

AGREEMENT BETWEEN THE GOVERNMENT OF BARBADOS AND THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of BARBADOS and the Government of the REPUBLIC OF VENEZUELA hereinafter referred to as Contracting Parties,

Desiring to strengthen the traditional ties of friendship between their countries, to extend and intensify the economic relations between them, particularly with respect to investments by the nationals and companies of one Contracting Party in the territory of the other Contracting Party.

Recognizing that agreement upon the treatment to be accorded to such investment will stimulate the flow of capital and technology and the economic development of the Contracting Parties, and that fair and equitable treatment of investment is desirable.

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

- a. "investment" means every kind of asset invested by nationals or companies of one Contracting Party in the territory of the other Contracting Party and in particular, though not exclusively, includes: i. Movable and immovable property and any other property rights such as mortgages, liens or pledges;
- ii. Shares in and stock and debentures of a company and any other form of participation in a company;
- iii. Claims to money or to any performance under contract having a financial value;
- iv. Intellectual property rights, goodwill, technical processes and know-how;
- v. Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments and the term "investment" includes all investments, whether made before or after the date of entry into force of this Agreement.

This agreement, however, does not apply to disputes arising from acts or occurrences which have taken place before its entry into force.

- b. "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;
- c. "nationals" means, in respect of each contracting party, physical persons deriving their status as nationals from the law in force in that Contracting Party;
- d. "companies" means, in respect of each Contracting Party, corporations, firms and associations incorporated or constituted under the law in force in that Contracting Party;

For the purposes of the Convention referred to in Article 8 "Company" shall include any company incorporated or constituted under the law in force in one Contracting Party which is owned or effectively controlled by nationals or companies of the other Contracting Party.

- e. "territory" means in respect of each contracting party, the territory thereof, the territorial sea and the exclusive economic

zone designated under the national law of that contracting party in accordance with international law as an area within which that contracting party has sovereign rights and jurisdiction to explore, exploit and preserve the natural resources.

Article 2. Promotion and Protection of Investment

1. Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest capital in its territory, and, subject to its rights to exercise powers conferred by its laws, shall admit such capital.

2. Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment in accordance with the rules and principles of International law and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to the treatment of investments of nationals or companies of the other Contracting Party.

Article 3. National Treatment and Most-favoured-nation Provisions

1. Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.

2. Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any third State.

3. The treatment provided for in paragraphs (1) and (2) above shall apply to the provisions of Articles 1 to 11 of this Agreement.

Article 4. Compensation for Losses

1. Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own nationals or companies or to nationals or companies of any third State.

2. Paragraph (1) of this Article shall not be construed to mean that a Contracting Party is relieved of its obligations under international law to accord restitution or adequate compensation in any of the situations referred to in that paragraph, for losses suffered by nationals or companies of the other Contracting Party as a result of requisitioning of their property by its forces or authorities or the destruction by them of their property not caused by combat action or required by the situation.

Article 5. Expropriation

1. Investments of nationals or companies 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 related to the internal needs of that Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The national or company 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 his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

2. 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 nationals or companies 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 prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares.

Article 6. Repatriation of Investment and Returns

Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the unrestricted transfer of their investments and returns. 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 transfer shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 7. Exceptions

The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other the benefit of any treatment, preference or privilege resulting from:

- a. Any existing or future customs union or similar international agreement to which either of the Contracting Parties is or may become a party, or
- b. Any international agreement or arrangement relating wholly or mainly to taxation or any existing domestic legislation relating wholly or mainly to taxation.

Article 8. Settlement of Disputes between One Contracting Party and Nationals or Companies of the other Contracting Party

1. Disputes between one Contracting Party and a national or company of the other Contracting Party concerning an obligation of the former under this Agreement in relation to an investment of the latter shall, at the request of the national concerned, be submitted to the International Centre for Settlement of Investment Disputes for settlement by arbitration or conciliation under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965.
2. As long as the Republic of Venezuela has not become a Contracting State of the Convention as mentioned in paragraph 1 of this Article, disputes as referred to in that paragraph shall be submitted to the International Centre for Settlement of Investment Disputes under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (Additional Facility Rules). If for any reason the Additional Facility is not available the investor shall have the right to submit the dispute to arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL).
3. The arbitral award shall be limited to determining whether there is a breach by the Contracting Party concerned of its obligations under this Agreement, whether such breach of obligations has caused damages to the national concerned, and if such is the case, the amount of compensation.
4. Each Contracting Party hereby gives its unconditional consent to the submission of disputes as referred to in paragraph 1 of this Article to international arbitration in accordance with the provisions of this Article.

Article 9. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.
2. If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.
3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.
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 any necessary appointments. If the President is a national of either Contracting Party or if he 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 if he too 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. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The 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. The tribunal shall determine its own procedure.

Article 10. Subrogation

1. If one Contracting Party or its designated Agency ("the first Contracting Party") makes a payment under an indemnity given in respect of non-commercial risks of an investment in the territory of the other Contracting Party, ("the second Contracting Party"), the second Contracting Party shall recognise:

a. The assignment to the first Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified, and

b. That the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

2. The first Contracting Party shall be entitled in all circumstances to the same treatment in respect of:

a. The rights and claims acquired by it by virtue of the assignment, and

b. Any Payments received in pursuance of those rights and claims,

As the Party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

Article 11. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

Article 12. Entry Into Force

The Contracting Parties shall notify each other of the completion of their domestic procedures for the entry into force of this agreement. This Agreement shall enter into force on the date of such notification by the second Contracting Party.

Article 13. Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of ten years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective

Governments, have signed this Agreement.

Done in duplicate at BRIDGETOWN this 15th day of July, 1994.

For the Government of Barbados: For the Government of the Republic of Venezuela: