No. 32895

FRANCE
and
CHILE

Agreement concerning the mutual promotion and protection of investments (with protocol). Signed at Paris on 14 July 1992

Authentic texts: French and Spanish.

Registered by France on 21 June 1996.

FRANCE
et
CHILI

Accord sur l'encouragement et la protection réciproques des investissements (avec protocole). Signé à Paris le 14 juillet 1992

Textes authentiques : français et espagnol.

Enregistré par la France le 21 juin 1996.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF CHILE CONCERNING THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the French Republic and the Government of the Republic of Chile, hereinafter referred to as the "Contracting Parties",

Desiring to reinforce economic cooperation between the two States and to create favourable conditions for French investments in Chile and Chilean investments in France,

Convinced that the promotion and protection of such foreign investments are likely to stimulate transfers of capital and technology between the two countries, in the interest of their economic development,

Have agreed as follows:

Article 1

For the purposes of this Agreement:

1. The term "investment" shall apply to assets such as property, rights and interests of any category, and particularly but not exclusively, to

(*a*) Movable and immovable property, and all other real rights such as mortgages, preferences, usufructs, sureties and similar rights;

(*b*) Shares, issue premiums and other forms of participation albeit minority or indirect, in companies constituted in the territory of either Contracting Party;

(*c*) Bonds, claims and rights to any benefit having an economic value;

(*d*) Copyrights, industrial property rights (such as patents for inventions, licences, registered trade marks, industrial models and designs), technical processes, registered trade names and goodwill;

(*e*) Concessions accorded by law or by virtue of a contract, including concessions for prospecting, cultivating, mining or developing natural resources, including those situated in the maritime zones of the Contracting Parties.

It is understood that the said assets shall be or shall have been invested in accordance with the legislation of the Contracting Party in whose territory or maritime zone the investment is made, before or after the entry into force of this Agreement.

Any change in the form in which assets are invested shall not affect their status as an investment, provided that the change is not contrary to the legislation of the Contracting Party in whose territory or maritime zone the investment is made.

[1] Came into force on 24 July 1994, i.e., one month after the date of receipt of the last of the notifications (of 26 August 1993 and 13 June 1994) by which the Parties had informed each other of the completion of the required internal procedures, in accordance with article 13.

2. The term "nationals" shall apply to individuals having the nationality of either Contracting Party, in accordance with its legislation.

3. The term "companies" shall apply to any body corporate constituted in the territory of either Contracting Party in accordance with its legislation and having its registered office there or controlled, directly or indirectly, by nationals of one Contracting Party, or by bodies corporate having their registered office in the territory of one Contracting Party and constituted in accordance with that Party's legislation.

4. The term "income" shall mean all the amounts yielded by an investment, such as profits, royalties or interest, during a given period.

Income from an investment and, in the event of reinvestment, income from its reinvestment shall enjoy the same protection as the investment itself.

5. This Agreement shall be applicable in the territory of each Contracting Party and to the maritime zone of each Contracting Party, hereinafter defined as the economic zone and continental shelf which extends beyond the limit of the territorial waters of each Contracting Party and over which they exercise, in accordance with international law, sovereign rights and jurisdiction for the purposes of prospecting, exploiting and preserving natural resources.

Article 2

Each Contracting Party shall permit and promote, in accordance with its legislation and the provisions of this Agreement, investments made in its territory and maritime zones by nationals and companies of the other Party.

Article 3

Each Contracting Party shall undertake to accord in its territory and maritime zone just and equitable treatment, in accordance with the principles of international law, to the investments of nationals and companies of the other Party and to ensure that the exercise of the right so granted is not impeded either *de jure* or *de facto*.

Article 4

Each Contracting Party shall accord, in its territory and maritime zone, to nationals or companies of the other Party, in respect of their investments and activities in connection with such investments, treatment which is no less favourable than that accorded to its national or companies, or the treatment accorded to nationals or companies of the most favoured nation, if the latter is more advantageous. For this purpose, nationals who are authorized to work in the territory and maritime zone of either Contracting Party shall be entitled to enjoy the material facilities appropriate for any professional activities relating to their investment.

Such treatment shall not, however, include privileges which may be extended by a Contracting Party to the nationals or companies of a third State by virtue of its participation in or association with a free-trade area, customs union, common market or any other form of regional economic organization.

The provisions of this article shall not apply in the area of taxation.

