

Agreement between the Government of the Kingdom of Sweden and the Government of the Polish People's Republic on the Promotion and Mutual Protection of Investments

The Government of the Kingdom of Sweden and the Government of the Polish People's Republic,

Desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and protection of such investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

Have agreed as follows:

Article 1.

For the purposes of the present Agreement:

(1) The term "investment" shall comprise every kind of asset, invested by investors of one 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 as well as any other property rights, such as mortgage, lien, pledge, usufruct and similar rights;

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

(c) Title to money or any performance having an economic value;

(d) Patents, other industrial property rights, technical processes, trade names, know-how and other intellectual property rights as well as good-will;

(e) Business concessions which are required to conduct economic activity and are conferred by law, administrative decisions or contracts; including concessions to search for, cultivate, extract or exploit natural resources;

(2) The term „investor" shall mean:

(a) Any natural person who is a national of a Contracting Party in accordance with its laws; and

(b) Any legal entity having a seat in the territory of the other Contracting Party, or in a third country with a predominant interest of an investor of either Contracting Party. However, purely contractual relations alone do not constitute a predominant interest. A legal entity may not invoke protection under this agreement if it had earlier invoked remedies available to it pursuant to another investment protection agreement concluded with the third country in question.

Article 2.

(1) Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof by unreasonable measures. As such unreasonable measures are considered restrictions on purchases of raw materials, components and units, auxiliary materials, energy and fuel as well as means of production and operation of all kinds. Hindrance on the sale of products within the country and abroad and other measures should not be instituted. The introduction of general restrictions, based on the economic situation, e.g. shortages, are not considered unreasonable.

(2) In connection with the transport of goods or of personnel associated with an investment, the investor shall have the right

to freely select the carrier. In cases where permission is required for such transport, this shall be granted without regard to any possible quotas. Concerning transportation through third countries, permission will be granted in accordance with applicable international law and agreements.

(3) Subject to the laws and regulations relating to the entry and sojourn of aliens, nationals of one Contracting Party, together with family members of their household, shall be permitted to enter into, remain and leave 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.

(4) Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

(5) In order to create favourable conditions for assessing the financial position and the results of activities which are based on investments under this agreement, the Contracting Parties shall permit, as far as is possible within the framework of their national legislation, harmonization of the investors' accounting procedures with the International Accounting Standards (IAS) drawn up by the International Accounting Standards Committee (IASC).

(6) An investment made in accordance with the laws and regulations of the Contracting Party in whose territory the investment is undertaken, enjoys the full protection of the present Agreement.

Article 3.

(1) Each Contracting Party shall apply to investments in its territory by investors of the other Contracting Party a treatment which is no less favourable than that accorded to investments by investors of third States.

(2) Notwithstanding the provisions of Paragraph (1) of this Article, a Contracting Party

(a) Which has concluded an agreement regarding the formation of a customs union, common market or a free-trade area, or

(b) Which has concluded a multilateral agreement on economic co-operation for mutual economic assistance,

Shall be free to grant more favourable treatment to investments by an investor of the State or States which are also parties to the aforesaid agreements, or by investors of some of these States.

(3) The treatment granted to investments under the Commercial Agreements which the Kingdom of Sweden has concluded with the Ivory Coast on 27 August 1965, with Madagascar on 2 April 1966 and with Senegal on 24 February 1967 shall not be invoked as the basis most-favoured-nation treatment under Article 3 by Polish investors.

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

Article 4.

(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 complied with:

(a) The measures are taken in the public interest and under due process of law;

(b) The measures are distinct and not discriminatory; and

(c) The measures are accompanied by provision for the payment of prompt, adequate and effective compensation, which shall be transferable without undue delay in a freely convertible currency.

(2) The provisions of Paragraph (1) of this Article shall also apply to the current income from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

(3) 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 national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to nationals or companies of any third State. Resulting payments, if any, shall be transferable in a freely convertible currency without undue delay.

Article 5.

(1) Each Contracting Party shall allow without delay the transfer in a freely convertible currency, subject to and to the extent permitted by its laws and regulations, of:

(a) The current income accruing from any investment by investors of the other Contracting Party, including in particular, though not exclusively, capital gains, profit, interests, dividends, licenses, royalties or fees;

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

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

(d) The earnings of nationals of the other Contracting Party who are allowed to work in connection with an investment in its territory and other amounts appropriated for the coverage of expenses connected with the management of the investment.

