

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of China and the Government of the Republic of Guatemala, hereinafter referred to as the "Contracting Parties",

Desiring to promote greater economic cooperation for the reciprocal benefits of both Contracting Parties,

Intending to create favorable conditions for investments, that will stimulate economic and technological development in the territories of the Contracting Parties, and increase the production of investors of each Contracting Party in the of the other, and

Recognizing that the promotion and protection of investments, through the present Agreement, will be conducive to the stimulation of business initiative and to the development of economic cooperation between them,

Have agreed as follows:

Article 1. Definitions

For the purposes of the present Agreement:

1. "Investment" means: any kind of asset, in goods or rights, owned by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and, in particular, though not exclusively, includes:

- a) Movable and immovable property and any other related rights;
- b) Shares of stock, documents of title and debentures of companies or any other forms of participation in a company;
- c) Credits or claims that have an economic value and that are directly related to an investment;
- d) Intellectual property rights according to the legislation of the Contracting Parties;
- e) Rights conferred by law or under contract, to undertake any economic and commercial activities, including any rights to search for, cultivate, extract or exploit natural resources,

Any change in the form of an investment shall not affect its character as an investment.

Investments in areas restricted by the Constitution, laws and regulations of the Contracting Party receiving the investment are excluded, among them, those activities reserved for nationals of each Contracting Party. The above restriction or reservation shall not be discriminatory between investors from the other Contracting Party and investors from any third States.

It will be considered that the Government of the receiving Contracting Party has given its approval, when that Government grants to an Investor from the other Contracting Party commercial licenses, patents, or any other related documents required to initiate operations.

2. "Returns" means: all amounts yielded by an investment, as referred to in paragraph 1 of this article and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties, and fees.

3. "Investor" means:

- a) Any natural persons possessing the nationality of one of the Contracting Parties according to its legislation, and that make investments, as referred to in paragraph 1 of this article;

b) Any legal persons, duly incorporated or constituted in accordance with the laws of one of the Contracting Parties, and that make investments, as referred to in paragraph 1 of this article;

4. "Territory" means:

a) For the Republic of China: The territory, including the territorial sea and any maritime area situated beyond the territorial sea, over which the Republic of China may exercise sovereignty rights or jurisdiction.

b) For the Republic of Guatemala: The land and waters and air space and the marine and submarine zones over which the State exercises sovereignty in accordance with the Constitution of the Republic of Guatemala and international law.

Article 2. Promotion and Protection

1. Each Contracting Party shall encourage and create favorable conditions in its territory for investments of investors of the other Contracting Party, according to its Constitution, laws and regulations.

2. Each Contracting Party shall promote, to the extent possible, the investments referred to in paragraph 1, and shall at all times be accorded fair and equitable treatment; and, it shall provide, in accordance with its laws and regulations, all necessary permits related to such investments as well as all authorizations required to perform the license and technical, commercial or administrative assistance contracts.

3. Each Contracting Party shall protect the investments of investors of the other Contracting Party in its territory, and shall eliminate all obstacles and prejudices, arbitrary or discriminatory measures suffered by these investments, and will abstain itself from incorporating any administrative measures that might affect these investments.

Both returns of the investments, and the reinvestments shall enjoy the same protection established for the investments.

4. All investments approved by either Contracting Party shall be covered under this Agreement.

5. The investments made in the territory of any of the Contracting Parties, before the entry into force of this Agreement, shall be covered by the protection established in it, at the request of the interested investor.

Nevertheless, this Agreement shall not apply to disputes which arose prior to its entry into force.

Article 3. National and Most-favoured-nation Treatment

1. In accordance with its laws and regulations, each Contracting Party shall grant investments made by investors of the other Contracting Party in the former's territory treatment no less favorable than that granted to investments of its own investors, or from any third State.

2. Nothing in this article shall be construed so as to oblige a Contracting Party to extend to investments of investors of the other Contracting Party advantages resulting from any existing or future Association or participation in a free trade area, customs union, common market, economic and monetary union or any other similar institutions of economic integration.

3. Nothing in this article shall be construed so as to oblige a Contracting Party to extend to investments of investors of the other Contracting Party deductions, fiscal exemptions or any other similar advantages resulting from double taxation agreements or any other agreement regarding tax matters concluded between one Contracting Party and any third State.

Article 4. Expropriation and Compensation

1. Investments of investors of either Contracting Party shall enjoy full protection and security in accordance with the legislation of the Contracting Party in which the investment is made.

2. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated, or subjected to measures having an equivalent effect, except in cases when any such measures have been adopted for public purpose, in accordance with the Constitution and due process of law, on a non discriminatory basis.

The Contracting Party that adopts any such measures, shall be obliged to pay, according to its laws and regulations, a prompt, adequate and effective compensation. The compensation shall amount to the fair market price of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, whichever was earlier. It shall include interest from the date of dispossession of the expropriated property until the date of payment.

Before the expropriation, nationalization or measures having an equivalent effect takes place, the Contracting Party making the expropriation shall take into consideration measures to make a satisfactory compensation to investors of the other Contracting Party.

The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

3. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer damages or losses owing to war or other armed conflicts, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable than that which the latter Contracting Party accords to its own nationals or investors of any third State.

