

Agreement between the Swiss Confederation and the Republic of Nicaragua on the Promotion and Reciprocal Protection of Investments

The Government of the Republic of Nicaragua and the Government of the Kingdom of Sweden, hereinafter referred to as the contracting parties;

Desiring to intensify economic cooperation for mutual benefit of the two countries and maintaining fair and equitable conditions for investment by investors of one Contracting Party in the territory of the other contracting party; and

Recognizing that the reciprocal promotion and protection of such investments will encourage the expansion of economic relations between the two contracting parties and encourage entrepreneurship;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1) "investment" shall every kind of asset owned or controlled directly or indirectly that are invested by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party and shall include in particular, though not exclusively:

- a) Movable and immovable property and any other property rights, such as mortgage, pledge, lien, usufruct;
- b) Shares and other kinds of interests in companies;
- c) Rights to money or to any other performance having economic value;
- d) Intellectual Property Rights, technical processes, trade names, know-how, for customers and other similar rights;
- e) Business concessions conferred by law or under contract, including concessions to research, develop, exploit or extract natural resources.

A change in the form in which assets are invested shall not affect their character as an investment.

Goods under lease are placed at the disposal of a lessee in the territory of one Contracting Party by a lessor that is an investor of the other Contracting Party, shall be accorded treatment no less favourable than that accorded to an investment.

2) "investor" shall:

- a) Any natural person who has the nationality of a Contracting Party in accordance with its laws; and
 - b) Any legal person having its head office in the territory of either contracting party or with a predominant interest of an investor of any other contracting party.
- 3) "proceeds" shall refer to the amounts obtained by an investment and in particular, though not exclusively, include profit, capital gains, interest, dividends, royalties and fees.
- 4) "territory" shall mean the territory of each Contracting Party as well as the maritime areas adjacent to the coast over which the contracting party exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote investments in its

territory by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

2) Shall be subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, as well as Members of Their Families; be allowed entry, stay and exit from the territory of the other contracting party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

3) Each Contracting Party shall at all times fair and equitable treatment to investments of investors of the other Contracting Party and shall not prejudice the management, maintenance, use, enjoyment or disposal nor the acquisition of goods and services or the sale of their production, through unreasonable or discriminatory measures.

4) The investments made in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, shall enjoy the full protection of this Agreement and in no case a Contracting Party shall be accorded treatment less favourable than that required by international law.

5) Reinvested earnings from an investment shall have the same treatment and protection as the receiving an investment.

Article 3. National Treatment and Most-favoured-nation Treatment to Investments

1) Each Contracting Party shall apply to investments made in its territory by investors of the other Contracting Party A treatment no less favourable than that which it accords to investments made by its own investors to investors or of any third State, whichever is more favourable.

2) Notwithstanding the provisions of paragraph (1) of this article, a Contracting Party which has concluded or may conclude an agreement regarding the formation of a customs union, a common market or a free-trade area shall be free to grant a more favourable treatment to investments by investors of the State or States which are also Parties to the aforesaid agreements, or by investors of some of these States.

3) 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 resulting from any international agreement or an arrangement or any domestic legislation relating wholly or partially to taxation.

Article 4. Expropriation and Compensation

1) Neither Contracting Party shall take any measures depriving, directly or indirectly, an investor of the other contracting party of an investment unless the following conditions are met:

- a) The measures are taken in the public interest and under due process of law;
- b) The different measures are discriminatory; and on a basis no
- c) The measures are accompanied by provisions that require prompt payment of adequate and effective compensation, which shall be transferable without delay in the free movement of convertible currency.

2) Investors of either Contracting Party who suffer losses of their investments in the territory of the other contracting party due to war or other armed conflict, a state of emergency, national surveys, riot or insurrection shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment no less favourable than that which it accords to its own investors to investors or of any third State. Resulting payments shall be freely transferable in convertible currency and without delay.

Article 5. Transfers

1) Each Contracting Party shall allow the transfer without delay in a freely convertible currency of payments related to investments such as:

- a) The profit;
- b) The proceeds of the total or partial sale or liquidation by an investor of the other contracting party;
- c) Funds in repayment of loans; and
- d) The earnings of individuals, not being its nationals, who are allowed to work in connection with an investment in its territory and other amounts assigned to cover expenses relating to the management of the investment.

