

AGREEMENT BETWEEN THE CZECH REPUBLIC AND THE UNITED MEXICAN STATES ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

THE CZECH REPUBLIC and THE UNITED MEXICAN STATES, hereinafter referred to as "the Contracting Parties";

DESIRING to intensify economic cooperation to the mutual benefit of both States,

INTENDING to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

RECOGNIZING the need to promote and protect foreign investments with the aim to foster their economic prosperity and to stimulate business initiatives in this field,

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "Investor of a Contracting Party" means:

- (a) A natural person having the nationality of a Contracting Party in accordance with its applicable law; or
- (b) Legal persons, including corporations, commercial companies or other companies or associations, which have a main office in the territory of one Contracting Party, and are incorporated or constituted and operate in accordance with the laws and regulations of that Contracting Party;

Making or having made an investment in the other Contracting Party's territory.

(2) The term "investment" shall comprise every kind of asset invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and shall include, in particular, though not exclusively:

- (a) Movable and immovable property, acquired or used for economic purposes, as well as any other rights in rem, such as mortgages, liens, leases, pledges, and similar rights;
- (b) Shares, stocks and debentures of companies or any other form of participation in a company;
- (c) Claims to money or to any performance under contract having an economic value such as bonds, debentures, loans and other forms of debt of an enterprise, including rights derived therefrom, where the enterprise is an affiliate of the investor, or where the original maturity of the loans is at least of three (3) years.

But investment does not include, a payment obligation from, or the granting of a credit to a Contracting Party or to a state enterprise;

(d) Intellectual property rights, which mean trade marks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;

(e) Interests arising from the commitment of capital or other resources in the territory of a Contracting Party to economic activity in such territory, such as under

(i) Contracts involving the presence of an investor's property in the territory of the Contracting Party, including turnkey or construction contracts, or concessions, or

- (ii) Contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;
- (f) An enterprise that is a legal person constituted or incorporated under the applicable laws of a Contracting Party;

But investment does not mean, claims to money that arise solely from:

- (i) Commercial contracts for the sale of goods or services by an investor in the territory of a Contracting Party to a company or a business enterprise in the territory of another Contracting Party, or
- (ii) The extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (c); or subparagraph (c); or
- (iii) Any other claims to money,

That do not involve the kinds of interests set out in subparagraphs (a) through (e).

(3) The term "returns" means the amounts yielded by an investment and, in particular, profits, interests, capital gains, dividends, royalties and other fees.

(4) The term "territory" means:

- (a) In respect of the Czech Republic, the territory of the Czech Republic over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with International Law;
- (b) In respect of the United Mexican States, the territory of the United Mexican States including the maritime areas adjacent to the coast of the State concerned, i.e. the exclusive economic zone and the continental shelf, to the extent to which that Party may exercise sovereign rights or jurisdiction in those areas according to International Law.

Article 2. Promotion and Admission of Investments

- (1) Each Contracting Party shall encourage and create favourable conditions for 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) The legal extension, alteration or transformation of an investment is to be considered a new investment.
- (3) Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

Article 3. National and Most-favoured-nation Treatment

- (1) Each Contracting Party shall in its territory accord investments of investors of the other Contracting Party and their returns, treatment not less favourable than that it accords, in like circumstances, to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favourable to the investment concerned.
- (2) Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords, in like circumstances, to its own investors or to investors of any third State, whichever is more favourable to the investor concerned.
- (3) The provisions of paragraphs (1) and (2) of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of paragraphs (1) and (2) of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:
 - (a) Any customs union, free trade area, monetary union, common market, or similar international agreements leading to such unions or institutions or other similar forms of regional co-operation to which either of the Contracting Parties is or may become a party; or
 - (b) Any tax measures. Nothing in this Agreement shall affect the rights and obligations of either Contracting Party derived from any tax convention. In the event of any inconsistency between the provisions of this Agreement and any tax convention, the provisions of the latter shall prevail.

Article 4. Expropriation and Compensation

(1) Neither Contracting Party shall expropriate or nationalise an investment either directly or indirectly through measures tantamount to expropriation or nationalisation (hereinafter referred to as "expropriation"), except:

- (a) For a public purpose;
- (b) On a non-discriminatory basis;
- (c) In accordance with due process of law, and
- (d) Accompanied by payment of compensation in accordance with paragraph (2) below.paragraph (2) below.

(2) Compensation shall:

- (a) Be paid without delay.
- (b) Be equivalent to the market value of the expropriated investment immediately before the expropriation occurred. The market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

Valuation criteria should include, for example, the going concern value, asset value, including declared tax value of tangible property, and other criteria, as appropriate, to determine the market value.

(c) Include interest from the date of expropriation until the date of actual payment.

(d) Be fully realisable and freely transferable.

