

AGREEMENT

BETWEEN

THE BELGO-LUXEMBURG ECONOMIC UNION

AND

THE REPUBLIC OF COSTA RICA

ON

THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

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THE GOVERNMENT OF THE KINGDOM OF BELGIUM,
acting both in its own name and in the name of
the Government of the Grand-Duchy of Luxemburg, by virtue of existing agreements,
the Walloon Government,
the Flemish Government,
and the Government of the Brussels-Capital Region,
on the one hand,

and

THE REPUBLIC OF COSTA RICA,
on the other hand,

(hereinafter referred to as “the Contracting Parties”),

DESIRING to strengthen their economic cooperation by creating favourable conditions for investments by nationals of one Contracting Party in the territory of the other Contracting Party,

HAVE agreed as follows :

ARTICLE 1

Definitions

For the purpose of this Agreement,

1. The term “investors” shall mean for either Contracting Party, the following subjects who have made investments in the territory of the other Contracting Party in accordance with the legislation of the latter and the provisions of this Agreement :
 - a) any natural person who, according to the legislation of the Kingdom of Belgium, of the Grand-Duchy of Luxemburg or of the Republic of Costa Rica, is considered as a citizen of the Kingdom of Belgium, of the Grand-Duchy of Luxemburg or of the Republic of Costa Rica respectively ;
 - b) any legal person or any other organization duly incorporated or duly constituted in accordance with the legislation of the Kingdom of Belgium, of the Grand-Duchy of Luxemburg or of the Republic of Costa Rica, whether or not it is for profit, and having its registered office in the territory of the Kingdom of Belgium, of the Grand-Duchy of Luxemburg or of the Republic of Costa Rica respectively.

2. The term “investments” shall mean any kind of assets and any direct or indirect contribution invested or reinvested by an investor of one Contracting Party in any sector of economic activity in the territory of the other Contracting Party.

The following shall more particularly, though not exclusively, be considered as investments for the purpose of this Agreement :

- a) movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufruct and similar rights ;
- b) shares, stocks, debentures, corporate rights and any other kind of shareholdings, including minority or indirect ones, in companies constituted in the territory of one Contracting Party ;
- c) bonds, claims to money and to any performance having an economic value directly related to the investment ;
- d) intellectual property rights including copyrights and related rights, trade marks, industrial designs, geographical indications, lay-out design and patents ;
- e) concessions granted, under public law or under contract, including concessions to explore, develop, cultivate, extract or exploit natural resources.

Changes in the legal form in which assets and capital have been invested or reinvested shall not affect their designation as “investments” for the purpose of this Agreement.

3. The term “incomes” shall mean the proceeds of an investment and shall include in particular, though not exclusively, profits, interests, capital increases, dividends, royalties and other capital gains.
4. The term “territory” shall apply to the territory of the Kingdom of Belgium, to the territory of the Grand-Duchy of Luxemburg and to the territory of the Republic of Costa Rica, as well as to the maritime areas, including the marine and underwater areas which extend beyond the

territorial waters, of the States concerned and upon which the latter exercise, in accordance with international law, their sovereign rights and their jurisdiction for the purpose of exploring, exploiting and preserving natural resources.

ARTICLE 2

Promotion of investments

1. Each Contracting Party shall promote investments in its territory by prospective investors of the other Contracting Party and shall accept such investments in accordance with its legislation.
2. In particular, each Contracting Party shall authorize the conclusion and the fulfilment of licence contracts and commercial, administrative or technical assistance agreements in accordance with its laws and regulations, as far as these activities are in connection with such investments.
3. With the purpose of increasing investment flows, upon request of the other Contracting Party, each Contracting Party will make an effort to inform the other Contracting Party about any existing investment opportunities in its territory.

ARTICLE 3

Protection of investments

1. All investments, whether direct or indirect, made by investors of one Contracting Party shall enjoy a fair and equitable treatment in the territory of the other Contracting Party.
2. Except for measures required to maintain public order, such investments shall enjoy continuous protection and security, excluding any unjustified or discriminatory measure which could hinder, either in law or in practice, the management, maintenance, use, possession or liquidation thereof.

