

[TRANSLATION – TRADUCTION]

AGREEMENT ON THE RECIPROCAL PROMOTION AND PROTECTION
OF INVESTMENTS BETWEEN THE KINGDOM OF THE NETHER-
LANDS AND BURKINA FASO

The Government of the Kingdom of the Netherlands and the Government of Burkina Faso, hereinafter referred to as "the Contracting Parties",

Desiring to strengthen their traditional ties of friendship and to develop and intensify the economic relations between, particularly with respect to investments made by the nationals of one Contracting Party in the territory of the other Contracting Party,

Recognising that agreement concerning the treatment to be accorded to such investments is likely to stimulate flows 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 "investment" shall comprise every type of asset and more particularly, though not exclusively:

(i) Movable and immovable property, as well as all real rights in respect of every type of asset;

(ii) Rights derived from shares, bonds and other forms of interest in companies and joint ventures;

(iii) Title to money and other assets and rights to any other service having an economic value;

(iv) Rights in the field of intellectual property, technical processes, goodwill and know-how;

(v) Rights granted by law or by contract, including concessions for prospecting, exploring, extracting and tapping 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 the Contracting Party;

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

(c) The term "territory" means the territory of the Contracting Party concerned and any area adjacent to the territorial sea which, under the legislation of the Contracting Party in question, and in accordance with international law, comprises the exclusive eco-

conomic zone or continental shelf of the Contracting Party in question, in which it exercises its jurisdiction or sovereign rights.

Article 2. Promotion and protection of investments

Each Contracting Party undertakes, in accordance with its laws and regulations, to promote economic cooperation through the protection of investments made in its territory by nationals of the other Contracting Party. Subject to its right to exercise powers conferred upon it by its laws and regulations, each Contracting Party shall admit such investments.

Article 3. National treatment and most favoured nation clause

1. Each Contracting Party shall ensure fair and equitable treatment of the investments made by nationals of the other Contracting Party and shall not impede, 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 shall case not be less favourable than that enjoyed either by investments of its own nationals or by 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 or monetary unions, or similar institutions, or by virtue of agreements leading to establishment of 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 made by nationals of the other Contracting Party.

5. If the provisions of law of either Contracting Party or obligations under international law currently in force 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. Taxes and fiscal issues

With respect to taxes, fees, charges and 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 under the same conditions, whichever is more favourable to the nationals concerned. For this purpose, however, there shall not be taken into account any special physical advantages accorded by that Contracting Party:

- (a) under an agreement to the avoidance of double taxation;

(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. Freedom of transfer

The Contracting Parties shall guarantee that payments relating to an investment may be transferred. The transfer shall be made in the freely convertible currency, without restrictions or delay. Such transfers shall include, in particular, though not exclusively:

(a) profits, interest, dividends and current income;

(b) funds necessary:

(i) for the acquisition of raw or auxiliary materials, semi-finished 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 handling costs;

(f) earnings of natural persons;

(g) the proceeds of sale or liquidation of the investment;

(h) payments arising from a situation such as that envisaged in Article 7.

Article 6. Expropriation and comparable measures

If the nationals of one Contracting Party suffer losses in respect of their investments in the territory of the other Contracting Party, owing to war or other armed conflict, revolt, insurrection or riots, they 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 7. Protection of property

Neither Contracting Party shall take any measure to directly or indirectly deprive nationals of the other Contracting Party of their investments, unless the following conditions are met:

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

(b) the measures are not discriminatory or contrary to undertakings given by the Contracting Party taking such measures;

(c) the measures are taken in exchange for payment of fair compensation. Such compensation shall represent the real value of the investment in question, including the payment of interest at the normal commercial rate until the date of 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 and in the currency of the country of which the claimants are nationals, or in any freely convertible currency accepted by the claimants.

Article 8. Subrogation

If the investments of a national of a Contracting Party are insured against non-commercial risks, or otherwise give rise to payment of indemnification in respect of such investment under a system established by law, regulation or government contract, any subrogation of the insurer or reinsurer, or an agency designated by a 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

Each Contracting Party hereby consents to submit any dispute arising between that Contracting Party and a national of the other Contracting Party concerning an investment made by that national in the territory of the other Contracting Party, to the International Centre for Settlement of Investment Disputes for settlement by conciliation or arbitration under the Convention on the Settlement of Investments Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965. A legal person who is an investor of one Contracting Party and who, before the dispute arises is controlled by investors of the other Contracting Party, shall, in accordance with Article 25 (2) (b) of the Convention, be treated as a national of the other Contracting Party for the purpose of the Convention.

Article 10. Application of the Agreement

The provisions of this Agreement shall, from the date of entry into force thereof, also apply to investments made before that date.

Article 11. Consultations

Each Contracting Party may propose to the other Party that consultations be held on any matter concerning the interpretation or application of the present Agreement. The other Party shall accord sympathetic consideration to the proposal and shall take all suitable measures to allow such consultations to take place.

Article 12. Settlement of disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement, which cannot be settled within a reasonable lapse of time through the diplomatic channel, shall, unless the Parties have agreed otherwise, 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 done so within two months after an invitation from the other Party to make such appointment, the latter Party may ask 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 the appointment, on the choice of the third arbitrator, either Party may ask 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 unable to discharge the said function or is a national of either Contracting Party, the Vice-President shall be asked to make the necessary appointments. If the Vice-President is unable to discharge 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 asked 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 a 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 (1) provides otherwise.

Article 14. Entry into force, and duration, 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 the formalities constitutionally required therefore in their respective countries have been complied with. The Agreement shall remain in force for a period of 15 years.

2. Unless notice of termination has been given by either Contracting Party at least six months before the expiry of its validity, the present Agreement shall be extended tacitly for further 15-year periods, whereby each Contracting Party reserves the right to terminate the Agreement by giving notice 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 expiry of the present Agreement, the foregoing Article shall continue to be effective for a further period of 15 years from that date.

4. Subject to the period mentioned in paragraph 2 of this Article, the Government of the Kingdom of Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any other parts of the Kingdom.

IN WITNESS WHEREOF, the undersigned, duly authorised to that effect, have signed the present Agreement.

DONE at Ouagadougou on 10 November 2000, in two original copies in Dutch and French, it being understood that in the event of differences of interpretation, the French text shall prevail.

For the Kingdom of the Netherlands:

A.J.A.J.M. HENNEKENS
Ambassador

For Burkina Faso:

TERTIUS ZONGO
Minister of Economic Affairs and Finance