

Treaty between the Federal Republic of Germany and the Republic of Chile on the Promotion and Protection of Capital Investments

The Federal Republic of Germany and the Republic of Chile

DESIRING to deepen the economic cooperation between the two countries,

DESIRING to establish more favorable conditions for the investment of capital by nationals or companies of one State in the territory of the other State, and

RECOGNIZING that encouragement and contractual protection of such capital investments are likely to stimulate private economic initiative and increase the prosperity of both peoples,

HAVE AGREED AS FOLLOWS:

Article 1.

(1) Each Contracting Party shall, within the framework of its legislation, encourage as far as possible capital investments in its territory by nationals or companies of the other Contracting Party. It shall in all cases treat such investments fairly and equitably.

(2) Each Contracting Party shall be free to decide, within the framework of its legislation, whether to grant any authorization required for the capital investment. Investments made in accordance with the legislation of a Party in its territory by nationals or companies of the other Party shall enjoy the full protection of this Treaty.

Article 2.

(1) Investments made in accordance with the preceding Article by nationals or companies of either Party in the territory of the other Party shall receive treatment no less favorable than that accorded to investments made by its own nationals and companies or to investments made by nationals and companies of third countries.

(2) The same shall apply to investments referred to in Article 1 made in the territory of a Party by companies and enterprises controlled by nationals or companies of the other Party.

(3) Nationals or companies of either Party shall enjoy in the territory of the other Party treatment no less favourable than that accorded to its own nationals and companies or to nationals and companies of third countries in respect of their activities in connection with investments which have been duly authorized.

Article 3.

(1) Capital investments of nationals or companies of one of the Contracting Parties shall enjoy full protection and security in the territory of the other Contracting Party.

(2) In case of expropriation of an investment of capital of nationals or companies of one of the Contracting Parties, the legality of the expropriation and the amount of compensation shall be subject to review in ordinary legal proceedings. The compensation shall be full, effectively realizable, freely and promptly transferable. By the date of the expropriation, at the latest, measures relating to the determination and payment of the compensation shall have been taken.

(3) Nationals or companies of one Contracting Party who otherwise suffer loss in the territory of the other Contracting Party shall not be treated less favorably by the latter than its own nationals or companies in respect of restitution, adjustment, compensation or other benefits. Such payments shall be freely transferable.

(4) With respect to the matters regulated in this Article, nationals or companies of one Contracting Party shall enjoy in the

territory of the other Contracting Party most-favored-nation treatment.

Article 4.

Each Contracting Party shall permit, with respect to investments of capital of nationals or companies of the other Contracting Party, the free transfer of the capital, its proceeds and, in case of liquidation, the proceeds thereof.

Article 5.

(1) If a Contracting Party makes payments to its nationals or companies by virtue of a guarantee given for a capital investment in the territory of the other Contracting Party, the latter shall, without prejudice to the rights of the former Contracting Party under Article 11, recognize the transfer of all rights or shares of such nationals or companies in favor of the former Contracting Party by operation of law or by juridical act, as well as the acquisition by the same Contracting Party of all rights or shares of such nationals or companies in favor of the latter Contracting Party, the transfer of all rights or shares of these nationals or companies which have been operated by operation of law or by juridical act, in favor of the first Contracting Party, as well as the acquisition by the same Party of all these rights or shares (transferred rights), which it may exercise to the same extent as their original holder. For the transfer of payments to be made to the respective Contracting Party by virtue of the transferred rights and shares, Article 3, paragraphs 2 and 3 and Article 4 shall apply accordingly.

(2) The acquisition of ownership of immovable property or business enterprises, situated in the territory of the other Contracting Party, in accordance with paragraph (1) shall be subject to the condition that such property be disposed of as soon as possible to a third person. The disposal shall require the authorization of the Contracting Party in whose territory the property is situated.

(3) The Contracting Party acquiring share rights by the transfer referred to in paragraph (1) shall not be in a more favorable legal position than its predecessor in title. The transfer shall not affect the legal character of the right or share.

Article 6.

(1) Unless otherwise agreed by the parties concerned and approved by the competent authorities of the Contracting Party in whose territory the capital investment is located, transfers under Article 3, paragraph 2 or 3, under Article 4 or under Article 5 shall be made at the rate applicable to current transactions on the date of the transfer.

(2) The rate applicable to current transactions shall be based on the par value agreed with the International Monetary Fund and shall be within the range of fluctuation permitted on either side of parity under Article IV, Section 3, of the International Monetary Fund Agreement.

(3. If, in respect of a Contracting Party, there is no exchange rate as defined in paragraph 2 of this Article at the time of transfer, the official rate fixed by that Contracting Party for its currency in relation to the United States dollar or to any other freely convertible currency or to gold shall be applied. If no such rate has been fixed either, the competent authorities of the Contracting Party in whose territory the capital is invested shall allow a rate of conversion which is just and equitable.

