AGREEMENT BETWEEN THE REPUBLIC OF COSTA RICA AND THE REPUBLIC OF CHINA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENT

The Republic of Costa Rica and the Republic of China hereinafter referred to as the "Contracting Parties",

Desiring to promote greater economic cooperation for the reciprocal benefit of both Parties,

Intending to create favorable conditions for the investments of investors of one Contracting Party in the territory of the other Contracting Party, and

Recognizing that the promotion and protection of investment according to this Agreement encourage new initiatives in this field,

Have agreed as follows:

Article I. Definitions

For the purposes of this Agreement:

1. "Investors" mean, for each Contracting Party, the following subjects who have made investments in the territory of the other Contracting Party in accordance with the legislation of the latter and the provisions of this Agreement: a) Any natural person possessing the nationality of one of the Contracting Parties according to its legislation; or

b) Any legal persons, including companies, business associations, corporations, branch offices and any other organization duly incorporated or constituted in accordance with the laws of that Contracting Party, which has its seat, domicile or registered office in the territory of that Contracting Party and whether or not it is for profit.

2. "Investment" means any kind of asset, defined in accordance with the laws of the host country, which the investor of one Contracting Party invests in the territory of the other Contracting Party in accordance with the latter's laws and regulations and; in particular, though not exclusively, includes: (a) Movable and immovable property and any other rights in rem such as mortgages, liens or pledges;

(b) Shares, stock, documents of title and debentures of companies or any other form of participation' in a company;

(c) Credits or claims to performances under contracts directly related to an investment;

(d) Intellectual property rights, including but without limitation, copyright and related rights, trade marks, industrial designs, geographical indications, layout-designs and patents;

(e) Rights conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources.

Any changes in the form of an investment do not affect its character as an investment.

3. "Territory" means the territories of the Contracting Parties, the air space as well as those maritime areas, including the seabed and subsoil adjacent to the outer limit of the territorial sea, over which the Contracting Parties exercise, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas.

Article II. Promotion and Admission

1. Each Contracting Party shall encourage and create favorable conditions in its territory for investments of investors of the other Contracting Party, and shall admit such investments in accordance with its laws and regulations.

2. With the purpose of increasing investment flows, upon request of the other Contracting Party, each Contracting Party will make an effort to inform the other Party about any existing investment opportunities in its territory.

3. Once a Contracting Party has admitted an investment in its territory, it shall provide, in accordance with its laws and regulations, all necessary permits related with such investment, as well as all authorizations required to perform the license and technical, commercial or administrative assistance contracts.

Article III. Protection

1. Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment, and shall enjoy full protection and security in accordance with International Law.

2. None of the Contracting Parties shall obstruct, in any manner, either through arbitrary or discriminatory measures, the enjoyment, use, management, conduct, operation and sale or other disposition thereof of such investments. Each Contracting Party shall comply with any obligation assumed regarding investments of investors of the other Contracting Party.

Article IV. National and Most-favored-nation Treatment

1. In accordance to its laws and regulations, each Contracting Party shall accord investments made by investors of the other Contracting Party in the former's territory a treatment no less favorable than that granted to investment of its own investors, or to investments of investors of any third State, whichever is more favorable.

2. Nothing in this article shall be construed so as to oblige a Contracting Party to extend to investments of investors of the other Contracting Party advantages resulting from any existing or future association or participation in a free trade area, customs union, common market, economic and monetary union or any other similar institution of economic integration.

3. Nothing in this article shall be construed so as to oblige a Contracting Party to extend to investments of investors of the other Contracting Party deductions, fiscal exemptions or any other similar advantages resulting from double taxation agreements or any other agreement regarding tax matters negotiated by one Contracting Party and any third State.

Article V. Expropriation and Compensation

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having an equivalent effect (hereinafter referred to as "expropriation") except in cases when any of such measures have been adopted for a public purpose, in accordance with the due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation.

2. The compensation shall amount to the fair price of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, whichever was earlier. It shall include interest from the date of dispossession of the expropriated property until the date of payment. Interest shall be based on the average deposit rate prevailing in the national banking, system of the Party where the expropriation was made. Compensation shall be paid without delay, in convertible currency, and be effectively realizable and be freely transferable.

