

[ENGLISH TEXT — TEXTE ANGLAIS]

AGREEMENT ON ENCOURAGEMENT AND RECIPROCAL PROTECTION
OF INVESTMENTS BETWEEN THE KINGDOM OF THE NETHER-
LANDS AND THE REPUBLIC OF COSTA RICA

The Kingdom of the Netherlands and the Republic of Costa Rica

Hereinafter referred to as the Contracting Parties,

Desiring to strengthen their traditional ties of friendship and to extend and intensify the economic relations between them particularly with respect to investments by the investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and sustainable economic development of the Contracting Parties and that fair and equitable treatment of investment is desirable,

Have agreed as follows:

Article 1

For the purposes of this Agreement:

a) the term "investments" means every kind of asset and more particularly, though not exclusively:

(i) movable and immovable property as well as any other rights in rem in respect of every kind of asset;

(ii) rights derived from shares, bonds and other kinds of interests in companies and joint ventures;

(iii) claims to money, to other assets or to any performance having an economic value;

(iv) rights in the field of intellectual property, technical processes, goodwill and know-how;

(v) rights granted under public law or under contract, including rights to prospect, explore, extract and win natural resources.

b) the term "nationals" shall comprise with regard to either Contracting Party the following subjects:

(i) natural persons having the nationality of that Contracting Party in conformity with its Constitution and laws; or

(ii) legal persons constituted under the law of that Contracting Party which have their seat or domicile in the territory of that Contracting Party;

(iii) legal persons constituted under the law of the other Contracting Party but controlled, directly or indirectly, by natural persons as defined in (i) or by legal persons as defined in (ii) above.

c) the term territory means the national territory of each Contracting Party, including the air space, the territorial sea as well as those maritime areas, including the seabed and

subsoil adjacent to the outer limit of the territorial sea of each Contracting Party, over which in accordance with international law, they exercise or may have, jurisdiction and sovereign rights for the purpose of exploration, exploitation, and preservation of the natural resources of such areas.

Article 2

Either Contracting Party shall, within the framework of its laws and regulations, promote economic cooperation through the protection in its territory of investments of investors of the other Contracting Party. Subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit such investments.

Article 3

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair by arbitrary or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors. Each Contracting Party shall accord to such investments physical security and protection, which in any case shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State.

2. More particularly, each Contracting Party shall accord to such investments treatment which in any case shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.

3. If a Contracting Party has accorded special advantages to investors of any third State in relation to their investments by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

4. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

5. 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 it is more favourable prevail over the present Agreement.

Article 4

With respect to taxes, fees, charges and to fiscal deductions and exemptions, each Contracting Party shall accord to investors of the other Contracting Party who are engaged in any economic activity in its territory, treatment not less favourable in relation to their investment than that accorded to its own investors or to those of any third State that are in the

same circumstances, whichever is more favourable to the investors concerned. For this purpose, however, there shall not be taken into account any special fiscal advantages accorded by that Party:

- a) under an agreement for the avoidance of double taxation; or
- b) by virtue of its participation in a customs union, economic union, monetary union, or similar institution, or on the basis of interim agreements leading to such unions or institutions; or
- c) on the basis of reciprocity with a third State.

Article 5

These Contracting Parties shall guarantee that payments relating to an investment may be transferred. The transfers shall be made in a freely convertible currency, without restriction or delay. Such transfers include in particular though not exclusively:

- a) profits, interest, dividends and other current income;
- b) funds necessary;
 - (i) for the acquisition of raw or auxiliary materials, semi-fabricated or finished products, or
 - (ii) to replace capital assets in order to safeguard the continuity of an investment;
- c) additional funds necessary for the development of an investment;
- d) funds in repayment of loans;
- e) royalties or fees;
- f) earnings of natural persons;
- g) the proceeds of sale or liquidation of the investment;
- h) payments arising under article 7.

Article 6

1. Neither Contracting Party will undertake, directly or indirectly, measures of nationalization or expropriation, nor any other measure having an equivalent effect, against investments of investors of the other Contracting Party, except in cases when any of such measures have been adopted for a public purpose, on a non-discriminatory basis, under due process of law, and against prompt, adequate and effective compensation.

2. The compensation shall be paid promptly, it shall amount to the fair market value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, and it shall be effectively realizable and be freely transferable. The amount of such compensation shall include interest from the date of dispossession of the expropriated property until the date of payment, according to a normal commercial rate for the currency in which it will be paid.

Article 7

Investors of the one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party gives to its own investors or to investors of any third State, in relation to their investment, whichever is more favourable to the investors concerned.