ARTICLE 4

National and most favoured Nation treatment

1. In accordance to its laws and regulations, each Contracting Party shall accord investments made by investors of the other Contracting Party in the former's territory a treatment no less favourable than that granted to investments of its own investors.

2. Each Contracting Party shall accord investments made by investors of the other Contracting Party in the former's territory a treatment no less favourable than that granted to investments of investors of any third State.
3. Each Contracting Party shall accord the treatment which is more favourable to the investments of investors of the other Contracting Party, either National or Most Favoured Nation Treatment.
4. Eventhough, nothing in this article shall cover the privileges granted by one Contracting Party to the investors of a third State in accordance with its existing or future participation in or association with a free trade area, customs union, common market, economic and monetary union or any other similar regional economic integration organization.
5. Nothing in this article shall be construed so as to oblige a Contracting Party to extend to investments of investors of the other Contracting Party deductions, fiscal exemptions or any other similar advantage resulting from double taxation agreements or any other agreements regarding tax matters concluded by one Contracting Party and any other third State.

ARTICLE 5

Expropriation and compensation

1. Each Contracting Party undertakes not to adopt any measure of expropriation or nationalization or any other measure having the effect of directly or indirectly dispossessing (hereinafter referred to as "expropriation") the investors of the other Contracting Party of their investments in its territory.
2. If reasons of public purpose require a derogation from the provisions of paragraph 1, the following conditions shall be complied with :
 - a) the measure shall be taken under due process of law ;
 - b) the measure shall not be discriminatory ;
 - c) the measure shall be accompanied by provisions for the payment of an adequate and effective compensation.
3. Such compensation shall amount to the market value of the investments on the day before the measure was taken or became public whichever was earlier.

For the determination of the market value the following rules shall apply :

- a) The experts opinion must include all the necessary information to individualize the asset valued ;
- b) In case of real estate property, the decision must include independent valuation of the land, the plantations, the constructions, leasehold, commercial rights, exploitation rights for mineral deposits, and any other asset or right having an economic value ;

- c) In case of movable property, each good must be separately valuated and all the characteristics that influenced the valuation must be indicated ;
 - d) The valuations should take into account only real permanent damages. Without prejudice of the subparagraph b.) above, future events or rights expectations will not be included or taken into consideration. The increased value derived from the project originating the expropriation shall not be recognized ;
 - e) All experts opinion must specify in detail the elements considered to assign the market value to the expropriated asset and the methodology used.
4. Such compensation shall be paid in any convertible currency. It shall be paid without delay and shall be freely transferable. It shall bear interest at the normal commercial rate based on the average deposit rate prevailing in the national banking system of the Party where the expropriation was made, in accordance to the legislation of the latter Contracting Party.
5. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his case and of the valuation of his *or* its investment in accordance with the principles set out in this Article.

ARTICLE 6

Compensation for losses

Investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency or revolt in the territory of the other Contracting Party shall be granted by the latter Contracting Party a treatment, as regards restitution, indemnification, compensation or other settlement, at least equal to that which the latter Contracting Party grants to the investments of its own investors or to the investments of the investors of any third State, whichever is more favourable to the investment of the affected investor.

ARTICLE 7

Transfers

1. Each Contracting Party shall grant to investors of the other Contracting Party the free transfer in and out of its territory of all payments relating to an investment, in accordance with its laws and regulations, and in particular, though not exclusively, the following :
- a) amounts necessary for establishing, maintaining or expanding the investment ;
 - b) amounts necessary for payments under a contract, including amounts necessary for repayment of loans, royalties and other payments resulting from licences, franchises, concessions and other similar rights, as well as salaries of expatriate personnel ;

- c) incomes from investments ;
 - d) proceeds from the total or partial liquidation of investments, including capital gains or increases in the invested capital ;
 - e) the compensations pursuant to Articles 5 and 6 ;
 - f) payments resulting from dispute settlements.
- 2. The nationals of each Contracting Party who have been authorized to work in the territory of the other Contracting Party in connection with an investment shall also be permitted to transfer an appropriate portion of their earnings to their country of origin, in accordance to the legislation of the latter Contracting Party.
 - 3. Transfers shall be made in a freely convertible currency at the rate applicable to spot transactions in the currency used on the day the transfers are made.
 - 4. Notwithstanding the provisions of paragraph 1 of this Article, each Contracting Party shall be entitled, under circumstances of exceptional or serious balance of payments difficulties, to limit transfers temporarily, on a fair and non-discriminatory basis, and in accordance with internationally accepted criteria. Limits on transfers adopted or maintained by a Party under this paragraph shall be notified promptly to the other Party.

