

Agreement on encouragement and reciprocal protection of investments between the Kingdom of the Netherlands and the Dominican Republic

The Kingdom of the Netherlands,

And

The Dominican Republic,

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 nationals of one Contracting Party in the territory of the other Contracting Party,

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

Considering that a stable framework for international investment will promote effective utilisation of economic resources and improve living standards;

Recognising that the development of economic and business ties will promote internationally accepted labour standards;

Considering that these objectives can be achieved without undermining policies with respect to health, social security and the environment;

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; 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:

- i. Natural persons having the nationality of that Contracting Party;
- ii. Legal persons constituted under the law of that Contracting Party;
- iii. Legal persons not constituted under the law of that Contracting Party but controlled, directly or indirectly, by natural persons as defined in (i) or by legal persons as defined in (ii). (i) or by legal persons as defined in (ii).

c. The term "territory" means:

The territory of the Contracting Party concerned and any area adjacent to the territorial sea which, under the laws applicable in the Contracting Party concerned, and in accordance with international law, is the exclusive economic zone or continental shelf of the Contracting Party concerned, in which that Contracting Party exercises jurisdiction or sovereign rights.

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 nationals 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 nationals of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals. Each Contracting Party shall accord to such investments full physical security and protection.

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 nationals or to investments of nationals of any third State, whichever is more favourable to the national concerned.

3. If a Contracting Party has accorded special advantages to nationals of any third State 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 nationals of the other Contracting Party.

4. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals 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 nationals 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 nationals of the other Contracting Party who are engaged in any economic activity in its territory, treatment not less favourable than that accorded to its own nationals or to those of any third State who are in the same circumstances, whichever is more favourable to the nationals concerned. For this purpose, however, any special fiscal advantages accorded by that Party, shall not be taken into account:

- a. Under an agreement to avoid double taxation; or
- b. By virtue of its participation in a customs union, economic union or similar institution; or
- c. On the basis of reciprocity with a third State.

Article 5.

1. The 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, interests, 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 7.

2. A Contracting Party has the authority to require that, prior to the transfer of payments relating to an investment, tax obligations in relation to such an investment have been fulfilled by the nationals of the other Contracting Party, provided that such obligations shall be nondiscriminatory and shall not be used to defeat the purpose of paragraph 1) of this Article. paragraph 1) of this Article.

Article 6.

Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals of the other Contracting Party of their investments unless the following conditions are complied with:

- a. The measures are taken in the public interest and under due process of law;
- b. The measures are not discriminatory or contrary to any undertaking which the Contracting Party which takes such measures may have given;
- c. The measures are taken against just compensation. Such compensation shall represent the genuine value of the investments affected, shall include interest to compensate adequately for any delay in payment that may occur from the date of expropriation until the day of real payment, taking into account the liabilities of the claimants concerned in connection to the expropriated investment, provided that the claimants cannot be held responsible for the delay in payment and shall, in order to be effective for the claimants, be paid and made transferable, without delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants.

Article 7.

Nationals 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 accords to its own nationals or to nationals of any third State, whichever is more favourable to the nationals concerned.

Article 8.

If the investments of a national 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 national pursuant to the terms of such insurance or under any other indemnity given shall be recognised by the other Contracting Party.

Article 9.

- 1. Any dispute which may arise between a national of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall, if possible, be settled amicably.
- 2. If the dispute referred to in paragraph 1 of this Article cannot be settled within four months from the date on which either party to the dispute requested in writing an amicable settlement, the national shall be entitled to submit the dispute, at his

choice, for settlement to:

- a. The competent court of the Contracting Party in the territory of which the investment has been made;
 - b. The International Centre for Settlement of Investment Disputes, for settlement by arbitration or conciliation under the Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention), opened for signature at Washington on 18 March 1965, when both Contracting Parties have become a party to the said Convention;
 - c. 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 Rules), when one of the Contracting Parties is not a party to the Convention mentioned under b);b);
 - d. A sole arbitrator or an international ad hoc arbitral tribunal under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);
 - e. The Court of Arbitration of the International Chamber of Commerce (ICC).
3. Each Contracting Party hereby gives its consent to the submission of a dispute to international conciliation or arbitration mentioned in paragraphs 2 (b), (c), (d) and (e) of this Article.
4. The arbitral awards shall be final and binding on the parties to the dispute and shall be executed under the laws of the Contracting Party in whose territory the investment was made.
5. 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 mentioned under Paragraph 2 b) above, for the purpose of the Convention be treated as a national of the other Contracting Party.

6.

- a. In accordance with Article 27 of the ICSID Convention, a Contracting Party shall not give diplomatic protection, nor bring an international claim, in respect of a dispute which one of its nationals and the other Contracting Party shall have consented to submit or shall have submitted to arbitration under this Convention, unless the other Contracting Party has failed to abide by and comply with the award rendered in such dispute.
- b. Diplomatic protection, for the purposes of paragraph (a), shall not prevent informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.paragraph (a), shall not prevent informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

Article 10.

The provisions of this Agreement shall, from the date of entry into force thereof, also apply to investments, which have been made before that date. However, they shall not apply to disputes, which arose 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 six months 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 two 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 respect for the 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. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.

8. Each Contracting Party shall bear the costs of its respective arbitrator, as well as the costs of its representation in the arbitration proceedings. The costs of the Chairman, as well as the remaining costs of the proceedings, shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of the costs shall be borne by one of the Contracting Parties.

Article 13.

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, to 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 fifteen 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.

DONE in two originals at Santo Domingo de Guzmán, Dominican Republic, on the thirtieth (30) day of March, two thousand six (2006), in the Netherlands, Spanish, and English languages, the three texts being authentic. In case of difference of interpretation the English text will prevail.

For the Kingdom of the Netherlands: B. W. SCHORTINGHUIS Ambassador Extraordinary and Plenipotentiary of the Kingdom of the Netherlands in the Dominican Republic

For the Dominican Republic: