

AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE CZECH AND SLOVAK FEDERAL REPUBLIC FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of Canada and the Government of the Czech and Slovak Federal Republic, hereinafter referred to as the "Contracting Parties",

Recognizing that the promotion and the 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 "investment" means any kind of asset held or invested either directly, or indirectly through an investor of a third State, 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:

(i) Movable and immovable property and any related property rights, such as mortgages, liens or pledges;

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

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

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

(v) Rights, conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources.

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

(b) The term "investor" means:

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

(ii) Any corporation, partnership, trust, joint venture, organization, association or enterprise incorporated or duly constituted in accordance with applicable laws of that Contracting Party,

Provided that such investor has the right, in accordance with the laws of the Contracting Party, to invest in the territory of the other Contracting Party.

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

(d) 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 Czech and Slovak Federal Republic, the territory of the Czech and Slovak Federal Republic.

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 and regulations, 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 in accordance with principles of international law 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, as regards their management, use, enjoyment or disposal of their investments or returns in its territory, treatment no less favourable than that which it grants to investors of any third State.

(4) 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 which 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:

(a) Any existing or future agreement establishing a 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 taxation.

Article V. Compensation for Losses

Investors of one Contracting Party who suffer losses because their investments or returns on the territory of the other Contracting Party are affected by an armed conflict, a national emergency or civil disturbance on that territory, shall be accorded by such latter Contracting Party in respect of restitution, indemnification, compensation or other settlement, treatment no less favourable than that which it accords to its own investors or to investors of any third State. If possible, any payment made under this Article shall be adequate, effective and made 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 such expropriation is accompanied by prompt, adequate and effective compensation. Such

compensation shall be based on the real value of the investment at the time of the expropriation, shall be payable from the date of expropriation at a normal commercial rate of interest, shall be paid without delay and shall 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 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 an investor of the other Contracting Party the unrestricted transfer of investments and returns. Without limiting the generality of the foregoing, each Contracting Party shall also guarantee to the investor the unrestricted transfer of:

(i) Funds in repayment of loans related to an investment;

(ii) The proceeds of the total or partial liquidation of any investment;

(iii) Wages and other remuneration accruing to a citizen of the other Contracting Party who was permitted to work in connection with an investment in its territory;

(iv) Any compensation owed to an investor by virtue of Articles V or VI of the Agreement.

(2) Transfers shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the rate of the exchange applicable on the date of transfer.

Article VIII. Subrogation

(1) If a Contracting Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance it has entered into in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of such 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 to the rights of an 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 effects of a measure taken by the former Contracting Party on the management, use, enjoyment or disposal of an investment made by the investor, and in particular, but not exclusively, relating to expropriation referred to in Article VI of this Agreement or to the transfer of funds referred to in Article VII of this Agreement, shall, to the extent possible, be settled amicably between them.

(2) 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.

(3) In that case, the dispute shall then be settled in conformity with the Arbitration Rules of the United Nations Commission on International Trade Law, as then in force. Arbitration Rules of the United Nations Commission on International Trade Law, as then in force.

Article X. Consultations and Exchange of Information

Upon request by either Contracting Party, the other Contracting Party shall agree promptly 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 amicably through consultations.

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

(3) An arbitral tribunal shall be constituted for each dispute. Within two months after receipt through diplomatic channels of 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 determine its own procedure. 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.

(6) 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. Other International Agreements

When a matter is covered both by the provisions of 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 XIII. Application

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 1955.

Article XIV. Entry Into Force

(1) Each Contracting Party shall notify the other in writing of the completion of the constitutional formalities required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.

(2) This Agreement shall remain in force 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 fifteen years.

Done at Prague on this 15th day of November 1990 in two originals, each in the English, French and Czech languages, the texts in each of the three languages having equal authenticity.

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

Joe Clark

FOR THE GOVERNMENT OF CANADA

Jiri Dienstbier

FOR THE GOVERNMENT OF THE CZECH AND SLOVAK FEDERAL REPUBLIC