

Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Oriental Republic of Uruguay

The Government of the Kingdom of the Netherlands
and
the Government of the Oriental Republic of Uruguay,

(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 the present 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;
 - ii. rights derived from shares, bonds and other kinds of interests in companies and joint ventures;
 - iii. title to money and other assets and 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 in accordance with its law ;
 - ii. without prejudice to the provisions of (iii) hereafter, legal persons constituted under the law of that Contracting Party;
 - iii. legal persons, wherever located, controlled, directly or indirectly, by nationals of that Contracting Party.
- (c) the term 'territory' includes the maritime areas adjacent to the coast of the State concerned, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

Article 2

- 1) Either Contracting Party shall, within the framework of its law 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.
- 2) Those activities which, due to reasons of security, morality, sanitation or public order, are forbidden or reserved to nationals of the Contracting Parties, are excluded from the provisions of this Agreement.

Article 3

- 1) Each Contracting Party shall ensure fair and equitable treatment to the investments of nationals of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment of disposal thereof by those nationals.
- 2) More particularly, each Contracting Party shall accord to such investments full 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 investor.

- 3) If a Contracting Party has accorded special advantages to nationals of any third State by virtue of agreements establishing customs unions, economic 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 investments of nationals of the other Contracting Party.
- 5) 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, 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, 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 under an agreement for the avoidance of double taxation, by virtue of its participation in a customs union, economic union or similar institution, or on the basis of reciprocity with a third State.

Article 5

The Contracting Parties shall guarantee that payments related 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, interest, dividends and other current income;
- (b) funds necessary
 - i. for the 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 liquidations of the investment.

Article 6

Neither of the Contracting Parties shall take, directly or indirectly, measures to expropriate, to nationalize or any other type of measure having effect equivalent to nationalization or expropriation, against investments of nationals of the other Contracting Party, unless for reasons of necessity or public benefit, under due process of law and under the conditions that these measures are not discriminatory and that the national concerned is paid a just and prompt indemnification. The amount of the indemnification shall represent the genuine value of the investments affected and shall be paid without any delay in the currency of the country of origin of the investments or in any other convertible currency accepted by the claimant, being this amount freely transferable.

Article 7

Nationals of the 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

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 into the rights of the said national shall be recognized by the other Contracting Party.

Article 9

- 1) Disputes which might arise between one of the Contracting Parties and a national of the other Contracting Party concerning an investment of that national in the territory of the former Contracting Party shall, whenever possible, be settled amicably between the parties concerned.
- 2) In case that is dispute, in the sense of the previous paragraph, has not been settled within a period of six months counted from the date on which the dispute arose, this dispute shall, at the request of one of the parties concerned, be submitted to the competent tribunal of the Contracting Party in the territory of which the investment was made. If within a period of eighteen months, after the dispute was submitted to the competent tribunal, no judgement were passed, the national concerned may resort to an arbitral tribunal, which will be competent to settle the dispute.
- 3) In case the competent tribunal mentioned in paragraph (2) of this Article has passed an award which infringes a rule of international law or which is obviously unfair, as a result of incorrect application of domestic law, the national concerned may resort to an arbitral tribunal.
- 4) The arbitral tribunal mentioned in paragraph (2) and (3) of this Article shall be set up for each case. The provisions of Article 13, paragraphs (2) through (7) shall apply *mutatis mutandis*. Nevertheless, the President of the Court of Arbitration of the International Chamber of Commerce of Paris shall be invited to make the necessary appointments.
- 5) In case both Contracting Parties have become members of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965, disputes between either Contracting Party and the national of the other Contracting Party under the first paragraph of the present Article shall be submitted for settlement by conciliation or arbitration to the International Centre for the Settlement of Investment Disputes.

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.

Article 11

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 (I) provides otherwise.

Article 12

Either Contracting Party may propose the other Party to consult on any matter concerning the interpretation or application of the Agreement. The other Party shall accord sympathetic consideration to and shall afford adequate opportunity for such consultation.

Article 13

- 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 a request of either Party, to an arbitral tribunal.
- 2) The tribunal will be 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. 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 the provisions of this Agreement, such rules of international law as the tribunal considers applicable, and the domestic law of the State in which the investment that gave rise to the dispute was made. 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 on the Parties.
- 8) No Contracting Party shall bring an international claim in respect of a dispute which one of its nationals and the other Contracting Party have submitted to the decision of the competent tribunal of the Party in the territory of which the investment was made or to the arbitration, provided for in Article 9 of this Agreement, unless such other Contracting Party shall have failed to abide by and comply with the award rendered in such dispute.

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 informed 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 at [place] on [date], in the Spanish, Dutch and English language, the three texts being equally authentic.

For the Government of
the Kingdom of the Netherlands:

For the Government of
the Oriental Republic of Uruguay:

Protocol

On signing the Agreement on encouragement and reciprocal protection of investments between the Kingdom of the Netherlands and the Oriental Republic of Uruguay, the authorized representatives of both Contracting Parties have agreed upon the following provisions, which constitute an integral part of this Agreement:

1) Ad Article 1 (a) (iii)

The term 'performance having an economic value' comprises inter alia activities such as marketing, advertising, management, consultancy, training and research.

2) Ad Article 1 (b) (i)

For the Oriental Republic of Uruguay this Agreement shall not apply to investments made in Uruguay by natural persons who are nationals of both Contracting Parties and are domiciled or have their centre or economic interest in Uruguay.

3) Ad Article 1 (b) (iii)

The legal persons referred to in Article 1 paragraph (b), subparagraph (iii) may be required to submit proof of such control in order to benefit from the provisions of this Agreement.

Acceptable proof may be, for example, the following:

- (a) being an affiliate of a legal person constituted in the territory of that Contracting Party;
- (b) being economically subordinated to a legal person constituted ..in the territory of that Contracting Party;
- (c) the fact that the percentage of its capital stock owned by natural or legal persons of that Contracting Party allows those persons to exercise control.

4) Ad Article 9

Decisions of the competent tribunal, in the sense of paragraphs (2) and (3) means for the Oriental Republic of Uruguay, the judicial decision in one instance only.

5)

In case of a difference of interpretation between the Spanish and the Dutch texts, the English text will be used as a reference.

DONE at [place] on [date], in the Spanish, Dutch and English language, the three texts being equally authentic.

For the Government of
the Kingdom of the Netherlands:

For the Government of
the Oriental Republic of Uruguay: