

AGREEMENT BETWEEN THE BELGO- LUXEMBURG ECONOMIC UNION AND THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

THE GOVERNMENT OF THE KINGDOM OF BELGIUM

And

THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Acting in its own name and on behalf of the Government of the Grand-Duchy of Luxembourg, under the Convention establishing the Belgo-Luxembourg Economic Union;

Desiring to create favourable conditions for greater economic co-operation between them and in particular for investments by nationals of one State in the territory of the other State;

Recognizing the need to protect investments by nationals and companies of both States and to stimulate the flow of capital with a view to the economic prosperity of both States:

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement

(1) The term investments mean every kind of asset and in particular, though not exclusively, includes:

(a) Movable and immovable property and any other property rights such as mortgages, liens or pledges;

(b) Stocks of companies, shares and other types of holding in companies;

(c) Claims to money or to any performance under contract having a financial value;

(d) Copyrights, industrial property rights (such as patents for inventions, trademarks, industrial designs), know-how, tradenames and goodwill;

(e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

Any modifications in the form in which assets are invested shall not affect their classification as an investment within the meaning of the present Agreement, provided that such modification is not contrary to the legislation of the State in the territory of which the investment is made and to the approval granted for the initial investment.

(2) The term returns means the amounts yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties or fees.

(3) The term nationals means:

(a) In respect of the Belgo-Luxembourg Economic Union, any physical person who, according to the laws of Belgium or Luxembourg, is a citizen of Belgium or Luxembourg;

(b) In respect of Sri Lanka, any person who is a citizen of Sri Lanka according to its laws.

(4) The term companies means:

(a) In respect of the Belgo-Luxembourg Economic Union, any juridical person lawfully constituted in accordance with the

legislation of Belgium or Luxemburg and having its seat in the territory of Belgium or Luxemburg;

(b) In respect of the Republic of Sri Lanka, corporations, firms or associations incorporated or constituted under the law in force in any part of the Republic of Sri Lanka.

(5) The term territory means:

(i) In respect of Sri Lanka the territory which constitutes the Republic of Sri Lanka.

(ii) In respect of Belgium or Luxemburg the territory which constitutes the Kingdom of Belgium or the Grand-Duchy of Luxemburg respectively.

Article 2. Applicability of this Agreement

(1) This Agreement shall only apply:

(a) In respect of investments in the territory of Sri Lanka, to all investments made by nationals and companies of Belgium or Luxemburg which are specifically approved in writing by the Government of Sri Lanka or by any of its designated Agencies, and upon such conditions, if any, as shall be deemed fit.

(b) In respect of investments in the territory of Belgium or Luxemburg to all investments, made by nationals or companies of Sri Lanka which are invested under the relevant laws and regulations of Belgium or Luxemburg respectively.

(2) The provisions of the foregoing paragraph shall apply to all investments made by nationals and companies of either Contracting Party after the coming into force of this Agreement.

(3) In respect of investments in the territory of Sri Lanka, the provisions of paragraph (1) shall apply to all investments made under the Greater Colombo Economic Commission Law No. 4 of 1978, whether made before or after the coming into force of the Agreement.

Article 3. Promotion of Investments

Each Contracting Party shall encourage and create favourable conditions for nationals and companies of the other Contracting Party to make in its territory investments that are in line with its general economic policy, subject to its rights to exercise powers conferred by its laws and regulations.

Article 4. Protection of Investments

1. Investments of nationals or companies of either Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

2. Such investments of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in anyway impair by unjustifiable or discriminatory measures the management, maintenance, use, enjoyment, disposal or liquidation of investments, in its territory, of nationals or companies of the other Contracting Party.

3. The treatment and protection guaranteed by paragraphs 1 and 2 of this Article shall at least be equal to that enjoyed by nationals or companies of any third State.

Article 5. Expropriation

1. Neither of the parties shall take measures of expropriation, nationalisation or dispossession, or any other measures having effect equivalent to expropriation, nationalisation or dispossession, against investments belonging to nationals or companies of the other Contracting Party, unless such measures are taken in the public interest, on a non-discriminatory basis, and under due process of law, and provided that provision be made for prompt, effective and adequate compensation.

2. The compensation referred to in paragraph (1) of this Article shall, unless the party adversely affected proves otherwise, represent the market value of the investments on the day before the date on which such measures were taken or, should the case arise, on the day before the date on which the impending measure became public knowledge. The compensation shall be paid in any convertible currency. Such compensation shall be paid without undue delay and shall include interest at a normal commercial rate until the date of payment.

