the Asian markets. Mexican investment in Australia is negligible at present.

Reasons for Australia to take the proposed treaty action

7. The Agreement is intended to encourage and facilitate bilateral investment by citizens, permanent residents and companies registered in Australia and Mexico, consistent with the Australian Government's foreign investment policy. The Agreement applies at the post-establishment stage of the investment cycle - that is, Australia's sovereign right to admit investments (either through acquisitions or new businesses) is unaffected by the provision of the Agreement.

8. The Agreement would be an important safeguard for Australian companies that wish to participate in major projects in Mexico. It would send a positive message to Australian business about investing in Mexico by offering most-favoured-nation status and national treatment in regard to the treatment of Australian investments, by providing guarantees about expropriation/nationalisation and by establishing mechanisms for resolving investment disputes. The Investor-State Dispute Settlement provisions provide an avenue by which Australian investors can choose to take alleged breaches of the obligations of this Agreement to international arbitration, instead of relying on the local legal system (for example, by recourse to the International Centre for the Settlement of Investment Disputes). No formal dispute resolution procedures have ever been invoked against Australia in relation to the nineteen investment protection and promotion agreements (IPPAs) currently in force for Australia.

9. Mexico is considered to have a relatively open and transparent investment regime. The prospect of consistent economic growth and ongoing political stability in Mexico is likely to lead to increased export and investment opportunities. Australian investors would benefit significantly and therefore be encouraged to invest in Mexico by the establishment of rules and a framework for investment promotion and protection between Australia and Mexico.

10. The IPPA would lead to greater Australian investor confidence and interest in the Mexican market. The absence of an IPPA leaves Australian investments more vulnerable to the effect of changes in Mexican investment policies. Experience has shown that the introduction of a set of investment rules, such as that under NAFTA in 1994, has led to greater predictability in the Mexican investment environment. Hence, a sizable benefit to Australian investors arising from the IPPA would be the continuity and stability of Mexican investment policies.

11. There is a relatively low level of two-way investment between Mexico and Australia, with Australian direct investment in Mexico at approximately A\$285 million and Mexican investment in Australia at A\$10 million. Investment agreements have been used by a number of countries as a means to increase their business and trade presence in the Mexican (and NAFTA) market. Potential exists for greater Australian investment in Mexico, especially in the mining, resources, energy and agribusiness sectors. While Mexico can be seen as a gateway to NAFTA markets for Australian investors, similarly Australia can be seen as a base for accessing South-East Asian markets for Mexican investors.

12. An IPPA would give Australian investors parity with Mexico's other bilateral investment treaty partners.

Obligations

13. This Agreement closely follows the Australian model IPPA text. It provides a clear set of obligations relating to the promotion and protection of investments and takes full account of each Party's laws and investment policies. It covers only the post-establishment treatment of investments. Decisions to admit new investments (either through acquisitions or new businesses) remain the sole purview of the host government.

14. Parties are obliged to encourage, promote, and to the extent possible by law and existing investment policies, admit investments by investors (including citizens and permanent residents) and companies of the other Party (Article 3). Parties must ensure that investments and associated activities of investors of the other Party receive most-favoured-nation treatment (i.e. investments of investors of a Party will be treated on a basis no less favourable than investments of investors from third countries) and national treatment (investments of investors of the other Party will be treated no less favourably than investments of domestic investors), subject to existing law and policy. This extends to procedural rights for dispute settlement and enforcement of judgments (Article 22). In addition, a minimum standard of treatment (consistent with customary international law) applies to investments of either Party at all times. This means that investments and associated activities will be accorded fair and equitable treatment and enjoy full security and protection in the territory of the other Party (Article 4 and Protocol). These obligations do not apply to special advantages given within free trade areas or regional trading arrangements, to taxation measures or double taxation agreements.

15. Article 5 requires the Parties to give sympathetic consideration to applications by investors of the other Party and their employees to enter and remain in their territory for the purpose of engaging in investment activities (subject to its laws and policies applicable from time to time).

16. Article 6 relates to the transparency of the investment regime – Parties must make public and readily accessible those laws, regulations and policies which pertain to or affect investments.