ARTICLE 8

Subrogation

- 1. If one Contracting Party or any public institution of this Party pays compensation to its own investors pursuant to a guarantee providing coverage against non-commercial risks for an investment, the other Contracting Party shall recognize that the former Contracting Party or the public institution concerned is subrogated into the rights of the investors.
- 2. As far as the transferred rights are concerned, the other Contracting Party shall be entitled to invoke against the insurer who is subrogated into the rights of the indemnified investors the obligations of the latter under law or contract.

ARTICLE 9

More favourable conditions

If an issue relating to investments is covered both by this Agreement and by the national legislation of one Contracting Party or by international conventions, existing or to be subscribed to by the Parties in the future, the investors of the other Contracting Party shall be entitled to avail themselves of the provisions that are the most favourable to their investments.

ARTICLE 10

Specific Agreements

1. Investments made pursuant to a specific agreement concluded between one Contracting Party and investors of the other Party shall be covered by the provisions of this Agreement and by those of the specific agreement.
2. Each Contracting Party undertakes to ensure at all times that the commitments it has entered into vis-a-vis investors of the other Contracting Party shall be observed.

ARTICLE 11

Dispute settlement between one Contracting Party and investors of the other Contracting Party

1. Any investment dispute between an investor of one Contracting Party and the other Contracting Party with respect to matters covered by this Agreement, shall be notified in writing by the first party to take action. The notification shall be accompanied by a sufficiently detailed memorandum.

As far as possible, the parties shall endeavour to settle the dispute through negotiations, if necessary by seeking expert advice from a third party, or by conciliation between the Contracting Parties through diplomatic channels.

2. In the absence of an amicable settlement by direct agreement between the parties to the dispute or by conciliation through diplomatic channels within six months from the notification, the dispute shall be submitted, at the option of the investor, either to the competent jurisdiction of the State where the investment was made, or to international arbitration.

To this end, each Contracting Party agrees in advance and irrevocably to the settlement of any dispute by this type of arbitration. Such consent implies that both Parties waive the right to demand that all domestic administrative or judiciary remedies be exhausted.

3. In case of international arbitration, the dispute shall be submitted for settlement by arbitration to one of the hereinafter mentioned organizations :

the International Centre for the Settlement of Investment Disputes (I.C.S.I.D.), set up by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965, when each State party to this Agreement has become a party to the said Convention ;

the Additional Facility Rules of ICSID, provided that one of the Contracting Parties, is a party of the ICSID, or ;

an ad hoc arbitral tribunal set up according to the arbitration rules laid down by the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.) when none of the Parties is a member of ICSID.

4. At any stage of the arbitration proceedings or of the execution of an arbitral award, none of the Contracting Parties involved in a dispute shall be entitled to raise as an objection the fact that the investor who is the opposing party in the dispute has received compensation totally or partly covering his losses pursuant *to an* insurance policy or to the guarantee provided for in Article 8 of this Agreement.
5. Once the investor has submitted the dispute either to a competent Tribunal of the disputing Contracting Party or to an arbitral procedure, the selection of one or the, other shall be final.
6. The arbitral tribunal shall decide on the basis of the national law, including the rules relating to conflicts of law, of the Contracting Party involved in the dispute in whose territory the investment has been made, as well as on the basis of the provisions of this Agreement, of the terms of the specific agreement which may have been entered into regarding the investment, and of the principles of international law.
7. The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the awards in accordance with its national legislation.
8. The Contracting Party shall abstain from addressing through diplomatic channels any matter submitted either to the domestic tribunals or to arbitration tribunals according to the terms of this article, except in the case that the disputing Party has not complied with the judicial or arbitral decision.

