

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE FRENCH
REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF
BOLIVIA ON THE RECIPROCAL PROMOTION AND PROTEC-
TION OF INVESTMENTS

The Government of the French Republic and the Government of the Republic of Bolivia, hereinafter referred to as “the Contracting Parties”,

Desiring to develop economic cooperation between the two States and to create favourable conditions for French investments in Bolivia and Bolivian investments in France,

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

Have agreed on the following provisions:

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 trademarks, 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 the 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.

2. The term “nationals” shall apply to individuals having the nationality of either Contracting Party.

¹ Came into force on 12 October 1996 by notification, in accordance with article 12.

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 investment, such as profits, royalties or interests, during a given period.

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

5. The term “maritime zones” shall mean those maritime and submarine zones over which the Contracting Parties exercise sovereignty, sovereign rights or jurisdiction in accordance with international law.

Article 2

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

Article 3

Each Contracting Party undertakes to accord in its territory and maritime zone just and equitable treatment, in conformity 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*.

The following shall be considered as *de jure* or *de facto* impediments to just and equitable treatment: any restrictions on the purchase or 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 or transportation of goods within the country and abroad, and any other measures having a similar effect.

The Contracting Parties, within the framework of their domestic legislation, shall give favourable consideration to applications for entry, stay, work and travel made by nationals of one Contracting Party in connection with an investment made in the territory of the other Contracting Party.

Article 4

Each Contracting Party shall, in its territory and maritime zones, accord to nationals or companies of the other Party, in respect of their investments and activities in connection with such investments, the same treatment as is accorded to its nationals 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 the maritime zones of either Contracting Party shall be entitled to enjoy the material facilities appropriate for the exercise of their professional activities.

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.

Article 5

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

2. The Contracting Parties shall not take any expropriation or nationalization measures or any other measures which could cause nationals and companies of the other Party to be dispossessed, directly or indirectly, of the investments belonging to them in their territory and maritime zones, except for reasons of public necessity and on condition that such measures are not discriminatory or contrary to a specific undertaking.

Any expropriation or nationalization measures, or any other dispossession action 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 expropriation (or nationalization or dispossession action).

Such compensation, its amount and methods of payment, shall be determined not later than the date of expropriation (or nationalization or other act 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 interest rate agreed by the Contracting Parties. The rate of interest agreed by the Contracting Parties shall be the official rate of interest of the special drawing right established by the International Monetary Fund.

3. National 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 zones 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 zones investments have been made by nationals or companies of the other Contracting Party shall accord to the said nationals or companies freedom of transfer of:

- (a) Interests, dividends, profits and other current income;
- (b) Royalties deriving from intangible property listed in article 1, subparagraphs 1 (d) and 1 (e);
- (c) Payments made towards the repayment of duly contracted loans;
- (d) Proceeds of the transfer or complete or partial liquidation of the investment, including appreciation of the invested capital;
- (e) The compensation for dispossession or loss provided for in article 5, paragraphs 2 and 3 above.

Nationals of each Contracting Party who have been authorized to work in the territory or maritime zones of the other Contracting Party in connection with an approved investment shall also be authorized to transfer to their country of origin an appropriate proportion of their remuneration, as agreed by both Parties.

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 zones 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 zones 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 such a 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 one or other of those parties, be submitted for arbitration by an *ad hoc* arbitral tribunal.

The arbitral tribunal shall be constituted for each specific case as follows:

Within two months of the date on which the claim was made by one of the parties to the dispute, each of the parties to the dispute shall designate a member of the tribunal. The two members shall designate a national of a third State who shall be appointed Chairman (hereinafter referred to as "the Chairman"). The Chairman shall be designated within three months of the date on which the other two members were designated.

If, within the time limits specified in the preceding paragraph of this article, one of the parties to the dispute has not designated its arbitrator, or if the two arbitrators have not reached an agreement on the appointment of the Chairman, either party to the dispute shall invite the Chairman of the Stockholm Chamber of Commerce to make the necessary appointments. If the Chairman of the Stockholm Chamber of Commerce is a national of one or other of the Contracting Parties or if he is prevented from exercising that function, the Vice-President of the Stockholm Chamber of Commerce shall make the necessary designations. If the Vice-President is a national of one or other of the Contracting Parties or if he is prevented from exercising that function, the most senior member of the Stockholm Chamber of Commerce not having the nationality of one of the Contracting Parties shall make the necessary designations.

The arbitral tribunal shall take its decision by majority vote and its decisions shall be binding. Each party to the dispute shall bear the costs of its arbitrator and of its representation in the arbitral procedure; the costs of the Chairman and any other costs shall be divided equally between the parties to the dispute. The dispute shall be settled definitively in accordance with the Arbitration Rules of the United Nations Commission on International Trade and Law (UNCITRAL) adopted by the General Assembly of the United Nations in its resolution 31/98 of 15 December 1976.¹

¹ United Nations, *Official Records of the General Assembly, Thirty-first Session, Supplement No. 39 volume I (A/31/39)*, p. 182.

3. Where both parties have become parties to the Convention on the Settlement of Investment Disputes between States and nationals of other States, concluded in Washington on 18 March 1965,¹ any investment dispute between one of the Contracting Parties and an investor of the other Contracting Party, if it has not been settled amicably within six months from the moment the claim was made by one of the parties to the dispute, shall be submitted to the International Centre for Settlement of Investment Disputes (ICSID) for settlement by arbitration.

Article 9

When one Contracting Party, by virtue of a guarantee issued in respect of an investment in the territory or maritime zone of the other Party, makes payments to one of its own nationals or companies, it shall thereby enter into the rights and shares of the said national or company, in particular those arising from the provisions of article 8.

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.

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 members shall, by 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 senior Under-Secretary-General shall, provided 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 award at the request of either Contracting Party. Unless the tribunal decides otherwise,

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

taking particular circumstances into consideration, the costs of arbitration, including leave for the arbitrators, shall be divided equally between the Parties.

Article 12

Each Party shall notify the other of the completion of the respective internal procedures required for the entry into force of this Agreement, which shall take place one month after the date of 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 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 25 October 1989 in two originals, each in French and Spanish, both texts being equally authentic.

For the Government
of the French Republic:
JEAN-CLAUDE TRICHET

For the Government
of the Republic of Bolivia:
ENRIQUE GARCIA

EXCHANGE OF LETTERS

I

Paris, 25 October 1989

Excellency,

I have the honour to refer to the Agreement signed today between the Government of the French Republic and the Gouvernement of the Republic of Bolivia on the Reciprocal Promotion and Protection of Investments and to state that the provisions of this Agreement apply equally to the "free zones" of the Republic of Bolivia, in accordance with the international law applicable to these free zones.

I would be obliged if you could inform me of the agreement of your Government on the content of this letter.

Please accept, Sir, the assurances of my highest consideration.

For the Government
of the Republic of Bolivia:

ENRIQUE GARCIA
Minister of Planning and Coordination

Mr. Pierre Beregovoy
Minister of State
Minister of the Economy, Finances and the Budget
(for the attention of Mr. Jean-Claude Trichet,
Director of the Treasury)

II

Paris, 25 October 1989

Excellency

I have the honour to acknowledge receipt of your letter dated today, of which the text is as follows:

[See letter I]

I am pleased to inform you of the agreement of my Government on the text of this letter.

Please accept, Sir, the assurances of my highest consideration.

For the Government
of the French Republic:
JEAN-CLAUDE TRICHET
Minister of State
Minister of the Economy,
Finances and the Budget and on behalf
of Director of the Treasury

Mr. Enrique Garcia
Minister of Planning and Coordination
