

AGREEMENT

**BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND
TOBAGO**

AND THE

**GOVERNMENT OF THE REPUBLIC OF CUBA ON THE RECIPROCAL
PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Trinidad and Tobago and the Government of the Republic of Cuba (hereinafter referred to as " the Contracting Parties ");

DESIRING to intensify economic cooperation between both States;

RECOGNIZING that the encouragement and contractual protection of investment will stimulate the flow of private capital and the economic development of both States;

INTENDING to create favourable conditions for investment by nationals or companies of either State in the territory of the other State;

AGREEING that these objectives can be achieved without relaxing health, safety and environmental measures of general application;

RESPECTING the sovereignty and laws of the Contracting Party within whose jurisdiction the investment falls;

HAVE AGREED as follows:

Article 1. Definitions

For the purpose of this Agreement:

a) "investment means every kind of asset and in particular, though not exclusively, includes:

i) movable and immovable property as well as any other property rights such as mortgages, liens and pledges;

ii) shares, stock, debentures and any other form of participation in a company;

iii) claims to money or to any performance under contract having an economic value;

iv) intellectual property rights including copyrights, patents, industrial designs, trademarks, trade names, technical processes, know-how and goodwill;

v) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any change in the form of an investment does not affect its character as an investment

Subject to the definition of investments in this agreement.

b) "returns" means the amount yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

c) "nationals" means:

i) in respect of the Republic of Trinidad and Tobago: physical persons deriving their status as Trinidad and Tobago citizens or residents from the law in force in the Republic of Trinidad and Tobago;

ii) in respect of the Republic of Cuba, natural persons possessing the Cuban citizenship in conformity with its laws, and with permanent residence in the national territory;

d) "companies" means:

i) in respect of the Republic of Trinidad and Tobago: corporations, firms and associations, firms and associations incorporated or constituted under the law in force in the Republic of Trinidad and Tobago;

ii) in respect of Republic of Cuba: any entity legally constituted in its territory and recognized by it, such as public entities, partnerships, corporations, irrespective of whether their liability is limited or not;

e) "territory" means:

i) in respect of the Republic of Trinidad and Tobago: the island of Trinidad and the island of Tobago and any territories that immediately before 31 August 1962 were dependencies of Trinidad and Tobago including the territorial sea and any maritime area adjacent to the outer limit of the territorial sea of Trinidad and Tobago which has been or might in the future be designated under the national law of Trinidad and Tobago as an area over which Trinidad and Tobago may in accordance with international law exercise sovereign rights and jurisdiction with regard to the seabed, subsoil and natural resources;

ii) in respect of the Republic of Cuba, in addition to the areas comprised with its land limits, the air space and maritime areas. The latter include the sea waters and seabed over which the Cuban State exercises sovereignty and sovereign rights or jurisdiction in accordance with international law.

Article 2. Application of Agreement

This Agreement shall apply to all investments made by nationals or companies of one Contracting Party in the territory of the other Contracting Party, whether the investments are made before, or after, the date of entry into force of this Agreement, but the provisions of this Agreement shall not apply to any dispute, claim or difference which arose before its entry into force.

Article 3. Promotion of Investment

Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest in its territory and shall admit such investments in accordance with its laws.

Article 4. Protection of Investment

1) Investment of nationals or companies of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party.

2) Returns from investments and in the event of their reinvestment, the returns therefrom shall enjoy the same protection as the investments.

Article 5. National and Most-favoured-nation Treatment

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 to 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) For the avoidance of doubt, it is confirmed that the investments or returns of the nationals or companies referred to in paragraphs (1) and (2) above, are those governed by the national legislation covering foreign investment and that the

treatment provided for by paragraphs (1) and (2) above should apply to the provisions of Article 1 to 11 of this Agreement.

4) The treatment granted under this Article shall not relate to privileges which either Contracting Party accords to nationals or companies of third States on account of its membership in, association with, a customs or economic union, a common market or a free trade area.

5) The treatment granted under this Article shall not relate to advantages which either Contracting Party accords to nationals or companies of third States by virtue of a double taxation agreement or other agreements regarding matters of taxation.

Article 6. Compensation for Losses

Nationals of companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, 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. Resulting payments shall be made in a freely convertible currency agreed upon by the parties and shall be freely transferable.

Article 7. Expropriation

Investments of nationals or companies of either Contracting party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization 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 Contracting Party, under due process of law, 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, and shall be made without delay, be effectively realizable and be freely transferable, in a freely convertible currency agreed upon by the parties. 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 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 paragraph.

