

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ECUADOR AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Ecuador and the Government of the People Republic of China (hereinafter referred to as the Contracting Parties).

Desiring to create favourable conditions for investments made by investors of one Contracting Party in the territory of the other contracting party;

Recognizing that the reciprocal promotion and protection of such investments will be conducive to stimulating business initiative of the investors and will increase prosperity in both States;

Desiring to intensify economic cooperation of both States on a basis of equality and mutual benefit;

Have agreed as follows:

Article 1.

For the purposes of this Agreement,

1. The term "investment" means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and includes in particular but not limited to:

- a) Movable and immovable property and other property rights such as mortgages and pledges;
- b) Actions, capital and any other kind of participation in companies;
- c) Monetary claims or any other obligations having economic value;
- d) Copyright, industrial property, know-how and technological processes;
- e) Legal concessions, including those to search for or exploit natural resources.

2. The term "investor" means:

With respect to the People Republic of China:

- a) Natural persons having the nationality of the People Republic of China;
- b) Economic entities established in accordance with the laws of the Republic of China people and people domiciled in the Republic of China;

With respect to the Republic of Ecuador:

- a) Natural persons having the nationality of the Republic of Ecuador;
- b) Legal persons, commercial companies and other companies and associations having its seat in the territory of the Republic of Ecuador, and having legal personality, irrespective of the nature of the liability of its members or activity.

3. The term "returns" means the amounts yielded returns by an investment interests, such as profits, dividends, royalties or other legitimate income.

Article 2.

1. Each Contracting Party shall encourage investors of the other contracting party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. Each Contracting Party shall grant assistance in and provide facilities to nationals of the other contracting party for obtaining visas and permits for work in its territory or in connection with activities associated with such investments in accordance with its domestic legislation.

Article 3.

1. Investments of either of the Contracting Parties and activities related to the same shall enjoy a fair and equitable treatment and protection in the territory of the other contracting party.

2. The treatment and protection referred to in paragraph 1 of this article shall not be less favourable than those accorded to investments of investors and investment-related activities of third countries.

3. The treatment and protection referred to in paragraphs 1 and 2 of this article shall not include any preferential treatment accorded by the other Contracting Party to investors of a third State based on customs unions, free trade areas, economic unions, agreements relating to the suppression of double taxation or frontier for facilitating trade.

Article 4.

1. Neither Contracting Party will expropriate, nationalize or take similar measures (hereinafter referred to as "expropriation") against investments by investors of the other Contracting Party in their territory, unless the following conditions are met:

- a) Declaration of public interest;
- b) Under domestic legal procedure;
- c) Without discrimination;
- d) In exchange of fair compensation.

2. The compensation referred to in paragraph 1 (d) of this article shall be equivalent to the value of the expropriated investments at the time when the expropriation, be freely transferable and convertible. The compensation shall be paid without undue delay.

Article 5.

Investors of one Contracting Party who suffer losses of their investments in the territory of the other contracting party due to war, state of national emergency, revolt, insurrection or other similar events shall be accorded by the latter Contracting Party treatment not less favourable than that accorded to the investors of a third State.

Article 6.

1. Each Contracting Party shall guarantee to investors of the other Contracting Party shall, subject to its laws and regulations, the transfer of their investments and proceeds, including:

- a) Profits, dividends, interests and other legitimate income;
- b) Amounts from total or partial liquidation of investments;
- c) Payments made pursuant to a loan agreement in connection with an investment;
- d) Royalties according to paragraph 1 (d) of article 1;
- e) Payments of technical assistance or technical service charges, management fees;
- f) Payments in connection with projects on contract;

2. The transfers mentioned above shall be made at the prevailing exchange rate of the Contracting Party accepting the investments on the date of transfer.

Article 7.

If one of the contracting parties or any of their relevant entities makes a payment to an investor under a guarantee that has decided to an investment of that investor in the territory of the other Contracting Party, that Contracting Party shall recognize the assignment of any such right or claim of the investor to former Contracting Party or its competent authority and shall recognize the subrogation of that Party or entity relating to such right or claim. The subrogation right or claim shall not be greater than the original right or claim of the investor.

Article 8.

1. Any dispute between the contracting parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channels.

2. If a dispute cannot be settled in this way within six months of the filing of the claim by one of the Contracting Parties, the dispute shall be submitted to an ad hoc arbitral tribunal.

