

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

Preamble

The Government of the Kingdom of Denmark and the Government of the Republic of Nicaragua, hereinafter referred to as the »Contracting Parties«,

DESIRING to create favourable conditions for foreign investments in both States and to intensify the economic cooperation between private enterprises in both States, with a view to stimulate the productive use of resources,

RECOGNIZING that a fair and equitable treatment of foreign investments on a reciprocal basis will serve this aim,

HAVE AGREED as follows:

Article 1. Definitions

For the purpose of this Agreement,

1) The term »investment« shall mean every kind of asset, irrespective of its legal form, provided the investment has been effectuated in accordance with the laws and regulations of that Contracting Party, which includes in particular, but not exclusively:

i) Shares, parts or any other form of participation in companies or business enterprises in the territory of one Contracting Party,

ii) Returns reinvested, claims to money or other rights relating to services having a financial value,

iii) Movable and immovable property, as well as any other rights such as leases, mortgages, liens, pledges, privileges, guarantees and any other similar rights as defined in conformity with the law of the Contracting Party in the territory of which the investment is made,

iv) Industrial and intellectual property rights including: patents, copyrights, trade names, technology, trademarks, goodwill, know-how and any other similar rights,

v) Business concessions conferred by law or by contract, including the concessions related to natural resources.

2) The term »returns« shall mean the amounts yielded by an investment and in particular though not exclusively, includes profits, interests, capital gains, dividends, royalties or fees. Such amounts, and in case of reinvestment amounts yielded from the reinvestment, shall be given the same protection as the investment.

3) The term »investor« shall mean with regard to either Contracting Party:

a) Natural persons having status as nationals of either Contracting Party according to its laws.

b) Any entity established in accordance with, and recognized as a legal person by the law of that Contracting Party and with its seat in the territory of that Contracting Party, such as corporations, firms, associations, development finance institutions, foundations or similar entities irrespective of whether their activities are directed at profit or not.

4) »Territory« means in respect of each Contracting Party the territory under its sovereignty as well as maritime zones over which the Contracting Party exercises, in conformity with international law, sovereign rights or jurisdiction.

Article 2. Promotion of Investments

Each Contracting Party shall admit the investment by investors of the other Contracting Party in accordance with its Laws and Regulations, and promote such investments as far as possible including facilitating the establishment of representative offices.

Article 3. Protection and Treatment of Investments

1) Investments of investors of either Contracting Party shall at all times be accorded full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures, the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

2) Each Contracting Party shall in its territory accord to investments made by investors of the other Contracting Party fair and equitable treatment which in no case shall be less favourable than that accorded to its own investors or to investors of any third state, whichever is the more favourable from the point of view of the investor.

3) Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment, fair and equitable treatment which in no case shall be less favourable than that accorded to its own investors or to investors of any third State, whichever of these standards is the more favourable from the point of view of the investor.

Article 4. Exceptions

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

a) Any existing or future customs union, regional economic organizations, or similar international agreement which either of the Contracting Parties is or may become a part of, or

b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

2) The provisions of Article 7, section 1 of this Agreement shall be without prejudice to the right of each Contracting Party to take protective measures in respect of capital movements provided such measures are taken in accordance with multilateral agreements to which either of the Contracting Parties is or may become a party.

Article 5. Expropriation and Compensation

Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as »expropriation«) in the territory of the other Contracting Party except for measures taken in the public or national interest, on the basis of non-discrimination and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall be made without delay and shall include interest at normal market rate until the date of payment, be effectively realizable in convertible currency and be freely transferable. There shall be legal provision giving an investor concerned a right to prompt review of the legality of the measure taken against the investment and of its valuation in accordance with the principles set out in this paragraph by due process of law in the territory of the Contracting Party making the expropriation.

Article 6. Compensation for Losses

1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, revolt, insurrection, riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is the more favourable from the point of view of the investor. Payments resulting from any provision in this Article shall be freely transferable, made without delay and shall include interest at normal market rate until the day of payment and be effectively realizable in convertible currency.

