

Agreement on encouragement and reciprocal protection of investments between the Federal Democratic Republic of Ethiopia and the Kingdom of the Netherlands

The Kingdom of the Netherlands

And

The Federal Democratic Republic of Ethiopia,

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 and in the territory of the other Contracting Party;

Recognizing 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;

Have agreed as follows:

Article 1. Definitions

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;

(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 exploit 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 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:

(i) In respect of the Kingdom of the Netherlands: the territory of the Kingdom of the Netherlands and any area adjacent to the territorial sea which, under the laws applicable within the Kingdom of the Netherlands, and in accordance with international law, is the exclusive economic zone or continental shelf of the Kingdom of the Netherlands, in which the Kingdom of the Netherlands exercises jurisdiction or sovereign rights;

(ii) In respect of the Federal Democratic Republic of Ethiopia: the territory in which the Federal Democratic Republic of

Ethiopia exercises sovereign rights or jurisdiction in accordance with International law.

Article 2. Admission of Investments

Either Contracting Party shall, within the framework of its laws and regulations, stimulate economic cooperation through the promotion and 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. Treatment of Investments

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 security and protection.

2. Each Contracting Party shall accord to such investments treatment which in any case shall not be less favourable than that accorded either to investment 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. 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, 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.

5. For the avoidance of doubt it is confirmed that the national treatment principle provided for in paragraph (2) and (4) of this Article applies to investments once legally admitted, through specific authorization, if applicable. paragraph (2) and (4) of this Article applies to investments once legally admitted, through specific authorization, if applicable.

Article 4. Taxes and other Fiscal Matters

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, there shall not be taken into account any special fiscal advantages accorded by that Party:

- a) Under an agreement for the avoidance of 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. Transfers

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 and dividends;
- b) Funds necessary
 - (i) For 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. In accordance with the provisions of Paragraph 1, the transfers referred to above shall be made pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made, at the rate of exchange applicable on the date of transfer.

Article 6. Expropriation and Nationalisation

Neither Contracting Party shall take any measure of expropriation, nationalisation or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party 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;
- c) The measures are taken against prompt, adequate and effective compensation. Such compensation shall represent the fair market value of the investment immediately before the moment the measures or impending measures became public knowledge and shall include interest at a normal banking commercial rate from the date the measures were taken, until the date of payment and shall, in order to be effective for the affected investors, be paid and made transferable, without delay to the country designated by the investors concerned in any freely convertible currency.

Article 7. Compensation for Damages or Losses

Nationals of 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. Subrogation

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 recognized by the other Contracting Party.

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

1. Disputes which might arise between one of the Contracting Parties and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall, whenever possible, be settled amicably between the parties concerned.
2. If the dispute has not been settled within a period of six months from the date either Party to the dispute requested amicable settlement, the dispute shall at the request of the national concerned be submitted to:
 - a) The competent court of the Contracting Party in the territory of which the investment has been made; or
 - 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 entered into force on October 14th, 1966 after accession by the Contracting Parties; or
 - 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 of Rules), if one of the Contracting Parties is not a Contracting State of the Convention as mentioned in paragraph 2 b) of this Article; or

d) An international ad hoc arbitral tribunal under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. 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 on the Settlement of Investment Disputes between States and Nationals of other States for the purpose of the Convention be treated as a national of the other Contracting Party.

4. The arbitral awards shall be final and binding on both parties to the dispute and shall be executed according to national law.

5. Each Contracting Party hereby consents to submit investment disputes for resolution to the alternative disputes settlement fora mentioned in the preceding paragraphs.

Article 10. Scope of Application

The present Agreement shall apply to investments made in the territory of one Contracting Party, whether prior to or after the entry into force of the Agreement. It shall, however, not be applicable to claims arising out of events which occurred prior to its entry into force.

Article 11. Consultations

Either Contracting Party may propose to the other Party that consultations be held on any matter concerning the interpretation of the Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

Article 12. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement, which cannot be settled within a reasonable lapse of time 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 generally recognized principles of international 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.

Article 13. Territorial Application

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. Entry Into Force and Termination

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 Addis Ababa, on 16 May 2003

For the Kingdom of the Netherlands (sd.) ROB VERMAAS

For the Federal Democratic Republic of Ethiopia.