Agreement between Australia and Czech and Slovak Federal Republic on the Reciprocal Promotion and Protection of Investments.

Australia and the Czech and Slovak Federal Republic (hereinafter referred to as the Contracting Parties),

ACKNOWLEDGING the importance of promoting the flow of capital for economic activity and development and aware of its role in expanding economic relations and technical co-operation between them, particularly with respect to investment by investors of one Contracting Party in the territory of the other Contracting Party; and

RECOGNISING that pursuit of these objectives would be facilitated by a clear statement of principles relating to the protection of investments, combined with rules designed to render more effective the application of these principles within the territories of the Contracting Parties,

HAVE AGREED as follows;

Article 1. Definitions

(1) For the purposes of this Agreement:

(a) "investment" means every kind of asset, owned or

Controlled by investors of one Contracting Party and admitted by the other Contracting Party subject to its law and investment policies applicable from time to time including activities associated with investments. Investment includes but is not limited to:

(i) tangible and intangible property, including

Rights, such as mortgages, liens and pledges,

(ii) shares, stocks, bonds and debentures and any other form of participation in a company,

Text provided by the Department of Foreign Affairs and Trade, Australia.

(iii) A loan or other claim to money or a claim to

Performance having economic value,

(iv)

Intellectual properry rights, including industrial property rights such as patents,

Trademarks, trade names, industrial designs,

Copyright, know-how and goodwill, and

(v) Business concessions and any other rights

Required to conduct economic activity and

Having economic value conferred by law or under a contract, including rights to engage in

Agriculture, forestry, fisheries and animal

Husbandry, to search for, extract or exploit

Natural resources and to manufacture, use and

Sell products;

(b) "investor" means a national or a company of either Contracting Party;

(c) "national" means;

(i) In relation to Australia a natural person who

Is an Australian citizen or whose residence in

Australia is not limited as to time under its

Law.

(ii) In relation to the Czech and Slovak Federal

Republic a natural person who is a Czechoslovak

Citizen;

(d) "company" means any corporation, association, partnership, trust or other legally recognised entity that is duly incorporated, constituted, or otherwise duly organised:

(i) under the law of a Contracting Party, or

(ii) under the law of a third country and is owned

Or controlled by an entity described in paragraph (l)(d)(i) of this Article or by a natural person who is a national of a Contracting Party under its law,

Regardless of whether or not the entity is organised for pecuniary gain, privately or otherwise owned, or organised with limited or unlimited liability;

(e) "return" means an amount derived from an investment including profits, dividends, interest, capital gains, royalty payments, management or technical assistance fees, payments in kind and all other lawful income;

(f) "freely convertible currency" means convertible currencies as classified by the International Monetary Fund;

(g) "territory" in relation to a Contracting Party includes the territorial sea, maritime zone or continental shelf where that Contracting Party exercises its sovereignty, sovereign rights or jurisdiction in accordance with international law.

(2) For the purposes of paragraph (1) of this Article,

Returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments.

(3) For the purposes of this Agreement, a natural person

Or company shall be regarded as controlling a company or an investment if the person or company has a substantial interest in the other company or the investment.

Article 2. Application of Agreement

(1) This Agreement shall apply to investments made after 1 January 1950.

(2) Where a company of a Contracting Party is owned or controlled by a citizen or a company of any third country, the Contracting Parties may decide jointly in consultation not to extend the rights and benefits of this Agreement to such company.

(3) A company duly organised under the law of a Contracting Party shall not be treated as an investor of the other Contracting Party, but any investments in that company by investors of that other Contracting Party shall be protected by this Agreement.

(4) This Agreement shall not apply to a company organised under the law of a third country within the meaning of paragraph (l)(d)(ii) of Article 1 where the provisions of an investment protection agreement with that country have already been invoked in respect of the same matter.

(5) In so far as the situation exists in either

Contracting Party, this Agreement shall not apply to a person who is a national but not a citizen of a Contracting Party where:..

(a) the provisions of an investment protection agreement between the other Contracting Party and the country of which the person is a citizen have already been invoked in respect of the same matter; or

(b) the person is a citizen of the other Contracting Party.

Article 3. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage and promote

Investments in its territory by investors of the other Contracting Party and shall, in accordance with its law and investment policies, admit investments..

(2) A Contracting Party shall ensure fair and equitable treatment in'its own territory to investments.

