Agreement between the Government of the Kingdom of Sweden and the Government of the Hungarian People's Republic for the Promotion and Reciprocal Protection of Investments

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

DESIRING to intensify economic co-operation to the mutual benefit of both countries and to maintain favourable 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 connected with economic activities and invested by investors 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 latter 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) Industrial property rights, technical processes, trade names, know-how and other intellectual property rights as well as goodwill;

(e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

(2) The term "investor" shall mean:

(a) Any natural person possessing the nationality of one Contracting Party according to its law;

(b) Any legal person constituted in accordance with the legislation of one Contracting Party.

Article 2.

If a Contracting Party, in the exercise of its full discretion, has admitted an investment in its territory by a legal person which is not covered by the definition in paragraph (2)(b) of Article 1, but in which the majority of shares are owned by investors of the other Contracting Party, the provisions of the present Agreement shall apply to that investment.

Article 3.

(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.

(2) 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.

(3) The investment made in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, enjoy the full protection of the present Agreement.

Article 4.

(1) Each Contracting Party shall apply to investments in its territory by investors of the other Contracting Party a treatment which is no less l 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 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 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 arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 5.

(1) Neither Contracting Party shall take any measures depriving, directly or indirectly, investors 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 not discriminatory; and

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be freely transferable.

(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.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.

Article 6.

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, revolution, 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 investors of any third State. Resulting payments shall be freely transferable without delay.

Article 7.

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

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

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

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

(d) The earnings of nationals of the other Contracting Party who are allowed to work in connection with an investment on its territory.

(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.

Article 8.

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 10, 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.

Article 9.

The Present Agreement shall not be considered to restrict in any way the rights and benefits which an investor of one Contracting Party enjoys under national or international law in the territory of the other Contracting Party.

Article 10.

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

(2) If the dispute cannot thus be settled within six months following the date on which such negotiations were requested, it shall, at the request of either Contracting Party be submitted to an arbitral tribunal.

(3) The arbitral tribunal shall be set up from case to case as follows: Each Contracting Party shall appoint one member and these two members shall then agree upon a national of a third State as Chairman of the tribunal to 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 either Contracting Party has advised the other Contracting Party of its wish to submit the dispute to an arbitral tribunal.

(4) If any of 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 agreement, 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 not being incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

(6) The tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties.

(7) Each Contracting Party shall bear the cost of the member appointed by that Party as well as the costs for its representation in the arbitral proceedings. The cost of the Chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties, unless the arbitral tribunal decides otherwise. In all other respects, the procedure of the arbitral tribunal shall be determined by the tribunal itself.

Article 11.

(1) Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes for settlement by conciliation or arbitration under the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States (hereinafter referred to as "the Washington Convention") any legal dispute arising under Article 5 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. If the parties to such a dispute have different opinions as to whether conciliation or arbitration is the more appropriate method of settlement, the investor shall have the right to choose.

(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 at the former, the dispute shall be submitted, upon agreement on such submission by both parties to that dispute, to the International Centre for the Settlement of Investment Disputes for conciliation or arbitration under the Washington Convention.

(3) For the purposes of this Article, any legal person which is constituted in accordance with the legislation of one Contracting Party and in which before a dispute arises the majority of shares are owned by investors of the other Contracting Party shall be treated, in accordance with Article 25(2)(b) of the Washington Convention, as an investor of the other Contracting Party.

Article 12.

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 31 December 1972.

Article 13.

The representatives of the Contracting Parties shall, whenever needed, hold meetings in order to review the implementation of this Agreement. These meetings 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 14.

(1) This Agreement shall enter into force upon signature.

(2) This Agreement is concluded for a period of twenty years. Unless it is denounced at least six months before the expiry of that period, the validity of the Agreement will be extended for an indefinite period of time. In that case, either Contracting Party may terminate the Agreement by giving at least six months' advance notice.

(3) In respect of investments made prior to the date when the Agreement ceases to be in force, the provisions of Articles 1 to 13 shall remain applicable for a further period of twenty years from that date.

Done at Stockholm this 21 st day of April 1987 in two originals in the English language.

For the Government of the Kingdom of Sweden

Anita Gradin

For the Government of the Hungarian People's Republic

Péter Várkonyi