No. 32428

—

SPAIN
and
CUBA

Agreement on the promotion and reciprocal protection of investments. Signed at Havana on 27 May 1994

Authentic text: Spanish.

Registered by Spain on 27 December 1995.

ESPAGNE
et
CUBA

Accord relatif à l'encouragement et à la protection réciproque des investissements. Signé à La Havane le 27 mai 1994

Texte authentique : espagnol.

Enregistré par l'Espagne le 27 décembre 1995.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF CUBA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Kingdom of Spain and the Republic of Cuba, hereinafter referred to as "the Contracting Parties",

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

Seeking to create favourable conditions for investments made by investors from each Contracting Party in the territory of the other, and

Recognizing that the promotion and protection of investments in accordance with this Agreement will stimulate initiatives in this area,

Have agreed as follows:

Article I

DEFINITIONS

For the purposes of this Agreement:

1. The term "investors" shall mean:

(*a*) Individuals or natural persons having the nationality of either of the Contracting Parties under the laws of their respective States;

(*b*) Legal entities, including companies, groups of companies, trading companies and other organizations constituted or, in any case, duly established in accordance with the legislation of that Contracting Party and having their main office in the territory of that Contracting Party.

2. The term "investments" shall mean any kind of assets, such as property and rights of every kind, acquired in accordance with the legislation of the country in which the investment is made and in particular, but not exclusively, the following:

Shares and other forms of participation in companies;

Rights derived from any kind of contribution made to create economic value, expressly including all loans granted to this effect, whether capitalized or not;

Movable and immovable property, as well as real rights such as mortgages, collateral rights, usufructs and similar rights;

Rights of any kind relating to intellectual property, including, specifically, patents and trade marks, as well as manufacturing licences, know-how and goodwill;

Concessions granted by law or by virtue of a contract for engaging in economic and commercial activity, in particular those related to the prospection, cultivation, extraction or development of natural resources.

[1] Came into force on 9 June 1995, the date on which the Contracting Parties notified each other (on 15 September 1994 and 9 June 1995) of the completion of their respective constitutional formalities, in accordance with article XII(1).

3. The term "returns on investment" refers to the income derived from an investment as defined above and includes, although it is not confined to, profits, dividends and interest.

4. The term "territory" means the territory on land and the territorial sea of the Contracting Parties, as well as the exclusive economic zone and the continental shelf beyond the limits of the territorial sea of each Contracting Party over which it has or may have, under international law, jurisdiction and sovereign rights for the purposes of developing, prospecting and conserving natural resources.

Article II

PROMOTION, ACCEPTANCE

1. Each Contracting Party shall, insofar as possible, promote investments in its territory by investors of the other Contracting Party and shall allow such investments in compliance with its legislation.

2. This Agreement shall also apply to investments made before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in compliance with the latter's legislation.

Article III

PROTECTION

1. Each Contracting Party shall protect within its territory investments made in compliance with its legislation by investors of the other Contracting Party and shall not obstruct, by unjustified or discriminatory measures, the management, maintenance, development, use, enjoyment, extension, sale or, where appropriate, liquidation of such investments.

2. Each Contracting Party shall grant the necessary permits for such investments and, within the framework of its legislation, shall permit the performance of labour contracts and manufacturing licensing contracts and the provision of technical, commercial, financial and administrative assistance.

3. Each Contracting Party shall also grant, as necessary, the requisite permits for the activities of consultants or experts engaged by investors of the other Contracting Party.

Article IV

TREATMENT

1. Each Contracting Party shall guarantee fair and equitable treatment in its territory for investments made by investors of the other Contracting Party. Likewise, investments in the territory of a Contracting Party by companies or corporations in which investors from the other Contracting Party have a share shall receive fair and equitable treatment.

2. The treatment accorded by each Contracting Party to investments and returns on investments made by investors of the other Contracting Party shall be no

less favourable than that accorded to investments and returns on investments made by investors of third countries.

3. The treatment accorded by each of the Contracting Parties to investments and returns on investments made by investors of the other Contracting Party shall, consistent with its current legislation, be no less favourable than that accorded to the investments and returns on investment of its own investors in similar activities.