(3) A Contracting Party shall, subject to its laws, accord within its territory protection and security to investments and shall not impair the management, maintenance, use, enjoyment or disposal of investments.

(4) This Agreement shall not prevent an investor of one

Contracting Party from taking advantage of the provisions of any law or policy of the other Contracting Party which are more favourable than the provisions of this Agreement.

Article 4.

MOST FAVOURED NATION PROVISIONS

A Contracting Party shall at all times treat investments in its own territory, including compensation under Article 7 and transfers under Article 8, on a basis no less favourable than that accorded to investments of investors of any third country, provided that a Contracting Party shall not be obliged to extend to investments any treatment, preference or privilege resulting from:

(a) any customs union, economic union, free trade area or regional economic integration agreement to which the Contracting Party belongs; or

(b) the provisions of a double taxation agreement with a third country.

Article 5. Entry and Sojourn of Personnel

(1) A Contracting Party shall, subject to its laws relating to the entry and sojourn of non-citizens, permit natural persons who are nationals of the other Contracting Party and personnel employed by companies of that other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments.

(2) A Contracting Party shall, subject to its laws, permit investors of the other Contracting Party who have made investments in the territory of the first Contracting Party to employ within its territory key technical and managerial personnel of their choice regardless of citizenship.

Article 6. Expropriation and Nationalisation

(1) Neither Contracting Party shall nationalise,

Expropriate or subject to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") the investments of investors of the other Contracting Party unless the following conditions are complied wi th:

(a) the expropriation is for a public purpose related to the internal needs of that Contracting Party and under due process of law;

(b) the expropriation is non-discriminatory; and

(c) the expropriation is accompanied by the payment of prompt, adequate and effective compensation.

(2) The compensation referred to in paragraph 1 of this

Article shall be computed on the basis of the market value of the investment immediately before the expropriation or impending expropriation became public knowledge. Where that value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognised principles of valuation and equitable principles taking into account, the capital invested, depreciation, capital already repatriated, replacement value, currency exchange rate movements and other relevant factors.

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(3) The compensation shall be paid without undue delay,

Shall include interest at a commercially reasonable rate from the date the measures were taken to the date of payment and shall be freely transferable between the territories of the Contracting Parties. The compensation shall be payable either in the currency in which the investment or investments were originally made or, if requested by the investor, in any other freely convertible currency.

Article 7. Compensation for Losses

(1) When a Contracting Party adopts any measures

Relating to losses in respect of investments in its territory by citizens or companies of any other country owing to armed conflict, a state of national emergency, civil disturbance or other similar events, the treatment accorded to investors of the other Contracting Party as regards restitution, indemnification, compensation or other settlement shall be no less favourable than that which the first Contracting Party accords to citizens or companies of any third country.

(2) Resulting payments shall be freely transferable

Between the territories of the Contracting Parties and shall be payable in a freely convertible currency.

Article 8. Transfers

(1) A Contracting Party shall, when requested by an

Investor of the other Contracting Party, permit all funds of that investor related to an investment in its territory and earnings and other assets of personnel engaged from abroad in connection with that investment, to be transferred freely.

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Without unreasonable delay and, in any case, within forty five days of the request. This paragraph is subject to the right of a Contracting Party in exceptional financial or economic circumstances to exercise equitably and in good faith powers conferred by its law. Such funds include the following:

(a) the initial capital plus any additional capital used to maintain or expand the investment;

(b) returns;

(c) fees, including payments in connection with intellectual and industrial property rights;

(d) receipts from the whole or partial sale, divestment or liquidation of the investment; and

(e) payments made pursuant to a loan agreement.

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(2) Unless the investor otherwise agrees, the transfers

Abroad of such funds and the earnings of foreign personnel shall be permitted in freely convertible currency and shall be made at the exchange rate applying on the date of transfer in accordance with the law of the Contracting Party which has admitted the investment.

(3) A Contracting Party may protect the rights of

Creditors, or ensure the satisfaction of judgments in court proceedings, through the equitable, non-discriminatory and good faith application of its law.

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Article 9. Consultations between Contracting Parties

The Contracting Parties shall consult at the request of either of them on matters concerning the interpretation or application this Agreement.

Article 10. Settlement of Disputes between Contracting Parties

(1) The Contracting Parties shall endeavour to resolve amicably any dispute between them connected with this Agreement.

