

(24.5.1995)

AGREEMENT

BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FINLAND AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Finland and the Government of the Federative Republic of Brazil, hereinafter referred to as the Contracting Parties,

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

Desiring to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and protection of such investments will contribute to stimulate investment initiatives,

Have agreed as follows:

Article 1 Definitions

For the purpose of this Agreement:

(1) The term "Investment" means every kind of asset, established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting Party, and includes particularly, though not exclusively:

- (a) movable and immovable property, including property rights, such as leases, mortgages, liens, pledges and usufructs;
- (b) shares, stocks, debentures and other kinds of participation in companies;
- (c) returns reinvested, claims to money, including bonds and debentures, or rights to any performance having economic value;

- (d) intellectual and industrial property rights, such as patents, copyrights, technical processes, industrial designs, business names, know-how and goodwill;
 - (e) rights or permits, including concessions to search for, cultivate, extract or exploit natural resources.
- (2) A change in the form in which assets are invested does not affect their character as investments.
- (3) The term "Returns" means the amounts yielded by an investment, including profits, capital gains, dividends, royalty payments and other fees.
- (4) The term "Investor" means:
- (a) any natural person who is a citizen of the Contracting Party in accordance with its laws and
 - (b) any legal person, company or other entity duly organized under the laws and regulations of the Contracting Party and having its seat in the territory of the same Contracting Party.
- (5) The term "Territory" means the land and sea area as well as the exclusive maritime zone over which the Contracting Party exercises, in accordance with international law and the law of the sea, sovereign rights or jurisdiction.

Article 2

Promotion and Protection of Investments

- (1) Each Contracting Party shall in its territory admit investments by investors of the other Contracting Party in accordance with its laws and regulations and encourage such investments.
- (2) Investments by investors of each Contracting Party shall at all times enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair in its territory by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments by investors of the other Contracting Party.

Article 3

Treatment of Investments

- (1) Each Contracting Party shall in its territory accord to investments by investors of the other Contracting Party fair and equitable treatment which in no case shall be less favourable than that accorded to its own investors or investors of any third State, whichever is the more favourable to the investor.

(2) Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, fair and equitable treatment which in no case shall be less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investor.

Article 4 **Exceptions**

(1) The provisions of this Agreement relative to the granting of treatment no less favourable than that accorded to investors of each Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

- (a) membership of any regional economic organization or customs union of which one of the Contracting Parties is or may become a party, or
- (b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

(2) The provisions of this Agreement shall not be construed so as to extend to investors of the other Contracting Party the preferential treatment to Brazilian companies in governmental procurement of goods and services, as provided for in paragraph (2) of Article 171 of the Constitution of the Federative Republic of Brazil.

Article 5 **Expropriation**

(1) Investments of investors of each Contracting Party shall not be nationalized, expropriated or subjected to measures having a similar effect (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, unless the measures are taken in the public interest on a non discriminatory basis, under due process of law and provided that provisions have been made for effective, prompt and adequate compensation.

(2) Such compensation shall amount to the fair market value of the investment, immediately before the measures of expropriation or impending expropriation was taken or became public knowledge, whichever is earlier. The compensation shall be effected in a freely convertible currency and it shall also include interest

at London Interbank Offered Rate (Libor) from the date of expropriation until the date of payment.

(3) When a Contracting Party expropriates assets of a company or an enterprise in its territory, which is constituted under its laws, and in which investors of the other Contracting Party own shares, stocks or other interests or rights, the provisions of this Article shall apply to ensure prompt, adequate and effective compensation for those investors for any impairment or diminishment of the market value of such investment resulting from the expropriation.

Article 6

Compensation for Losses

(1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war, armed conflict, revolution, state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State, whichever is the more favourable to the investor.

(2) Without prejudice to paragraph (1) of this Article, an investor of a Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory on the other Contracting Party resulting from requisitioning or destruction of its investment or a part of it by the armed forces or authorities of the latter Contracting Party, which was not caused in combat action, shall be accorded prompt, adequate and effective restitution or compensation.