Article 8. Transfers

1) Each Contracting Party shall guarantee without delay the free transfer of investments and returns after payment of the relevant tax obligations and in particular, though not exclusively of:-

- a) the capital and additional sums necessary for the maintenance and development of the investments;
- b) gains, profits, interest, dividends and other current income;
- c) funds in repayment of claims to money as defined in Article 1 (a)(iii);
- d) royalties and fees;
- e) the proceeds from a total or partial sale or liquidation of an investment;
- f) compensation provided for in Article 6;
- g) the wages and other remuneration earned by nationals of one Contracting party who are allowed to work in connection with an investment in the territory of the other.

2) Transfers shall be effected without delay in a freely convertible currency, agreed upon by the parties, at the applicable exchange rate at the date of the transfer.

3) Notwithstanding paragraphs 1 and 2, a Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its law relating to:

- a) bankruptcy, insolvency or the protection of the rights of creditors;
- b) issuing, trading or dealing in securities;
- c) criminal or penal offences;

- d) reports of transfers of currency or other monetary instruments; or
- e) ensuring the satisfaction of judgments in adjudicatory proceedings.

Article 9. Entry, Sojourn and Employment

With the framework of their national law the Contracting Parties shall permit the entry, sojourn and employment of nationals of one Contracting Party in connection with an investment made in the territory of the other Contracting Party.

Article 10. Settlement of Disputes between One Contracting Party and a National or Company of

The other Contracting Party

- 1) For purposes of this Agreement, an investment dispute is a dispute between a 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.
- 2) In the event of an investment dispute, the Parties to the dispute should initially seek a resolution through consultation and negotiation. If the dispute cannot be settled amicably within six months from the date of written notification of a claim, the national or company that is a Party to an investment dispute may submit the dispute for resolution under one of the following alternatives:
 - a) to the courts or administrative tribunals of the Contracting Party that is a Contracting Party to the dispute; or
 - b) in accordance with any applicable, previously agreed dispute-settlement procedures; or
 - c) to international arbitration in accordance with paragraph 3 below.
- 3) Where the dispute is referred to international arbitration, the national or company concerned may submit the dispute either to:
 - a) the Court or Arbitration of the International Chamber of Commerce; or
 - b) an international arbitrator or ad hoc arbitral tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law;
 - c) to any other arbitration institution or in accordance with any other arbitration rules agreed to by both parties to the dispute.
- 4) Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award.
- 5) In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to any insurance or guarantee contract.

Article 11. Settlement of 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 diplomatic channels.
- 2) If the dispute has not been settled within a period of six months from the date on which the matter was raised by either Contracting Party, it may be submitted at the request of either Contracting Party to an Arbitral Tribunal.
- 3) Such an arbitral tribunal shall be constituted as hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third State as the chairman to be appointed by of the two Contracting parties. Such members shall be appointed within two months, and such chairman within four months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.
- 4) If within the periods specified in paragraph 3 above the necessary appointments have not been made, either Contracting Party shall, in the absence of any other

Arrangement, invite the President of the International Court of Justice to make the 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 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 Court next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5) Unless otherwise agreed, all submissions, including documents, notifications, notices, and identification of proxies, shall be made and all hearings shall be completed within six months of the date of selection of the chairman. The arbitral tribunal shall reach its decision by a majority of votes, and it shall render its decisions within two months of the date of final submissions, or the date of the closing of the hearings, whichever is later. Such decisions 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 12. Subrogation

1) If one Contracting Party, as a result of a guarantee against non-commercial risks given for an investment made in the territory of the other Contracting Party, makes payments to its own nationals or companies. The first mentioned Contracting Party has in this case full rights of subrogation with regard to the rights and actions of the said national or company.

2) Payments made under this Article shall not affect the rights of the beneficiary of the guarantee to recourse to any dispute resolution procedure in accordance with the provisions of Article 10 or to continue proceedings until their completion.

Article 13. 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 14. Amendment

Any provision of this Agreement may be amended by mutual agreement between the Contracting Parties. Any such amendment shall be confirmed by an Exchange of Diplomatic Notes.

Article 15. Entry Into Force, Duration and Termination

1) Each Contracting Party shall notify the other in writing of the completion of the constitutional formalities required in its territory of the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.

2) 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 Contracting Party.

3) With respect to 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 authorized thereto by their respective Governments, have signed this Agreement.

Done at Havana this 26 th day of May, 1999 in Spanish and English languages, the two texts being equally authentic.

For the Government of the Republic of Trinidad and Tobago

For the Government of the Republic of Cuba