Bilateral Investment Treaty between Belgo-Luxemburg and Thailand

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE KINGDOM OF THAILAND

AND

THE BELGO-LUXEMBURG ECONOMIC UNION

ON

THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of Thailand, on the one hand, and 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 Region of Brussels-Capital, on the other hand, hereinafter referred to as the "Contracting Parties";

Desiring to strengthen their economic cooperation by creating favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Have agreed as follows:

ARTICLE 1
DEFINITIONS

For the purposes of this Agreement:

1. The term "investor" shall mean with regard to either Contracting Party:

(a) natural persons who, according to the law of that Contracting Party are considered to be its nationals or citizens;

(b) juridical persons which are constituted in accordance with the legislation of that Contracting Party and having its registered office in the territory of that Contracting Party;

(c) juridical persons not established under the law of that Contracting Party:

(i) in which more than 50 per cent of the equity interest is beneficially owned by natural or juridical persons of that Contracting Party; or

(ii) in relation to which natural or juridical persons of that Contracting Party have the power to name a majority of their directors or otherwise legally direct their actions.

2. The term "investments" shall mean any kind of assets invested or reinvested in any sector of economic activity. The following shall, inter alia, be considered as investments for the purpose of this Agreement:

(a) movable and immovable property as well as any other rights in rem, pledges, usufruct and similar rights;

(b) shares, corporate rights and any other kind of shareholdings in companies constituted in the territory of one Contracting Party;

(c) bonds, claims to money and to any performance under contract having financial value;

(d) patents, other industrial property rights, trade names, and other intellectual property rights as well as goodwill that may be recognized by the laws of the Contracting Party in which the investment is made;

(e) concessions granted under public law or under contract, including concessions to explore, develop, extract or exploit natural resources.

Any alteration of the form in which assets are invested or are reinvested shall not affect their character as an investment, provided that such alteration or reinvestment has also been approved under Article 2 of this Agreement.

3. the term "returns" shall mean the amounts yielded by an investments and, in particular, though not exclusively, shall include profit, interest, capital gains, dividends, royalties or fees.

4. the term "territory" shall apply to the territory of the Kingdom of Thailand, to the territory of the Kingdom of Belgium, and to the territory of the Grand-Duchy of Luxemburg, as well as to the maritime areas, i.e. 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.

5. the term "freely usable currencies" shall mean currencies that the International Monetary Fund determines, from time to time, as freely usable currencies in accordance with the Articles of Agreement of the International Monetary Fund and Amendments thereafter.

ARTICLE 2
SCOPE OF APPLICATION

1. This Agreement shall only apply:

(a) in respect of investments in the territory of the Kingdom of Thailand, to all investments made, in accordance with law and regulations of Thailand, by investors of Belgium or Luxemburg which have received written approval from the competent authority of Thailand. The application for approval shall be processed in an expeditious manner and the result of the consideration will be given without undue delay in accordance with the criteria appearing in the Annex to this Agreement;

(b) in respect of investments in the territory of the Kingdom of Belgium, and in the Grand-Duchy of Luxemburg, to all investments made by investors of Thailand which are invested under the relevant laws and regulations of Belgium and of the Grand-Duchy of Luxemburg.

2. In respect of investments in the territory of the Kingdom of Thailand, investors of Belgium or Luxemburg shall be free to apply for such approval in respect of any investment whether made before or after the entry into force of this Agreement.

ARTICLE 3
PROMOTION OF INVESTMENT

Each Contracting Party shall, having regard to its plans and policies, encourage and facilitate investments in its territory by the investors of the other Contracting Party.

ARTICLE 4
TREATMENT OF INVESTMENT

1. (a) Investments made by investors of one Contracting Party in the territory of the other Contracting Party, and also the returns therefrom, shall receive treatment which is fair and equitable;

(b) Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair in law or in practice by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party;

(c) Treatment and protection accorded by subparagraphs (a) and (b) shall be at least the same as those accorded by each Contracting Party to its own investors, or to the investors of the most favoured nation if these are more favourable. They shall in no case be less favourable than those recognized by international law.

2. Each Contracting Party shall observe any obligation, additional to those specified in this Agreement, into which it may have entered with regard to investments made by investors of the other Contracting Party.

ARTICLE 5
EXPROPRIATION

1. In any case where investments of an investor of one Contracting Party are subjected, directly or indirectly, to any measure of expropriation or nationalization, the investor concerned shall be accorded in the territory of the other Contracting Party fair and equitable treatment in relation to any such measure. No such measure shall be taken except for public purposes and against payment of compensation. Such compensation shall amount to the actual market value of the investment expropriated on the day before the measure was taken, and shall be effectively realizable. It shall be made without delay, and shall be in freely usable currencies in keeping with standards and accepted principles of international law.

Expropriation or nationalization measures should also comply with due process of law.

Compensation shall also include interest at a commercial rate established on a market basis for the currency in question from the date when the payment is due until the date of actual payment.

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 investors of the most favoured nation.

2. Where a Contracting Party expropriates assets of a company which is incorporated or constituted under the law in force in any part of its territory, and in which an investor of the other Contracting Party owns shares, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to guarantee compensation as specified therein to such investor of the other Contracting Party who is the owner of those shares.

3. Without prejudice to the foregoing provisions of this Article, the investors of one Contracting Party shall, in respect of any matter dealt with therein, be accorded in the territory of the other Contracting Party treatment not less favourable than that accorded to the investors of the latter Contracting Party or of the most favoured nation.

