

TREATY BETWEEN THE REPUBLIC OF PARAGUAY AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF CAPITAL INVESTMENTS

The Republic of Paraguay and the Federal Republic of Germany,

Desiring to intensify economic cooperation between the two States,

Intending to create favourable conditions for investments by nationals and companies of either State in the territory of the other State,

Recognizing that the promotion and contractual protection of such investments are apt to stimulate private business initiative and to increase the prosperity of the two nations,

Have agreed as follows:

Article 1.

For the purposes of this Treaty:

(1) The term "investments" shall comprise every kind of asset, in particular:

(a) Movable and immovable property as well as any rights in rem such as mortgages, liens and pledges;

(b) Shares of companies and other kinds of interest;

(c) Claims to money which has been used to create an economic value or claims to any performance having an economic value;

(d) Intellectual property rights, particularly copyrights, patents, utility models, industrial designs and models, trademarks, secret industrial and commercial tradenames, technological processes, know-how and goodwill;

(e) Business concessions under public law, including concessions for prospection and exploitation;

Any alteration of the form in which assets are invested shall not affect their classification as an investment;

(2) The term "returns" shall mean the amounts yielded by an investment for a definite period as profit, dividends, interest, license or other fees;

(3) The term "nationals" shall mean: With respect to the Republic of Paraguay:

Natural persons who, under the National Constitution and other norms in force in that connection in its territory, are regarded as nationals of that country;

With respect to the Federal Republic of Germany:

Germans within the meaning of Basic Law of the Federal Republic of Germany;

(4) The term "companies" shall mean:

With respect to the Republic of Paraguay:

Any juridical person under the laws and regulations of the Republic of Paraguay having its seat in the territory in the Republic of Paraguay;

With respect to the Federal Republic of Germany:

Any juridical person as well as any commercial or other company or association with or without legal personality having its seat in the territory of the Federal Republic of Germany, irrespective of whether or not its activities are directed at profit.

Article 2.

(1) Each Contracting Party shall, in accordance with its legislation, permit in its territory investments of capital by nationals or companies of the other Contracting Party and promote such investments as far as possible. It shall in any case accord such investments fair and equitable treatment.

(2) Neither Contracting Party shall, through arbitrary or discriminatory measures, prejudice the management, maintenance, use and enjoyment in its territory of the investments of nationals or companies of the other Contracting Party.

Article 3.

(1) Neither Contracting Party shall subject investments in its territory owned or influenced by nationals or companies of the other Contracting Party to treatment less favourable than it accords to investments of its own nationals or companies or to investments of nationals or companies of any third State.

(2) Neither Contracting Party shall subject nationals or companies of the other Contracting Party in its territory, insofar as their investment related activities are concerned, to treatment less favourable than it accords to its own nationals and companies or to nationals and companies of any third State.

(3) Such treatment shall not extend to privileges which either Contracting Party accords to nationals or companies of third States on account of their membership in or association with a customs or economic union, a common market or a free trade area.

(4) The treatment granted under this article shall not refer to privileges granted by either Contracting Party to nationals or companies of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation.

Article 4.

(1) Investments by nationals or companies of either Contracting Party shall enjoy full protection as well as security in the territory of the other Contracting Party.

(2) Investments by nationals or companies of either Contracting Party shall not be expropriated, nationalized, or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party, except for the public benefit and against compensation. Compensation shall be equivalent to the value of the investment expropriated immediately before the date of actual impending expropriation, nationalization or comparable measure was publicly announced.

The compensation shall be paid without delay and shall carry the usual bank interest until the time of payment; it shall be actually realizable and freely transferable. Appropriate measures must be taken by the time of expropriation, nationalization or comparable measure, at the latest, to determine the amount of compensation and to pay it. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

(3) Nationals or companies of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded by such other Contracting Party treatment no less favourable than that which that Party accords to its own nationals or companies as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

(4) Nationals or companies of either Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in this article.

Article 5.