(3) The investor whose investment is expropriated, shall have the right, under the laws and regulations of the expropriating Contracting Party, to the prompt review by a judicial or other competent authority of that Contracting Party of its case and of valuation of its investment in accordance with the principles set out in this Article.

Article 5. Compensation for Losses

Where investments of investors of either Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, such investors shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

Article 6. Transfers

(1) A Contracting Party shall permit the transfer of payments related to investments of an investor of the other Contracting Party in its territory. The transfers shall be made in a freely convertible currency, without any restriction and undue delay. Such transfers shall include, in particular though not exclusively:

- (a) Returns;
- (b) Proceeds from the sale of all or any part of the investment, or from the partial or complete liquidation of the investment;
- (c) Payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
- (d) Payments arising from the compensation for expropriation;
- (e) Payments pursuant to the application of provisions relating to the settlement of disputes; and
- (f) Earnings of personnel engaged from abroad who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party.

(2) Transfers shall be made at the market rate of exchange prevailing on the date of transfer.

(3) Transfers shall be considered to have been made "without undue delay" in the sense of paragraph (1) of this Article when they have been made within the period normally necessary for the completion of the transfer.paragraph (1) of this Article when they have been made within the period normally necessary for the completion of the transfer.

(4) Notwithstanding paragraphs (1) and (2) above, either Party may prevent a transfer through the equitable, non-discriminatory and in good faith application of its laws relating to: paragraphs (1) and (2) above, either Party may prevent a transfer through the equitable, non-discriminatory and in good faith application of its laws relating to:

- (a) Bankruptcy, insolvency or the protection of the rights of creditors;
- (b) Issuing, trading or dealing in securities;
- (c) Criminal or administrative violations; or
- (d) Ensuring the satisfaction of judgements in adjudicatory proceedings.

(5) In case of serious balance of payments difficulties or the threat thereof, each Contracting Party may temporarily restrict transfers provided that such a Contracting Party implements measures or a programme in accordance with recognised international standards. These restrictions would be imposed on an equitable, non-discriminatory and in good faith basis.

Article 7. Subrogation

If a Contracting Party or its designated Agency has granted a financial guarantee against non-commercial risks concerning an investment by one of its investors in the territory of the other Contracting Party, the Contracting Party or its designated Agency becomes the direct beneficiary of any kind of payment due to the investor from the moment in which it has covered the investor's presumed loss. However, in case of a dispute, only the investor or a designated agency organised under private law may initiate, or participate in, proceedings before a national tribunal or submit the case to international arbitration in accordance with the provisions of part one of Chapter two of this Agreement.

Article 8. Application of other Rules

Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors as regards their investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable to their case.

Chapter Two: Dispute Settlement

Part One: Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

Article 9. Means of Settlement

This Part applies to disputes between a Contracting Party and an investor of the other Contracting Party derived from an alleged breach of an obligation under this Agreement. Disputes should, if possible, be settled by negotiation or consultation. If it is not so settled, the investor may choose to submit it for resolution:

- (a) To any competent court or administrative tribunal of the Contracting Party, party to the dispute;
- (b) In accordance with any applicable previously agreed dispute settlement procedure, or
- (c) By arbitration in accordance with Article 10. Article 10.

Article 10. Arbitration: Scope and Standing and Time Periods

(1) An investor of a Contracting Party may submit to arbitration a claim that the other Contracting Party has breached an obligation under this Agreement and that the investor has incurred loss or damage by reason of, or arising out of, that breach. Likewise, an investor of a Contracting Party that owns or controls an investment that is an enterprise of the other Contracting Party, may submit to arbitration a claim that the other Contracting Party has breached an obligation under this Agreement and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach. Nevertheless, an investment may not make a claim under this Part.

(2) Provided that neither the investor concerned nor the enterprise of the other Contracting Party that such an investor owns or controls, has submitted the dispute for resolution under Article 9 (a) or (b), the investor may submit the dispute for settlement by binding arbitration after six (6) months have elapsed since the events giving rise to the claim. Article 9 (a) or (b), the investor may submit the dispute for settlement by binding arbitration after six (6) months have elapsed since the events giving rise to the claim.

(3) A disputing investor may submit the claim to arbitration under:

- (a) The Convention on the Settlement of Investment Disputes between States and National of other States ("ICSID"), provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the Convention; or the Convention on the Settlement of Investment Disputes between States and National of other States ("ICSID"), provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the Convention;
- (b) The Additional Facility Rules of ICSID, provided that either the disputing Contracting Party or the Contracting Party of the investor, but not both, is a party to the ICSID Convention; or the Additional Facility Rules of ICSID, provided that either the disputing Contracting Party or the Contracting Party of the investor, but not both, is a party to the ICSID Convention; or
- (c) The Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL Arbitration Rules").

