

AGREEMENT BETWEEN THE GOVERNMENT OF THE CZECH AND SLOVAK FEDERAL REPUBLIC AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Czech and Slovak Federal Republic and the Government of the People's Republic of China (hereinafter referred to as the " Contracting Parties "),

Desiring to develop the economic cooperation of both States on the basis of mutual respect for sovereignty, equality and mutual benefit and to encourage and create favourable conditions for' investments of investors of one State in the territory of the other State and

Recognizing that the promotion and reciprocal protection of investments, according to the present Agreement, stimulates the business initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

Text provided by the Federal Ministry of Finance, Czechoslovakia

1. The term "investment" means every kind of asset invested by investors of one Contracting Party in

accordance with, the laws and regulations of the other Contracting Party in the territory of the latter, including, in particular, though not exclusively:

- (a) movable and immovable property and other property rights;
- (b) shares in companies or other form of interest in such-companies;
- (c) a claim to money or to any performance having an economic value;
- (d) intellectual property rights, including

Copyrights, trade marks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill;

(e) concessions conferred by law, including the concessions to search for or exploit natural resources.

2. The term "investor" means any natural or legal person who invests in the territory of the other Contracting -Party.

(a) The term "natural person" means any natural person having the nationality of either Contracting Party in accordance with its laws.

(b) The term "legal person" means with respect to either Contracting Party, any entity incorporated or constituted in accordance with its laws.

3. The term "returns" means amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, shares, dividends, royalties or fees.

4. The term "territory" means territory over which the Contracting Party has sovereignty and exercises its jurisdiction.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage 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. Each Contracting Party shall grant assistance in and provide facilities for obtaining visa and working permit to nationals of the other Contracting Party to or in the territory of the former in connection with activities associated with such investments.

Article 3. Treatment of Investment

1. The treatment and protection accorded by either

Contracting Party within its territory to investors of the other Contracting Party with respect to investments, returns and business activities in connection with investment shall not be less favourable than that accorded to investors of any third country.

2. The treatment and protection accorded by either Contracting Party within its territory to investors of the other Contracting Party with respect to investments, returns and business activities in connection with the investment shall not be less favourable than that accorded to its own investors. -

3. The treatment and protection as mentioned in paragraph 1 of this Article shall not include any preferential treatment accorded by the other Contracting Party to investments of investors of a third State based on customs union, free trade zone, economic union, agreement relating to avoidance of double taxation or for facilitating frontier trade.

Article 4. Expropriation

1. Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose. The expropriation shall be carried out:

(a) under domestic due process of law,

(b) on a non-discriminatory basis,

(c) against compensation-Such compensation shall amount to the real value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall include interest at a normal rate until the date of payment, shall be made without undue delay, be effectively realisable and be freely transferable in a freely convertible currency.

2. The investor affected shall have a right to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

3. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to guarantee reasonable compensation in respect of their investment to such investor of the Contracting Party who are owners of those shares.

Article 5. Compensation for Damage or Loss

1. When investments by investors of either Contracting

2. " Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the - territory of the other Contracting Party resulting from:

(a) requisitioning of their property by its or authorities

(b) destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation

Shall be accorded fair and appropriate compensation for the damage or loss sustained during the period of the requisitioning or as a result of the destruction of the property. Resulting payments shall be in a freely convertible currency and freely transferable without undue delay.

Article 6. Transfers

1. Either Contracting Party shall guarantee to investors of the other contracting Party free transfer of the proceeds related to their investments in a freely convertible currency without undue delay. Such transfers shall include in particular, though not exclusively:

(a) capital and additional funds that are necessary to maintain the operation of or to increase the investment ?

(b) returns;

(c) repayment of loans similar to shares provided by investors;

(d) royalties and other fees derived from the rights as defined in section (d) of paragraph 1 of Article I;

(e) proceeds resulting from the sale related to total or partial liquidation of the investment;

f) the earnings of natural persons subject to the laws and regulations of that Contracting Party where investments have been made.

2. The transfers mentioned in this Article shall be made at the official exchange rate of the Contracting Party accepting investment on the date of transfer.

Article 7. Subrogation

If one Contracting Party or its Agency makes payment to an investor under a guarantee it has granted to an investment of such investor in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer of any right or claim of such investor to the former Contracting Party or its Agency and recognize the subrogation of the former Contracting Party or its Agency to such right or claim. The subrogated right or claim shall not be greater than the original right or claim of the said investor.

Article 8. Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channel.

2. If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

3. Such tribunal comprises of three arbitrators within two months from the date on which either Contracting Party receives the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within three months from the date of their appointment, together select a third arbitrator who is a national of a third-State which has diplomatic relations with both Contracting Parties. The third arbitrator shall be appointed by the two Contracting Parties as Chairman of the arbitral tribunal.

4. If the arbitral tribunal has not been constituted within five months from the date of the receipt of the written notice requesting for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator(s) who has or have not yet been appointed. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Court of Justice who is not a national of either Contracting Party shall be invited to make the necessary appointment(s).

