

Agreement between the Government of the Republic of China and the Government of the Republic of Nicaragua on investment guarantees

The Government of the Republic of China and the Government of the Republic of Nicaragua

Desiring to create favourable conditions for investors of either contracting party to make investments in the territory of the other contracting party for the purpose of promoting economic development of the contracting parties; and recognising that adequate protection of such investments will stimulate the desire to invest and prosperity will increase in both countries;

Have agreed as follows:

Article I.

1. The term "investor" referred in this Agreement designates:

(1) A national of either of the contracting Parties.

(2) A company incorporated under the laws of either Contracting Party, in which shareholders who possess the majority of shares or actual beneficiaries are nationals of the Contracting Parties.

2. The term "investment capital" referred in this agreement includes the following classes:

(1) Effective consisting of foreign currency transferred or introduced in either of the contracting parties;

(2) The proceeds of the sale of goods that are introduced into the country, when intended for the financing of investment projects prior authorization by the competent authority of the host State's of the investement.

(3) The main interests, profits, or any other revenue from investments and the transfer abroad in the form of foreign exchange has been approved by the competent authority

(4) Technology in its various forms, such as Intellectual Property Rights, in accordance with the legislation of the respective contracting parties.

3. The term "types of investment" referred to in this Agreement includes:

(1) The establishment of new enterprises or through the expansion of existing capital increase, through investment, individually co-investment, or association with citizens; or legal persons of either the Government of the Contracting Parties.

(2) Purchase of shares or bonds of existing enterprises, or in cash, loans in machinery, equipment or raw materials, approved by the competent authorities.

(3) Specialized or transfer of technology or Intellectual Property Rights and industrial and social capital adopted by the national authority to approve the foreign investment.

(4) Transfer of specialized technology or intellectual Property Rights and industrial, not as capital but as a form of cooperation.

4. The "specific risk" referred to this Agreement refers to the following cases:

(1) "no convertibility", or a situation where, within the period of this Convention, investors of the Contracting Parties may not convert in foreign currency and return the invested capital and profits (capital gains, dividends, interests, dividends, royalties and other income) within ninety days from the date on which the investor has duly submitted applications necessary for the transfer until the date on which the transfer is effectively made due to foreign exchange control of the

Government of the other Contracting Party; or investors of either Contracting Party suffer losses in the repatriation of their investments in its original or profits because the exchange rate imposed by the Government of the other contracting party, not reflect the exchange rate prevailing in the banking market.

(2) "expropriation", nationalization of foreign companies or dispossession of property by the Government of either of the Contracting Parties with investors of the other contracting party;

(3) "breach of contract" shall be regarded as a breach of contract violation or the withdrawal of incentives granted by the host Government to investors; or administrative measures or amendments of laws or regulations to produce effects against property and / or business operations of investors equivalent to a breach of contract.

(4) "revolution", insurrection or a state of war, revolution or insurrección which causes loss or damage. Such losses include but are not limited to those caused by discontinuation of operations.

5. In the case of the Republic of Nicaragua, the competent authority with respect to foreign investment is the Foreign Investment Committee, as defined in the law on foreign investment. in the case of the Republic of China the competent authority regarding matters of foreign investment is the Ministry of Economic Affairs as defined in the statute of foreign investment.

Article II.

Investments referred to in this Agreement shall be approved by the Governments of the Contracting Parties. The Government of one of the Contracting Parties has given its approval if an investor of either contracting party holds an investment contract with the Government of any of the Contracting Parties. In the case of Nicaragua the signing of a "investment contract" according to the Law on Foreign Investment "of the Republic of Nicaragua shall fully fulfill this requirement.

Article III.

1. The Government of either Contracting Party shall accord to investments made in its territory by investors of the other contracting party a treatment, with respect to investments or returns, which shall not be less favourable than that accorded in the present or in the future to investments of nationals or companies of its own country or a third country.

2. The Government of either Contracting Party shall accord to investors of one Contracting Party, as regards the management, use, enjoyment or disposal of their investments, treatment which shall not be less favourable than that accorded in the present or future to nationals or companies of its own country or a third country.

Article IV.

The Government of either Contracting Party agrees that the Government of the other Contracting Party may grant investment guarantees that have been approved by both Governments and that are consistent with the provisions of this Agreement. In case of event of any specific risks relating to this Agreement, the Government of the other contracting party, after the compensation to the investor for the damages, acquires their rights and may assert all rights and claims.

The Government of either Contracting Party shall recognize the transfer to the Government of the investor of the other contracting party of any right, title or interest, capital goods, claims to money or other property rights, together with any other claim on the rights mentioned, including the initiation of proceedings.