(2) If a dispute is not resolved by such means within ninety days of one Contracting Party seeking in writing consultations or negotiations, it shall be submitted at the request of either Contracting Party to an Arbitral Tribunal established -in accordance with the provisions of Annex A of this Agreement or, by agreement, to any other international tribunal.

Article 11. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) In the event of a dispute between a Contracting

Part y. And an Investor of the other Contracting Party Relating to an Investment, the Parties to the Dispute Shall Initially Seek to Resolve the Dispute Amicably

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(2) If the dispute in question cannot be so resolved either party to the dispute may, in accordance with the law of the Contracting Party which has admitted the investment, initiate proceedings before that Contracting Party's competent judicial or administrative bodies;

(3) Either party to a dispute may take the following action irrespective of whether any local remedies available pursuant to action under paragraph (2) of this Article have already been pursued or exhausted:

(a) if both Contracting Parties are at that time party to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of other States <"the Convention"), refer the dispute to the International Centre for the Settlement of Investment Disputes (the Centre") for conciliation or arbitration pursuant to Article 28 or 36 of the Convention. Where this action is taken by an investor of one Contracting Party the other Contracting Party shall consent in writing to the submission of the dispute to the Centre within thirty days of receiving such a request from the investor;.

(b) if both Contracting Parties are not at that time party to the Convention, refer the dispute to an Arbitral Tribunal constituted in accordance with Annex B, or by agreement, to any other arbitral authority.

(4) Where a dispute is referred to the Centre in

Accordance with paragraph (3)<

a) of this Article:

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(a) if the parties to the dispute cannot agree whether conciliation or arbitration is the more appropriate procedure, the investor affected shall have the

Right to choose, and

(b) a company which is constituted or incorporated under the law in force in the territory of one Contracting Party and in which before the dispute arises the majority of shares are owned by investors of the other Contracting Party shall, in accordance with Article 25(2)(b) of the Convention, be treated as a company of the other Contracting Party.

(5) Once an action referred to in paragraphs {2} or (3)

Of this Article has been taken, neither Contracting Party shall pursue the dispute through diplomatic channels unless:

(a) the relevant judicial or administrative body, the Secretary-General of the Centre, the arbitral authority or tribunal or the conciliation commission, as the case may be, has decided that it has no jurisdiction in relation to the dispute in question; or

(b) the other Contracting Party has failed to abide by or comply with any judgment, award, order or other determination made by the body in question.

(6) In any proceeding involving a dispute relating to an

Investment, a Contracting Party shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the investor concerned has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

Nevertheless, an investor of a Contracting Party involved in

Such a dispute shall not be entitled to compensation for more than the value, as determined in accordance with paragraph 2 of Article 6, of the investment which is the subject of the

Dispute, taking into account all sources of compensation within

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The territory of the Contracting Party liable to pay compensation..

Article 12. Settlement of Disputes between Investors of the Contracting Parties

A Contracting Party shall in accordance with its law

(a) provide investors of the other Contracting Party who have made investments within its territory and personnel employed by them for activities associated with investments full access to its competent judicial or administrative bodies in order to afford means of asserting claims and enforcing rights in respect of disputes with its own nationals or companies;

(b) permit its nationals and companies to select means of their choice to settle disputes relating to investments''with investors of the other Contracting Party, including arbitration conducted in a third country; and

(c) provide for the recognition and enforcement of any resulting judgments or awards.

Article 13. Subrogation

If a Contracting Party or an agency of a Contracting Party makes a payment to an investor of that Contracting Party under a guarantee, a contract of insurance or other form of indemnity it has granted in respect of an investment, the other Contracting Party shall recognise the transfer of any right or title in respect of such investment. The subrogated right or claim shall not be greater than the original right or claim of the investor.

Article 14. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force thirty days after the date on which the Contracting Parties shall have notified each other that their constitutional reguirements for the entry into force of this Agreement have been fulfilled. It shall remain in

force for a period of fifteen years and thereafter sl 3.aH remain in force indefinitely, unless terminated in accordance with paragraph (2) of this Article.

(2) Either Contracting Party may terminate this Agreement at any time after it has been in force for fifteen years by giving one year's written notice to the other Contracting Party.