(2) The Contracting Parties undertake to accord to transfers referred to in Paragraph (1) of this Article a treatment no less favourable than that accorded to transfers originating from investments made by investors of any third State.

(3) The transfer shall be allowed without undue delay and, in any event, within a period of time not exceeding one month from the date on which the request for the transfer is made.

(4) Any transfer referred to in this Agreement shall be effected at the official exchange rates prevailing on the day the transfer is made.

(5) To the extent any return from an investment in the territory of the Polish People's Republic by a Swedish investors realized in a non-convertible currency, where the competent Polish authorities have at their discretion given prior permission, the equivalent amount in convertible currency required for effecting the transfer of such a return shall be provided by the Polish National Bank against payment in the same non-convertible currency.

(6) It is further noted that Swedish investors may use market mechanisms, e.g. auctions, to buy and sell foreign currency in accordance with laws and regulations of the Polish People's Republic. When foreign currency is obtained in this way the exchange rate referred to in Paragraph (4) is not applicable.

Article 6.

If a Contracting Party or one of its organs makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 7, recognize the transfer of any right or title of such an investor to the former Contracting Party or its organ and the subrogation of the former Contracting Party or its organ to any such right or title, subject to the other Contracting Party's right to deduct taxes and other public charges due and payable by the investor.

Article 7.

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

(2) If the dispute cannot thus be settled within six months, it shall at the request of either Contracting Party be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be set up from case to case, each Contracting Party appointing one member, and these two members shall then agree upon a national of a third State which maintains diplomatic relations with both Contracting Parties as their Chairman, to be appointed by the Governments of the Contracting Parties. The members shall be appointed within two months, and the Chairman within four months, from the date either Contracting Party has advised the other Contracting Party of its wish to submit the dispute to an arbitration tribunal.

(4) If the time limits referred to in Paragraph (3) of this Article have not been complied with, either Contracting Party 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 prevented from discharging the function provided for 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 prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

(6) The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties. Each Contracting Party shall bear the cost of the member appointed by that party as well as the costs for its representation in the arbitration proceedings; the cost of the Chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 8.

(1) Each Contracting Party consents to submit for settlement by an arbitration tribunal any legal dispute arising under Article 4 of this Agreement between that Contracting Party and an investor of the other Contracting Party concerning an investment by the latter in the territory of the former.

(2) In the event of a dispute not referred to in Paragraph (1) of this Article which arises between one Contracting Party and an investor of the other Contracting Party concerning an investment by the latter in the territory of the former, it shall upon agreement by both parties to the dispute be submitted to an arbitration tribunal for settlement.

(3) An arbitration tribunal in terms of this Article shall be set up from case to case as follows: Each Party to the dispute shall appoint one member and these two members shall then appoint a national of a third State as their Chairman, a national of such a state not being eligible as chairman or member of the tribunal if diplomatic relations do not exist between that state and either of the two Contracting Parties. The members shall be appointed within two months, and the chairman within three months, from the date an investor, party to a dispute as defined in Paragraph (1) of this Article, has advised the other party to the dispute of the wish of the former to have the dispute submitted to an arbitration tribunal, or else, from the date both parties to a dispute as defined in Paragraph (2) of this Article have agreed that the dispute be submitted to an arbitration tribunal.

(4) If the time-limits referred to in Paragraph (3) of this Article have not been complied with, either party to the dispute may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

(5) An arbitration tribunal set up in accordance with this Article shall, in deciding a dispute submitted to it, apply the arbitral procedure provided in the Arbitration Rules of the United Nations Commission on International Trade Law as adopted by the General Assembly on 15 December 1976 and shall, where otherwise necessary, determine its own procedure. The arbitration tribunal shall reach its decision by a majority of votes. Such a decision shall be final and binding.

Article 9.

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 investors 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 10.

The provisions of this Agreement shall apply to investments made by investors of one Contracting Party in the territory of the other Contracting Party after May 26, 1976.

Article 11.

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

(2) This Agreement shall remain in force for a period of twenty years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its intention to terminate this Agreement.

(3) 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 10 shall remain in force for a further period of twenty years from that date.

Done at Warsaw on October 13, 1989 in duplicate in the Swedish, Polish and English languages, the three texts having the same value. In the case there is any divergence of interpretation of the provisions of this Agreement the English text shall prevail.

For the Government of the Kingdom of Sweden

Ingvar Carlsson

For the Government of the Polish People's Republic

Tadeusz Mazowiecki