17. Articles 7 and 8 relate to circumstances in which a Party must pay compensation for actions that affect investments. Article 7 prohibits Parties from expropriating or nationalising investments of the investors of the other Party unless it is for a public purpose, under due process of law, non-discriminatory, and compensated promptly, adequately and in the currency in which the investment was originally made or any other freely transferable and realisable currency. Article 8 provides that where an investor suffers loss due to war or other armed conflict, revolution, a state of national emergency, civil disturbance or other similar event, they will be accorded treatment which is no less favourable than that accorded to its own investors or those of any third country.

18. Article 9 requires Parties to permit all financial transfers (including profits, dividends and proceeds from the sale of investments) related to investments to be freely made and without unreasonable delay. This does not affect a Party's ability to prevent transfers where such action is required for enforcement of bankruptcy, insolvency, criminal or securities laws or to ensure satisfaction of court judgements. A Party's right to temporarily restrict transfers where there are serious balance of payment difficulties is also preserved.

19. Where a Party makes a payment to an investor under a guarantee, contract of insurance or other indemnity in respect of an investment, Article 10 requires the other Party to

recognise the resulting subrogation or transfer of any rights or title. It should be noted that these rights are restricted to non-commercial risks.

20. Machinery for the settlement of disputes between the Parties is established under Article 21. This follows the model IPPA text and requires Parties to consult on matters concerning the review, interpretation or application of the Agreement and endeavours to resolve any disputes connected with it by prompt consultations and negotiations (pursuant to Articles 11 and 21). If consultations fail, the Parties may submit the dispute to international arbitration.

21. Formal procedures for the initiation, conduct and settlement of disputes concerning investments between a Party and an investor of the other Party are established under Articles 12 to 20 and 22 (referred to as investor-State dispute settlement or “ISDS”). Parties are required to seek to settle the dispute in the first instance by negotiation and consultation (Article 12). If resolution is not achieved, a Party may be required to proceed to arbitration.

22. Parties are required to provide investors with several avenues of redress for damage suffered as a result of a Party’s breach of this Agreement.

23. Investors may, either on their own or on behalf of an enterprise it owns or controls, bring an action under the domestic courts and tribunals of the Party responsible for the breach, or submit the matter to arbitration under the Agreement. Where the relief sought is payment of monetary damages, investors must give up their rights to pursue or continue actions in respect of the same measure under any other dispute settlement process (including domestic courts) before they will be permitted to initiate an action in an arbitral tribunal. Where the relief sought is non-monetary (eg injunctive or declaratory relief), investors are not required to provide this waiver. This means that Parties are obliged to provide investors unlimited access (subject to law) to domestic courts for the purpose of obtaining interlocutory orders.

24. An investor may refer a dispute to international dispute settlement provided that six months has elapsed from the date the events giving rise to the dispute occurred. There is a four year limitation period for the pursuit of actions starting from the day that the investor first acquired knowledge of the events giving rise to the dispute (Article 13).

25. Investors are provided with two alternatives. The dispute may be referred to the International Centre for Settlement of Investment Disputes (ICSID). This would be made pursuant to the Additional Facility Rules of ICSID since Mexico is not a party to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of other States (the “ICSID Convention”) (Article 13.4(b)). Alternatively, the dispute may be submitted to arbitration under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules. The latter rules will apply to all consolidated cases - ie where two or more claims are heard together because they arise from the same legal or factual issues. If investors do not comply with the respective rules, the Parties are entitled to challenge jurisdiction of the tribunal on the basis of procedural irregularity.

26. Arbitral awards are binding and enforceable (Article 19 and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards to which Australia is a signatory). They may take the form of a declaration, monetary compensation, restitution in kind or other form of relief if the Parties agree.

Implementation

27. The Agreement complies with existing Australian legislation. The Agreement will be implemented within the framework of Australia's existing laws and policies relating to foreign investment.

Costs

28. Compliance with the Agreement has few foreseeable direct financial costs for Australia. Costs may be incurred in the event of a dispute between the Parties, should the dispute be submitted to an Arbitral Tribunal at the request of either Party. Under these circumstances each Party bears the cost of the arbitrator it has appointed and of its representation in arbitrating proceedings, while the cost of the Chairman and the remaining costs of arbitration are borne in equal parts by the Parties unless otherwise decided by the Tribunal (Article 21).