ARTICLE 12

Dispute settlement between the Contracting Parties relating to the interpretation or application of this Agreement

1. Any dispute relating to the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels.
2. In the absence of a settlement through diplomatic channels, the dispute shall be submitted to a joint commission consisting of representatives of the two Parties ; this commission shall convene without undue delay at the request of the first Party to take action.
3. If the joint commission cannot settle the dispute, the latter shall be submitted, at the request of either Contracting Party, to an arbitration court set up as follows for each individual case :

Each Contracting Party shall appoint one arbitrator within a period of three months from the date on which either Contracting Party has informed the other Party of its intention to submit the dispute to arbitration. Within a period of two months following their appointment, these two arbitrators shall appoint by mutual agreement a national of a third State as chairman of the arbitration court.

If these time limits have not been complied with, either Contracting Party shall request the President of the International Court of Justice to make the necessary appointment(s).

If the President of the International Court of Justice is a citizen of a Contracting State or of a State with which one of the Contracting States has no diplomatic relations or if, for any other reason, he cannot exercise this function, the Vice-President of the International Court of Justice shall be requested to make the appointment(s).

If the Vice-President is a citizen of a Contracting State or if he is also prevented from discharging said function, the Member of the International Court of Justice next in seniority who is not a citizen of a Contracting State shall be invited to make the necessary appointments.

4. The court thus constituted shall determine its own rules of procedure unless agreed otherwise by the Contracting Parties. Its decisions shall be taken by a majority of the votes ; they shall be final and binding on the Contracting Parties.
5. The arbitral tribunal shall dictate its judgement on the basis of the provisions of this Agreement and other applicable agreements between the Contracting Parties, and on the basis of universally recognized principles of International Law.
6. Each Contracting Party shall bear the costs resulting from the appointment of its arbitrator. The expenses in connection with the appointment of the third arbitrator and the administrative costs of the court shall be borne equally by the Contracting Parties.

ARTICLE 13

Previous investments

This Agreement shall also apply to investments made before its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and regulations. For further certainty, this Agreement does not apply to disputes which arose, nor legal actions taken or completed, prior to its entry into force.

ARTICLE 14

Entry into force, duration and termination

1. This Agreement shall enter into force one month after the date of exchange of the instruments of ratification by the Contracting Parties. The Agreement shall remain in force for an initial period of ten years.

Unless notice of termination is given by either Contracting Party at least twelve months before the expiry of its period of validity, this Agreement shall be tacitly extended each time for a further period of ten years, it being understood that each Contracting Party reserves the right to terminate the Agreement by written notification given at least twelve months before the date of expiry of the current period of validity.

2. Investments made prior to the date of termination of this Agreement shall be covered by this Agreement for an additional period of ten years from the date of termination.

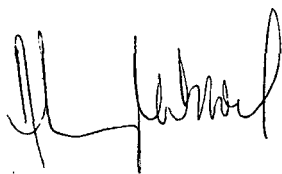
IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE at **BRUSSELS**, on the **26th APRIL 2002**, in two original copies, each in the English, Dutch, French and Spanish languages, all texts being equally authentic. The text in the English language shall prevail in case of difference of interpretation.

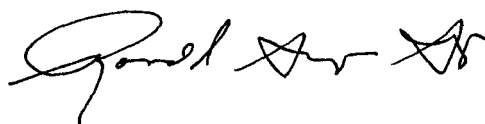
**FOR THE BELGO-LUXEMBURG
ECONOMIC UNION :**

**FOR THE REPUBLIC
OF COSTA RICA :**

For the Government of the Kingdom of Belgium,
acting both in its own name and in the name of
the Government of the Grand-Duchy of
Luxemburg :




A. NEYTS-UYTTEBROECK



RONALD SABORÍO

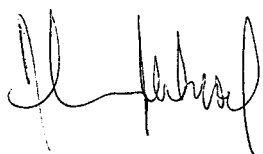
AMBASSADOR

For the Walloon Government :



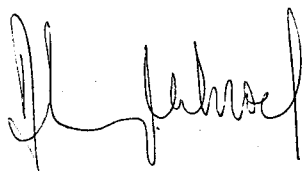
A. NEYTS-UYTTEBROECK

For the Flemish Government :



A. NEYTS-UYTTEBROECK

For the Government of the Brussels-Capital
Region :



A. NEYTS-UYTTEBROECK