(3) Notwithstanding termination of this Agreement pursuant to paragraph (2) of this Article the Agreement shall continue to be effective for a further period of fifteen years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

DONE in duplicate at Canberra on the Twenty - ninth day of July, 1991 in the English and Czech languages, both texts being egually authentic.

FOR AUSTRALIA: FOR THE CZECH AND SLOVAK

(1) The Arbitral Tribunal referred to in Article 10 shall

Consist of three persons appointed as follows:

(a) each Contracting Party shall appoint one arbitrator;

(b) the arbitrators appointed by the Contracting Parties shall, within thirty days of the appointment of the second of them, by agreement, appoint an arbitrator as Chairman of the Tribunal who shall he a national of a third country which has diplomatic relations with both Contracting Parties.

(2) Arbitration proceedings shall be instituted upon

Notice being given through the diplomatic channel by the Contracting Party instituting such proceedings to the other Contracting Party. Such notice shall contain a statement setting forth in summary form the grounds of the claim, the nature of the relief sought, and the name of the arbitrator appointed by the Contracting Party instituting such proceedings. Within sixty days after the giving of such notice the respondent Contracting Party shall notify the Contracting Party instituting proceedings of the name of the arbitrator appointed by the respondent Contracting Party.

(3) If, within the time limits provided for in paragraph

(2) of this Annex, the required appointment has not been made, either Contracting Party may request the President of the International Court of Justice to make the necessary appointment. If the President is a national of either Contracting Party or is otherwise unable to act, the

Vice-President shall be invited to make the appointment. If the Vice-President is a national of either Contracting Party or is unable to act, 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 appointment.

(A) In case any arbitrator appointed as provided for in

This Annex shall resign or become unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

(5) The Arbitral Tribunal shall decide all questions relating to its competence and shall, subject to any agreement between the Contracting Parties, determine its own procedure.

(6) The Arbitral Tribunal shall reach its award by majority vote taking into account the provisions of this Agreement, the international agreements both Contracting Parties have concluded and the generally recognised principles of international law. It may render an award on the default of a Contracting Party.

(7) Each Contracting Party shall bear the costs of its appointed arbitrator. The cost of the Chairman of the Tribunal and other expenses associated with the conduct of the arbitration shall be borne in equal parts by both Contracting Parties. The

Arbitral Tribunal may decide, however, that a higher proportion of costs shall be borne by one of the Contracting Parties.

(8) An award shall be final and binding on the Contracting Parties.

(1) The Arbitral Tribunal referred to in paragraph (3)(b)

Of Article 11 shall consist of 3 per 3 appointed as follows:

(a) each party to the dispute shall appoint one arbitrator

(b) the arbitrators appointed by the parties to the dispute shall, within thirty days of the appointment of the second of them, by agreement, appoint an arbitrator as Chairman of the Tribunal who shall be a national of a third country which has diplomatic relations with both Contracting Parties.

(2) Arbitration proceedings shall be instituted by written

Notice setting forth the grounds of the claim, the nature of the relief sought and the name of the arbitrator appointed by the party instituting such proceedings.

(3) lf a party to the dispute, receiving notice in writing from the other party of the institution of arbitration proceedings and the appointment of an arbitrator, shall fail to appoint its arbitrator within thirty days of receiving notice from the other party, or if, within sixty days after a party has given notice in writing instituting the arbitration proceedings, agreement has not been reached on a Chairman of the Tribunal, either party to the dispute may reguest the Secretary-General of the International Centre for Settlement of Investment Disputes

To make the necessary appointment.

(4) In case any arbitrator appointed as provided in this Annex shall resign or become unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

(5) The Arbitral Tribunal shall decide all questions relating to its competence and shall, subject to the provisions of any agreement between the parties to the dispute, determine

. its procedure by reference to the rules of procedure contained in.he Arbitration Rules of the United Nations Commission on International Trade Law.

(6) The Arbitral Tribunal shall reach its award by majority vote taking into account the provisions of this Agreement, any agreement between the parties to the dispute and the relevant domestic law of the Contracting Party which has admitted the investment.

(7) Each party to the dispute shall bear the costs of its appointed arbitrator. The cost of the Chairman of the Tribunal and other expenses associated with the conduct of the arbitration shall be borne equally by the parties. The Arbitral Tribunal may, however, decide that a higher proportion of the costs shall be borne by 'one of the parties.

(8) An award shall be final and binding and shall be enforced in the territory of each Contracting Party in accordance with its law.

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