Bilateral Investment Treaty between Chile and China

Signed on March 23, 1994

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CHILE AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING THE ENCOURAGEMENT AND THE RECIPROCAL PROTECTION OF INVESTMENT

The Government of the Republic of Chile and the Government of the People's Republic of China (hereinafter referred to as the Contracting Parties),

Intending to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the reciprocal encouragement, promotion and protection of such foreign investments will be conducive to stimulating business initiative of the investors and will increase prosperity in both States;

Desiring to intensify the economic cooperation of both States on the basis of equality and mutual benefits;

Have agreed as follows :

ARTICLE 1

Definitions

For the purpose of this Agreement,

(1) The term "investment" means every kind of asset invested by investors of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and in particular, though not exclusively, includes:

(a) movable, immovable property and other property rights such as mortgages and pledges;
(b) shares, stock and any other kind of participation in companies;
(c) claims to money or to any other performance having an economic values;
(d) copyrights, industrial property rights, know-how and technological process;
(e) concessions conferred by law, including concessions to search for or exploit natural resources.

(2) The term "investor" means :
in respect of the People's Republic of China :
(a) natural persons who have nationality of the People's Republic of China;
(b) economic entities established in accordance with the laws of the People's Republic of China and domiciled in the territory of the People's Republic of China;
in respect of the Republic of Chile:
(a) natural persons who, according to its law, are considered to be its nationals;
(b) legal entities, including companies, corporations, business associations and other organizations, which are constituted or otherwise duly organized under its law and have their seat in its territory.

(3) The term "returns" means the amounts yielded by investments, such as profits, dividends, interests, royalties or other legitimate income.

(4) The term "territory" means the territory of either Contracting Party as defined in its laws and the adjacent areas over which it has sovereign rights or jurisdiction in accordance with international law.

ARTICLE 2

Promotion Of Investment

(1) Each Contracting Party shall encourage investors of the other Contracting Party to make investment in its territory and admit such, investments in accordance with its laws and regulations.

(2) Each Contracting Party shall grant assistance in and provide facilities for obtaining visa and working permits to nationals of the other Contracting Party in the territory of the former in connection with activities associated with such investments.

ARTICLE 3

Treatment And Protection

(1) Investments and activities associated with investments of investors of either Contracting Party shall be accorded fair and equitable treatment and shall enjoy protection in the territory of the other Contracting Party.

(2) The treatment and protection referred to in Paragraph 1 of this Article shall not be less favourable than that accorded to investment and activities associated with such investments of investors of a third State.

(3) The treatment and protection as mentioned in Paragraph 1 and 2 of this Article shall not include any preferential treatment accorded by the other Contracting Party to investments of investors of a third State based en customs union, free trade zone, economic union, agreement relating to avoidance of double taxation or for facilitating frontier trade.

ARTICLE 4

Expropriation And Compensation

(1) Neither Contracting Party shall expropriate, nationalize or take similar measures (hereinafter referred to as "expropriation") against investments of investors of the other Contracting Party in its territory, unless the following conditions are met :
(a) for the public or national interest;
(b) under domestic legal procedure;
(c) without discrimination;
(d) against compensation.

(2) The compensation shall amount to the real value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall include interest at a normal rate until the date of payment, shall be made without undue delay, be effectively realisable and be freely transferable. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a Judicial 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 paragraph.

ARTICLE 5

Compensation For Losses

Investors of either Contracting Party who suffer within the territory of the other Contracting Party losses in relation to their investments, returns or business activities in connection with their investment, owing to the outbreak of hostilities or a state of national emergency, insurrection, riot or other similar events, shall, in case any measure is taker by the latter Contracting Party in relation to the outbreak of such hostilities or state of national emergency, be accorded treatment no less favourable than that accorded to investors of any third State.

ARTICLE 6

Transfer

(1) Investors of either Contracting Party shall be guaranteed by the other Contracting Party freedom of payments, remittances and transfers of financial instruments or funds including the value of a liquidation of an investment between the territories of the two Contracting Parties as well as between the territories of such other Contracting Party and of any third country. Such transfers include in particular though not exclusively :

(a) profits, dividends, interests and other income;
(b) proceeds from total or partial liquidation of investment;
(c) payment made pursuant to a loan agreement in connection with an investment;
(d) royalties in Paragraph 1 (d) of Article 1;
(e) payments of technical assistance or technical service fee, management fees;
(f) payments in connection with projects on contract;
(g) earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the one Contracting Party.

(2) The transfer mentioned above shall be made in a convertible currency without delay at the prevailing exchange rate of the Contracting Party accepting investment on the date of transfer.

(3) The provisions in the paragraphs above of the present Article shall not preclude either Contracting Party from imposing exchange restrictions in accordance with its applicable laws and regulations.

(4) The provision in paragraph 3 of this Article shall not affect the rights and obligations with respect to exchange restrictions, that either Contracting Party has or may have as a Contracting Party to the Articles of Agreement of the International Monetary Fund.

(5) Capital repatriation from the Republic of Chile can only be transferred one year after it has entered the territory unless its legislation provides for a more favourable treatment.

ARTICLE 7

Subrogation

If a Contracting Party or its Agency makes payment to an investor under a guarantee it has granted to an investment of such investor in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer of any right or claim of such investor to the former Contracting Party or its Agency and recognize the subrogation of the former Contracting Party or its Agency to such right or claim. The subrogated right or claim shall not be greater than the original right or claim of the said investor.

ARTICLE 8

Disputes Between The Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through the diplomatic channel.

(2) If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting Party, be submitted to an ad-hoc arbitral tribunal.