4. The provisions of this article shall not apply to the advantages and privileges which a Contracting Party grants or may grant to third countries by virtue of its participation in a customs or economic union, common market associations, free-trade areas, regional or subregional agreements or multilateral international economic agreements, or as a result of agreements intended to avoid double taxation or any other tax agreement.

Article V

NATIONALIZATION AND EXPROPRIATION

1. Nationalization, expropriation or any other measure having similar characteristics or effects that might be taken by the authorities of one Contracting Party against investments in its territory by investors of the other Contracting Party should be imposed only in the public interest and in accordance with the law, and should in no case be discriminatory. The Contracting Party that imposes such measures shall pay the investor or the investor's assignees appropriate compensation without undue delay and in freely convertible and transferable currency.

2. The compensation shall equal the actual market value of the investment immediately prior to the announcement or publication of the decision to nationalize or expropriate. If no agreement can be reached between the investor and the Contracting Party under obligation to pay, the compensation shall be determined according to the procedures for the settlement of disputes contained in article XI of this Agreement.

3. Following expropriation, if property acquired for that purpose has not been fully or partly utilized as intended, those from whom it was expropriated and their assignees have the right to reacquire it.

Article VI

COMPENSATION FOR LOSSES

1. Investors of a Contracting Party who suffer losses on their investments or returns on investment in the territory of the other Contracting Party as a result of war, armed conflict, a national state of emergency, revolt, uprising or other similar circumstance, including losses as a result of requisition, shall be accorded, by way of restitution, reimbursement, compensation or other settlement, treatment no less favourable than that accorded by the last-named Contracting Party to its own investors and investors from any third State.

2. Once the appropriate level of compensation has been determined, it shall be paid promptly and its transfer in freely convertible currency shall be authorized.

Article VII

TRANSFERS

1. Each Contracting Party shall guarantee the free transfer of income and other payments related to investments made in its territory by investors of the other Contracting Party, in particular, but not exclusively, the following:

Returns on investment, as defined in article I;

The compensation provided for in article V;

The settlements provided for in article VI;

The proceeds of the total or partial sale or liquidation of the investments;

The amounts necessary for the repayment of loans and the payment of interest on them;

The amounts necessary to maintain and consolidate the investment;

The wages, salaries and other remuneration received by citizens of one Contracting Party who have obtained the necessary work permits in the other Contracting Party in connection with an investment, as provided in the legislation in force.

2. The Contracting Party in whose territory the investment is made shall make it possible for the investor of the other Contracting Party or the company in which the investor has a share to acquire the currency required to make the transfers covered in this article without discrimination.

3. The transfers referred to in this Agreement shall be made in freely convertible currency and in accordance with the tax liabilities established by the legislation in force in the Contracting Party in whose territory the investment is made.

4. The Contracting Parties undertake to simplify the necessary procedures for making such transfers without undue delay or restrictions, in accordance with the practices of the international financial centres. In particular, no more than three months shall elapse between the time when the investor duly submits the necessary application for the transfer and the time when the transfer is actually made. Accordingly, each Contracting Party undertakes to carry out the necessary formalities both for the acquisition of foreign currency and for its effective transfer abroad by the end of the above-mentioned period.

5. The treatment accorded by the Contracting Parties to the transfers referred to in this article shall be no less favourable than that accorded to transfers initiated by investors of any third State.

Article VIII

MORE FAVOURABLE TERMS

Where one Contracting Party has agreed with investors of the other Contracting Party on more favourable terms than those specified in this Agreement, those terms shall not be affected by this Agreement.

Article IX

PRINCIPLE OF SUBROGATION

Where one Contracting Party has provided a financial guarantee against non-commercial risks in respect of an investment by one of its investors in the territory of the other Contracting Party, the latter shall agree to the subrogation of the first Contracting Party in respect of the investor's economic rights as from the time when the first Contracting Party makes a first payment to be charged against the guarantee it has provided. This subrogation will enable the first Contracting Party to receive directly any payment of compensation to which the investor may be entitled.