Article 7.

If the legislation of a Contracting Party or obligations under international law which, in addition to the provisions of this Treaty, exist or may hereafter be established between the Contracting Parties, gives rise to any general or special rule providing for more favorable treatment for investments of the nationals or companies of the other Contracting Party than is provided for under the provisions of this Treaty, such rule shall prevail over the provisions of this Treaty in so far as it is more favorable.

Article 8.

(1) The term "capital assets" shall include all kinds of assets and in particular

- (a) ownership of movable and immovable property and other rights in rem, such as mortgages, liens and the like;
- (b) shares in companies and other types of participation;
- (c) monetary claims or claims to benefits that have an economic value.

A change in the form in which assets are invested, made in accordance with the relevant legislation, shall not affect their

status as investments.

(2) The term "income" means those amounts that are attributable to a capital investment for a certain period of time as profit shares or interest.

(3) The term "nationals" means

(a) with respect to the Federal Republic of Germany:

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

(b) with respect to the Republic of Chile:

Persons considered as Chileans by the Constitution of the Republic of Chile.

(4) The term "companies" shall include

(a) with respect to the Federal Republic of Germany:

Any legal entity as well as any commercial company or other partnership or association, with or without legal personality, having its registered office in the territory of the Federal Republic of Germany and legally existing under the laws, whether the liability of its partners, associates or members is limited or unlimited and whether or not its activity is profit-making;

(b) with respect to the Republic of Chile:

All commercial or other companies, corporations and foundations, as well as other legal entities established in accordance with the laws of Chile and having their registered office in the territory of the Republic of Chile.

Article 9.

This Treaty shall apply to investments made after its signature.

Article 10.

Each Contracting Party shall grant national treatment, under the terms of this Treaty, on the basis that national treatment is granted in the same matters by the other Contracting Party.

Article 11.

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

(2) If a dispute of this kind cannot be settled in this way, it shall, at the request of either Contracting Party, be submitted to the decision of an Arbitrator appointed by common agreement. If there is no agreement on the designation of the Arbitrator within three months from the date on which one of the Contracting Parties has communicated to the other Party its decision to have recourse to arbitration, the matter shall be submitted, at the request of either Party, to an Arbitral Tribunal, designated as follows: each of the Contracting Parties shall appoint an Arbitrator and these two Arbitrators shall designate, by common agreement, the Chairman of the Arbitral Tribunal, who shall be a national of a third State. The two Arbitrators shall be appointed within two months and the Chairman of the Arbitral Tribunal within three months of the expiry of the time limit fixed for the appointment of the sole Arbitrator.

(3) If the appointments provided for in the preceding paragraph are not made within the time limits specified therein, and unless otherwise agreed, each Contracting Party shall have the right to request 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 one of the Contracting Parties, or is prevented from doing so for any reason, the appointments shall be made by the Vice-President of the same Court. If the Vice-President is a national of one of the Contracting Parties, or is otherwise unable to act, the appointment shall be made by the senior member of the International Court of Justice who is not a national of any of the Contracting Parties.

(4) The arbitral tribunal shall decide by majority vote. The decisions of the sole arbitrator and those of the arbitral tribunal shall be binding. Each Party shall bear the costs of the arbitrator appointed by it and of its representation in the proceedings. The costs of the umpire, the sole arbitrator and other costs shall be borne equally by the two contracting parties. The sole arbitrator or the arbitral tribunal may make other arrangements as to costs. In all other respects, they shall

regulate the proceedings themselves.

(5) The jurisdiction of the courts of the Contracting Party in whose territory the capital investment was made shall not be affected in any way by the arbitration established in this Article.

Article 12.

The provisions of this Treaty shall remain in force in the event of disputes between the Parties, without prejudice to the right to take temporary measures permitted by the general rules of international law. Measures of this kind shall be terminated at the latest at the time of the actual termination of the dispute, whether or not diplomatic relations have been restored.

Article 13.

This Treaty shall also apply to the Land of Berlin, unless the Government of the Federal Republic of Germany makes a declaration to the contrary to the Government of the Republic of Chile within three months after the entry into force of this Treaty.

Article 14.

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

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It shall remain in force for ten years and shall be renewed indefinitely unless terminated in writing by either Party one year before its expiration. After the expiration of ten years, the agreement may be terminated at any time, but shall remain in force for one year after termination.

(3) For capital investments made up to the date of expiration of the contract, Articles 1 to 13 shall continue to apply for the period provided for in the certificate of approval, but at least for another fifteen years from the date of termination of this contract.

DONE at Santiago de Chile, March 30, 1964, in four originals, two in German, two in Spanish, each text being equally authentic.

