

AGREEMENT BETWEEN THE CZECH REPUBLIC and THE REPUBLIC OF PARAGUAY ON PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Czech Republic and the Republic of Paraguay, hereinafter called the "CONTRACTING PARTIES",

DESIRING to intensify the economic cooperation for mutual benefit of both States,

WITH THE INTENTION to create and keep favorable conditions to the investments of investors of one Contracting Party in the territory of the other Contracting Party,

RECOGNIZING the need to promote and protect the foreign investments with the purpose of favoring the economic prosperity of both States,

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purpose of the present Agreement:

1. The term "investment" designates every kind of assets invested in connection with economic activity by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter.

The term designates in particular, but not exclusively:

- (a) Movable and immovable property, as well as any other property rights, such as mortgages, liens or pledges;
- (b) Shares, stocks and debentures of companies or any other form of participation in a company;
- (c) Loans, claims to money or to any performance under contract having an economic value and directly connected with a specific investment;
- (d) Intellectual property rights, including copyright, patents, industrial designs, trademarks, trade names, technological processes, know-how, and goodwill value;
- (e) Economic concessions conferred, by law or under contract, by the Contracting Parties or their public entities for the performance of an economic activity, including the concessions for prospection, cultivation, extraction, utilization or development of natural resources.

Any alteration of the form in which assets were invested shall not affect their character as investment, as long as that alteration conforms with the present Agreement.

2. The term "investor" designates:

- (a) Any natural person having the nationality of either Contracting Party according to its laws;
- (b) Any legal person which with respect to either Contracting Party means any entity registered or constituted in accordance with, and recognized as a legal person by its laws, having the permanent seat in the territory of that Contracting Party.

3. The term "returns" designates the amounts yielded by an investment made pursuant to this Agreement, such as profits, capital gains, dividends, interest, royalties, fees and other regular income.

4. The term "territory" designates:

- (a) In respect of the Czech Republic, the territory of the Czech Republic, over which it exercises sovereignty, sovereign rights

and jurisdiction in accordance with international law.

(b) In respect of the Republic of Paraguay, it refers to the territory of the State on which it exercises its sovereignty, sovereign rights or jurisdiction pursuant to the international law.

Article 2. Scope of Application

1. The provisions of this Agreement shall apply to future investments made by investors of one Contracting Party in the territory of the other Contracting Party, and also to the investments existing in accordance with the laws of the Contracting Parties on the date this Agreement came into force. However, the provisions of this Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled, prior to its entry into force.

Article 3. Promotion and Protection of Investments

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

2. 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 the territory of the other Contracting Party.

3. The Contracting Party which had admitted an investment in its territory will grant, according to its laws and regulations, the necessary permits in relation with such an investment.

4. Each Contracting Party will issue when so required, pursuant its laws and regulations, the necessary permits for the activity of advisers or other qualified persons of foreign nationality, including the necessary permits for the admittance and stay in the territory of the members of their families.

Article 4. National and Most Favored Nation Treatment

1. Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment which is fair and equitable and not less favorable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favorable.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment which is fair and equitable and not less favorable than that which it accords to its own investors or investors of any third State, whichever is more favorable.

3. The treatment of the most favored nation, shall not be applied to the privileges which one Contracting Party grants to the investors of a third State in pursuance of its participation to a free trade zone, customs union, similar international agreements leading to such unions or institutions, common market, monetary unions or other forms of regional agreements to which each Contracting Party is or may become a party.

4. The treatment granted by this Article does not refer to the advantages that one of the Contracting Parties grants to the investors of a third State as a result of an agreement to avoid the double taxation or other agreements relating to taxation matters.

Article 5. Expropriation

1. Investments of investors 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 the purpose of public, including social, interest. The expropriation shall be carried out under due process of law, on a non discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the real value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, shall be made without delay, be effectively realizable and be freely transferable in a freely convertible currency. In case there is an undue delay with payment of the compensation for expropriation, this compensation shall include interest according to the legislation of the respective Contracting Party.

2. The investor affected shall have a right to prompt review by a judicial authority of that Contracting Party, of his or its case.

Article 6. Compensation for Losses

1. Investors of one of the Contracting Parties whose investments in the territory of the other Contracting Party suffer losses owing to war or any other armed conflict, revolution, state of national emergency, insurrection, rebellion or revolt in the territory of the other Contracting Party shall receive, as regards to restitutions, indemnities, compensations or other settlement, a treatment not less favorable than the one granted to their own investors or to the investors of any other third State.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from: paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

(a) Requisitioning of their property by the forces or authorities of the latter Contracting Party, or

(b) Destruction of their property by the forces or authorities of the latter Contracting Party which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or just and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property. Resulting payments shall be freely transferable in a freely convertible currency without undue delay.

Article 7. Transfers

1. Each Contracting Party, in the territory of which investments have been made by investors of the other Contracting Party, shall guarantee the free transfer of the payments related to those investments and their returns, in particular, but not exclusively:

(a) Capital and additional amounts to maintain or increase the investment;

(b) Profits, interest, dividends and other current income;

(c) Payments made for the reimbursement of the loans;

(d) Royalties or fees;

(e) Proceeds of sale or liquidation of the investment;

(f) The earnings of personnel engaged from abroad who are employed and allowed to work in connection with an investment in the territory of the other Contracting Party;

(g) The compensations, provided for, in the Articles 5 and 6. Articles 5 and 6.