Each Contracting Party shall guarantee to the nationals or companies of the other Contracting Party the free transfer of payments connected with an investment, especially:

(a) Of the capital and additional amounts to maintain or increase the investment;

- (b) Of the returns;
- (c) In repayment of loans;
- (d) Of the proceeds from the sale of the whole or any part of the investment;
- (e) Of the compensation provided for in article 4,

Article 6.

If either Contracting Party makes payment to any of its nationals or companies under a guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under article 10, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim from such national or company to the former Contracting Party. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such right or claim (assigned claims) which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. As regards the transfer of payments by virtue of such assignment, article 4, paragraphs 2 and 3, as well as article 5 shall apply *mutatis mutandis*.

Article 7.

(1) Transfers pursuant to article 4, paragraph 2 or 3, article 5, or article 6 shall be made without delay at the rate in effect in each case.

(2) Such a rate shall coincide with the cross rate resulting from the exchange rates which the International Monetary Fund would apply if, at the time of payment, the currencies of the countries concerned were converted into special drawing rights.

Article 8.

(1) If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Treaty contain a regulation, whether general or specific, entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by this Treaty, such regulation shall, to the extent that it is more favourable, prevail over this Treaty.

(2) Each Contracting Party shall observe any other obligations it may have entered into with regard to investments in its territory by nationals or companies of the other Contracting Party.

Article 9.

This Treaty shall also apply to investments made prior to its entry into force by nationals or companies of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation.

Article 10.

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty should as far as possible be settled by the Governments of the two Contracting Parties.

(2) If a dispute cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted *ad hoc* as follows: each Contracting Party shall appoint one member and these two members shall agree upon a national of a third State as their chairman to be appointed by the Governments of the two Contracting Parties. Such members shall be appointed within two months, and such chairman within three months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Party or if he is otherwise prevented from discharging the said function, the Vice-President shall make the necessary appointments. If the Vice-President is a national of either Contracting Party, or if he, too, is prevented from discharging the said function, the member of the Court next in seniority who is not a national of

either Contracting Party shall make the necessary appointments.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and representatives in the arbitral proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitral tribunal may make a different regulation concerning costs. In all other respects, the arbitral tribunal shall determine its own procedure.

(6) As both Contracting Parties are also parties to the Convention on the settlement of investment disputes between States and nationals of other States, signed at Washington, D.C, on 18 March 1965, the arbitral tribunal provided for above may, in consideration of the provisions of article 27, paragraph 1, of the said Convention, not be appealed to where agreement has been reached between the national or company of one Contracting Party and the other Contracting Party under article 25 of the Convention. This shall not affect the possibility of appealing to such arbitral tribunal in the event that a decision of the arbitral tribunal established under the said Convention (article 27) is not complied with or in the case of an assignment under a law or pursuant to a legal transaction as provided for in article 6 of this Treaty.

Article 11.

(1) Disputes between either Contracting Party and a national or company of the other Contracting Party in connection with investments should as far as possible be settled amicably between the Parties to the dispute.

(2) If a dispute cannot be settled within six months from the date on which it has been raised by either Party to the dispute, the national or company may submit the dispute either to the national jurisdiction of the Contracting Party in whose territory the investment was made or, alternatively, at any time, to international arbitration. In the latter case, the judicial action initiated in the courts shall be discontinued. Provided there is a desire to settle the dispute before an arbitral tribunal and provided the parties in litigation do not agree on a different arrangement, the dispute shall be submitted to an arbitral procedure in accordance with the Convention of 18 March 1965 on the settlement of investment disputes between States and nationals of other States,

(3) The arbitral award shall be binding and may not be the subject of further recourse or of legal action other than as provided for in the said Convention. The award shall be executed in accordance with domestic law.

(4) The Contracting Party involved in the litigation shall not plead, during an arbitral procedure or at the time of execution of an arbitral award, the fact that a national or company of the other Contracting Party has received compensation as a result of insurance against part or all of the damage.

Article 12.

This Treaty shall be effective irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

Article 13.