The Contracting Party which may take any such measures shall be liable to pay, in accordance with its laws and regulations, a prompt, effective and adequate compensation. The compensation shall be the fair market value of the expropriated investment immediately before the expropriation or impending expropriation became public knowledge, what happens first. It shall include interest from the date on which the original owner was deprived of the expropriated property until the date of payment. Before the expropriation and nationalization measures or having an equivalent effect, the contracting party making the expropriation shall take account of measures to offset satisfactorily to investors of the other contracting party. The investor affected shall have a right under the law of the contracting party making the expropriation, to promote the review by a judicial or other independent authority of the contracting party of its case and of the valuation of its investment in accordance with the principles set out in this paragraph.

3. Investors of one Contracting Party whose investments in the territory of the other contracting party suffer loss or damage owing to war or other armed conflict, a national state of emergency, revolt, riot or insurrection in the territory of the contracting party recently referred to receive the contracting party recently referred to as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than that which the contracting party recently referred to it provides to its own nationals or to investors of third States.

Article 5. Transfers

1. Each Contracting Party shall guarantee investors of the other Contracting Party, in accordance with its laws and regulations, the unrestricted transfer of payments related to their investments. Such transfers shall include, in particular, though not exclusively, the following:

- a) Additional amounts needed to maintain, expand and develop the Investment;
- b) Returns;
- c) Payments made according to the terms of a contract, among them mortgages, repayments of loans related to an investment;
- d) Cash derived from the partial or total sale or liquidation of the investment;
- e) The compensations referred to in article 4;
- f) The payments resulting from a dispute settlement procedure

2. Subject to the exchange regime in effect, transfers shall be effected at the market rate of exchange applicable on the date of transfer and shall be made without delay in any freely convertible currency.

Article 6. Subrogation

If a Contracting Party or its designated agency makes a payment under an indemnity against non-commercial risks given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment, under the law of that country, of any right or claim from the investor to the former Contracting Party, or its designated agency, as well as the entitlement by virtue of subrogation that will entitle the former Contracting Party, or its designated agency, to assert any such right or claim to the same extent as its predecessor. The Contracting Party that recognizes the subrogation of the other Contracting Party or its designated agency shall permit the correspondent transfers to the latter.

Article 7. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, to the extent possible, be settled through diplomatic channels.
2. If the dispute cannot thus be settled within a period of three months from the commencement of consultations, it shall be submitted, upon written request of either Contracting Party, to an arbitration tribunal.
3. The arbitration tribunal shall be constituted in the following way: each Contracting Party shall appoint one member of the tribunal, and those two members shall then select a national of a third State as chairman of the tribunal. The members shall be appointed within two months, and the chairman within a month, from the date the last member was appointed.
4. If one of the Contracting Parties fails to appoint its member of the tribunal within the period specified in paragraph 3, the other Contracting Party may invite the Chairman of the court of arbitration of the International Chamber of Commerce (the ICC) to make the necessary appointments, according to the rules of the ICC then in effect.
5. In case that the appointed members of both Contracting Parties could not reach an agreement upon the appointment of the chairman of the tribunal, within the period of time established on paragraph 3 of this article, any Contracting Party could request to follow the procedure established on paragraph 4.
6. The proceedings of the arbitration tribunal shall be conducted in accordance with the Rules of Conciliation and Arbitration of the ICC. The Contracting Parties shall establish the venue in which the arbitral procedure will take place. In case that the tribunal cannot reach agreement, within 7 days, on the venue where the arbitral procedure should take place, either Contracting Party can invite the Secretary General of the ICC to make, within 7 days, a selection of the venue for the procedure. In case that the Secretary General of the ICC cannot make a decision, the City of London, capital city of the United Kingdom of Great Britain and Northern Ireland, will be immediately established as the place for the procedure.
7. The arbitration tribunal shall reach its award by a majority of votes. Such award shall be final and binding for both Contracting Parties.
8. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitration proceeding. The cost of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitration tribunal may in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties.

Article 8. Settlement of Investment Disputes between One Contracting Party and Investors of the other Contracting Party

1. For the settlement of any investment dispute which may arise between one Contracting Party and an investor of the other Contracting Party with respect to matters regulated by this Agreement, an amicable settlement shall be conducted between such parties to the dispute.
2. If a dispute cannot be settled in compliance with paragraph 1 of this article, within 3 months from the date the above amicable settlement is initiated, it shall be submitted to arbitration, upon written request of either party to the dispute, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce then in effect.
3. The procedures established in paragraphs 3 to 8 of article 7 hereof shall be applicable to the arbitration conducted under this article.

Article 9. Entry Into Force, Duration, Amendment and Termination

1. This Agreement shall enter into force one month after the date when both Contracting Parties have notified each other, through the diplomatic channels, of the completion of their applicable legal formalities required for the entry into force of international agreements.
2. This Agreement shall remain in force for an initial period of ten years, and shall continue thereafter unless one of the Contracting Parties notifies the other Contracting Party, with a written notification one year in advance, of its intention to terminate it. In such case, the termination shall become effective one year after the notification has been received by the other Contracting Party.
3. In respect of investments made prior to the termination of this Agreement, the provisions contained in this Agreement shall remain in force for an additional period of ten years from the date of termination.

4. The Contracting Parties shall periodically consult with each other, to improve the measures, application and interpretation of this Agreement, and to make any amendment by exchange of letters

5. This Agreement shall remain in force, independent of the diplomatic and consular relations between the Contracting Parties

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Agreement.

Done in triplicate at Guatemala City the twelve day of November, 1999 in the Spanish, Chinese and English languages, all three texts being equally authoritative. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of China

Andrew J.S. Wu

Ambassador Extraordinary and Plenipotentiary

For the Government of the Republic of Guatemala

José Guillermo Castillo V.

Interim Minister of Economy