

## **TREATY OF ITAIPU**

### **Treaty between Brazil and Paraguay, april 26 of 1973**

Treaty between the Federative Republic of Brazil and the Republic of Paraguay for the Hydroelectric Development of the Hydraulic Resources of the Paraná River, Belonging in Condominium to the two Countries, from and including the Salto Grande de Sete Quedas or Salto de Guairá to the Mouth of the Iguaçu River.

The President of the Federative Republic of Brazil, Army General Emilio Garrastazu Médici, and the President of the Republic of Paraguay, Army General Alfredo Stroessner, Considering the spirit of cordiality existing between the two countries and the bonds of fraternal friendship that unite them;

The common interest in effecting the hydroelectric development of the hydraulic resources of the Paraná River, belonging in Condominium to the two Countries, from and including the Salto Grande de Sete Quedas or Salto de Guairá to the Mouth of the Iguaçu River;

That stipulated in the Final Act signed in Foz do Iguaçu, on June 22 of 1966, regarding the division in equal parts, between the two countries, of the electric energy eventually produced by the difference in levels of the Paraná River in the stretch referred to above;

That stipulated in Article VI of the Treaty of the Plata Basin;

That established in the Declaration of Asunción concerning the development of international rivers, on June 3 of 1971;

The studies of the Brazilian-Paraguayan Joint Technical Commission constituted on February 12 of 1967;

The traditional identity of positions held by the two countries in relation to the freedom of navigation of the international rivers of the Plata Basin, have resolved to celebrate a Treaty and, to this end, have designated their Plenipotentiaries, to wit:

- OThe President of the Federative Republic of Brazil to the Minister of State for Foreign Affairs, Ambassador Mário Gibson Barboza;

- The President of the Republic of Paraguay to the Minister of Foreign Affairs, Doctor Raúl Sapena Pastor;

Who, having exchanged their Full Powers, found to be in good and due form, agree upon the following:

#### **Article I**

The High Contracting Parties agree to carry out, together and in accordance with that foreseen in the present Treaty and its Annexes, the hydroelectric development of the hydraulic resources of the Paraná River, belonging in condominium to the two countries, from and including the Salto Grande de Sete Quedas or Salto de Guairá to the Mouth of the Iguaçu River.

#### **Article II**

For the effects of the present Treaty it is understood that:

a) Brazil, is the Federative Republic of Brazil;

b) Paraguay, is the Republic of Paraguay;

c) Commission, is the Brazilian-Paraguayan Mixed Technical Commission, constituted on February 12 of 1967;

d) ELETROBRÁS, is the Centrais Elétricas Brasileiras S.A. - ELETROBRÁS, of Brazil, or the juridical entity that succeeds it;

e) ANDE, is the Administración Nacional de Electricidad, of Paraguay, or the juridical entity that succeeds it;

f) ITAIPU, is the binational entity created by the present Treaty.

### **Article III**

The High Contracting Parties create, with equal rights and obligations, a binational entity denominated ITAIPU, with the purpose of carrying out the hydroelectric development referred to in the Article I.

Paragraph 1 - ITAIPU shall be constituted by ELETROBRÁS and by ANDE, with equal capital participation, governed by the rules established in the present Treaty, in the Statute that constitutes its Annex A and in the other Annexes.

Paragraph 2 - The Statute and the other Annexes, may be modified by common accord between the two Governments.

### **Article IV**

ITAIPU shall have headquarters in Brasília, Capital of the Federative Republic of Brazil, and in Asunción, Capital of the Republic of Paraguay.

Paragraph 1 - ITAIPU shall be managed by a Council of Administration and an Executive Directorate integrated by an equal number of nationals from both countries.

Paragraph 2 - The acts, resolutions, reports or other official documents of the administrative organs of ITAIPU shall be drafted in the Portuguese and Spanish languages.

### **Article V**

The High Contracting Parties grant ITAIPU a concession to execute, during the period of validity of the present Treaty, the hydroelectric development of the stretch of the Paraná River referred to in Art. 1º.

### **Article VI**

The following form part of the present Treaty:

a) the Statute of the binational entity called ITAIPU (Annex A);

b) a general description of the installations for the production of electric energy and of the auxiliary works, with any eventual modifications that may become necessary (Annex B);

c) the financial bases for the provision of electricity services by ITAIPU (Annex C).