(3) Such tribunal comprises of three arbitrators. Within two months from the date on which either Contracting Party receives the written notice requesting for arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall, within further two months, together select a third arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties. The third arbitrator shall be appointed by the two Contracting Parties as Chairman of the arbitral tribunal.

(4) If the arbitral tribunal has not been constituted within four months from the date of the receipt of the written notice for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator(s) who has or have not yet been appointed. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next month senior member of the International Court of Justice who is a national of either Contracting Party shall be invited to make the necessary appointed(s).

(5) The arbitral tribunal shall determine its own procedure. The tribunal shall reach its award in accordance with the provisions of this Agreement and the generally recognized principles of international law.

(6) The tribunal shall reach its award by a majority of votes. Such award shall be final and binding on both Contracting Parties. The ad-hoc arbitral tribunal shall, upon the request of either Contracting Party, explain the reasons of its award.

(7) Each Contracting Party shall bear the cost of its appointed arbitrator and of its representation in arbitral proceedings. The relevant costs of the Chairman and the tribunal shall be borne in equal parts by the Contracting Parties.

ARTICLE 9

Settlement Of Disputes Between An Investor And A Host State

(1) Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

(2) If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting Party accepting the investment.

(3) If a dispute involving the amount of compensation for expropriation cannot be settled within six months after resort to negotiations as specified in Paragraph 1 of this Article, it may be submitted at the request of either party to an international arbitration of the International Centre for the Settlement of Investment Disputes (ICSID), created by the Convention on the settlement of investment disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965. Any dispute concerning other matters between an investor of either Contracting Party and the other Contracting Party may be submitted by mutual agreement to an ad-hoc arbitral tribunal. The provisions of this Paragraph shall not apply if the investor concerned has resorted to the procedure specified in Paragraph 2 of this Article.

(4) Such an ad-hoc arbitral tribunal shall be constituted for each individual case in the following way; each party to the dispute shall appoint an arbitrator, and these two shall select a national of a third State which has diplomatic relations with the two Contracting Parties as Chairman. The first two arbitrators shall be appointed within two months of the written notice for arbitration by either party to the dispute to the other, and the Chairman be selected within four months. If within the period specified above, the tribunal has not been constituted, either party to the dispute may invite Secretary General of the International Centre for the Settlement of Investment Disputes to make the necessary appointments. If the Secretary General is a national of either Contracting Party or is otherwise prevented from discharging the said function, the next most senior member of the International Centre for the Settlement of Investment Disputes who is not a national of either Contracting Party shall be invited to make the necessary appointment(s).

(5) That ad-hoc arbitral tribunal shall determine its own procedure. However, the tribunal may, in the course of determination of procedure, take as guidance the Arbitration Rules of the International Center for Settlement of Investment Disputes.

(6) The ad-hoc arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the decision in accordance with their respective domestic law.

(7) The ad-hoc arbitral tribunal shall adjudicate in accordance with the law of the Contracting Party to the dispute accepting the investment including its rules on the conflict of laws, the provisions of this Agreement as well as the generally recognized principles of international law.

(8) Each party to the dispute submitted to the ad-hoc tribunal shall bear the cost of its appointed member of the tribunal and of its representation in the proceedings. The cost of the appointed Chairman and the remaining costs shall be borne in equal parts by the parties to the dispute.

(9) The decisions by the arbitral tribunal of the International Centre for the Settlement of Investment Disputes shall be final and binding on both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the decision in accordance with their respective domestic law.

(10) Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceeding have terminated and a Contracting Party has failed to abide by or to comply with the award rendered by the Arbitral Tribunal.

ARTICLE 10

More Favourable Treatment

If the treatment to be accorded by one Contracting Party in accordance with its laws and regulations to investments or activities associated with such investments of investors of the other Contracting Party is more favourable than the treatment provided for in this Agreement, the more favourable treatment shall be applicable.

ARTICLE 11

Scope Of Application

This Agreement shall apply to investments which are made prior to or after its entry into force by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter. It shall however not be applicable to divergencies or disputes which have arisen prior to its entry into force.

ARTICLE 12

Consultations

(1) The representatives of the two Contracting Parties shall hold meetings from time to time for the purpose of :

(a) reviewing the implementation of this Agreement;
(b) exchanging legal information and investment opportunities;
(c) resolving dispute arising out of investments;
(d) forwarding proposals on promotion of investment;
(e) studying other issues in connection with investments.

(2) Where either Contracting Party requests consultation on any matters of Paragraph 1 of this Article, the other Contracting Party shall give prompt response and the consultation be held by mutual agreement alternately in Beijing and Santiago.

ARTICLE 13

Entry Into Force, Duration And Termination

(1) This Agreement shall enter into force on the first day of the following month after the date on which both Contracting Parties have notified each other in writing that their respective internal legal procedures have been fulfilled, and shall remain in force for a period of five years.

(2) This Agreement shall continue in force it either Contracting Party fails to give a written notice to the other Contracting Party to terminate this Agreement one year before the expiration specified in Paragraph 1 of this Article.

(3) After the expiration of the initial five year period, either Contracting Party may at any time thereafter terminate this Agreement by giving at least one year's written notice to the other Contracting Party.

(4) With respect to investment made prior to the date of termination of this Agreement, the provisions of Article 1 to 12 shall continue to be effective for a further period of ten years from such date of termination.

In witness whereof, the duly authorized representatives of their respective Governments have signed this Agreement.

Done in duplicate at Santiago, Chile on 23 of March 1994 in the Spanish, Chinese and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.