(1) This Treaty shall be ratified; the instruments of ratification shall be exchanged as soon as possible at Bonn.

(2) This Treaty shall enter into force one month from the date of the exchange of the instruments of ratification. It shall remain in force for a period of 10 years and shall be extended thereafter for an unlimited period unless denounced in writing by either Contracting Party 12 months before its expiration. After 10 years, the Treaty may be denounced at any time, with 12 months' prior notice.

(3) In respect of investments made prior to the date of termination of this Treaty, articles 1 to 12 shall continue to be effective for a further period of 20 years from the date of termination of this Treaty.

Done at Asunción on 11 August 1993, in two originals in the Spanish and German languages, both texts being equally authentic.

For the Republic of Paraguay:

ALEXIS FRUTOS VAESKEN

For the Federal Republic of Germany:

PROTOCOL

On signing the Treaty between the Republic of Paraguay and the Federal Republic of Germany concerning the Promotion and Reciprocal Protection of Capital Investments, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which shall be regarded as an integral part of the said Treaty:

(1) Ad article 1

(a) Returns from the investment, and, in the event of their reinvestment, the returns therefrom, shall enjoy the same protection as the investment.

(b) Without prejudice to any other method of determining nationality, in particular, any person in possession of a passport issued by the competent authorities of the Contracting Party concerned shall be deemed to be a national of that Party. The Treaty shall not apply to investors who are nationals of both the Contracting Parties.

(2) Ad article 2

(a) Investments made, in accordance with the laws and regulations of either Contracting Party, within the territory of that Party by nationals or companies of the other Contracting Party shall enjoy the full protection of this Treaty.

(b) With respect to the Federal Republic of Germany, this Treaty shall be effective also in the areas of the exclusive economic zone and the continental shelf, provided that international law permits the exercise of the rights of sovereignty or jurisdiction in those areas.

(3) Ad article 3

(a) The following shall more particularly, though not exclusively, be deemed "activity" within the meaning of article 3, paragraph 2: the management, maintenance, use and enjoyment of an investment. The following shall, in particular, be deemed "treatment less favourable" within the meaning of article 3: less favourable treatment in the purchase of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, unequal treatment in the case of impeding the marketing of products inside or outside the country, as well as any other measures having similar effects. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favourable" within the meaning of article 3.

(b) The provisions of this article do not obligate a Contracting Party to extend tax privileges, exemptions and relief accorded only to natural persons and companies resident in its territory in accordance with its tax laws also to natural persons and companies resident in the territory of the other Contracting Party.

(c) The Contracting Parties shall within the framework of their national legislation give sympathetic consideration to applications for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to nationals of either Contracting Party who in connection with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Application for work permits shall also be given sympathetic consideration.

(4) Ad article 4

A claim to compensation shall also exist when it arises from state intervention in the company in which the investment is made as a consequence of which such company's economic substance is severely impaired.

(5) Ad article 7

A transfer shall be deemed to have been made "without delay" within the meaning of article 7, paragraph 1, if effected within such period as is normally required for the completion of transfer formalities. The said period, which may not in any case exceed two months, shall begin at the time when the respective request is transmitted.

(6) Ad article 9

This Treaty shall not apply to disagreements or legal action that arose before its entry into force.

(7) Whenever goods or persons connected with an investment are to be transported, each Contracting Party shall neither exclude nor hinder transport enterprises of the other Contracting Party and shall issue permits as required to carry out such

transport. This shall include the transport of.

(a) Goods directly intended for an investment within the meaning of this Treaty or acquired in the territory of either Contracting Party or of any third State by or on behalf of an enterprise in which assets within the meaning of this Treaty are invested;

(b) Persons travelling in connection with an investment.

Done at Asunción on 11 August 1993, in two originals, in the German and Spanish languages, both texts being equally authentic.

For the Republic of Paraguay:

ALEXIS FRUTOS VAESKEN

For the Federal Republic of Germany:

HEINZ SCHNEPPEN