In the case of the Republic of Nicaragua, this right of subrogation shall be authorized by the Committee on Foreign Investment in the investment contract, that each investor concluded with the Government.

Article V.

Investments made by nationals or companies of one Contracting Party shall enjoy in the territory of the host State of investment, full protection and security in the event of specific risks set out in this Agreement.

Article VI.

Compensation for specific risks occurring and set out in this Agreement that the Government of either of the Contracting Parties may claim to the Government of the other Contracting Party shall be one of the following categories.

1. No convertibility: in the event of the situation referred to in paragraph (1) of paragraph 4 of Article I, investors of either of the Contracting Parties may invoke the convertibility guaranty transferred amounts in local currency convertibility, subject to no account maintained by its Government in the other Contracting Party requesting the compensation for the damage referred. in such a case, the Government of the investor to compensate the damage, covering may arrange with the Host Government of investment in foreign currency conversion of these sums of money.

2. Expropriation: in the event of any of the situations referred to in paragraph (2) of paragraph 4 of Article I, the Government of either of the Contracting Parties, after compensating the investor for the damage may request compensation from the Government of the other contracting party. Such compensation shall be based on the market value.

The Government of either of the Contracting Parties may replace in the right of investors with respect to the claims for compensation and act as the transferee of assets that have not been expropriated, taking into account the scope of the compensation provided for by the security.

3. In case of disputes concerning the interpretation or breach of contract for the Government of either of the Contracting Parties after compensate investors of one of the Contracting Parties, for damages, may enter into contractual subrogation as an international arbitration in accordance with the procedure of article 8 of this Agreement.

4. War, insurrection or revolution: if the in versionistas of either Contracting Party suffer losses owing to war, insurrection or revolution in the other Contracting Party, investors shall be accorded such treatment, with respect to restitution, indemnification, compensation or other settlement, not less favourable than the treatment granted under the present or future by the Government of the other contracting party to its own nationals or companies or to nationals or companies of any third country.

Article VII.

The compensation for which the Government of each Contracting Party shall make creditor under the investment guarantee shall receive a treatment no less favourable than that accorded to the original investment. Also, such compensation shall be based on the market value in the host State for the investment at the time immediately prior to the occurrence of a specific risk and shall include accrued interest at a commercial rate until the date of payment, and shall be made without delay. The Government of that Contracting Party may convert the compensation into foreign currency or spend it according to the law.

Article VIII.

1. Any dispute between the contracting parties concerning the interpretation or application of this Agreement shall be settled as far as possible, by the Governments of the two contracting parties.

2. If the dispute cannot be settled in this way within six months from the beginning of negotiations, shall be submitted, at the request of either of the contracting parties to an arbitration tribunal.

3. The arbitration tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall elect a national of a third State as Chairman. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which are designated the parties' arbitrators

4. The tribunal shall determine its own procedure.

5. The arbitral tribunal shall issue its Award on:

- The provisions of this Agreement and the investment contract.
- The national law of the Party in whose territory the investment was made, including the rules relating to conflicts of law.
- The rules and the universally accepted principles of International Law.

6. The tribunal shall reach its decisions by a majority vote, these shall be final and binding upon the disputing parties. Each Party undertakes to execute the decisions in accordance with its national legislation.

7. Each Contracting Party shall bear the costs of the arbitrator appointed by it and its representation in the arbitral proceedings. The other expenses including the chairman shall be borne equally by the contracting parties.

Article IX.

This Agreement shall enter into force on the day on which the two Governments have notified each other that their

respective constitutional formalities required for the Entry into Force of international agreements have been completed, which shall be by means of exchange of diplomatic notes.

This Agreement shall be for a period of ten years and may be extended by the contracting parties through an exchange of letters with six months notice. However, the provisions of this Agreement shall remain valid for a period of ten years after the date of its termination in respect of investments made during the term of the same, without prejudice to the later application of national legislation of the investment host State, or general international law.

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

Done in duplicate in the English and Chinese languages both texts being equally authentic, in the city of Managua at the twenty-ninth day of the seventh month of the year and eighty one of the Republic of China, for the twenty-ninth day of July in the year one thousand nine hundred and ninety-two Gregorian calendar.

The Government of the Republic of China

[signed]

Vincent Siew

Economics Minister of the Republic of China

The Government of the Republic of Nicaragua

[signed]

July Cárdenas Robleto

Minister of Economy and Development of the Republic of Nicaragua

8 January 1993