3. The investor 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 Article.

4. Nothing in this Article shall affect the authority of any Contracting Party to decide whether or not to negotiate with the other Contracting Party, or with any third State, quantitative export restrictions, nor its authority to allocate those quotas using the mechanisms and criteria the Contracting Party considers appropriate.

Article VI. Compensation for Losses

Investors 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, insurrection, riot or any other similar event, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable than that which the latter Contracting Party accords to investments of its own investors or investments of investors of any third State.

Article VII. Transfers

1. Each Contracting Party shall permit investors of the other Party, in accordance with its laws and regulations, the unrestricted transfer of payments related with their investments. Such transfers include, in particular, though not exclusively, the following:

a) Initial capital and additional amounts needed to maintain, expand and develop the investment;

b) Funds in repayment of loans related to an investment;

c) The compensations referred to in Articles V and VI;

d) Cash derived from the partial or total sale or liquidation of the investment;

e) Any compensation owed to an investor by virtue of a resolution of the dispute settlement procedures set up by this Agreement.

2. Transfers referred to by this Article will be effected in any freely convertible currency at the applicable exchange rate on the date of the transfer. The Contracting Parties assume the commitment to expedite the required formalities to effect such transfers without delay. No more than three months shall elapse from the date when the investor has duly applied for the transfer and the date when such transfer is effectively made.

3. Notwithstanding the provisions of paragraph one of this Article, each Contracting Party shall be entitled, under circumstances of exceptional or serious balance of payments difficulties, to limit transfers temporarily, on a fair and non-discriminatory basis, and in accordance with internationally accepted criteria. Limits on transfers adopted or maintained by a Party 'under this paragraph shall be notified promptly to the other Party.

Article VIII. More Favorable Conditions

If the laws of one of the Contracting Parties, or any current or future obligation under International Law, provided more favorable conditions than those granted by this Agreement to investment of investors of the other Contracting Party, the most favorable provisions shall apply.

Article IX. Subrogation

If a Contracting Party or its designated agency, makes a payment under an indemnity against non-commercial risks given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment, under the law of that country, of any right or claim from the investor to the former Contracting Party, or its designated agency, as well as the entitlement by virtue of subrogation, to exercise the rights and enforce the claims of that investor. This subrogation will entitle the former Contracting Party, or its designated agency, to assert any such right or claim to the same extent as its predecessor.

Article X. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, to the extent possible, be settled through diplomatic channels.

2. If the dispute cannot thus be settled within the period of six months from the start of the consultations, it shall be submitted, upon request of either Contracting Party, to an arbitral tribunal.

3. The arbitral tribunal shall be constituted in the following way: each Contracting Party shall appoint one member of the Tribunal, and those two members shall then select a citizen of a third State as chairman. The members shall be appointed within three months, and the chairman within five months, from the date the request for arbitration was received.

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 or the International Chamber of Commerce to make any necessary appointments. If the President of the International Court of Justice or the International Chamber of Commerce 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 citizen of either Contracting Party or if he is also prevented from discharging said function, the Member of the International Court of Justice or the International Chamber if Commerce 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 dictate its judgement on the basis of the norms of this Agreement and other applicable agreements between the Contracting Parties, and on the basis of worldwide recognized principles of International Law.

6. Unless agreed otherwise by the Contracting Parties, the arbitral tribunal shall determine its own procedure.

7. The arbitral tribunal shall reach its decision by a majority of votes, such decision shall be final and binding for both Contracting Parties.

8. 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 both Contracting Parties.

Article XI. Settlement of Investment Disputes between One Contracting Party and Investors of the other Contracting Party

1. Any investment dispute which may arise between one Contracting Party and an investor of the other Contracting Party with respect to matters regulated by this Agreement, will be notified in writing by the investor to the host Contracting Party. Such notification shall include in detail all relevant information. To the extent possible, the dispute shall be settled amicably between the parties.