With regard to rights of ownership, use or enjoyment, or any other real right, the subrogation may only take place after the relevant permits have been obtained, in compliance with the legislation in force in the territory of the Contracting Party where the investment was made.

Article X

SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Any dispute between the Contracting Parties over the interpretation or application of this Agreement shall, insofar as possible, be settled amicably by the Governments of the two Contracting Parties.

2. If the dispute cannot be settled in that way within six months of the start of negotiations, it shall be submitted, at the request of either of the Contracting Parties, to an arbitral tribunal.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint an arbitrator and the two arbitrators shall nominate a citizen of a third State as chairman. The arbitrators shall be appointed within three months and the chairman within five months of the date on which either Contracting Party informs the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If one of the Contracting Parties has not appointed its arbitrator within the period specified, the other Contracting Party may invite the President of the International Court of Justice to make the appointment. Should the arbitrators be unable to agree on the choice of the third arbitrator within the period specified, either Contracting Party may invite the President of the International Court of Justice to make the appointment.

5. If, in the cases specified in paragraph 4 of this article, the President of the International Court of Justice is not able to perform that function or is a national of either Contracting Party, the Vice-President shall be requested to make the appointments. If the Vice-President is not able to perform that function or is a national of either Contracting Party, the appointments shall be made by the most senior member of the International Court of Justice who is not a national of either of the Contracting Parties.

6. The ruling of the arbitral tribunal shall be based on respect for the law, the provisions of this Agreement or other valid agreements between the Contracting Parties, and the universally recognized principles of international law.

7. Unless the Contracting Parties agree otherwise, the tribunal shall determine its own procedure.

8. The tribunal shall take its decision by majority vote, and its decision shall be final and binding on both Contracting Parties.

9. Each Contracting Party shall defray the expenses of its appointed arbitrator and those relating to its representation in the arbitral proceedings. The remaining expenses, including those of the chairman, shall be shared equitably by both Contracting Parties.

Article XI

SETTLEMENT OF DISPUTES BETWEEN ONE CONTRACTING PARTY AND INVESTORS OF THE OTHER CONTRACTING PARTY

1. Any dispute over investments between one of the Contracting Parties and an investor of the other Contracting Party relating to questions governed by this Agreement shall be communicated in writing, together with a detailed report, by the investor to the Contracting Party in whose territory the investment was made. The parties to the dispute shall, insofar as possible, endeavour to settle their differences amicably.

2. If the dispute cannot be settled in this way within six months of the date of the written notification referred to in paragraph 1, it shall be submitted to one of the following tribunals, as the investor chooses:

The appropriate tribunals of the Contracting Party in whose territory the investment was made;

The *ad hoc* arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);[1]

The arbitral tribunal of the International Chamber of Commerce in Paris.

3. The decisions of the arbitral tribunal shall be based on:

The provisions of this Agreement and those of other agreements between the Contracting Parties;

The widely accepted norms and principles of international law;

The domestic legislation of the Contracting Party in whose territory the investment was made, including the rules on conflicts of law.

4. The decisions of the arbitral tribunal shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to abide by those decisions in accordance with its domestic legislation.

Article XII

ENTRY INTO FORCE, RENEWAL AND TERMINATION

1. This Agreement shall enter into force on the day on which the Contracting Parties have notified each other that the respective constitutional requirements for the entry into force of international agreements have been completed. It shall remain

[1] United Nations, *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17), p. 34.

in force for an initial period of 10 years and shall be automatically renewed for successive two-year periods.

Each Contracting Party may terminate this Agreement by serving written notice six months before the date of expiration.

2. In the event of termination, the provisions of articles I to XI of this Agreement shall continue to apply for a period of ten years to investments made prior to its termination.

DONE at Havana on 27 May 1994 in two originals in Spanish, both texts being equally authentic.

For the Kingdom of Spain:

APOLONIO RUIZ LIGERO
Secretary of State for Foreign Trade

For the Republic of Cuba:

EDUARDO MELÉNDEZ BACHS
Minister of Foreign Investment
and Economic Cooperation