### **Article VII**

The installations dedicated to the production of electric energy and the auxiliary works shall not produce any variation in the boundaries between the two countries established by the Treaties in force.

Paragraph 1 - the installations and works carried out in fulfilment of the present Treaty shall not grant, to any one of the High Contracting Parties, the right of property or of jurisdiction over any part of the territory of the other.

Paragraph 2 - The authorities respectively declared competent by the High Contracting Parties shall establish, as the case may be and by the process they judge to be adequate, the suitable sign-post system, of the works to be constructed, for the practical effects of jurisdiction and control.

#### **Article VIII**

The resources necessary for the capital integration of ITAIPU shall be provided, to ELETROBRÁS and to ANDE, respectively, by the Brazilian Treasury and by the Paraguayan Treasury or by the financial organisms that the Governments indicate.

Sole Paragraph - Any of the High Contracting Parties may, with the consent of the other, advance to it the resources for the integration of the capital, under the conditions established by common accord.

#### **Article IX**

The complementary resources to those mentioned in Article VIII, necessary for the studies, construction and operation of the electric power plant and for the auxiliary works and installations, shall be supplied by the High Contracting Parties or obtained by ITAIPU through credit operations.

#### **Article X**

The High Contracting Parties, jointly or separately, directly or indirectly, in the form that they may agree, shall provide ITAIPU, upon its request, a guarantee for the credit operations to be carried out. They shall assure, in the same manner, the exchange conversion required for the payment of the obligations assumed by ITAIPU.

#### **Article XI**

As far as possible and under comparable conditions, the labour, specialized or not, the equipment and the materials, available in the two countries, shall be utilized in an equitable manner.

Paragraph 1 - the High Contracting Parties shall adopt all the necessary measures for their nationals to be able to be employed, without distinction, on the work effected in the territory of one or the other, in relation to the objective of the present Treaty.

Paragraph 2 - That disposed in this Article shall not be applied to the conditions agreed upon with financing organizations, with regard to contracting specialized personnel or the purchase of equipment or materials. Neither shall the terms of this Article be applicable when technological requirements thus demand.

#### **Article XII**

The High Contracting Parties shall adopt the following rules with regard to attributes:

a) They shall not apply taxes, compulsory rates and loans, of any nature, to ITAIPU and to the electricity services it provides;

b) They shall not apply taxes, compulsory rates and loans, of any nature, upon the materials and equipment that ITAIPU acquires in any of the two countries or that it imports from a third country, for utilization in the construction works of the electric power plant, its accessories and complementary works, or for incorporation into the electric power plant, its accessories and complementary works. In the same manner, they shall not apply taxes, compulsory rates or loans of any nature that involve the operations in relation to those materials and equipment to which ITAIPU is a party;

c) They shall not apply taxes, compulsory rates and loans, of any nature, upon the profits of ITAIPU and upon the payments and remittances effected by it to any physical or legal person, as long as the payments for said taxes, compulsory rates and loans are the legal responsibility of ITAIPU;

d) They shall not place any impediment nor apply any fiscal imposition to the movement of ITAIPU's funds that result from the execution of the present Treaty;

e) They shall not apply restrictions of any nature to the movement or storage of the materials and equipment referred under the item b of this Article;

f) ) The materials and equipment referred to under the item b of this Article shall be admitted to the territory of the two countries.

### **Article XIII**

The energy produced by the hydroelectric development referred to in Article I shall be divided in equal parts between the two countries, each being recognised the right of purchasing, in the manner established in Article XIV, the energy that is not utilised by the other country for its own consumption.

Sole Paragraph - The High Contracting Parties assume the obligation to acquire, jointly or separately, in the manner to which they agree, the total of the installed power.

### **Article XIV**

The purchase of the electricity services of ITAIPU shall be effected by ELETROBRÁS and by ANDE, who may also effect it through the intermediation of the Brazilian or Paraguayan entities they may indicate.

### **Article XV**

Annex C contains the financial bases for the provision of the electricity services of ITAIPU.

Paragraph 1 - ITAIPU shall pay the High Contracting Parties, in equal amounts, the "royalties" due to the use of the hydraulic potential..

Paragraph 2 - ITAIPU shall include in the cost of its service the amount necessary for the payment of the returns on the capital.

Paragraph 3 - ITAIPU shall include, as well, in the cost of its service, the amount necessary for remunerating the High Contracting Party that cedes energy to the other.

