

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF SWEDEN AND THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA ON THE PROMOTION AND MUTUAL PROTECTION OF INVESTMENTS

The Government of the Kingdom of Sweden and the Government of the Republic of Bolivia,

Desiring to enhance, for their mutual benefit, economic cooperation between the two States and to maintain fair and equitable conditions for investments made by investors of either Contracting Party in the territory of the other Contracting Party,

Aware that the promotion and protection of such investments fosters the development of economic relations between the two Contracting Parties and stimulates investment initiatives,

Have agreed as follows:

Article 1.

For the purposes of this Agreement:

(1) The term "investment" comprises every kind of asset invested by an investor of either Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and provisions of the other Contracting Party and includes, in particular, though not exclusively:

(a) Movable and immovable property and any other property rights such as mortgages, sureties, guarantees, usufruct and similar rights;

(b) Shares and other forms of interest in companies;

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

(d) Patents, other industrial property rights, technical processes, registered trademarks, know-how and other intellectual property rights and goodwill; and

(e) Business concessions granted by law, administrative decision or contract, including concessions to search for, cultivate, extract or exploit natural resources.

(2) Leased goods made available to a lessee in the territory of either Contracting Party by a lessor who is a national of the other Contracting Party, or a legal entity whose registered offices are in the territory of that Contracting Party shall be treated as if they were an investment.

(3) The term "investor" means:

(a) Any individual who is a national of either Contracting Party in accordance with the legislation of that Contracting Party; and

(b) Any legal entity whose registered offices are in the territory of either Contracting Party or in a third State in which an investor of either Contracting Party has major interests.

Article 2.

(1) Each of the Contracting Parties shall guarantee at all times fair and equitable treatment of investments made by investors of the other Contracting Party and shall not impede the management, maintenance, use, enjoyment or disposal of such investments by unreasonable means such as restrictions on the purchase of raw materials, components or equipment, auxiliary materials, energy and fuel and all means of production and operation. With respect to the acquisition of the above-

mentioned materials and services, the investor shall have the right to choose freely the supplier on the most favourable terms that can be obtained. The investor shall also have the right to sell his goods freely domestically and abroad and no obstacles to such sales or other measures with a similar effect shall be imposed.

(2) With respect to the movement of goods or persons in connection with an investment, the investor shall have the right to choose freely the form of transportation. If authorization is required for such transportation, it shall be granted irrespective of any established quotas.

(3) In accordance with the legislation and provisions concerning the entry and stay of aliens, persons hired by an investor of either Contracting Party and their family members shall obtain authorization to enter, reside in and leave the territory of the other Contracting Party for purposes of carrying out investment-related activities in that Party's territory.

(4) Each of the Contracting Parties, within the framework of its general foreign investment policy, shall promote investments in its territory by investors of the other Contracting Party and shall allow such investments in accordance with its legislation.

(5) In order to create favourable conditions for evaluating the financial situation and earnings from related-investment activities in the territory of one of the Contracting Parties, the Party in question shall allow — without prejudice to its national requirements on accounting and auditing — the investment to be also subject to accounting and auditing procedures in accordance with the standards which the investor must meet to comply with the requirements of his own country or in accordance with internationally accepted standards (for example, the International Accounting Standards (IAS) established by the International Accounting Standards Committee (IASC)). The results of such accounting and auditing procedures may be freely disclosed.

(6) Investments which conform to the laws and provisions of the Contracting Party in whose territory they are made shall enjoy the full protection of this Agreement.

Article 3.

(1) Each Contracting Party shall grant investments made in its territory by investors of the other Contracting Party treatment that is no less favourable than that granted in respect of investments made by investors of third States.

(2) Without prejudice to the provisions of paragraph 1 of this article, a Contracting Party which

(a) Has concluded an agreement to establish a customs union, common market or free trade area, or

(b) Has concluded a multilateral agreement on economic cooperation for reciprocal economic assistance,

shall be authorized to apply more favourable treatment to investments made by investors of the State or States which are also parties to such agreements or by investors of any of those States. (3) The treatment accorded to investments under the Trade Agreements which Sweden concluded with Côte d'Ivoire on 27 August 1965,⁽¹⁾ Madagascar on 2 April 1966⁽²⁾ and Senegal on 24 February 1967⁽³⁾ may not be invoked by Bolivian investors as a basis for most-favoured-nation treatment under this article.

(4) The provisions of paragraph 1 of this article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege deriving from an agreement or international arrangement relating wholly or mainly to taxation or from domestic legislation relating wholly or mainly to taxation.

Article 4.

(1) Neither Contracting Party shall take measures which, directly or indirectly, divest an investor of the other Contracting Party of an investment unless the following conditions obtain:

(a) The measures are taken in the general interest and in accordance with the corresponding legal formalities;

(b) The measures are explicit and non-discriminatory; and

(c) The measures are accompanied by provisions for the prompt payment of an adequate and effective indemnity which is transferable without delay in freely convertible currency.

