

AGREEMENT BETWEEN THE FRENCH REPUBLIC AND THE CZECH AND SLOVAK FEDERAL REPUBLIC ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The French Republic and the Czech and Slovak Federal Republic,

hereinafter referred to as "the Contracting Parties",

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for French investments in Czechoslovakia and Czechoslovak investments in France,

Considering that the encouragement and protection of such investments are likely to stimulate the transfer of capital and technology between the two countries in the interest of their economic development,

Have agreed on the following provisions:

Article 1.

For the application of the present Agreement:

1. The term "investment" means any asset such as property and rights of any kind and more particularly

(a) movable and immovable property, as well as all real rights, in particular mortgages, liens, guarantees and rights of use;

(b) Shares and all other forms of participation in companies incorporated in the territory of one of the Contracting Parties, as well as all rights deriving therefrom;

(c) Bonds, debts and rights to any benefits of economic value;

(d) copyrights, industrial property rights (such as patents, trademarks, industrial designs and models) technical processes, licenses, registered names and goodwill;

(e) concessions granted by law or under contract, including concessions relating to the exploration, cultivation, extraction or exploitation of natural resources, including those in the maritime zone of the Contracting Parties,

it is understood that such assets must be or have been invested in accordance with the laws of the Contracting Party in whose territory or maritime zone the investment is made.

The term "investment" also refers to indirect investments made by investors of one Contracting Party in the territory or maritime area of the other Contracting Party through an investor of a third State.

Any change in the form of investment of the assets shall not affect their qualification as investments within the meaning of this Agreement, provided that such change is not contrary to the legislation of the Contracting Party in whose territory or maritime area the investment is made.

2. The term "investor" means:

(a) Any natural person who possesses the nationality of one of the Contracting Parties and who may, in accordance with the legislation of that Contracting Party, make investments in the territory or maritime area of the other Contracting Party;

(b) Any legal person incorporated in the territory of one of the Contracting Parties, in accordance with the legislation of that Contracting Party, and having its registered office there.

3. The term "income" means all sums produced by an investment during a given period, in particular profits, dividends, interest, royalties, commissions.

4. This Agreement shall apply to the territory of each Contracting Party and to the maritime area of each Contracting Party, hereinafter defined as the economic zone and the continental shelf which extend beyond the limits of the territorial waters of each Contracting Party and over which they have, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploring, exploiting and conserving natural resources.

Article 2.

Each Contracting Party shall, within the framework of its legislation and the provisions of this Agreement, admit and encourage investments made by investors of the other Contracting Party in its territory and in its maritime zone.

Article 3.

Each Contracting Party undertakes to ensure, in its territory and in its maritime zone, to the investments of investors of the other Contracting Party, fair and equitable treatment, in accordance with the principles of international law, excluding any unjust or discriminatory measure which might impede the management, maintenance, enjoyment or liquidation of such investments, and to ensure that the exercise of the right so recognized is not impeded either in law or in fact.

The principle of fair and equitable treatment shall apply, inter alia, to the purchase and transportation of raw and auxiliary materials, energy and fuel, and means of production and operation of any kind, and to the sale and transportation of products within the country and abroad.

Article 4.

Each Contracting Party shall apply to investors of the other Contracting Party, in its territory and maritime area, in respect of their investments and activities related to such investments, treatment no less favourable than that accorded, in accordance with its national legislation, to its investors, or the treatment accorded to the investments of the most favoured Nation, whichever is more favourable.

Such treatment shall not, however, extend to privileges accorded by a Contracting Party to investors of a third State by virtue of its participation in or association with a free trade area, customs union, common market, mutual economic assistance organization or any other form of regional economic organization, or by virtue of a double taxation agreement or any other international agreement in the field of taxation.

Investors authorized to work in the territory and maritime area of one of the Contracting Parties shall be entitled to appropriate conditions for the exercise of their professional activities.

The Contracting Parties shall, within the framework of their national legislation, give sympathetic consideration to applications for entry and authorisation to stay, work and travel submitted by nationals of a Contracting Party in connection with an investment in the territory or maritime area of the other Contracting Party.

Article 5.

Investments which have been the subject of a special undertaking by one of the Contracting Parties in respect of investors of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement by the terms of that undertaking insofar as it contains provisions more favourable than those contained in this Agreement.

Article 6.

1. Investments made by investors of either Contracting Party shall enjoy full protection and security in the territory and maritime zone of the other Contracting Party.

2. Income from investments and, in the case of reinvestment, income from reinvestment shall enjoy the same protection as investments.

3. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is to dispossess

3. Contracting Parties shall not take any expropriation, nationalization or other measures the effect of which is to dispossess, directly or indirectly, investors of the other Contracting Party of investments belonging to them in their territory and in their maritime zone, except in the public interest and provided that such measures are neither discriminatory nor contrary to any particular undertaking within the meaning of Article 5.

Any measures of dispossession which may be taken shall give rise to the payment of prompt and adequate compensation, the amount of which shall correspond to the real value of the investments concerned, prior to any threat of dispossession.