2. The above mentioned transfers shall be made without any undue delay in a freely convertible currency at the prevailing exchange rate applicable on the date of the transfer.

3. Transfers shall be considered to have been made "without any undue delay" when they have been made within the period normally necessary for the completion of the transfer. Such period shall not exceed three months, since the date when the request for transfer has been made.

4. Without prejudice to paragraphs 1, 2 and 3 of this Article, the free transfer can be limited in pursuit of ensuring the satisfaction of judgments in civil, including labor, administrative and criminal proceedings through the equitable, non-discriminatory and good faith application of the laws and regulations of the respective Contracting Party. paragraphs 1, 2 and 3 of this Article, the free transfer can be limited in pursuit of ensuring the satisfaction of judgments in civil, including labor, administrative and criminal proceedings through the equitable, non-discriminatory and good faith application of the laws and regulations of the respective Contracting Party.

Article 8. Subrogation

1. If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee against non-commercial risks and this guarantee has been accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) The assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its designated agency, as well as,

(b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligation related to the investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. To settle the disputes related to the investments between a Contracting Party and an investor of the other Contracting Party, the involved parties will hold consultations to settle the case, as far as possible, amicably.

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

(a) The competent tribunal of the Contracting Party in whose territory the investment was made, or

(b) International arbitration. In this latter case the investor has the following options:

b. 1) the International Center for Settlement of Investment Disputes (ICSID) having regard to applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other State opened for signature at Washington D.C. on 18 March 1965, or Convention on the Settlement of Investment Disputes between States and Nationals of other State opened for signature at Washington D.C. on 18 March 1965, or

b. 2) an ad hoc Tribunal established under Arbitration Rules of the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.), ad hoc Tribunal established under Arbitration Rules of the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.).

3. The Contracting Party which is part of a dispute, at no time during the proceedings, shall be able to make use of its immunity for its defense, or the fact that the investor had received an indemnity by insurance contract compensating for the total or part of the incurred damages or losses.

4. The arbitral awards shall be based on the provisions of this Agreement, other agreements between the Contracting Parties to the extent they provide for the issues covered by this Agreement, the rules and accepted general principles of international law and on the domestic law of the host Contracting Party to the extent the domestic laws and regulations of the host Contracting Party are not inconsistent with the provisions of this Agreement or the principles of international law.

5. The arbitral awards shall be final and binding on both parties to the dispute and shall be enforceable in accordance with the domestic legislation.

Article 10. Settlement of Disputes between the Contracting Parties

1. The disputes between Contracting Parties related to the interpretation or the application of the provisions of the present Agreement shall be settled, if possible, by consultations or negotiations through diplomatic channels.

2. If the Contracting Parties do not reach an agreement within six months since the beginning of the disputes, this shall be submitted, on request of any of them, to an arbitration tribunal, composed of three members. Each Contracting Party shall appoint one arbitrator and both arbitrators thus appointed shall together select a third arbitrator of a nationality of a third State, who on approval by both Contracting Parties, shall be appointed as their Chairman.

3. If one of the Contracting Parties fails to appoint its arbitrator, and has not proceeded to do so within two months after an invitation of the other Contracting Party to make such an appointment, the arbitrator will be appointed on request of the last mentioned Contracting Party, by the President of the International Court of Justice.

4. If both arbitrators do not reach an agreement in two months following their appointment on the choice of the third arbitrator, the latter shall be appointed, on request of either Contracting Party, by the President of the International Court of Justice.

5. If, in the cases provided for in Paragraphs (3) and (4) of the present Article, the President of the International Court of Justice is impeded to perform such function, or if he is a national of any of the Contracting Parties, the necessary appointments will be made by the Vice President, and if the latter is impeded to perform such function, or if he is a national of either Contracting Party, the Judge of the Court of older seniority that is not a national of any of the Contracting Parties shall make the necessary appointments.

6. The arbitral tribunal shall take its decision by majority of votes. Each Contracting Party shall bear the costs of its own arbitrator and of its representation in the arbitral proceeding. The costs of the Chairman, as well as the other expenses shall be borne, in principle, in equal parts by the Contracting Parties.

7. The tribunal shall determine its procedure.

8. The decisions of the tribunal are final and binding for the Contracting Parties.

Article 11. Complementary Provisions

1. Each Contracting Party will respect, at all times, the obligations assumed in connection with the investments of investors of the other Contracting Party.

2. If the provisions of the existing international agreements or the agreements that may be concluded in the future between the Contracting Parties in addition to the present Agreement contain a general or special rules that authorize the investors of the other Contracting Party to a more favorable treatment than the one provided for in the present Agreement, the more favorable provisions shall prevail over the present Agreement.

3. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions of contracts is more favourable than that accorded by the Agreement, the more favourable shall be accorded.

Article 12. Entry Into Force, Duration and Termination of this Agreement

1. Each of the Contracting Parties shall notify the other of the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force on the date of the second notification.

2. This Agreement shall remain in force for a period of ten years. Thereafter, it shall remain in force until the expiration of a twelve month period from the date either Contracting Party notifies the other in writing of its intention to terminate this Agreement.

3. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination.

Done in duplicate at Asuncion, this 21st day OCTOBER, 1998, in the Czech, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

FOR THE CZECH REPUBLIC

FOR THE REPUBLIC OF PARAGUAY