

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

The Government of the Republic of Venezuela and the Government of the Kingdom of the Netherlands, hereinafter referred to as the Contracting Parties;

Desiring to strengthen the traditional ties of friendship between their countries, 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,

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.

For the purposes of this Agreement:

(a) The term "investments" shall comprise 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) Title 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, 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) above.

(c) The term "territory" includes the maritime areas adjacent to the coast of the State concerned, to the extent to which that State exercises sovereign rights or jurisdiction in those areas according to international law.

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 arbitrary or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals.

(2) More particularly, each Contracting Party shall accord to such investments full physical security and protection which in any case shall not be less 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 the treatment of investments of nationals of the other Contracting Party. 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 with respect to their investments in its territory treatment not less favourable than that accorded to its own nationals or to those of any third State, 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 customs union, economic union, or similar institutions; or
- c) On the basis of reciprocity with a third State.

Article 5.

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 undue 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 acquisitions of raw or auxiliary materials, semifabricated 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.

Article 6.

Neither Contracting Party shall take any measures to expropriate or nationalise investments of nationals of the other Contracting Party or take measures having an effect equivalent to nationalisation or expropriation with regard to such 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 taking such measures may have given;

c) The measures are taken against just compensation. Such compensation shall represent the market value of the investments affected immediately before the measures were taken or the impending measures became public knowledge, whichever is the earlier; it shall include interest at a normal commercial rate until the date of payment and shall, in order to be effective for the claimants, be paid and made transferable, without undue 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 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 favorable 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 under a system established by law, any subrogation of the insurer or re-insurer to the rights of the said national pursuant to the terms of such insurance shall be recognized by the other Contracting Party.

Article 9.

1) Disputes between one Contracting Party and a national of the other Contracting Party concerning an obligation of the former under this Agreement in relation to an investment of the latter, shall at the request of the national concerned be submitted to 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 opened for signature at Washington on 18 March 1965.

(2) As long as the Republic of Venezuela has not become a Contracting State of the Convention as mentioned in Paragraph 1 of this Article, disputes as referred to in that paragraph shall be submitted to 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).

3) The arbitral award shall be limited to determining whether there is a breach by the Contracting Party concerned of its obligations under this Agreement, whether such breach of obligations has caused damages to the national concerned, and, if such is the case, the amount of compensation.

4) Each Contracting Party hereby gives its unconditional consent to the submission of disputes as referred to in Paragraph 1 of this Article to international arbitration in accordance with the provisions of this Article.

5) The arbitral award shall be based on:

i The law of the Contracting Party concerned;

ii The provisions of this Agreement and other relevant Agreements between the Contracting Parties;

iii The provisions of special agreements relating to the investments;

iv The general principles of international law; and

v - such rules of law as may be agreed by the parties to 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, but shall not apply to any disputes concerning an investment which arose, or any claim concerning an investment which was settled before its entry into force.

Article 11.

Either Contracting Party may propose 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 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 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 the power of the tribunal to decide 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 upon the Parties.

Article 13.

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, the Netherland Antilles, and to Aruba.

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 the procedures constitutionally required therefor in their respective countries 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, each Contracting Party reserving 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 thereof 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 Government of 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.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

DONE in duplicate in Caracas, on October twenty second, 1991, in the Spanish, Netherlands and English languages, the three texts being equally authentic.

For the Government of the Kingdom of the Netherlands:

For the Government of the Republic of Venezuela:

On the signature of this Protocol on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Government of the Republic of Venezuela the authorized Representatives of both Contracting Parties have agreed on the following provisions, which constitute an integral part of this Agreement:

Ad Article 1 (b) (iii)

A Contracting Party may require legal persons referred to in Article 1, paragraph (b) (iii) to submit proof of such control in order to obtain the benefits provided for in the provisions of this Agreement. For example, the following may be considered acceptable proof:

- a) That the legal person is an affiliate of a legal person constituted in the territory of the other Contracting Party;
- b) That the legal person is economically subordinated to a legal person constituted on the territory of the other Contracting Party;
- c) That the percentage of its capital owned by natural or legal persons of the other Contracting Party makes it possible for them to exercise control.

Ad Article 3 (1)

The Contracting Parties agree that the treatment of investments shall be considered to be fair and equitable as mentioned in Article 3, paragraph 1, if it conforms to the treatment accorded to investments of their own nationals, or to investments of nationals of any third State, whichever is more favourable to the national concerned, as well as to the minimum standard for the treatment of foreign nationals under international law.

3) In case of difference of interpretation between the three equally authentic texts of the present Agreement, reference shall be made to the English text.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Protocol.

DONE in duplicate at [place], on [date], in the Spanish, Netherlands and English languages, the three texts being equally authentic.

For the Government of the Kingdom of the Netherlands

For the Government of the Republic of Venezuela