Paragraph 4 - The real value of the quantity of dollars of the United States of America required for the payment of the royalties, for the return on capital and for the remuneration, established in Annex C, shall be maintained constant, so that said quantity may accompany the fluctuations of the dollar of the United States of America with reference to its standard weight and title, in gold, in force on the date of the exchange of the instruments of Ratification of the present Treaty.

Paragraph 5 - this value in relation to the weight and title in gold of the dollar of the United States of America may be substituted, in the case of the currency referred to not maintaining its official parity in relation to gold.

### **Article XVI**

The High Contracting Parties declare their commitment to establish all the conditions for the entry into service of the first generating unit to occur within the term of eight years after the ratification of the present Treaty.

### **Article XVII**

The High Contracting Parties undertake to declare of public utility the areas necessary for the installation of the hydroelectric power plant, auxiliary works and for its exploitation, as well as to practice, within the areas of their respective sovereignties, all the administrative or legal acts tending to expropriate the terrains and their improvements or to construct a right of way upon them.

Paragraph 1 - The demarcation of such areas shall be the responsibility of ITAIPU, 'ad referendum' of the High Contracting Parties.

Paragraph 2 - ITAIPU shall be responsible for the payment of the expropriation of the demarked areas.

Paragraph 3 - The movement of people who are rendering services to ITAIPU shall be free in the areas demarked, as well as that of the goods despatched to same or to the physical or juridical parties contracted by same.

#### **Article XVIII**

The High Contracting Parties, by means of additional protocols or of unilateral acts, shall adopt all the measures necessary for the fulfilment of the present Treaty, especially those concerning the following aspects:

- a) diplomatic and consular;
- b) administrative and financial;
- c) of labour and social security;
- d) fiscal and customs;
- e) of movement through the international frontier;
- f) urban and residential;
- g) of police and security;
- h) for controlling access to the demarked areas in accordance with the

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- f) urban and residential;
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- h) for controlling access to the demarked areas in accordance with the Article XVII.

#### **Article XIX**

The forum of ITAIPU, in relation to the physical or juridical parties domiciled or with headquarters in Brazil or in Paraguay, shall be, respectively, that of Brasília and of Asunción. To that effect, each High Contracting Party shall apply its own legislation, taking into account the rules of the present Treaty and of its Annexes.

Sole Paragraph - In the case of physical or legal parties, domiciled or with headquarters outside of Brazil or Paraguay, ITAIPU shall reach agreement on the clauses governing the contractual relations of works and supplies.

#### **Article XX**

The High Contracting Parties shall adopt, by means of an additional protocol, to be signed within 90 days reckoned from the date of the exchange of the ratification instruments of the present Treaty, the legal rules applicable to the labour and social security relations of the workers contracted by ITAIPU.

#### **Article XXI**

The civil and/or penal responsibility of the Councillors, Directors, Adjunct Directors and other Brazilian or Paraguayan employees of ITAIPU, for actions harmful to the interests of the latter, shall be investigated and judged in accordance with that stipulated in the respective national laws.

Sole Paragraph - The procedure for the employees of a third nationality shall be in accordance with the Brazilian or Paraguayan legislation, depending whether the headquarters of their functions is in Brazil or in Paraguay.

#### **Article XXII**

In the case of divergence with regard to the application of the present treaty and its Annexes, the High Contracting Parties shall resolve it by the usual diplomatic means, which shall not delay or interrupt the construction and/or the operation of the hydroelectric development and of its auxiliary works and installations.

#### **Article XXIII**

The Brazilian-Paraguayan Mixed Technical Commission, created on February 12 of 1967 with the objective of performing the studies alluded to in the preamble of the present Treaty, shall remain constituted until it delivers to the High Contracting Parties the final report of the mission entrusted to it.

#### **Article XXIV**

The present Treaty shall be ratified and the respective instruments exchanged, as soon as possible, in the city of Asunción.

#### **Article XXV**

The present treaty shall become effective on the date of the exchange of the instruments of Ratification and shall remain in force until the High Contracting Parties, by means of a new agreement, adopt the decision they deem suitable.

In Good Faith of Which the above-mentioned Plenipotentiaries sign the present Treaty, in two examples, in Portuguese and in Spanish, both texts equally authentic.

Executed in the city of Brasília, on the twenty sixth day of the month of April of the year one thousand nine hundred and seventy three.

**Mario Gibson Barboza**

**Raúl Sapena Pastor**