Article 5

1. Investments made by nationals or companies of either Contracting Party shall be fully and completely protected in the territory and maritime zone of the other Contracting Party.

2. The Contracting Parties shall not take any expropriation or nationalization measures in their territory and maritime zone or any other measures which could cause investors of the other Party to be dispossessed, directly or indirectly, of the investments belonging to them, except for reasons of public necessity. Such measures shall be neither discriminatory nor contrary to a specific undertaking as described in article 10 of this Agreement.

Any dispossession measures taken shall give rise to the payment of prompt and adequate compensation, the amount of which, calculated in accordance with the real value of the investments in question, shall be assessed on the basis of a normal economic situation prior to any threat of dispossession. Such compensation shall be calculated in accordance with standard procedure.

Such compensation, its amount and methods of payment, shall be determined not later than the date of dispossession. The compensation shall be effectively realizable, paid without delay and freely transferable. It shall yield, up to the date of payment, interest calculated on the basis of the appropriate market interest rate.

3. Nationals or companies of either Contracting Party whose investments have suffered losses as a result of war or any other armed conflict, revolution, state of national emergency or uprising in the territory or maritime zone of the other Contracting Party, shall be accorded by the latter Party treatment which is no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation.

Article 6

A Contracting Party in whose territory or maritime zone investments have been made by nationals or companies of the other Contracting Party shall accord to these nationals or companies the free transfer of:

(*a*) Interest, dividends, profits and other current income;

(*b*) Royalties deriving from the intangible property listed in article 1, subparagraphs (*d*) and (*e*);

(*c*) Payments made in settlement of loans lawfully contracted, and relating to the investment;

(*d*) Proceeds of the transfer or complete or partial liquidation of the investment, including appreciation in the invested capital;

(*e*) The compensation for dispossession or loss provided for in article 5, paragraphs 2 and 3, above.

Nationals of either Contracting Party who have been authorized to work in the territory or maritime zone of the other Contracting Party in connection with an approved investment shall also be authorized to transfer to their country of origin a reasonable proportion of their earnings.

The transfers referred to in the preceding paragraphs shall be carried out without delay at the regular official rate of exchange applicable on the date of transfer.

Article 7

Insofar as the regulations of one Contracting Party provide for guaranteeing external investments, a guarantee may be granted, on the basis of a case-by-case

review, for investments made by nationals or companies of that Party in the territory or maritime zone of the other Party.

The guarantee referred to in the preceding paragraph shall not be available for investments by nationals and companies of one Contracting Party in the territory or maritime zone of the other Party unless the investments have been granted prior approval by the latter Party.

Article 8

1. Any dispute relating to investments between one Contracting Party and a national or company of the other Contracting Party shall, as far as possible, be settled amicably between the two parties concerned.

2. If any such dispute cannot be so settled within six months of the time when a claim is made by one of the parties to the dispute, the dispute shall, at the request of the national or the company, be submitted:

— Either to the competent tribunal of the Contracting Party in whose territory the investment was made;

— Or for arbitration to the International Centre for Settlement of Investment Disputes (ICSID) established by the Convention on the settlement of investment disputes between States and nationals of other States, signed at Washington, D.C., on 18 March 1965.[1]

Once the investor has submitted the dispute to the competent tribunal of the Contracting Party in whose territory the investment was made or for international arbitration, the choice of procedure shall be definitive.

3. The arbitral decision shall be final and binding for both parties.

Article 9

When one Contracting Party makes payments to one of its own nationals or companies by virtue of a guarantee issued in respect of an investment in the territory or maritime zone of the other Party, it shall be subrogated to the rights and actions of the said national or company.

Those nationals or companies shall have the right to bring or to pursue an action to protect moneys which were not covered by the subrogation.

In respect of moneys which were covered by the subrogation, the procedure chosen pursuant to article 8 shall apply.

Article 10

Investments which have been the subject of a specific undertaking by one Contracting Party vis-à-vis nationals and companies of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, by the terms of that undertaking, insofar as its provisions are more favourable than those laid down by this Agreement.

Article 11

1. Disputes concerning the interpretation or application of this Agreement shall, as far as possible, be settled through the diplomatic channel.

[1] United Nations, *Treaty Series*, vol. 575, p. 159.

2. If a dispute cannot be settled within six months of the time when a claim is made by one of the Contracting Parties, it shall be submitted, at the request of either Contracting Party, to an arbitral tribunal.