(4) A disputing investor may submit a claim to arbitration only if:

- (a) The investor consents to arbitration in accordance with the procedures set out in this Agreement; and
- (b) The investor and, where the claim is for loss or damage to an interest in an enterprise of the other Contracting Party that the investor owns or controls, the enterprise waive their right to initiate before any administrative tribunal or court under the law of a Contracting Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Contracting Party that is alleged to be a breach of this Agreement, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Contracting Party.

(5) A consent and waiver required by this Article shall be in writing, be delivered to the disputing Contracting Party and be included in the submission of a claim to arbitration.

(6) The applicable arbitration rules shall govern the arbitration except to the extent modified by this Part.

(7) A dispute may be submitted to arbitration provided that the investor has delivered to the Contracting Party, party to the dispute, written notice of his intention to submit a claim to arbitration at least one hundred and twenty (120) days in advance, but not later than three (3) years from the date that either the investor or the enterprise of the other Contracting Party that the investor owns or controls, first acquired or should have acquired knowledge of the events which gave rise to the dispute.

(8) The notice referred to in paragraph (7), shall specify: paragraph (7), shall specify:

- (a) The name and address of the disputing investor and, where the claim is for loss or damage to an interest in an enterprise of the other Contracting Party that the investor owns or controls, the name and address of the enterprise;
- (b) The provisions of this Agreement alleged to have been breached and any other relevant provisions;
- (c) The issues and the factual basis for the claim; and
- (d) The relief sought and the approximate amount of damages claimed.

Article 11. Contracting Party Consent

Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with this Part.

Article 12. Formation of the Arbitral Tribunal

(1) Unless the parties to the dispute agree otherwise, the arbitral tribunal shall comprise three members. Each party to the dispute shall appoint one member and the disputing parties shall agree upon a third member as their chairman.

(2) Members of arbitral tribunals shall have experience in International Law and investment matters.

(3) If an arbitral tribunal has not been constituted within ninety (90) days from the date the claim was submitted to arbitration, either because a party to the dispute failed to appoint a member or failed to agree upon a chairman, the Secretary General of ICSID, on the request of any of the parties to the dispute, shall be asked to appoint, in his discretion, the member or members not yet appointed. Nevertheless, the Secretary General of ICSID, on appointing a chairman, shall assure that the chairman is a national of neither of the Contracting Parties.

Article 13. Consolidation

(1) A tribunal of consolidation established under this Article shall be installed under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Part. UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Part.

(2) Proceedings will be consolidated:

(a) When two or more investors in relation with the same investment submit a claim to arbitration under this Agreement; or

(b) When two or more claims are submitted to arbitration arising from common legal and factual issues.

(3) The tribunal of consolidation will decide the jurisdiction of the claims and will jointly review such claims, unless it determines that the interests of any party to the dispute are seriously harmed.

Article 14. Place of Arbitration

Any arbitration under this Part shall, at the request of any party to the dispute, be held in a state that is party of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Claims submitted to arbitration under this Part shall be considered to arise out of a commercial relationship or transaction for purpose of Article 1 of the New York Convention.

Article 15. Indemnification

A Contracting Party shall not assert as a defence, counter-claim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged losses or damages has been received or will be received pursuant to an indemnity, guarantee or insurance contract.

Article 16. Applicable Law

(1) A tribunal established under this Part shall decide the submitted issues in dispute in accordance with this Agreement and the applicable rules and principles of International Law.

(2) An interpretation jointly formulated and agreed upon by the Contracting Parties of a provision of this Agreement shall be binding on any tribunal established under this Part.

Article 17. Awards and Enforcement

(1) Arbitration awards may provide the following forms of relief:

(a) A declaration that the Contracting Party has failed to comply with its obligations under this Agreement;

(b) Pecuniary compensation;

(c) Restitution in kind in appropriate cases, provided that the Contracting Party may pay pecuniary compensation in lieu thereof where restitution is not practicable; and

(d) With the agreement of the parties to the dispute, any other form of relief.

(2) Arbitration awards shall be final and binding only upon the parties to the dispute and only with respect to the particular case.

(3) The final award will only be published if there is written agreement by both parties to the dispute.

(4) An arbitral tribunal shall not order a Contracting Party to pay punitive damages.

(5) Each Contracting Party shall, in its territory, make provision for the effective enforcement of awards made pursuant to this Article and shall enable that any such award issued in a proceeding to which it is a party be enforced.

(6) An investor may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention, if both Contracting Parties are parties to such instruments. ICSID Convention or the New York Convention, if both Contracting Parties are parties to such instruments.

(7) A disputing party may not seek enforcement of a final award until:

(a) In the case of a final award made under the ICSID Convention:

(i) One hundred and twenty (120) days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

(ii) Revision or annulment proceedings have been completed; and

(b) In the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules: ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:

(i) Three (3) months have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or

(ii) A court has dismissed an application to revise, set aside or annul the award and there is no further appeal, or

(iii) A court has allowed an application to revise, set aside or annul the award and the proceeding has been completed and there is no further appeal.