29. Costs may be incurred should it be necessary to defend disputes brought by Mexican investors. If a claim is brought in Australian courts or tribunals, Australia will incur the ordinary costs associated with litigating domestic disputes (including payment of any award) as determined by the court. If a claim is brought in an international tribunal, costs will be determined by ICSID and UNCITRAL rules respectively depending on the forum in which the claim is prosecuted.

30. In relation to ICSID disputes, only Australia is a party to the ICSID Convention. Mexican investors may nevertheless refer a dispute relating to an investment in Australia to the ICSID pursuant to the Additional Facility Rules of ICSID. In this case, the Australian Government may be required to bear all or part of the cost of arbitration and any relevant ICSID fees, subject to the discretion of the tribunal. The Government would also have to pay the cost of any award handed down in favour of the Mexican investor. To date, no case has been referred to the ICSID in relation to Australia's existing investment promotion and protection agreements. If the dispute is governed by UNCITRAL rules, Australia would in principle be liable for the costs of arbitration if it were unsuccessful. The tribunal can apportion costs if this is deemed reasonable. Costs of legal representation will be determined by the tribunal.

31. Finally, Australia may be liable to pay compensation for losses owing to war or other armed conflict, revolution, a state of national emergency, civil disturbance or similar events in its territory (Article 8), or in the event that an investment is expropriated or nationalised (Article 7). Again, while this is a potential cost, it is highly unlikely to eventuate in the Australian political and investment environment.

Regulation Impact Statement

32. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

33. The text of the Agreement has no explicit reference to the negotiations of future legally binding instruments or a procedure for its amendment. It may nevertheless be amended

at any time by agreement between the Parties in accordance with the Vienna Convention on the Law of Treaties. Such amendments would be subject to the domestic treaty process.

Withdrawal or denunciation

34. Article 24 provides that the Agreement will remain in force for a period of ten years. After that period, either Party may give twelve months written notice of termination to the other Party. Any such decision to terminate would be subject to the domestic treaty process.

35. Article 24 provides that the Agreement will continue to be effective in respect to investments made or acquired before the date of termination for a further period of ten years after the date of termination.

Contact details

Latin America and Caribbean Section
Americas and Europe Division
Department of Foreign Affairs and Trade.

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CONSULTATION

1. The Agreement negotiations with Mexico were announced on the website of the Department of Foreign Affairs and Trade. While no formal submissions were received, negotiations of this Agreement had been encouraged by industry representatives. The Agreement was also placed on the Internet Treaties Library after it was signed.
2. The Agreement was negotiated by the Department of Foreign Affairs and Trade, the Attorney-General's Department and Treasury. All relevant agencies have been consulted during negotiations and have given their approval to the final text of the Treaty, including Treasury and the Attorney-General's Department.
3. The State and Territories Governments were advised of the proposed Agreement with Mexico when negotiations commenced in 2001, through the Commonwealth-State/Territories Standing Committee on Treaties (SCOT). Updated information on the Agreement has been included on the Schedule of Treaties under negotiation, consideration or review by the Australian Government, which is distributed to the SCOT representatives twice a year. No objections or concerns have been raised by the States or Territory Governments as a result of this notification.