(2) The provisions of paragraph 1 of this article shall also apply to income on investments and, in the event of liquidation of the latter, to the proceeds from such liquidation.

(3) Investors of either Contracting Party whose investments have suffered losses in the territory of the other Contracting

Party owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot, shall be entitled to treatment, as regards restitution, indemnification, compensation or other settlement, that is no less favourable than that accorded to investors of a third State. The corresponding payments shall be transferable without delay in freely convertible currency.

Article 5.

(1) Each Contracting Party shall authorize the transfer in freely convertible currency of:

(a) Income on any investment made by an investor of the other Contracting Party, including, in particular, but not exclusively, capital gains, profits, interest, dividends, licences, royalties or rents;

(b) The proceeds of the total or partial liquidation of an investment by an investor of the other Contracting Party;

(c) Funds in repayment of loans which both Contracting Parties have recognized as investments; and

(d) The earnings of persons who, though not citizens of the Contracting Party, have been authorized to work in its territory in connection with an investment and other amounts earmarked to cover expenses related to the management of the investment.

(2) The Contracting Parties undertake to apply to the transfers referred to in paragraph 1 of this article treatment no less favourable than that accorded to transfers originating from investments made by investors of a third State.

(3) Authorization for the transfer shall be granted without delay and in any case not later than one month from the date on which the request for the transfer is submitted.

(4) The transfers referred to in this Agreement shall be made at the official exchange rate applicable on the date on which they are effected.

Article 6.

Where a Contracting Party or one of its agencies, makes a payment to one of its investors under a guarantee issued in respect of an investment in the territory of the other Contracting Party, the latter Party, without prejudice to the rights of the former Party under Article 7, shall recognize the assignment of any right or claim of that investor to the first-mentioned Contracting Party or its agencies and the subrogation of that Contracting Party or its agencies with respect to any such rights or claims.

Article 7.

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by negotiations between the Governments of the two Contracting Parties.

(2) If the dispute has not been settled within six months from the date on which such negotiations were requested by either Contracting Party, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.

(3) The arbitral tribunal shall be established in each individual case as follows: each Contracting Party shall appoint one member. The two members shall then agree on a national of a third State as their Chairman, who shall be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months, and the Chairman within four months, of the date when either Contracting Party has made known to the other Contracting Party that it wishes the dispute to be brought before an arbitral tribunal.

(4) If the deadlines specified in paragraph 3 of this article are not honoured, either of the two Contracting Parties may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

(5) If the President of the International Court of Justice is unable to discharge the function described in paragraph 4 of this article, or if he is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is unable to discharge the said function or is a national of either Contracting Party, the member of the Court who is next in seniority and who is neither unable to discharge the function nor a national of either Contracting Party shall be invited to make the necessary appointments.

(6) The arbitral tribunal shall reach its decision by a majority of votes and its awards shall be final and binding upon the Contracting Parties. Each Contracting Party shall bear the cost of its own member and of its representation in the arbitral

proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitral tribunal may, however, in its award direct that a higher proportion of the costs shall be borne by one of the Contracting Parties. In all other respects, the arbitral tribunal shall determine its own procedure.

Article 8.

(1) Any dispute between one Contracting Party and an investor of the other Contracting Party concerning the interpretation or application of this Agreement shall, if possible, be settled amicably.

(2) If the dispute cannot be settled within a period of six months from the date on which it was initiated by either Party, it shall, upon the request of either Party, be submitted to arbitration for final settlement. The Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), adopted by the General Assembly on 15 December 1976,(4) shall be applied in the arbitral process.

Article 9.

This Agreement shall in no way restrict the rights and benefits which an investor of either Contracting Party enjoys under national or international law in the territory of the other Contracting Party.

Article 10.

This Agreement shall apply to all investments made before and after its entry into force, but shall not apply to disputes with respect to an investment which arose, or to claims concerning an investment which were settled, before its entry into force.

Article 11.

(1) This Agreement shall enter into force on the date when the Governments of the two Contracting Parties have notified each other that the constitutional requirements for the entry into force of this Agreement have been fulfilled.

(2) This Agreement shall remain in force for 20 years. It shall then be extended for a period of 12 months from the date on which either Contracting Party notifies the other Contracting Party in writing of its decision to terminate the Agreement.

(3) In respect of investments made prior to the date when the notice of termination takes effect, the provisions of articles 1 to 10 shall remain in force for a further period of 20 years from that date.

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

Done in the city of Stockholm on 20 September 1990 in two originals in the Swedish and Spanish languages, both texts being equally authentic.

For the Government of the Kingdom of Sweden : HANS LINTON For the Government of the Republic of Bolivia : MEDARDO NAVIA QUIROGA