

AGREEMENT BETWEEN THE REPUBLIC OF CHILE AND THE REPUBLIC OF HUNGARY ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of Hungary and the Republic of Chile, hereinafter the "Contracting Parties",

Desiring to intensify economic cooperation to the mutual benefit of both countries;

With the intention to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the reciprocal promotion and protection of such foreign investments favour the economic prosperity of both countries;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1 . "investor" means the following persons or entities which have made an investment in the territory of the other Contracting Party in accordance with the present Agreement:

- (a) a natural person who, according to the laws of either Contracting Party is considered to be its national;
- (b) a legal entity, including companies, corporations, business associations and other legally recognized entities including partnerships and limited partnerships which are constituted or otherwise duly organised under the laws of one Contracting Party and have their seat together with their effective economic activities in the territory of that Contracting Party,

2 . "Investment" shall comprise any kind of assets invested by an investor of one Contracting Party and admitted by the other Contracting Party in accordance with the laws and regulations of the latter, and shall include, in particular, though not exclusively:

- (a) movable and immovable property and any other property rights such as mortgages, liens or pledges;
- (b) shares, debentures or any other form of participation in companies;
- (c) a loan or other claim to money or to any performance having an economic value;
- (d) intellectual and industrial property rights, including copyrights, patents, trademarks, trade names, technical processes, know-how and goodwill;
- (e) concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Article 2. Scope of Application

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party after January 1, 1973. It shall not be applicable to disputes which arose prior to its entry into force or to disputes directly related to events which occurred prior to its entry into force.

Article 3. Promotion and Protection of Investments

1 . Each Contracting Party shall, subject to its general policy in the field of foreign investments, promote investments of investors of the other Contracting Party.

2 . Each Contracting Party shall protect investments once admitted and made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and liquidation of such investments.

Article 4. Treatment of Investments

1 . Each Contracting Party shall extend fair and equitable treatment to investments made by investors of the other Contracting Party on its territory and shall ensure that the exercise of the rights thus recognized shall not be hindered in practice.

2 . Each Contracting Party in its territory shall accord investments of investors of the other Contracting Party treatment which is not less favourable than that accorded to investments made by its own investors or by investors of any third country, whichever is more favourable.

3 . If a Contracting Party accords special advantages to investors of any third country by virtue of an agreement establishing a free trade area, a customs union, a common market, an economic union or any other form of international economic organization or cooperation or any international agreement leading to such unions or institutions to which the Party belongs or may belong or through the provisions of an international agreement relating wholly or mainly to taxation, it shall not be obliged to extend such advantages to investors of the other Contracting Party .

Article 5. Free Transfer

1 . Each Contracting Party shall allow without delay the investors of the other Contracting Party the transfer of payments in connection with an investment in a freely convertible currency, particularly of:

- (a) capital and additional amounts to maintain or increase the investment;
- (b) interests, dividends, profits and other returns;
- (c) repayments of a loan or credit related to the investment;
- (d) any capital or proceeds from the sale or partial sale or liquidation of the investment;
- (e) compensation for expropriation or loss described in Article 6 of this Agreement and
- (f) royalties or fees.

2 . Transfers shall be made at the exchange rate applying on the date of transfer in accordance with the laws of the Contracting Party which has admitted the investment.

Article 6. Expropriation and Compensation

1 . Neither Contracting Party shall take any measures depriving or having effect of depriving an investor of the other Contracting Party of an investment unless the following conditions are complied with:

- (a) the measures are taken in the public or national interest and in accordance with the laws of the Contracting Party taking the measures;
- (b) the measures are not discriminatory;
- (c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation.

2 . The compensation shall be based on the market value of the investment affected immediately before the measure became public knowledge. Where that value cannot be readily ascertained, the compensation may be determined in accordance with internationally recognised equitable principles of valuation taking into account the capital invested, depreciation, capital already repatriated, replacement value and other relevant factors. This compensation shall carry an interest at the appropriate market rate of interest from the date of expropriation or loss until the date of payment.

3 . The investor affected shall have a right to access, under the laws of the Contracting Party making the expropriation, to the judicial authority of that Contracting Party, in order to review the amount of compensation and the legality of any such expropriation or comparable measure.

4 . The investor of one Contracting Party whose investment has suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment as regards restitution, indemnification, compensation or other consideration, not less favourable than that which that Contracting Party accords to its domestic investors or to the investor of any third country, whichever is more favourable to the investor concerned.

Article 7. Subrogation

1. Where one Contracting Party or an agency authorized by that Contracting Party has granted a contract of insurance or any form of financial guarantee against non-commercial risks with regard to an investment of one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this contract or financial guarantee by the first Contracting Party.

