

Protocol

between the Government of the Czech Republic and the Government of Ukraine on the amendments to the Agreement between the Government of the Czech Republic and the Government of Ukraine for the Promotion and Reciprocal Protection of Investments signed on 17th March 1994 in Prague

The Government of the Czech Republic and the Government of Ukraine (hereinafter referred to as the Contracting Parties);

Desiring to intensify economic cooperation to the mutual benefit of both States;
Intending to create and maintain favourable conditions for investments of investors of one State in the territory of the other State;

Recognising the Czech Republic's obligation arising from Article 307 of the Treaty establishing the European Community to bring all its international legal commitments into compliance with European Community law;

Have agreed to amend the Agreement between the Government of the Czech Republic and the Government of Ukraine for the Promotion and Reciprocal Protection of Investments (hereinafter referred to as 'the Agreement') as follows:

ARTICLE 1

Paragraph 3 of Article 3 of the Agreement is deleted and replaced by new paragraphs 3 to 5:

"3. The National Treatment and Most-Favoured-Nation Treatment provisions of this Article shall not apply to advantages accorded by a Contracting Party pursuant to its obligations as a member of a customs, economic, or monetary union, a common market or a free trade area.

4. The Contracting Party understands the obligations of the other Contracting Party as a member of a customs, economic, or monetary union, a common market or a free trade area to include obligations arising out of an international agreement or reciprocity agreement of that customs, economic, or monetary union, common market or free trade area.

5. The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party, or to the investments or returns of such investors, the benefit of any treatment, preference or privilege which may be extended by the Contracting Party by virtue of any international agreement or arrangement relating wholly or mainly to taxation."

ARTICLE 2

The first sentence of paragraph 1 Article 6 of the Agreement shall read as follows:

“Without prejudice to measures adopted by the European Community, the Contracting Parties shall guarantee the transfer of payments related to investments and returns.”

ARTICLE 3

After Article 9 of the Agreement a new Article 10 is inserted. It reads as follows:

“Essential Security Interests

1. Nothing in this Agreement shall be construed to prevent any Contracting Party from taking any actions that it considers necessary for the protection of its essential security interests,

a) relating to criminal or penal offences;

b) relating to traffic in arms, ammunition and implements of war and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment;

c) taken in time of war or other emergency in international relations, or

d) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices or

e) in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. A Contracting Party's essential security interests may include interests deriving from its membership in a customs, economic, or monetary union, a common market or a free trade area.”

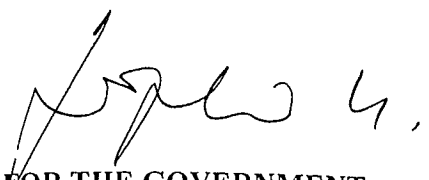
Taking into consideration the inclusion of a new Article 10, the subsequent Articles of the Agreement are accordingly re-numbered.”

ARTICLE 4

1. This Protocol shall be considered an integral part of the Agreement between the Government of the Czech Republic and the Government of Ukraine for the Promotion and Reciprocal Protection of Investments signed on 17th March 1994 in Prague.

2. This Protocol shall enter into force on the ninetieth day after the later notification by a Contracting Party that the necessary internal legal procedures have been completed. The Protocol shall remain in force as long as the Agreement.

Done in *Kiev*..... on *17 September 2008* in two originals in the Czech, Ukrainian and English languages, all texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.



FOR THE GOVERNMENT
OF THE CZECH REPUBLIC



FOR THE GOVERNMENT
OF UKRAINE