

Treaty Series No. 42 (2001)

Exchange of Notes

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Republic of Paraguay

amending the Agreement for the Promotion and
Protection of Investments which was signed
at London on 4 June 1981

Asuncion, 17 June 1993

[The Exchange of Notes entered into force on 13 June 1997]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
August 2001*

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[Translation of No. 11]

"Ambassador:

"I have the honour to refer to the Agreement between the ' Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Paraguay for the Promotion and Protection of Investments which was signed at London on 4 June 1981 and to discussions which have recently taken place between representatives of the two Governments.

"As a result of those discussions I have the honour to propose on behalf of the Government of the Republic of Paraguay that the Agreement be amended as set out below.

"A. The existing Article 1 should be deleted and replaced by the following:

ARTICLE 1

Definitions

"For the purposes of this Agreement:

(a) "investment" means every kind of asset as defined according to the laws and regulations of the Contracting Party in whose territory the investment is made and admitted in accordance with this Agreement and in particular, though not exclusively, includes:

(i) movable and immovable property and any property rights such as mortgages and liens;

(ii) stock, shares, debentures, commercial obligations and every other form of participation in companies established in the territory of one of the Contracting Parties;

(iii) claims to money directly related to a specific investment and any other right to performance under contract having a financial value;

(iv) intellectual property rights, goodwill, technical processes and know-how;

(v) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

"No modification of the form in which assets have been invested shall affect their classification as investments. The term "investment" includes all investments, made before or after the date of entry into force of this Agreement, but the terms of this Agreement shall not apply to any dispute related to an investment that had arisen, or to a claim related to an investment that had been resolved, before its entry into force;

(b) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

(c) "nationals" means:

(i) in respect of the United Kingdom: physical persons deriving their status as United Kingdom nationals from the law in force in any part of the United Kingdom or in any territory for the international relations of which the government of the United Kingdom are responsible;

(ii) in respect of the Republic of Paraguay: the Paraguayans who are such in accordance with its National Constitution and other regulations on the subject applicable in its territory.

(d) "companies" means:

in respect of the United Kingdom: companies, corporations, firms and associations incorporated or constituted under the law in force in any part of the United Kingdom or in any territory to which this Agreement is extended in accordance with the provisions of Article 11;

in respect of the Republic of Paraguay: all those juridical persons created in accordance with the laws and regulations of the Republic of Paraguay or that have their domicile in the territory of the Republic of Paraguay.

(e) "territory" means:

(i) in respect of the United Kingdom: Great Britain and Northern Ireland, including the territorial sea and any maritime area situated beyond the territorial sea of the United Kingdom which has been or might in the future be designated under the national law of the United Kingdom in accordance with international law as an area within which the United Kingdom may exercise rights with regard to the sea-bed and subsoil and the natural resources and any territory to which this Agreement is extended in accordance with the provisions of Article 11;

(ii) in respect of the Republic of Paraguay: all the national territory."

"B. In **ARTICLE 3** add the following paragraph:

"(3) For the avoidance of doubt it is confirmed that the treatment provided for in paragraphs (1) and (2) above shall apply to the provisions of Articles 1 to 11 of this Agreement."

"C. At the end of paragraph (1) of **ARTICLE 4** add the following sentence:

"Resulting payments shall be freely transferable."

"D. The existing **ARTICLE 5** should be deleted and replaced by the following:

ARTICLE 5

Expropriation

"(1) The investments of nationals or companies of one of the Contracting Parties shall not, in the territory of the other Contracting Party, be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") except for a public purpose and for a social benefit related to the internal needs of that Party and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment immediately before the date of the expropriation taking effect or of the impending expropriation becoming public knowledge, whichever is the earlier, shall include interest at the normal commercial rate applicable in the territory of the Contracting party which made the expropriation, until the date of payment, shall be made without delay and be effectively realizable and freely transferable. The national or company affected shall have the right to establish promptly by a judicial or other independent proceeding, in the territory of the Contracting Party making the expropriation, the lawfulness of the expropriation and the amount of compensation in accordance with the principles set out in this paragraph.

"(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph 1 of the Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares".

"E. The existing **ARTICLE 6** should be deleted and replaced by the following:

ARTICLE 6

Repatriation of investment and Returns

"Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the unrestricted transfer to the country where they reside of their investments and returns. Transfers of currency shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

"F. The existing **ARTICLE 8** should be deleted and replaced by the following:

ARTICLE 8

Disputes

"(1) Any dispute with respect to investments within the meaning of this Agreement arising between a Contracting Party and a national or company of the other Contracting Party shall, wherever possible, be resolved by amicable consultation between the two parties to the dispute.

"(2) If after a period of three months after one of the parties raised the dispute the dispute has not been resolved, it shall be submitted, at the request of the national or company, either to:

- (a) the national courts of the Contracting Party involved in the dispute; or
- (b) international arbitration in the manner described in paragraph 3 of this Article.

"In the event of recourse to the national courts, the dispute may also be submitted to international arbitration if the final decision of the courts has been given but the parties are still in dispute.

"(3) In the event of recourse to international arbitration, the national or company involved may choose to submit the dispute to one of the following:

(a) the International Centre for the Settlement of Investment Disputes for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965; 1

(is) an "ad hoc" tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law.

"(4) The arbitral tribunal shall reach its decisions in accordance with the terms of the present Agreement, the laws of the Contracting Party that is involved in the dispute including its laws and regulations in respect of the conflict of laws - and the terms of any private agreements that may exist with respect to the investment as well as the principles of international law relating to the matter.

"(5) The arbitral award shall be final and binding on the parties on the dispute."

"G. After **ARTICLE 10** add the following Article:

"Treaty Series No. 25 (1967) Cmnd. 3255.

ARTICLE 10A

Applications of other Rules

"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 rules, whether general or specific, entitling investment by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

If the foregoing proposal is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland I have the honour to suggest that this letter and Your Excellency's reply to that effect shall constitute an Agreement between our two Governments in this matter which shall enter into force when each has notified the other in writing of the completion of the constitutional formalities which are required in its territory.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

ALEXIS FRUTOS VAESKEN

No. 2

The British Ambassador at Asuncion to the Minister of Foreign Affairs of the Republic of Paraguay

Asuncion

17 June 1999

Your Excellency:

I have the honour to acknowledge receipt of Your Excellency's letter of 17 June 1993 the content of which is as follows:

[As in No. 11]

I have the honour to confirm that the foregoing proposal is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland and that you letter and this reply shall constitute an Agreement between our two Governments in this matter which shall enter into force when each has notified the other in writing of the completion of the constitutional formalities which are required in its territory.

I take this opportunity to renew to Your Excellency the assurances of my highest consideration.

MICHAEL DIBBEN

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