3. Each Contracting Party shall, in every case, accord to the investors of the other Contracting Party a treatment no less favourable than that enjoyed by the nationals of any third State.

4. 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 paragraphs (1), (2) and (3) of this 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.

Article 6. Free Transfer

(1) As regards the investments made in its territory, each Contracting Party shall, agree subject to its rights, in the event of balance of payment difficulties, to exercise temporarily, equitably and in good faith powers conferred by its laws and regulations, and guarantee free transfer of their assets and in particular though not exclusively;

(a) Returns from investments, including profits, interests, capital gains, dividends, royalties or fees;

(b) Instalments in repayment of loans which are regularly contracted;

(c) Proceeds from assignments, full or partial liquidation of any approved investment;

(d) Compensation paid under Article 5.

(2) Each Contracting Party shall issue the authorizations required to ensure that the transfer can be effected without undue delay and any fees or charges other than the usual bank charges.

(3) The treatment referred to in paragraphs (1) and (2) of this Article may not be less favourable than that accorded to the nationals of a third State who are in a similar situation.

Article 7. Exchange Rates

The transfers referred to in Articles 5 and 6 of this Agreement shall be effected at the official rate of exchange prevailing on the date of transfer.

Article 8. Subrogation

(1) In the event of either Contracting Party, or any public institution of such Party, as a result of a guarantee given by it within the framework of this Agreement, making payment to its own nationals, the other Contracting Party acknowledges that the former Contracting Party or the concerned public institution, is entitled by virtue of subrogation to exercise the rights and assert the claims of its own nationals.

(2) Any such payment made by one Contracting Party, or any public institution of such Party, to its nationals in pursuance of this Agreement shall not affect the right of the nationals to take proceedings to the International Centre for settlement of Investment Disputes in accordance with Article 10 of this Agreement, nor shall it affect the right of the said nationals to carry on the proceeding until the dispute is settled.

Article 9. Priority of Agreement

For the avoidance of any doubt, it is declared that all investments shall, subject to the priority to be attached to this Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

Article 10. Reference to the International Centre for the Settlement of Investment Disputes

(1) Any investment dispute shall form the subject of a written notification, accompanied by a sufficiently detailed memorandum which will be submitted by one of the Parties to such investment dispute, to the other Party. Such dispute shall preferably be settled amicably by direct consultation between the Parties to the dispute or through pursuit of local, non-judicial or administrative remedies. In the absence of such settlement the dispute shall be submitted to conciliation between the Contracting Parties to this Agreement through diplomatic channels.

(2) If any such dispute cannot be settled within six months of a written notification being submitted by one party to the

dispute to the other party as provided for in paragraph 1 of this Article, such dispute shall at the request of either party to the dispute be submitted to conciliation or arbitration by the International Centre for the Settlement of Investment Disputes (hereinafter referred to as The Center) under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on 18 March, 1965.

(3) In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure, the national or company affected shall have the right to choose.

(4) Each Contracting Party hereby irrevocably consents to submit to the Centre any legal dispute arising between that Contracting Party and a national or company of the other Contracting Party concerning an investment of the latter in the territory of the former.

(5) The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the national or company which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.

(6) Neither Contracting Party shall pursue through diplomatic channels any dispute referred to the Centre unless:

(a) The Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre, or

(b) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

Article 11. Most-favoured-nation-treatment

(1) Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of nationals or companies of any third State.

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards the management, use, enjoyment disposal or liquidation of their investments, as well as regarding the exercise of other commercial and economic activities related to these investments, to treatment less favourable than that which it accords to nationals or companies of any third State.

Article 12. Exceptions

The provisions in this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals or companies of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other Party the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union or similar international Agreement to which either of the Contracting Parties is or may become a party, or

(b) Any international Agreement or Arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 13. Disputes as to Interpretation between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through diplomatic channels.

(2) If any such dispute cannot be settled, it shall upon the request of either Contracting Party be submitted to arbitration. The arbitral tribunal (hereinafter called the tribunal) shall consist of three arbitrators, one appointed by each Contracting Party and the third, who shall be the Chairman of the tribunal, appointed by agreement of the Contracting Parties.