For the Federal Republic of Germany

Hans Strack

For the Republic of Chile

Julio Philippi

Protocol

At the time of signature of the Treaty on the Promotion and Protection of Capital Investments between the Federal Republic of Germany and the Republic of Chile, the undersigned representatives plenipotentiary have further agreed upon the following stipulations which are to be considered as an integral part of the Treaty:

1. Ad Article 1.

The expression "capital investments" in the territory of the Republic of Chile refers exclusively to those capital investments which have been approved in accordance with the legal provisions of the Republic of Chile.

2. Ad Article 2.

(a) No. 1 of this Protocol shall not apply with respect to Article 2 of the Treaty, inasmuch as the latter provides for a treatment no less favorable to nationals and companies of the other Contracting Party than that applicable to nationals and companies of third States.

(b) At the time of granting the authorization for the capital investment, each Contracting Party may agree with the investor

special conditions different from the national treatment provided for in Article 2. To be effective, these special conditions must be specifically and circumstantially stated in the respective agreement.

(c) The administration, use and enjoyment of a capital investment shall be regarded as an activity within the meaning of Article 2, paragraph 3, in particular, but not exclusively, the administration, use and enjoyment of a capital investment. The following shall in particular be considered as less favorable treatment for the purposes of the aforesaid provision: restrictions on the acquisition of raw and auxiliary materials, energy and fuels, as well as of means of production and exploitation of all kinds; any obstacle placed in the way of the sale of products at home and abroad; as well as other measures having analogous effects. Measures to be adopted for reasons of security and public order, health or morality shall not be considered as less favorable treatment.

(d) Article 2, paragraph 3, shall not apply with respect to the entry into the country, stay and activity of employees and workers.

3. Ad Article 3

(a) The provisions of Article 3, paragraph 2, shall also apply to the loss or limitation of any property or property rights constituting an investment of capital within the meaning of this Treaty by measures of authority and to an extent amounting to expropriation.

Article 3, paragraph 2, also applies to the nationalization of a capital investment.

(b) With respect to Article 3, paragraph 2, the Contracting Parties declare that they have taken into consideration the general principle of international law that the measures referred to therein may be taken only in the public interest.

(c) The Parties will ensure that prompt compensation is paid to nationals or companies.

4. Ad Article 4.

(a) Each Contracting Party will take care to facilitate the prompt execution of the transfer. If a Party has a foreign exchange management system (quota system) in force in its territory, that Party will ensure that the transfer is carried out promptly.

The transfer shall be deemed to have been effected without delay if it is effected not later than 180 days after the submission of the transfer request.

(b) For the purposes of Article 4, "liquidation" shall also include a sale effected for the purpose of abandoning all or part of the investment.

5. regarding article 6

(a) If the parity referred to in paragraph 2 of Article 6 is not in practice applied in the territory of the Contracting Party in which the capital investment has been made, and if a new parity value has not yet been agreed with the International Monetary Fund, paragraph 2 of Article 6 shall not apply in the territory of that Contracting Party.

(b) It is understood that the "official rate" provision in paragraph 3 of Article 6 shall apply only where a single rate exists.

6 Concerning Article 8

a) Income from capital investment shall enjoy the same protection as capital investment. To the extent that the said income itself constitutes a capital investment, it shall enjoy the protection of this Treaty if so provided in the instrument of admission or if a new admission for reinvestment has been granted.

(b) In particular, without prejudice to other procedures for determining nationality, any person holding a national passport issued by the competent authorities of the Contracting Party concerned shall be considered a national of that Party.

DONE at Santiago de Chile, this 30th day of March 1964, in four originals, two in German, two in Spanish, each text being equally authentic.

For the Federal Republic of Germany

Hans Strack

For the Republic of Chile

Julio Philippi

Exchange of Letters

Santiago de Chile, March 30, 1964

Mr. Ambassador,

In the course of the negotiations which have taken place, both delegations have unanimously expressed the view that less favorable treatment, within the meaning of Article 2 of the Treaty, is not accorded to nationals or companies of the other Party when the benefits are granted to nationals or companies of neighboring countries or within the framework of free trade areas or economic communities.

Please accept, Sir, the assurance of my highest consideration.

Julio Philippi

H. E.

Mr. Hans Strack

Extraordinary and Plenipotentiary

Ambassador of the Federal Republic of Germany

The Ambassador of the Federal Republic of Germany

Santiago de Chile, March 30, 1964

Mr. Minister,

I have the honor to acknowledge receipt of your letter of today's date, which reads as follows:

"In the course of the negotiations which have taken place, both delegations have unanimously expressed the view that less favorable treatment of nationals or companies of the other Party within the meaning of Article 2 of the Treaty does not exist when the benefits are granted to nationals or companies of neighboring countries or within the framework of free trade areas or economic communities."

Please accept, Sir, the assurance of my highest consideration.

Hans Strack

To His Excellency

the Minister of Foreign Affairs of the Republic of Chile

Mr. Julio Philippi