3. The Tribunal shall be composed of three arbitrators. Within two months from the date on which either Contracting Party receives the written notice to the other Party requesting arbitration, each party shall appoint an arbitrator. Those two arbitrators shall appoint by mutual agreement a third arbitrator who shall be a citizen of a third State which has diplomatic relations with both contracting parties. The third arbitrator shall be appointed by the two contracting parties as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within four months from the date of receipt of the written notice requesting arbitration, either Contracting Party may, in the absence of any other provision in this regard, invite the President of the International Court of Justice to appoint the arbitrator(s) who has not yet been appointed. If the President is a national of either Contracting Party or by any other cause cannot discharge the said functions then the next most senior member of the International Court of Justice who is not a citizen of either of the Contracting Parties shall be invited to make the necessary appointment(s).

5. The arbitral tribunal shall determine its own procedure. The Tribunal shall deliver its award in accordance with this Agreement and the Principles of International Law.

6. The tribunal shall determine its award by a majority of votes. Such award shall be final and binding on both contracting parties. The ad hoc arbitral tribunal shall, upon request of either Contracting Party, extend or explain such award.

7. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitration proceedings. The relevant costs of the Chairman and the Tribunal shall be borne equally by the contracting parties.

Article 9.

1. Any dispute between an investor of one Contracting Party and the other contracting party in connection with an investment in the territory of that Party shall, as far as possible, be settled amicably through negotiations between the parties to the conflict.

2. If the dispute cannot be settled by negotiations within a period of six months, any party shall be entitled to submit the dispute to the competent court of the Contracting Party accepting the investment.

3. If a dispute related to the amount of compensation for expropriation cannot be settled within a period of six months after resort to negotiations as specified in paragraph 1 of this article, the dispute may be submitted at the request of either party to an ad hoc arbitral tribunal. Nothing in this paragraph shall not apply if the investor concerned has resorted to the procedure specified in paragraph 2 of this article.

4. Such an arbitral tribunal shall be constituted for each individual case as follows: each party to the dispute shall appoint one arbitrator and shall select the two as president is a citizen of a third State having diplomatic relations with both contracting parties. The first two arbitrators shall be appointed within two months after one of the Parties to the conflict from the other party receives written notice of the request for arbitration, and the Chairman shall be appointed within four months. If within the specified period before the Tribunal has not been constituted, either party to the dispute may invite the Secretary-General of the International Centre for the Settlement of Investment Disputes to make the necessary appointments.

5. The tribunal shall determine its own procedure. However, the court may, in the course of the proceedings, use as a guide the Rules of Arbitration of the International Centre for the Settlement of Investment Disputes.

6. The tribunal shall reach a decision by a majority of votes. Such decision shall be final and binding on both parties to the conflict. both Contracting Parties shall undertake to implement the decision in accordance with their respective domestic legislation.

7. The Tribunal shall decide in accordance with the legislation of the Contracting Party to the conflict which accepts investment, including its rules on the Conflict of Laws, the provisions of this Agreement and the generally recognized principles of international law as accepted by both contracting parties.

8. Each Party to the dispute shall bear the costs of their respective designated members of the Tribunal and representation and of its proceedings. The cost of the Chairman appointed and the remaining costs shall be borne equally by the parties.

Article 10.

If the treatment that, in accordance with its laws and regulations, one of the Contracting Parties to accord to investments made by investors of the other contracting party or to activities associated with such investments are more favourable than the treatment provided for in this Convention, it shall apply the treatment which is the most favourable.

Article 11.

This Agreement shall apply to investments made by investors of either Contracting Party before or after its Entry into Force, in accordance with the laws and regulations of the other Contracting Party in the territory of the latter.

Article 12.

1. The representatives of the two Contracting Parties shall undertake timely meetings with the aim of:

- a) Reviewing the implementation of this Agreement;
- b) Exchanging information and legal investment opportunities;
- c) Resolving disputes arising out of investments;
- d) Forwarding proposals on promotion of investment;
- e) Studying other issues in connection with investments.

2. If either Contracting Party requests consultation on any matter referred to in paragraph 1 of this article, the other Contracting Party shall give prompt response and the consultation shall take place alternately in Beijing and in Quito.

Article 13.

1. This Agreement shall enter into force on the first day of the month following the date on which either contracting party notifies the other in writing that their respective internal legal procedures have been completed, and remain in force for a period of five years.

2. This Agreement shall remain in force unless one of the contracting parties is not sending a notice in writing to the other contracting party to terminate this Agreement one year before the expiration specified in paragraph 1 of this article.

3. After the expiry of the initial period of five years, either Contracting Party may at any time after that date denounce this Agreement by a written notification to at least one year in advance to the other contracting party.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of articles 1 to 12 shall remain in force for a further period of ten years from such date of termination.

In WITNESS WHEREOF, the duly authorised representatives of their respective Governments have signed this Agreement.

Done at Beijing on March 21, 1994, in duplicate in the Chinese and English languages, all texts being equally valid. In case of divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Ecuador

Diego Paredes Peña

For the Government of the People's Republic of China

Shi Guangsheng