Article 7

Free Transfer

(1) Each Contracting Party shall with respect to investments in its territory by investors of the other Contracting Party allow the free transfer into and out of its territory of:

- (a) the initial capital plus any additional capital for the maintenance and development of an investment,
- (b) interests, dividends, profits and other returns,
- (c) amortisation of principal and accrued interest payment,
- (d) unspent earnings and other remuneration of foreign personnel engaged from abroad in connection with an

investment,

- (e) proceeds from the sale or liquidation of all or any part of an investment,
 - (f) payments arising out of the settlement of dispute, and
 - (g) payments of compensation pursuant to Articles 4 and 5.
- (3) Transfers under this Article shall be effected without delay and in a freely convertible currency.
- (4) Transfers shall be made at the prevailing market rate of exchange on the date of transfer, with respect to spot transactions in the currency to be transferred.

Article 8 Subrogation

If a Contracting Party or its designated agency makes a payment to its own investor under a guarantee against non-commercial risks it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment, whether under the law or pursuant to a legal transaction to the former Contracting Party of all the rights and claims resulting from such an investment, and shall recognize that the former Contracting Party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor. Where subrogation in the rights or titles is not possible under national law, the Contracting Party concerned is entitled to pecuniary indemnification corresponding to the value as defined in Article 5 of this Agreement.

Article 9 Disputes between an Investor and a Contracting Party

- (1) Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party relating to an investment by an investor of the former Contracting Party in the territory of the latter Contracting Party should be settled amicably.
- (2) If such a dispute cannot be settled amicably within a period of six months from the date at which either party to the dispute requested amicable settlement, the investor shall be entitled to submit the case either to the competent tribunals of the Contracting Party in whose territory the investment was made or to international arbitration. In the latter event the investor has the choice of submitting the case either to:
- (a) the International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention

on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965, as soon as the Federative Republic of Brazil becomes a Party to this Convention, or

- (b) an ad hoc arbitration tribunal, which unless otherwise agreed upon by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).
- (c) For the time being, when the Federative Republic of Brazil is not a party to the Convention referred to in subparagraph (a) of this paragraph, the dispute may be settled under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes.

(3) An investor who has submitted the dispute to national jurisdiction may nevertheless have recourse to one of the arbitral tribunals mentioned in paragraph (2) of this Article if, before judgement has been delivered on the subject matter by a national court, the investor declares not to pursue the case any longer through national proceedings.

(4) The award shall be final and binding for the parties to the dispute, and shall be executed according to national law.

Article 10

Disputes between Contracting Parties

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

(2) If such a dispute cannot thus be settled within six months from the date at which either Contracting Party requested negotiations, either Contracting Party may by written notice to the other Contracting Party submit the matter to arbitration under this Article.

(3) The arbitration tribunal shall be constituted for each individual case. Each Contracting Party shall appoint one member. These two members shall then agree upon a national of a third state, to be appointed by the Contracting Parties to their Chairman. The members shall be appointed within two months and the Chairman within four months from the date of the receipt of the written notice under paragraph (2) of this Article.

(4) If the time limits referred to in paragraph (3) of this Article have not been complied with, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is prevented from

discharging this task, the appointments shall be made by the most senior deputy of the President.

(5) The arbitration tribunal shall take its decisions by a majority of votes and determine its own procedures. The tribunal shall decide the dispute in accordance with this Agreement and applicable rules and principles of international law. The arbitral award shall be final and binding upon the Contracting Parties.

(6) The expenses of the tribunal, including the remuneration of its members, shall be borne in equal shares by the Contracting Parties. The tribunal may, however, at its discretion direct that a higher proportion of the costs shall be borne by one of the Contracting Parties.

Article 11

Scope of the Agreement

(1) If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that is more favourable, prevail over the present Agreement.

(2) This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before its entry into force.

Article 12

Consultations

Each Contracting Party may propose to the other Contracting Party consultations on any matter relating to this Agreement. These consultations shall be held at a place and at a time agreed upon through diplomatic channels.

Article 13

Final Clauses

(1) This Agreement shall enter into force on the thirtieth day after the day on which the Governments of the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.

(2) This Agreement shall remain in force for a period of ten

years. Thereafter it shall remain in force for twelve months from the date on which either Contracting Party has in writing notified the other Contracting Party of its decision to terminate this Agreement.

(3) In respect to investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 12 remain in force for a further period of fifteen years from the date of notification referred to in paragraph (2) of this Article.

Done in Brasilia on 28 of March 1995 in duplicate in the Finnish, Portuguese and English languages, all texts being equally authentic. However, in case of any divergency of interpretation, the English text shall prevail.

For the Government of
the Republic of Finland

For the Government of the
Federative Republic of
Brazil