5. The arbitral tribunal shall determine its own procedure. The tribunal shall reach its award in accordance with the provisions of this Agreement and the principles of international law recognized by both Contracting Parties.

6. The tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting Parties. The ad hoc arbitral tribunal shall, upon the request of either Contracting Parties, explain the reasons of its award.

7. Each Contracting Party shall bear the cost of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting Parties.

Article 9. Disputes between an Investor and a Contracting Party

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations

between the parties to the dispute.

2. If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to submit the dispute either

(a) to the competent court of the Contracting Party accepting the investment; '

(b) to an international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as then in force provided that the dispute relates to the amount of compensation for expropriation and any other dispute which is agreed upon by both parties to the dispute. The parties to the dispute may agree in writing to modify these rules.

3. Notwithstanding the provisions of section (b) of paragraph 2 of this Article relating to the submission of the dispute to arbitration, the investor shall have the right to ' choose the conciliation procedure before the dispute is submitted for arbitration.

4. The arbitral awards shall be recognised and enforced by the Contracting Parties in accordance with the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Article 10. Application of other Rules

If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations, to investments or activities associated with such investments of investors of the other Contracting Party is more favourable than the treatment provided for in this Agreement, the more favourable treatment shall be applicable.

Article 11. Applicability of this Agreement

The provisions of this Agreement shall apply to investments made after January 1, 1950 by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter.

Article 12. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the first day of the following month after the date on which both Contracting Parties have notified each other in writing that their respective internal constitutional requirements or legal procedures for the entry into force of this Agreement have been fulfilled, and shall remain in force for a period of ten years.

2. This Agreement shall continue in force if either Contracting Party fails to give a written notice to the other Contracting Party to terminate this Agreement one year before the expiration specified in paragraph 1 of this Article.

3. After the expiration of the initial ten year period, either Contracting Party may at any time terminate this Agreement by giving one year's advance notice in writing to the other Contracting Party.

4. With respect to investments made prior to the date of termination of this Agreement, the provisions of Article 1 to 11 shall continue to be effective for a further period of ten years from such date of termination.

IN WITNESS WHEREOF, the undersigned duly authorized have signed this Agreement.

DONE in duplicate at Beijing on December , 1991 in the Czech, Chinese and English languages, all texts being equally - authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE CZECH AND SLOVAK FEDERAL REPUBLIC

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

At the time signing the Agreement between the Government of the Czech and Slovak Federal Republic and the Government of the People's Republic of China for the Promotion and Reciprocal Protection of Investment [hereinafter referred to as "the Agreement"), the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement.

1. For the purpose of the provisions of paragraph 2 of Article 3 of the Agreement, it shall not be deemed "treatment less favourable" for either Contracting Party to accord discriminatory treatment, in accordance with its applicable laws and regulations, to investors of the other Contracting Party, in case it is really necessary for the reason of public order, national security or priority in the sound development of national economy.

2. "Frontier Trade" mentioned in paragraph 3 of Article 3 means trade conducted in the specified frontier areas with preferential treatment permitted by either Contracting Party and its neighbouring countries for facilitating the needs of their residents in the frontier areas.

3. The term "Either Contracting Party shall guarantee to investors of the other Contracting Party free transfer of the proceeds related to their investments in a freely convertible currency without undue delay." mentioned in Article 6 of the Agreement, means in respect of the People's Republic of China:

(1) The payment of amounts mentioned in paragraph (1), section (a) to (f) of Article 6 shall be transferred abroad from the foreign exchange account of a company in which an investor owns shares in accordance with the applicable foreign exchange control regulations in the absence of a more preferential provision in the

Foreign exchange control regulations of the People's Republic of China.

In case the foreign exchange account of such company mentioned in this paragraph has no sufficient foreign exchange for transfer, the Chinese Government will under the following conditions, provide the necessary foreign exchange for transfer:

(a) payment of the amounts in paragraph 1, s (a), (d), (e) and (f) of Article 6 of the Agreement;

(b) payment of the amounts in paragraph 1, section (c) of Article 6 of the Agreement if it has been guaranteed by the Bank of China;

(c) amount in paragraph 1, section (b) of the Article 6 of this Agreement obtained by the company mentioned in this paragraph which has special approval from the competent authority of the People's Republic of China for sale of its products in non-convertible currency.

(2) The Chinese government shall provide the access to the official foreign exchange market in a non-discriminatory manner to investors of the other Contracting Party, or the companies in which they have invested, so that the investors may purchase the necessary foreign currency to make the transfers pursuant to this Article.

4. The Contracting Parties shall review the Agreement and the Protocol within three years after the entry into force of the Agreement.

IN WITNESS WHEREOF, the undersigned duly authorized have signed this Protocol.

DONE in duplicate at Beijing on December, 1991 in the Czech, Chinese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE CZECH AND SLOVAK FEDERAL REPUBLIC

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA