

AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE REPUBLIC OF HUNGARY FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Canada and the Government of the Republic of Hungary hereinafter referred to as the "Contracting Parties";

Recognizing that the promotion and the reciprocal protection of investments of investors of one Contracting Party in the territory of the other Contracting Party will be conducive to the stimulation of business initiative and to the development of economic cooperation between them;

Have agreed as follows:

Article I. Definitions

For the purpose of this Agreement:

(a) The term "territory" means:

(i) In respect of Canada, the territory of Canada, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which Canada exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas;

(ii) In respect of the Republic of Hungary, the territory of the Republic of Hungary.

(b) The term "investment" means any kind of asset invested by an investor of one Contracting Party in the territory of the other contracting Party and in particular, though not exclusively, shall include:

(i) Any movable and immovable property and any other related property rights;

(ii) Shares, stock, bonds and debentures or any other form of participation including minority or indirect participation in a company or a business enterprise;

(iii) Claims to money, and claims to performance under contract having a financial value;

(iv) Any intellectual property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets, good will as well as know-how;

(v) Business concessions conferred by law or under contract, including concession rights to search for, cultivate, extract or exploit natural resources;

(vi) Rights, conferred by law or under contract, to undertake any economic and commercial activity.

Any change in the form of an investment does not affect its character as an investment;

(c) The term "returns" means all amounts yielded by an investment and in particular, though not exclusively, profits, interest, capital gains, dividends, royalties, fees or other current income;

(d) The term "investor" means with regard to either Contracting Party:

(i) Any natural person possessing the citizenship of a Contracting Party in accordance with its laws; or

(ii) Any corporation, partnership, trust, joint venture, organization, association, enterprise or legal person incorporated or duly constituted in accordance with applicable laws of that Contracting Party directly or indirectly controlled by nationals of one of the contracting Parties.

(iii) If the investment is made by an investor through an entity not covered by paragraph (d) (ii) of this Article, in which he holds an equity participation, such investor shall enjoy the benefits of this Agreement to the extent of such indirect equity participation, provided, however, that such an investor shall not enjoy the benefits of this Agreement if the investor invokes the dispute settlement mechanism under another foreign investment protection agreement concluded by the Contracting Party in whose territory the investment is made.

In case of disagreement concerning the nationality of an investor, consultations shall take place between the Contracting Parties with a view to achieve a mutually satisfactory solution.

Article II. Promotion of Investment

(1) Each Contracting Party shall encourage the creation of favourable conditions for investors of the other Contracting Party to make investments in its territory.

(2) Subject to its laws, regulations and published policies, each Contracting Party shall admit investments of investors of the other Contracting Party.

(3) This Agreement shall not preclude either Contracting Party from prescribing laws and regulations in connection with the establishment of a new business enterprise or the acquisition or sale of a business enterprise in its territory, provided that such laws and regulations are applied equally to all foreign investors. Decisions taken in conformity with such laws and regulations shall not be subject to the provisions of Articles IX or XI of this Agreement.

Article III. Protection of Investment

(1) Investments or returns 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.

(2) Each Contracting Party shall grant to investments or returns of investors of the other Contracting Party in its own territory treatment no less favourable than that which it grants to investments or returns of investors of any third State.

(3) Each Contracting Party shall grant investors of the other Contracting Party in its territory, as regards their management, use, enjoyment or disposal of their investments or returns, treatment no less favourable than that which it grants to investors of any third state.

(4) In addition to the provisions of paragraphs (2) and (3) of this Article, each Contracting Party shall, to the extent possible and in accordance with its laws and regulations, grant to investments or returns of investors of the other Contracting Party a treatment no less favourable than that it grants to investments or returns of its own investors.

Article IV. Exceptions

The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefits of any treatment, preference or privilege resulting from participation in:

- (a) Any existing or future free trade area or customs union;
- (b) Any multilateral agreement for mutual economic assistance, integration or cooperation to which either of the contracting Parties is or may become a party;
- (c) Any bilateral convention, including any customs agreement, in force on the date of entry into force of this Agreement which contains provisions similar to those contained in paragraph (b) above; or paragraph (b) above; or
- (d) Any existing or future convention relating to double taxation or other fiscal matters.

Article V. Compensation for Losses

Investors of one Contracting Party whose investments or returns in the territory of the other contracting Party suffer losses owing to war, other armed conflicts, a state of national emergency or other similar circumstances in the territory of the latter shall be accorded, as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that which the latter Contracting Party grants to investors of any third state. Any payment made under this Article shall be prompt, adequate, effective and freely transferable without delay.

Article VI. Expropriation

Investments or returns of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose, under due process of law, in a non-discriminatory manner and provided that it is accompanied by prompt, adequate and effective compensation. Such compensation shall be based on the market value of the investment expropriated, immediately before the expropriation and shall include interest at a normal commercial rate until the date of payment, be effectively realizable and freely transferable. 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 its case and of the valuation of its investment in accordance with the principles set out in this Article.