2 . Where a Contracting Party has made a payment to its investor and has taken over rights and claims of the investor, that investor shall not unless authorised to act on behalf of the Contracting Party making the payment, pursue those rights and claims against the other Contracting Party

Article 8. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. With a view to an amicable solution of disputes, which arises within the terms of this Agreement, between a Contracting Party and an investor of the other Contracting Party consultations will take place between the parties concerned.

2. If these consultations do not result in a solution within five months from the date of request for settlement, the investor may submit the dispute either:

(a) to the competent tribunal of the Contracting party in whose territory the investment was made; or

(b) to international arbitration of the International Centre for the Settlement of Investment Disputes (ICSID), created by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965.

(c) an international ad hoc arbitral tribunal which unless otherwise agreed upon by the parties to the dispute shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Once the investor has submitted the dispute to the competent tribunal of the Contracting Party in whose territory the investment was made or to international arbitration, that election shall be final.

4. The arbitration decisions shall be final and binding on both parties and shall be enforced in accordance with the laws of the Contracting Party in whose territory the investment was made.

5 . Once a dispute has been submitted to the competent tribunal or international arbitration in accordance with this Article, neither Contracting Party shall pursue the dispute through diplomatic channels unless the other Contracting Party has failed to abide or comply with any judgment, award, order or other determination made by the competent international or local tribunal in question.

Article 9. Settlement of Disputes between the Contracting Parties

1. The Contracting Parties shall endeavour to resolve any difference between them regarding the interpretation or application of the provisions of this Agreement by friendly negotiations.

2. If the difference cannot thus be settled within six months following the date of notification of the difference, either Contracting party may submit it to an ad hoc Arbitral Tribunal in accordance with this Article.

3. The Arbitral Tribunal shall be formed by three members and shall be constituted as follows: within two months of the notification by a Contracting Party of its wish to settle the dispute by arbitration, each Contracting Party shall appoint one arbitrator. These two members shall then, within thirty days of the appointment of the last one, agree upon a third member who shall be a national of a third country and who shall act as the Chairman. The appointment of the Chairman shall be approved by the Contracting Parties within thirty days of that person's nomination.

4. If within the time limits provided for in paragraph 3. of this Article the required appointment has not been made or the required approval has not been given, either Contracting Party may request the President of the International Court of Justice to make the necessary appointment. If the President of the International Court of Justice is prevented from carrying out the said function or if that person is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if that person is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

5. The Chairman of the Tribunal shall be a national of a third country which has diplomatic relations with both Contracting Parties.

6. The Arbitral Tribunal shall reach its decisions taking into account the provisions of this Agreement, the principles of international law on the subject and the general principles of Law as recognised by both of the Contracting Parties. The Tribunal shall reach its decisions by a majority of votes and shall determine its procedure.

7. Each Contracting Party shall bear the cost of the arbitrator it has appointed 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 unless agreed otherwise.

8. The decisions of the Arbitral Tribunal shall be final and binding on both Parties.

Article 10. Consultations between the Contracting Parties

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

Article 11. Final Provisions

1. The Contracting Parties shall notify each other on the fulfilment of the constitutional requirements for the entry into force of this Agreement. The Agreement shall enter into force thirty days after the date of the latter notification.

2. This Agreement shall remain in force for a period of fifteen years. Thereafter it shall remain in force indefinitely unless one of the Contracting Parties gives one year's written notice of termination through diplomatic channels.

3. In respect of investments made prior to the termination of this Agreement, its provisions shall remain in force for a further period of fifteen years from that date

4. This Agreement shall be applicable irrespective of whether diplomatic or consular relations exist between the Contracting Parties.

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

DONE at Santiago on, this 10th day of March 1997 in duplicate in the Hungarian, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of Hungary

For the Republic of Chile

PROTOCOL

On signing the Agreement on the Reciprocal Promotion and Protection of Investments between the Republic of Chile and the Republic of Hungary the undersigned duly authorized have, in addition, agreed on the following provisions. which shall form an integral part of the said Agreement.

Ad Article 5

1. Transfers concerning investments made under the Chilean Program of Foreign Debt Equity Swaps are subject to special regulations.

2. Capital may be remitted or reexported from one of the Contracting Parties after one year has elapsed from the date on which it was brought in, unless the laws and regulations of that Contracting party provide for a more favourable treatment. Any capital increase produced by profits, that could have been remitted abroad shall not be subject to any time limit.

3. A transfer shall be deemed to have been made without delay if carried out within such period as is normally required for the completion of transfer formalities. The said period shall start on the day on which the relevant request has been submitted in due form and may in no case exceed thirty days.

DONE at Santiago on, this 10th day of March 1997 in duplicate in the Hungarian, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of Hungary

For the Republic of Chile