Article 7. Repatriation and Transfer of Capital and Returns

(1) Each Contracting Party shall in accordance with its law without delay allow the transfer of:

- a) The invested capital or the proceeds of total or partial liquidation or alienation of the investments;
- b) The returns realized;
- c) The payments made for the reimbursement of the credits for investments and interests due;
- d) Payments derived from rights enumerated in Article 1, paragraph (1), (iv) of this Agreement;(iv) of this Agreement;
- e) Unspent earning and other remunerations of personnel engaged from abroad in connection with an investment.

2) Transfers of currency pursuant to Article 5, 6 and section 1) of this Article shall be made in the convertible currency in which the investment has been made or in any convertible currency if so agreed by the investor. Article 5, 6 and section 1) of this Article shall be made in the convertible currency in which the investment has been made or in any convertible currency if so agreed by the investor.

3) Transfers shall be made at the market rate of exchange existing on the date of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent exchange rate applied to inward investments.

Article 8. Subrogation

If one Contracting Party or its designated agency has granted a financial guarantee to cover the non-commercial risks related to an investment made by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation of the right of the investors, provided that the former Contracting Party has made a payment in accordance with such guarantee.

Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party

1) Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment on the territory of that other Contracting Party shall be subject to negotiations between the parties in dispute.

2) If any dispute between an investor of one Contracting Party and the other Contracting Party continues to exist after a period of six months, the investor shall be entitled to submit the case either to:

- a) A competent court of the Contracting Party in whose territory the investment was made, or
- b) The International Centre for Settlement of Investment Disputes having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, D.C. on 18 March 1965.

3) In relation to this article any juridical person constituted in accordance with the legislation of one Contracting Party in which, before a controversy arises, the majority of the shares be held by investors of the other Contracting Party, shall be treated according to Article 25 2) b) of the above mentioned agreement of Washington as a juridical person of the other Contracting Party.

Article 10. Disputes between the Contracting Parties

1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled through negotiations between the Contracting Parties.

2) If such a dispute cannot be settled within six months from the beginning of the negotiation, it shall upon the request of either Contracting Party, be submitted to an arbitral tribunal.

3) Such an arbitral tribunal shall be constituted for each individual case in the following way:

Within three months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State, who on approval by the Contracting Parties shall

be appointed Chairman of the tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two members.

4) If within any of the periods specified the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, is prevented from discharging said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5) The arbitral tribunal shall apply the provisions of this Agreement, other Agreements concluded between the Contracting Parties, and the procedural standards called for by international law. It shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The arbitral tribunal determines its own procedure.

6) Each Contracting Party shall bear the cost of its own member of the tribunal 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, unless otherwise agreed.

Article 11. Consultations

Either Contracting Party may propose the other Party to consult on any matter affecting the application of the present Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time agreed upon through diplomatic channels.

Article 12. Applicability of this Agreement

The provisions of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party after this Agreement has entered into force. It shall apply to investments existing at the time of entry into force of this Agreement. It shall, however, not be applicable to divergencies or disputes which have arisen prior to its entry into force.

Article 13. Amendments

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such manner as may be agreed between the Contracting Parties. Such amendments shall enter into force when the Contracting Parties have notified each other that the constitutional requirements for the entry into force have been fulfilled.

Article 14. Territorial Extension

Subject to Article 1 the present Agreement shall not apply to the Faroe Islands and Greenland.

The provisions of this Agreement may be extended to the Faroe Islands and Greenland as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 15. Entry Into Force

This Agreement shall enter into force thirty days after the date on which the Governments of the Contracting Parties have notified each other that the constitutional requirements for the entry into force of this Agreement have been fulfilled.

Article 16. Duration and Termination

1) This Agreement shall remain in force for a period of ten years and shall remain in force thereafter unless either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

2) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 13 shall remain in force for a further period of ten years from that date.

DONE AT Copenhagen on 12 March 1995 in the English language.

The Danish and the Spanish version of the Agreement will be exchanged between the parties.

For the Government of the Kingdom of Denmark Poul Nielson

For the Government of the Republic of Nicaragua Ernesto Leal Sánchez