2) With regard to transactions to be paid in the currency to be transferred, any transfer referred to in this Agreement shall be effected at the market exchange rate prevailing on the date of transfer. In case of absence of a market for foreign exchange, the recent exchange rate applied to domestic investment or the recent exchange rate for conversion of currencies into funds special drawing rights, whichever is the more favourable to the investor.

Article 6. Subrogation

If a Contracting Party or its designated agency by a payment to any of its investors under a guarantee given in respect of an investment in the territory of the other contracting party, the latter Contracting Party shall recognize, without prejudice to the rights of the first Contracting Party and in accordance with article 8, the transfer of any right or claim by an investor to the former Contracting Party or its designated agency and the first subrogation of the Contracting Party or its designated agency to exercise such rights or claims.

Article 7. Disputes between an Investor and a Contracting Party

1) Any dispute between an investor of one Contracting Party and the other contracting party in connection with an investment shall, if possible, be settled amicably.

2) Each Contracting Party agrees to submit to the International Centre for Settlement of Investment Disputes (ICSID) for conciliation or arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and nationals of other States in case of any difference cannot be settled within six months following the date on which the claim arose between the parties. If the disputing parties differ in view of which is the most appropriate approach to reach agreement, either by conciliation or arbitration, the investor shall have the right to choose.

3) For the purpose of article 25 (2) (b) of the Washington Convention, any legal person constituted in accordance with the legislation of one Contracting Party and which, before a dispute arises, an investor of the other Contracting Party maintains predominant interest, is treated as a juridical person of the other contracting party.

4) The consent given by each contracting party in paragraph (2) and the submission by an investor to settle the dispute in accordance with paragraph above must satisfy the requirements of Chapter 11 of the Washington Convention (Jurisdiction of the Centre).

5) Any ruling of the arbitration under this article shall be final and binding upon the disputing parties. Each Contracting Party shall without delay the provisions of any judgment and shall provide in its territory for the enforcement of such award.

6) In any proceeding involving an investment dispute, a Contracting Party shall not argue as a counterclaim, defence, right of set-off or for any other reason, that other indemnification or compensation for all or part of the alleged damage has been received pursuant to an insurance or guarantee contract.

Article 8. Disputes between the Contracting Parties

1) Any dispute between the contracting parties concerning the interpretation or application of this Agreement shall, if possible, be settled through negotiations between the Governments of the two contracting parties.

2) If the dispute cannot be settled within six months following the date on which such negotiations were requested by either contracting party, be submitted at the request of any of the contracting parties to an arbitration tribunal.

3) The arbitration tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one member. These two members shall agree to select a national of a third State as 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 from the date on which either Contracting Party has expressed in the other contracting party of its wish to submit the dispute to an arbitration tribunal.

4) If within the periods specified in paragraph (3) of this article the appointments have not been made, either Contracting Party in the absence of any other relevant agreement, invite the President of the International Court of Justice to carry out the appointments.

5) The President of the International Court of Justice is unable to perform the function referred to in paragraph (4) of this article or 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 perform this function or is a national of either Contracting Party shall be invited to the member of the Court next in seniority who is not incapacitated or who is not a national of either Contracting Party, to make the necessary appointments.

6) The arbitration tribunal shall take its decision by a majority of votes. Such decision shall be final and binding on the contracting parties. Each Contracting Party shall bear the cost of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the two contracting parties. However, the arbitration tribunal shall decide which of the two Contracting Parties shall assume a higher proportion of costs. This decision shall be binding on both contracting parties. In all respects, the tribunal shall determine its own procedure.

Article 9. Implementation of the Agreement

This Agreement shall apply to all investments made before or after its Entry into Force, but shall not apply to any dispute which arose or any claim concerning an investment which was settled before the Entry into Force of this Agreement.

Article 10. Entry Into Force , Duration and Termination

1) Each Contracting Party shall notify the other contracting party fulfilment of the constitutional procedures required for the Entry into Force of this Agreement. The Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

2) This agreement is concluded for a period of 20 years and may be extended unless, one year before the expiration date, either Contracting Party notifies in writing the other contracting party of its decision to terminate this Agreement.

3) In respect of investments made prior to the termination of this Agreement becomes effective, the provisions of articles 1 to 16 shall remain valid for a period of twenty years from the date of its termination.

In WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed the present Agreement.

Done in duplicate at Stockholm on 27 May 1999 in three Swedish, English and Spanish languages, all texts being equally authentic. In case of any divergence in interpretation, the text shall prevail in the English language.