Political brief on Mexico

1. Mexico is a significant player in international affairs. It is a regional leader in both political and economic contexts, and has a close relationship with the United States of America. Mexico is the world's 13th largest economy, with a GDP of US\$740 billion. Its population of 106 million people makes it a significant market in its own right.
2. Mexico is Australia's largest trading partner in Latin America. Two-way trade exceeded A\$1.6 billion in 2005. Mexico is Australia's second largest export market in Latin America, just behind Brazil, with exports to Mexico amounting to approximately A\$830 million in 2005. Australian direct investment in Mexico is modest at around A\$285 million (2004 figures), while Mexican investment in Australia is negligible. Our key exports to Mexico are coal, other ores, leather, meat and livestock. The main imports from Mexico are automotive parts, base metals, telecommunications equipment, medical equipment and medicines.
3. The Australia - Mexico bilateral relationship is strong and growing. An increased level of cooperation in recent years has resulted in several commercially focused outcomes, including a bilateral Double Taxation Agreement, a Memorandum of Understanding (MOU) on Mining, an MOU on Energy and an MOU on Education and Training. The Double Taxation Agreement entered into force on 1 January 2004. The DTA clarifies the taxation rights of the two countries by introducing measures to relieve double taxation, and prevents fiscal evasion. A bilateral Air Services Agreement was signed in March 2005. In March 2006 Australia and Mexico agreed to commence a Joint Experts' Group process which will look at ways to strengthen the bilateral economic relationship, including the negotiation of a possible FTA at some point in the future.
4. Mexico has transformed itself from a highly protected economy in the early 1980s to a more open, regionalised and market-based economy today. Economic activity is characterised by modern, export-oriented industry and agriculture, alongside more outmoded sections of the domestic economy. Much of the modern economy has been driven by competition and export opportunities stemming from Mexico's extensive network of Free Trade Agreements (FTAs), covering more than 90 per cent of the country's trade. Mexico has the largest FTA network in the world, with 12 FTAs involving 43 countries.
5. In recent years, Mexico's economic policy has been characterised by sound fiscal management and efforts to build the confidence of international markets in the Mexican economy. Windfall profits from the sale of Mexico's oil reserves have enabled the retirement of considerable foreign debt. Mexico is one of only two Latin America countries that has an investment grade rating from Standard and Poor's, the globally recognised provider of credit ratings.
6. Mexico will need to implement structural reforms in order to continue attracting the high levels of foreign direct investment that have driven economic growth since the conclusion of NAFTA. Mexican business strongly supports structural reform. The speed and scope of reform, however, will be determined by the new administration. Notwithstanding these challenges, the Mexican economy has continued to grow since moving out of recession in 2002. Mexico's GDP grew by 3.5 per cent in 2005, and is predicted to maintain 3.5 per cent growth in 2006.
7. Mexico has a democratically elected government. Presidential and Congressional elections are due on 2 July 2006. Key candidates in the election include Andrés Manuel López Obrador of the Party of the Democratic Revolution (PRD), Roberto Madrazo for the Institutional Revolutionary Party (PRI) and Felipe Calderón of the ruling National Action Party (PAN).



MEXICO

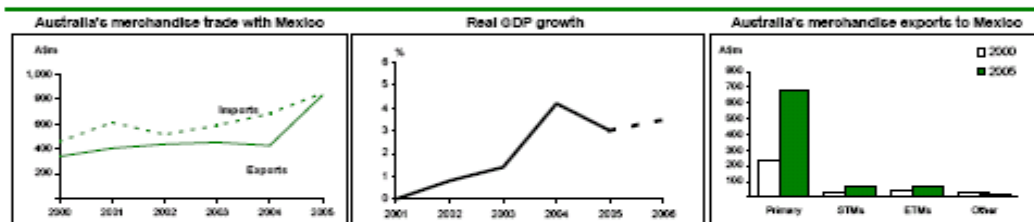
Fact Sheet

General information:

Fact sheets are updated biannually; May and September

Capital:	Mexico City	Head of State and Head of Government:
Surface area:	1,958 thousand sq km	H.E. President Mr Vicente Fox Quesada
Official language:	Spanish	
Population:	107.4 million (2006)	
Exchange rate:	A\$1 = 7.9166 New Pesos (Jan 2006)	

Recent economic indicators:	2001	2002	2003	2004	2005(a)	2006(b)
GDP (US\$bn) (current prices):	622.1	649.1	639.1	683.5	768.4	846.8
GDP PPP (US\$bn) (c):	893.5	916.6	948.4	1,015.8	1,072.6	1,132.9
GDP per capita (US\$):	6,280	6,438	6,248	6,586	7,298	7,926
GDP per capita PPP (US\$) (c):	8,991	9,092	9,272	9,788	10,186	10,604
Real GDP growth (% change YOY):	0.0	0.8	1.4	4.2	3.0	3.5
Current account balance (US\$m):	-17,645	-13,524	-8,621	-7,180	-5,708	-5,488
Current account balance (% GDP):	-2.8	-2.1	-1.3	-1.1	-0.7	-0.6
Goods & services exports (% GDP):	27.6	26.8	27.8	29.8	29.9	31.2
Inflation (% change YOY):	6.4	5.0	4.5	4.7	4.0	3.5



Australia's trade relationship with Mexico:

Australian merchandise trade with Mexico, 2005:	Total share:	Rank:	Growth (yoy):	
Exports to Mexico (A\$m):	830	0.6%	27th	94.3%
Imports from Mexico (A\$m):	847	0.5%	30th	24.1%
Total trade (exports + imports) (A\$m):	1,676	0.6%	28th	51.1%