2. If a dispute has not been settled amicably within a period of six months from the date of the notification referred in paragraph one above, it may be submitted, at the election of the investor concerned, either to the competent Tribunals of the Party in whose territory the investment was made, or to international arbitration in accordance with the following provisions. The dispute may be submitted to:

a. The International Center for Settlement of Investment Disputes (ICSID), established by the "Convention on the Settlement of Investment Disputes between States and Nationals of other States" opened for signature at Washington D.C. on 18 March 1965, provided both Contracting Parties are signatories of the ICSID Convention;

b. The Additional Facility Rules of ICSID, provided that one of the Contracting Parties, but not both, is a party to the ICSID Convention;

c. An ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), when none of the Contracting Parties is a signatory of the ICSID Convention.

3. Once the investor has submitted the dispute either to a competent Tribunal of the disputing Contracting Party or to an arbitral procedure, the selection of one or the other shall be final.

4. The arbitral award shall be based on:

a. The provisions of this Agreement and any other binding agreements between the Contracting Parties;

b. The national laws of the Contracting Party where the investment was made, including the rules dealing with forum shopping;

c. The rules and general recognized principles of International Law;

5. The arbitral awards shall be final and binding on both parties to the dispute. Each Contracting Party assumes the commitment to implement the awards in accordance with its national legislation.

6. The Contracting Parties shall abstain from addressing through diplomatic channels any matter submitted either to the tribunals or arbitration according to the terms of this article, except in the case that the disputing Party has not complied with the judicial or arbitral decision.

Article XII. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the date when both Contracting Parties have notified each other of the Completion of their applicable constitutional formalities required for the entry into force of international agreements. It shall remain in force for an initial period of ten years, and shall continue thereafter unless one of the Contracting Parties notifies the other Contracting Party, in accordance with the terms of paragraph 3 below, of its intention to terminate it.

2. This Agreement shall apply to any investment made by an investor of one Contracting Party in the territory of the other Contracting Party before or after the entry into force of this Agreement. However, this Agreement shall not have retroactive effect.

3. Each Contracting Party may terminate this Agreement provided this intention has been previously notified in writing to the other Party. The termination of this Agreement shall become effective twelve months after the notice of termination has been received by the other Contracting Party.

4. In respect of investments made prior to the termination of this Agreement, the provisions contained in the remaining articles of this Agreement shall remain in force for an additional period of ten years from the date of termination.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Agreement. Done in triplicate at Taipei, this twenty–fifth day of March, 1999, in the Spanish, Chinese and English languages, all three texts being equally authoritative. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of Costa Rica

Samuel Guzowski

Minister of Foreign Trade

For the Republic of China

Wang Chih–kang

Minister of Economic Affairs

Protocol to the Agreement between the Republic of Costa Rica and the Republic of China on the Promotion and Reciprocal Protection of Investment

At the time of signing the agreement between the Republic of Costa Rica and the Republic of China on the Promotion and Reciprocal Protection of Investment, the Contracting Parties have, in addition, agreed on the following provisions, which shall constitute an integral part of the Agreement.

Ad Article V

With respect of article V, paragraph 2, the Contracting Parties agree that the concept "fair price" will be equivalent to the compensation amount which shall be determined as follows:

The valuation of the property expropriated will be based on all the information required to individualize the expropriated asset.

In cases of immovable property, the final valuation will be based on the individual valuation of the land, crops, buildings, leasing contracts, commercial rights, and any other asset or right susceptible of compensation.

In case of expropriation of several movable assets, each one will be valuated separately, and all characteristics affecting its valuation will be indicated.

Valuation will only consider actual permanent damages.

Future or expected events or rights will not be taken into consideration. Any gain derived from the project originating the expropriation will also not be considered for valuation purposes.

Every valuation report shall indicate in detail not only all the elements of judgement used to determine the value assigned to the expropriated property, but also, the methodology used for valuation.

IN WITNESS WHEREOF, the Undersigned, duly authorized, have signed this Protocol.

Done in triplicate at Taipei, this twenty–fifth day of March, 1999, in Spanish, Chinese and English languages, all three texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Republic of Costa Rica

Samuel Guzowski

Minister of Foreign Trade

For the Republic of China

Wang Chih–kang

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