Article 8

If the investments of an investor of the one Contracting Party are insured against non-commercial risks or otherwise give rise to payment of indemnification in respect of such investments under a system established by law, regulation or government contract any subrogation of the insurer or re-insurer or Agency designated by the one Contracting Party to the rights of the said investor pursuant to the terms of such insurance or under any other indemnity given shall be recognized by the other Contracting Party.

Article 9

1. Disputes which might arise between one of the Contracting Parties and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall, whenever possible, be settled amicably between the parties concerned.

2. If the dispute has not been settled within a period of six months from the date either Party to the dispute requested amicable settlement, each Contracting Party consents to submit the dispute at the request of the national concerned to:

a) the International Centre for Settlement of Investment Disputes (ICSID), for settlement by arbitration or conciliation 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;

b) the International Centre for Settlement of Investment Disputes under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (Additional Facility of Rules), if one of the Contracting Parties is not a Contracting State of the Convention as mentioned in paragraph 2 a) of this Article;

c) an international ad hoc arbitral tribunal under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), if none of the Contracting Parties is a Contracting State of the Convention as mentioned in paragraph 2 a) of this Article.

3. A legal person which is a national of one Contracting Party and which before such a dispute arises is controlled by nationals of the other Contracting Party shall in accordance with Article 25 2 (b) of the Convention on the Settlement of Investment Disputes between

States and Nationals of other States for the purpose of the Convention be treated as a national of the other Contracting Party.

4. The arbitral awards shall be final and binding on both parties to the dispute.

5. An investor may also decide to submit a dispute to a competent domestic court. In case a legal dispute concerning an investment in the territory of Costa Rica has been submitted to a competent domestic court, this dispute may not be submitted to international dispute settlement, unless no final judgement has been rendered by the competent domestic court. If a dispute concerns an investment in the territory of the Kingdom of the Netherlands an investor may choose to submit a dispute to international dispute settlement at any time.

Article 10

The provisions of this Agreement shall, from the date of entry into force thereof, apply to all investments made, whether before or after its entry into force, by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party, including its laws and regulations on labour and environment.

The provisions of this Agreement shall not apply to any dispute concerning an investment which arose, or any claim which was settled before its entry into force.

Article 11

Either Contracting Party may propose to the other Party that consultations be held on any matter concerning the interpretation or application of the Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

Article 12

1. Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement, which cannot be settled within a reasonable lapse of time by means of diplomatic negotiations, shall, unless the Parties have otherwise agreed, be submitted, at the request of either Party, to an arbitral tribunal, composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Party.

2. If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such appointment, the latter Party may invite the President of the International Court of Justice to make the necessary appointment.

3. If the two arbitrators are unable to reach agreement, in the three months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice, to make the necessary appointment.

4. If, in the cases provided for in the paragraphs 2 and 3 of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a

national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Party the most senior member of the Court available who is not a national of either Party shall be invited to make the necessary appointments.

5. The tribunal shall decide on the basis of international law and the relevant domestic law. Before the tribunal decides, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice settlement of the dispute *ex aequo et bono* if the Parties so agree.

6. Unless the Parties decide otherwise, the tribunal shall determine its own procedure.

7. Each Contracting Party concerned shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceeding, and half of the costs of the Chairman and the remaining costs. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties.

8. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.

Article 13

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, the Netherlands Antilles and to Aruba, unless the notification provided for in Article 14, paragraph 1 provides otherwise.

Article 14

1. The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have notified each other in writing that their constitutionally required procedures have been complied with, and shall remain in force for a period of ten years.

2. Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of ten years, whereby each Contracting Party reserves the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3. In respect of investments made before the date of the termination of the present Agreement the foregoing Articles shall continue to be effective for a further period of fifteen years from that date.

4. Subject to the period mentioned in paragraph (2) of this Article, the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom.

In witness whereof, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

Done in duplicate at The Hague, on 21 May 1999, in the Netherlands, Spanish and English languages, the three texts being equally authentic. In case of difference of interpretation the English text will prevail.

For the Kingdom of the Netherlands:

J. D. VAN DEN BERG

For the Republic of Costa Rica:

ROBERTO ROJAS

PROTOCOL

On signing the Agreement on encouragement and reciprocal protection of investments between the Republic of Costa Rica and the Kingdom of the Netherlands, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which shall be regarded as an integral part of the said Agreement.

Ad Article 5

"Without restriction or delay" means that transfers shall be made in accordance with normal banking and commercial practices and shall in any case be made within a period of two months from the date the application for transfer was made.

Ad Article 6

Nothing in this Article shall affect the authority of any Contracting Party to decide whether or not to negotiate with the other Contracting Party, or with any other third State, quantitative export restrictions, nor its authority to allocate those quotas in accordance with international law.

For the Kingdom of the Netherlands:

J. D. VAN DEN BERG

For the Republic of Costa Rica:

ROBERTO ROJAS