Major Australian merch. exports, 2005 (A\$m):	Major Australian merch. imports, 2005 (A\$m):
Coal: 518	Motor vehicle parts: 93
Meat (excl. bovine): 49	Manufactures of base metals: 85
Leather: 42	Telecommunications equipment: 82
Manganese ore and concentrates: 30	Computers: 66

Australia's trade in services with Mexico, 2005:	Total share:	
Exports of services to Mexico (A\$m):	35	0.1%
Imports of services from Mexico (A\$m):	24	0.1%

Major Australian service exports, 2005 (A\$m):	Major Australian service imports, 2005 (A\$m):
Education-related travel: 20	Personal travel excl. education: 18
Personal travel excl. education: 8	Business travel: 2

Mexico's global merchandise trade relationships:

Mexico's principal export destinations, 2004:	Mexico's principal import sources, 2004:
1 United States: 87.6%	1 United States: 55.1%
2 Canada: 1.8%	2 China: 7.1%
3 Spain: 1.1%	3 Japan: 5.3%
22 Australia: 0.2%	30 Australia: 0.2%

Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various international sources.
 (a) all recent data subject to revision; (b) IMF/EU forecast; (c) PPP is purchasing power parity.
 n.a. Data not available

List of other treaties with Mexico

- Basic Agreement between the Government of Australia and the Government of the United States of Mexico on Scientific and Technological Co-operation
[1983] ATS 4
- Treaty on Extradition between Australia and the United Mexican States
[1991] ATS 13
- Treaty between Australia and the United Mexican States on Mutual Assistance in Criminal Matters
[1992] ATS 31
- Agreement between the Government of Australia and the United Mexican States Concerning Cooperation in Peaceful Uses of Nuclear Energy
[1992] ATS 32
- Trade and Investment Agreement with the Government of the United Mexican States
[1997] ATS 15
- Agreement between the Government of Australia and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income
[2004] ATS 4

List of treaties of the same type with other countries

- Agreement with the People's Republic of China on the Reciprocal Encouragement and Protection of Investments
[1988] ATS 14
- Agreement with the Socialist Republic of Vietnam on the Reciprocal Promotion and Protection of Investments
[1991] ATS 36
- Agreement with the Independent State of Papua and New Guinea for the Promotion and Protection of Investments
[1991] ATS 38
- Agreement with the Republic of Poland on the Reciprocal Promotion and Protection of Investments
[1992] ATS 10
- Agreement with Republic of Hungary on the Reciprocal Promotion and Protection of Investments
[1992] ATS 19
- Agreement with the Republic of Indonesia concerning the Promotion and Protection of Investments
[1993] ATS 19
- Agreement with Hong Kong concerning the Promotion and Protection of Investments
[1993] ATS 30
- Agreement with Romania on the Reciprocal Promotion and Protection of Investments
[1994] ATS 10
- Agreement with the Czech Republic on the Reciprocal Promotion and Protection of Investments
[1994] ATS 18
- Agreement with the Lao People's Democratic Republic on the Reciprocal Promotion and Protection of Investments
[1995] ATS 9
- Agreement with the Republic of the Philippines on the Promotion and Protection of Investments
[1995] ATS 28
- Agreement with the Argentine Republic on the Promotion and Protection of Investments
[1997] ATS 4
- Agreement with the Republic of Peru on the Promotion and Protection of Investments
[1997] ATS 8

- Agreement with the Islamic Republic of Pakistan on the Promotion and Protection of Investments
[1998] ATS 23
- Agreement with the Republic of Chile on the Reciprocal Promotion and Protection of Investments
[1999] ATS 37
- Agreement with the Republic of India on the Promotion and Protection of Investments
[2000] ATS 14
- Agreement with the Arab Republic of Egypt on the Promotion and Protection of Investments
[2002] ATS 19
- Agreement with the Republic of Lithuania on the Promotion and Protection of Investments
[2002] ATS 7
- Agreement between Australia and Uruguay on the Promotion and Protection of Investments
[2003] ATS 10
- Agreement with the Republic of Turkey on the Promotion and Protection of Investments
[2005] ATNIA 23