(3) Within two months of receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator, and within two months of such appointment of the two arbitrators, the Contracting Parties shall appoint the third arbitrator.

(4) If the tribunal shall not have been constituted within four months of receipt of the request for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President is a national of either Contracting Party or if he is unable to do so, the Vice President may be invited to do so. If the Vice President is a national of either Contracting Party or if he is unable to do so, the Member of the International Court of Justice next in seniority who is not a national of either

Contracting Party may be invited to make the necessary appointments, and so on.

(5) The tribunal shall establish its own rules of procedure.

(6) The tribunal's decision shall be final and the Contracting Parties shall abide by and comply with the terms of its award.

(7) Each Contracting Party shall bear the costs resulting from the appointment of its own member of the tribunal and from its representation in the arbitration proceedings, the costs resulting from the appointment of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Parties, and this award shall be binding on both Parties.

Article 14. Entry Into Force and Duration

1. This Agreement shall be subject to ratification after the necessary internal procedures for approving the Agreement have been complied with and shall enter into force on the date of exchange of the Instruments of Ratification.

2. This Agreement shall remain in force for a period of ten years. Thereafter it shall continue to be in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other Contracting Party. Provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of ten years after the date of termination.

In witness whereof, the undersigned representatives duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE at Brussels this 5th day of April 1982, in two originals, in the English language.

For the Belgo-Luxembourg Economic Union:

L. TINDEMANS.

For the Democratic Socialist Republic of Sri Lanka:

L. ATHULATHMUDALI.

Brussels, 5th April 1982

Excellency ,

With reference to the agreement between the Belgo-Luxembourg Economic Union and the Democratic Socialist Republic of Sri Lanka, for the Promotion and Protection of Investments. I have the honour to state that it is an understanding between the Contracting Parties that:

1. If physical or legal persons of one of the Contracting Parties enjoy a decisive and substantial interest in the equity of a foreign company which is not Belgian, Luxembourg or Sri Lankan company, which should itself be owner of shares of a company of the other Contracting Party, this latter Party shall apply the protection referred to in article 5 of this agreement to the forementioned physical or legal persons, shareholders of the foreign company concerned;

2. This provision shall only be applicable if the State of the foreign company concerned and the Contracting Party in the territory of which the investments have been made, have concluded an Agreement for the promotion and protection of investments;

3. Provided further that the Contracting Party referred to in § 1, or the physical or legal persons of this Party, shall enjoy the protection of article 5 of this agreement, only when the State in which the company is incorporated or constituted and the foreign company concerned renounce their claim under the agreement for the promotion and protection of investments concluded with the Contracting Party in the territory of which the investment is made.

Please let me have your confirmation that the above correctly sets out the understanding between the two Parties.

Accept, Excellency, the renewed assurances of my highest consideration.

L. TINDEMANS.

His Excellency

Mr. L. ATHULATHMUDALI,

Minister of Trade and Shipping of Sri Lanka.

Brussels, 5th April, 1982

Excellency.

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

"With reference to the agreement between the Belgo-Luxemburg Economic Union and the Democratic Socialist Republic of Sri Lanka, for the Promotion and Protection of Investments. I have the honour to state that it is an understanding between the Contracting Parties that:

1. If physical or legal persons of one of the Contracting Parties enjoy a decisive and substantial interest in the equity of a foreign company which is not Belgian, Luxemburg or Sri Lankan company, which should itself be owner of shares of a company of the other Contracting Party, this latter Party shall apply the protection referred to in article 5 of this agreement to the forementioned physical or legal persons, shareholders of the foreign company concerned;
2. This provision shall only be applicable if the State of the foreign company concerned and the Contracting Party in the territory of which the investments have been made, have concluded an Agreement for the promotion and protection of investments;
3. Provided further that the Contracting Party referred to in § 1, or the physical or legal persons of this Party, shall enjoy the protection of article 5 of this agreement, only when the State in which the company is incorporated or constituted and the foreign company concerned renounce their claim under the agreement for the promotion and protection of investments concluded with the Contracting Party in the territory of which the investment is made.

Please let me have your confirmation that the above correctly sets out the understanding between the two Parties".

In reply I have the honour to confirm that the above correctly sets out the understanding between the two Parties.

Accept, Excellency, the renewed assurances of my highest consideration.

L ATHULATHMUDALI.

His Excellency

Mr. L TINDEMANS,

Minister of External Relations

Brussels