

**ADDITIONAL PROTOCOL
BETWEEN THE CZECH REPUBLIC AND THE UNITED STATES OF AMERICA
TO THE TREATY BETWEEN THE CZECH AND SLOVAK FEDERAL REPUBLIC
AND THE UNITED STATES OF AMERICA CONCERNING
THE RECIPROCAL ENCOURAGEMENT AND
PROTECTION OF INVESTMENT OF OCTOBER 22, 1991**

Representatives of the Czech Republic and the United States of America;

Desiring to make more effective the Treaty Between the Czech and Slovak Federal Republic and the United States of America Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol and Three Related Exchanges of Letters, signed at Washington on October 22, 1991 (hereinafter "the Treaty");

Have discussed the intentions of the Czech Republic and the United States of America regarding the compatibility between the Czech Republic's obligations under the Treaty and its obligations that arise from membership in the European Union;

Have acknowledged that the Czech Republic, pursuant to Article 307 of the Treaty Establishing the European Community and Article 6.10 of the Czech Republic's Act of Accession, as applicable, must take all appropriate steps to eliminate incompatibilities between the Treaty Establishing the European Community and its other international agreements, including the Treaty;

Have concluded, as a result, that certain amendments to the Treaty are necessary in order to avoid such incompatibilities;

Have decided to conclude this Additional Protocol thereto; and

Have agreed upon the following articles:

Article I

As necessary for the Czech Republic to meet its obligations pursuant to measures adopted by the European Union, Article II, paragraph 5, of the Treaty shall not limit the ability of the Czech Republic to impose performance requirements:

- (a) in the agricultural sector that relate to the production, processing and trade of agricultural and processed agricultural products, that implement quotas, or that require the purchase or use of goods produced or services provided in the European Union or, with respect to goods produced or services provided, a particular level or percentage of content from a source in the European Union;
- or

(b) in the audio-visual sector that relate to the production, distribution and exploitation of audio-visual works, that implement quotas, or that require the purchase or use of goods produced or services provided in countries of the Council of Europe or, with respect to goods produced or services provided, a particular level or percentage of content from a source in countries of the Council of Europe.

Article II

The Parties acknowledge that the terms of the customs union or free trade area exception found at Article II, paragraph 9(a), of the Treaty shall apply to all obligations of a Party by virtue of its membership in an economic integration agreement that includes a free trade area or customs union (*e.g.*, the European Union), including obligations owed to nationals or companies of any third country.

Article III

Article XII of the Treaty shall be amended by deleting the text of the existing article in its entirety and substituting the following text in its place:

“The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty. The Parties also agree to consult promptly whenever a Party believes that steps are necessary to assure compatibility between the Treaty and the Treaty Establishing the European Community with a view to assuring compatibility.”

Article IV

A. The Annex to the Treaty shall be amended by adding, after paragraph 3, the following additional paragraphs:

“4. Consistent with Article II, paragraph 1, and as necessary to meet its obligations pursuant to measures adopted by the European Union, the Czech Republic reserves the right to make or maintain exceptions to national treatment in the sectors or matters it has indicated below:

Agriculture
Audio-visual
Securities, Investment Services and other Financial Services
Fisheries
Hydrocarbons
Subsidies
Transport (Air Carriers)
Transport (Inland Waterways)
Transport (Maritime)

5. Consistent with Article II, paragraph 1, and as necessary to meet its obligations pursuant to measures adopted by the European Union, the Czech Republic reserves the right to make or maintain exceptions to most-favored-nation treatment in the sectors or matters it has indicated below:

Agriculture
Audio-visual
Hydrocarbons

6. Any exception by the Czech Republic exercised pursuant to paragraphs 4 or 5 above (*i.e.*, through any law or regulation adopted by, or any European Union measure directly applicable within, the Czech Republic) shall not apply, for the time period set forth below in subparagraph (a), to investments of nationals or companies of the United States that are existing in the relevant sector on the date this amendment takes effect or on the date the European Commission publishes its proposal to enact the relevant measure in its Official Journal, whichever date is later.

(a) The time period referred to in this paragraph shall be ten years from the date the relevant law or regulation adopted by, or European Union measure directly applicable within, the Czech Republic takes effect, or twenty years from the date of entry into force of the Treaty, whichever date is later.

(b) In no case, however, may an exception exercised pursuant to paragraphs 4 or 5 above apply to an existing investment, as defined in this paragraph, to the extent that it would require divestment, in whole or in part, of such an existing investment.”

B. Paragraph 4 of the Annex to the Treaty shall be renumbered as paragraph 7.

C. Paragraph 1 of the Annex to the Treaty shall be amended to reflect that, consistent with Article II, paragraph 1, the United States reserves the right to make or maintain limited exceptions to national treatment in the new sectors or matters it has indicated below:

Fisheries
Subsidies

D. Paragraph 2 of the Annex to the Treaty shall be amended to reflect that, consistent with Article II, paragraph 1, the United States reserves the right to make or maintain limited exceptions to most favored nation treatment in the new sectors or matters it has indicated below:

Fisheries

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Article V

This Additional Protocol, which shall form an integral part of the Treaty, shall be subject to ratification.

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Article VI

This Additional Protocol shall enter into force upon the exchange of instruments of ratification, and shall remain in force so long as the Treaty shall remain in force.

In witness whereof, the respective plenipotentiaries have signed this Additional Protocol.

DONE in Brussels on the day.....of 2003, in two originals, each in the Czech and English languages, each text having equal validity.

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**FOR
THE CZECH REPUBLIC**

**FOR
THE UNITED STATES OF AMERICA**