This compensation, its amount and the terms of payment shall be fixed at the latest on the date of dispossession. This compensation, which is freely transferable, is paid without delay in a convertible currency. After the expiry of a period of fifteen days from the day on which the measures are taken or made known to the public and until the date of payment, it shall bear interest at the appropriate market rate. This rate shall be determined by reference to the "international financial statistics" published by the International Monetary Fund, unless a special agreement is concluded between the investor and the competent body of the Contracting Party concerned.

Article 7.

Investors of one of the Contracting Parties whose investments have suffered losses due to war or any other armed conflict, state of national emergency, riot or any other situation of similar effect occurring in the territory or maritime area of the other Contracting Party, shall receive from the latter treatment no less favourable than that accorded, in accordance with its national legislation, to its own investors or to those of the most favoured nation.

Article 8.

1. Each Contracting Party, in whose territory or maritime area investments have been made by investors of the other Contracting Party, shall grant to such investors the free transfer of the financial resources relating to such investments and in particular

- (a) Profits, dividends, interest and other current income;
- (b) income derived from the rights referred to in paragraph 1(d) and (e) of Article 1 of this Agreement;
- (c) Payments made for the repayment of loans regularly contracted;
- (d) Proceeds from the total or partial disposal or liquidation of the investment, including capital gains on the investment;
- (e) Compensation for loss of possession or loss of property as provided in Article 6 of this Agreement.

2. Nationals of each Contracting Party who have been authorized to work in the territory or maritime area of the other Contracting Party in connection with an approved investment shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

3. The transfers referred to in the preceding paragraphs shall be made without delay at the normal rate of exchange officially applicable on the date of the transfer.

Article 9.

To the extent that the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad it may be granted, on a case-by-case basis, to investments made by investors of that Contracting Party in the territory or maritime area of the other Contracting Party.

Investments by investors of one of the Contracting Parties in the territory or maritime zone of the other Contracting Party may only obtain the guarantee referred to in the above paragraph if they have first obtained the approval of the latter Contracting Party.

If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory or maritime zone of the other Contracting Party, makes payments to one of its investors

it shall thereby be subrogated to the rights and actions of that investor, in particular those defined in Article 10 of this Agreement.

Article 10.

1. Any investment dispute between one of the Contracting Parties and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the two parties concerned.

2. Once each of the Contracting Parties has become a Contracting Party to the "Convention on the Settlement of Investment

Disputes between States and Nationals of Other States", concluded in Washington on March 18, 1965, such a dispute, if not amicably settled within six months from the time it was raised by one of the parties to the dispute, shall be submitted, at the request of either of these parties, to the International Centre for Settlement of Investment Disputes for settlement by arbitration. 3. As long as the condition of paragraph 2 has not been fulfilled and if such a dispute has not been settled within six months from the time it was raised by either party to the dispute, it shall be submitted, at the request of either party, to arbitration before an ad hoc tribunal.

This ad hoc tribunal shall be formed for each case in the following manner: each party to the dispute shall appoint an arbitrator, the two arbitrators shall together appoint a third arbitrator, a national of a third State, who shall be the chairman of the tribunal. The arbitrators shall be appointed within two months and the chairman within three months from the date on which the investor notifies the Contracting Party concerned of its intention to arbitrate.

In the event that the above time limits are not met, either party to the dispute may request the President of the Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

The ad hoc tribunal shall determine its own rules of procedure in accordance with those of the United Nations Commission on International Trade Law in force.

Article 11.

1. Disputes between Contracting Parties concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.

2. If the dispute is not settled within six months of its being raised by either Contracting Party, it shall, at the request of either Contracting Party, be submitted to an arbitration tribunal.

3. The said Tribunal shall be constituted for each particular case in the following manner:

Each Contracting Party shall appoint one member, and both members shall appoint, by mutual agreement, a national of a third State who shall be appointed by both Contracting Parties as chairman. All members shall be appointed within two months of the date on which one Contracting Party has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits set out in paragraph 3 above have not been observed either Contracting Party, in the absence of any applicable agreement, shall invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or is otherwise unable to serve, the most senior Under-Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

5. The Arbitration Tribunal shall take its decisions by a majority vote. Such decisions shall be final and binding on the Contracting Parties.

The Tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal decides otherwise, taking into account special circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the Contracting Parties.

Article 12.

This Agreement shall apply to all investments made after January 1, 1950.

Article 13.

Each Contracting Party shall notify the other Contracting Party of the completion of its domestic procedures, for the entry into force of this Agreement, which shall take effect thirty days after the date of receipt of the last notification.

The Agreement is concluded for a period of fifteen years and shall remain in force thereafter, unless one of the Contracting Parties denounces it through diplomatic channels with one year's notice.

Upon the expiration of the period of validity of this Agreement, investments made prior to the date of such expiration shall continue to enjoy the protection of its provisions for a further period of fifteen years.

Done at Prague, on 13 September 1990, in two originals, each in the French and Czech languages, both texts being equally authentic.

For the French Republic:

ROLAND DUMAS

For the Czech and Slovak Federal Republic

VACLAV KLAUS