(8) A Contracting Party shall not initiate proceedings under Part Two for a dispute regarding the infringement of rights of an investor, unless the other Contracting Party has failed to abide by or comply with the award rendered in a dispute that an investor has submitted to proceedings under this Part. In that case, the arbitral tribunal established under Part Two, on delivery of a request by a Contracting Party whose investor was a party to the dispute, may award:

(a) A declaration that the failure to abide by or comply with the final award is in contravention of the obligations of the other Contracting Party under this Agreement; and

(b) A recommendation that the other Contracting Party abide by or comply with the final award.

Part Two: Settlement of Disputes between the Contracting Parties

Article 18. Scope, Consultations, Mediation and Conciliation

Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably or through consultations, mediation or conciliation.

Article 19. Initiation of Proceedings

At the request of either Contracting Party a dispute concerning the interpretation or application of this Agreement may be submitted to an arbitral tribunal for decision not earlier than six (6) months after such request has been notified to the other Contracting Party.

Article 20. Formation of the Tribunal

(1) 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 who, on approval by the Contracting Parties, shall be appointed as the chairman of the tribunal. Such members shall be appointed within two (2) months from the date one Contracting Party has informed the other Contracting Party, that it intends to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two (2) further months.

(2) If the periods specified in paragraph (1) are not 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 of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or, in case of his inability, the member of the International Court of Justice next in seniority shall be invited under the same conditions to make the necessary appointments.

(3) Members of an arbitral tribunal shall be independent and impartial.

Article 21. Applicable Law

The arbitral tribunal will decide disputes in accordance with this Agreement and the applicable rules and principles of International Law.

Article 22. Costs

Each Contracting Party shall pay the cost of its representation in the proceedings. The cost of the arbitral tribunal shall be paid for equally by the Contracting Parties, unless the tribunal directs that they be shared differently.

Chapter Three: Final Provisions

Article 23. Application of the Agreement

The provisions of this Agreement shall apply to future investments made by investors of one Contracting Party in the territory of the other Contracting Party, and also to the investments existing in accordance with the laws of the Contracting Parties on the date this Agreement came into force. However, the provisions of this Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled, prior to its entry into force.

Article 24. Consultations

Each Contracting Party may propose to the other Contracting Party consultations on any matter relating to this Agreement. These consultations shall be held at a place and at a time agreed upon by Contracting Parties.

Article 25. Entry Into Force, Duration and Termination

(1) The Contracting Parties shall notify each other in writing on the compliance with their constitutional requirements in relation to the approval and entry into force of this Agreement.

(2) This Agreement shall enter into force thirty (30) days after the date of the final notification, through diplomatic channels used by both Contracting Parties to notify the fulfillment of the requirements referred to in paragraph (1).paragraph (1).

(3) This Agreement shall remain in force for period of ten (10) years and shall remain in force thereafter for an indefinite period of time, unless either of the Contracting Parties gives to the other Contracting Party written notice of its intention to terminate the Agreement, through diplomatic channels, with twelve (12) months in advance.

(4) In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of termination.

(5) This Agreement may be modified by mutual consent of the Contracting Parties and the agreed modification shall come into effect in conformity with the procedures established in paragraphs (1) and (2).

DONE at Mexico City, in the fourth day of April of two thousand and two, in duplicate, in the Czech, Spanish and English languages, being all texts equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Czech Republic

Jiří Rusnok

Minister of Finance

For the United Mexican States

Luis Ernesto Derbez Bautista

Secretary of Economy

On signing the Agreement between the Czech Republic and the United Mexican States on the Promotion and Reciprocal Protection of Investments, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which shall be regarded as an integral part of the said Agreement.

Ad Article 2, paragraph (3)

1) Article 2, paragraph (3) prescribes the customary International Law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of another Contracting Party.

2) The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary International Law minimum standard of treatment of aliens.

3) A determination that there has been a breach of another provision of the Agreement, or of a separate international agreement, does not establish that there has been a breach of the provisions established in Article 2, paragraph (3) of this Agreement.

Ad. Article 3, paragraph (3) (a)

Nothing in this Agreement shall prevent either Contracting Party from applying new measures adopted within the framework of one of the forms of regional co-operation referred to in paragraph (3) (a) of this Article, which replace the measures previously applied by that Contracting Party, in a manner that is not inconsistent with this Agreement.

DONE at Mexico City, in the fourth of April of two thousand and two, in duplicate, in the Czech, Spanish and English languages, being all texts equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Czech Republic

Jiří Rusnok

Minister of Finance

For the United Mexican States

Luis Ernesto Derbez Bautista

Secretary of Economy