Article VII. Transfer of Funds

(1) Each Contracting Party shall guarantee to any investor of the other Contracting Party the transfer without delay of, in particular:

- (a) The returns accruing from any investment;
- (b) The proceeds of the total or partial liquidation of any investment;
- (c) Funds in repayment of loans related to an investment;
- (d) The corresponding part of wages and other remuneration accruing to a citizen of that other Contracting Party who was permitted to work in connection with an investment in the territory of the former Contracting Party subject to laws and regulations of that Contracting Party; and
- (e) Any compensation owed to an investor by virtue of Articles V or VI of this Agreement;

In any convertible currency agreed upon between the investor and the Contracting Party concerned at the exchange rate on the day of the transfer.

For the purpose of this paragraph, transfer without delay means transfer within a period not exceeding six months.

(2) In cases where exceptional balance of payments difficulties exist, and then for a period not exceeding eighteen months, the contracting Party shall guarantee the transfer of any amount mentioned in paragraph (1) of this Article on a pro rata basis, provided that the total period for the transfer does not exceed five years.

(3) The Contracting Parties undertake to accord to transfers referred to in paragraph (1) of this Article a treatment no less favourable than that accorded to transfers originating from investments made by investors of any third state.

Article VIII. Subrogation

(1) If a Contracting Party or any agency thereof makes a payment to any of its investors under a guarantee or insurance it has contracted in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of the former Contracting Party or agency thereof to any right or title held by the investor.

(2) A Contracting Party or any agency thereof which is subrogated in the rights of a investor in accordance with paragraph (1) of this Article, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment concerned and its related returns. Such rights may be exercised by the Contracting Party or any agency thereof or by the investor if the Contracting Party or any agency thereof so authorizes.

Article IX. Settlement of Disputes between an Investor and the Host Contracting Party

(1) Any dispute between one Contracting Party and an investor of the other Contracting Party relating to the expropriation mentioned in Article VI of this Agreement shall, to the extent possible, be settled amicably. If the dispute has not been settled amicably within a period of six months from the date on which the dispute was initiated, it may be submitted by the investor to arbitration in accordance with paragraph (3) of this Article.

(2) Any dispute that may arise under this Agreement between one Contracting Party and an investor of the other contracting Party, other than a dispute mentioned in paragraph (1) of this Article, shall, to the extent possible, be settled amicably. If the dispute has not been settled amicably within a period of six months from the date on which the dispute was initiated, it shall be submitted to arbitration in accordance with paragraph (3) of this Article, upon agreement between that Contracting Party

and the investor.

(3) In those cases, the disputes shall then be settled in conformity with either:

(a) The Arbitration Rules of the United Nations Commission on International Trade Law, as adopted in Resolution 31/98 of the United Nations General Assembly on 15 December 1976, or

(b) The rules of the Convention on the Settlement of Investment Disputes between States and Nationals of other States of 18 March 1965, when both Contracting Parties are bound by it.

Article X. Consultations and Exchange of Information

Upon request by either Contracting Party, the other Contracting Party shall agree to consultations on the interpretation or application of this Agreement. Upon request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions, administrative practices or procedures, or policies of the other Contracting Party may have on investments covered by this Agreement.

Article XI. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, whenever possible, be settled through diplomatic channels.

(2) If the dispute cannot be settled through diplomatic channels within six months, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal for decision.

(3) The Arbitral tribunal shall be constituted for each dispute. Within two months after receiving the request for arbitration, each Contracting Party shall appoint one member to the Arbitral tribunal. The two members shall then select a national of a third State who, upon approval by the two Contracting Parties, shall be appointed Chairman of the Arbitral tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members of the Arbitral tribunal.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or is prevented from discharging the said function, the Member of the International Court of Justice next in seniority, who is not a national of either Contracting Party, shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Unless otherwise agreed, the decision of the arbitral tribunal shall be rendered within six months of the appointment of the Chairman in accordance with paragraph (3) or (4) of this Article. The arbitral tribunal shall determine its own procedure. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings; the costs related to the Chairman and any remaining costs shall be borne equally by the Contracting Parties. The arbitral tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties.

Article XII. Amendments

This Agreement may be amended by mutual consent of the Contracting Parties. Amendments shall enter into force on a date which shall be mutually agreed upon through an exchange of notes on this matter.

Article XIII. Other International Agreements

Where a matter is covered both by the provisions of this Agreement and any other international agreement to which both Contracting Parties are bound, nothing, in this Agreement shall prevent an investor of one Contracting Party that has investments in the territory of the other contracting Party from benefitting from the most favourable regime.

Article XIV. Final Provisions

(1) This Agreement shall enter into force 30 days after the date on which the two countries are notified in writing that their

constitutional requirements for the entry into force of this Agreement have been fulfilled.

(2) This Agreement shall apply to any investment made by an investor of one Contracting Party in the territory of the other Contracting Party on or after January 1st 1973.

(3) This Agreement shall remain in force for a period of ten years and will continue in force thereafter unless either Contracting Party notifies in writing the other Contracting Party of its intention to terminate it. The notice of termination of this Agreement shall become effective one year after it has been received by the other Contracting Party. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles I to XIII inclusive of this Agreement shall remain in force for a period of twenty years.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in Ottawa, this 3rd day of October, 1991 in duplicate in the English, French and Hungarian languages, each version being equally authentic.

Barbara J. McDougall

FOR THE GOVERNMENT OF CANADA

Geza Jeszensky

FOR THE GOVERNMENT OF THE REPUBLIC OF HUNGARY