3. The said tribunal shall, in each separate case, be constituted as follows:

Each Contracting Party shall designate one member, and the two said members shall, by mutual agreement, designate a national of a third State, who shall be appointed Chairman by the two Contracting Parties. All the members shall be appointed within two months of the date on which one Contracting Party notifies the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits established in paragraph 3 above are not observed, one Contracting Party shall, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if, for any other reason, he is prevented from performing that function, the Assistant Secretary-General next in seniority shall, provided that he is not a national of either Contracting Party, make the necessary appointments.

5. The arbitral tribunal shall take its decisions by majority vote. Such decisions shall be final and binding on the Contracting Parties.

The tribunal shall adopt its own rules of procedure. It shall interpret its judgement at the request of either Contracting Party. Unless the tribunal decides otherwise, taking particular circumstances into consideration, costs of the arbitration, including leave for the arbitrators, shall be divided equally between the Parties.

Article 12

This Agreement shall apply to all investments made by nationals or companies of one Contracting Party in the territory or maritime zone of the other Contracting Party but shall not apply to disputes relating to an investment which arose before the entry into force of this Agreement.

Article 13

Each Party shall notify the other Party of the completion of the respective internal procedures required by it for the entry into force of this Agreement, which shall take place one month after the date of the receipt of the last such notification.

This Agreement is concluded for an initial period of 10 years. It shall remain in force thereafter unless one year's notice of denunciation is given through the diplomatic channel by either Party.

Upon the expiry of the validity of this Agreement, investments made while it was in force shall continue to be protected by its provisions for an additional period of 20 years.

DONE at Paris on 14 July 1992, in two originals, each in French and Spanish, both texts being equally authentic.

For the Government
of the French Republic:

MICHEL SAPIN

For the Government
of the Republic of Chile:

PATRICIO AYLWIN

PROTOCOL

Upon signing this day the Agreement between the Government of the French Republic and the Government of the Republic of Chile concerning the mutual promotion and protection of investments, the Contracting Parties have also agreed on the following provisions which shall form an integral part of that Agreement.

In respect of article 1:

The direct or indirect control of a body corporate mentioned in article 1, paragraph 3 of this Agreement may be established in particular by the following:

— Its branch status;

— Direct or indirect participation allowing for effective control, particularly participation exceeding 50 per cent;

— Direct or indirect possession of voting rights allowing for a dominant position in its managing organs or allowing for any other form of decisive influence on its operations.

In respect of article 3:

(*a*) It is understood that the Contracting Parties view as *de jure* or *de facto* impediments to just and equitable treatment: any discriminatory restrictions on the purchase and transportation of raw materials and secondary materials, energy and fuel, and of means of production and operation of all kinds, any impediment to the sale and transportation of goods within the country or abroad and any other measures having an equivalent effect;

(*b*) Within the context of their domestic legislation, the Contracting Parties shall give favourable consideration to applications for entry, and for residence, work and travel permits made by nationals of one Contracting Party in connection with an investment made in the territory or maritime zone of the other Contracting Party.

In respect of article 6:

(*a*) Notwithstanding the provisions of article 6, and to the extent that this is set forth in Chilean legislation, the Republic of Chile reserves the right to authorize the repatriation of capital only after a period not exceeding three years from the date on which the capital was invested by the investor.

(*b*) So long as the Chilean programme for the conversion of external debts to investments shall remain in force, the Republic of Chile shall give French investors the right to repatriate any investment made in the context of that programme after a period of 10 years beginning from the date on which it was made, and to transfer profits after a period of four years. The profits from the first four years may be repatriated, beginning in the fifth year, in annual payments of 25 per cent each. That shall not in any way prejudice the right of the investor to choose the shortened periods provided for in the specific rules established by the central bank of Chile.

(*c*) In no case may French investors be accorded, in respect of transfers, treatment less favourable than that accorded to investors of any third State.

In respect of articles 6 and 8:

The provisions of articles 6 and 8 shall not apply to investments made by individuals who are nationals of either Contracting Party and who, on the date the investment is made in the territory or maritime zone of the other Contracting Party,

have been resident in the territory of that Contracting Party for more than five years, unless the funds necessary for the investment originate abroad.

DONE at Paris on 14 July 1992 in two originals, each in French and Spanish, both texts being equally authentic.

For the Government
of the French Republic:

MICHEL SAPIN

For the Government
of the Republic of Chile:

PATRICIO AYLWIN