4. The investors of either Contracting Party affected by expropriation or nationalization shall have a right, under the law of the other Contracting Party, to review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in paragraphs 1 and 2. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

ARTICLE 6
TRANSFER OF INVESTMENTS AND RETURNS

1. Each Contracting Party shall guarantee to the investors of the other Contracting Party the free transfer of the capital and of all the returns relating to their investments after the payments of usual taxes and costs.

2. The earnings of nationals of either Contracting Party who are allowed to work in connection with an investment in the territory of the other Contracting Party shall also be freely transferred in freely usable currency.

3. Transfers shall be made in a freely usable currency at the rate applicable on the day transfers are made.

4. The guarantees referred to in this Article shall at least be equal to those granted to the investors of the most favoured nation.

ARTICLE 7
SUBROGATION

1. If either Contracting Party or an agency designated by it makes payment to an investor under a policy of insurance covering non-commercial risks, which it has given in respect of any investment or any part thereof in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) the assignment, whether under law or pursuant to a legal transaction, of any right or claim from such an investor to the former Contracting Party or its designated agency; and

(b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of such an investor.

2. The former Contracting Party or its designated agency shall, accordingly, be entitled to assert, if it so desires, any such right or claim to the same extent as its predecessor in title.

3. If the former Contracting Party acquires amounts in the lawful currency of the other Contracting Party or credits thereof by virtue of an assignment under subparagraph (a) of paragraph 1 of this Article, such amounts and credits shall be freely available to the former Contracting Party for the purpose of meeting its expenditure in the territory of the latter Contracting Party.

ARTICLE 8
EXCEPTIONS

1. In all matters relating to the treatment of investments the investors of each Contracting Party shall enjoy most-favoured-nation treatment in the territory of the other Contracting Party.

2. The provisions of this Agreement relating to the grant of the most favoured nation treatment shall not be construed so as to oblige one Contracting Party the benefit of any treatment, preference or privilege which may be extended by the other Contracting Party by virtue of:

(a) the formation or extension of a custom union or a free trade area or a common external tariff area or a monetary union or a regional association for economic cooperation; or

(b) the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or

(c) any arrangement with a third country or countries in the same geographical region designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields; or

(d) any international agreement or arrangement, or any domestic legislation, relating wholly or mainly to taxation.

ARTICLE 9
MORE FAVOURABLE TREATMENT OF INVESTMENT

1. All the provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of the most favoured nation shall be interpreted as meaning that such treatment shall be accorded immediately and unconditionally.

2. Wherever this Agreement makes alternative provisions for the grant of national treatment or of treatment not less favourable than that accorded to the investors of the most favoured nation in respect of any matter, the option as between these alternatives shall rest with the beneficiary side in each particular case.

ARTICLE 10
DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultation or negotiation.

2. If a dispute between the Contracting Parties cannot thus be settled within six months, it shall at the request of either Contracting Party, be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case as follow:

(a) each Contracting Party shall appoint one member, and these two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal;

(b) the said members shall be appointed within two months, and the Chairman within four months, from the date on which either Contracting Party shall have informed the other Contracting Party that it proposes to submit the dispute to an arbitral tribunal.

4. If, within the periods specified in paragraph 3 of this this Article, the necessary appointments have not been made, either Contracting Party may, in the absence of any other relevant agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. (a) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Parties;

(b) Subject to the power of the arbitral tribunal to give a different ruling concerning costs, the cost of its own member and of its representation in the arbitral proceedings shall be borne by each Contracting Party and the cost of the Chairman and the remaining costs shall be borne in equal parts by the two Contracting Parties;

(c) In all respects other than those specified in subparagraphs (a) and (b) of this paragraph, the arbitral tribunal shall determine its own procedure.

ARTICLE 11
SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR OF ONE CONTRACTING PARTY AND THE OTHER CONTRACTING PARTY

1. Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall be settled amicably through consultation and negotiation.

2. If any such dispute cannot be settled within six months following the date on which the dispute has been raised through written notification, the dispute may, at the selection of the investor concerned, be submitted to arbitration:

(a) to the International Center for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of the other States, opened for signature at Washington D.C. on 18 March, 1965 (ICSID Convention), provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the ICSID Convention; or

(b) under the Additional Facility Rules of ICSID, provided that one of the Contracting Parties is a party to the ICSID Convention; or

(c) to an international arbitrator or ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The appointing authority under the UNCITRAL Rules shall be the Secretary-General of ICSID.

3. Any arbitration under paragraph 2 shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

4. In case the investor selects to submit the dispute to arbitration under the ICSID as stated in paragraph 2 (a), each Contracting Party shall give irrevocable consent to such submission in accordance with the provisions of the said Convention.

5. Each Contracting Party shall give irrevocable consent to the submission of any investment dispute for settlement by arbitration in accordance with the choice of the investor under paragraph 2 (b) and (c).

6. The consent given by each Contracting Party in paragraph 5 and the submission of the dispute by an investor under the said paragraphs shall satisfy the requirements of:

(a) The Additional Facility Rules of ICSID for written consent of the parties to a dispute; and

(b) Article I of the UNCITRAL Arbitration Rules for an agreement in writing on referral to arbitration by the parties to a contract; and

(c) Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, for "an agreement in writing".

7. 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.

8. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.

9. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason, that the indemnification or other compensation for all or part of the alleged damage has been received or will be received pursuant to an insurance or guarantee contract, but the Contracting Party may require evidence that the compensating party agrees to that the investor exercises the right to claim compensation.

ARTICLE 12
ENTRY INTO FORCE, DURATION AND TERMINATION

This Agreement shall be subject to ratification and the instruments of ratification shall be exchanged at Bangkok as soon as possible. The Agreement shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall remain in force for an initial period of ten years. It shall thereafter continue in force for renewable periods of ten years automatically, subject to the right of either Contracting Party to terminate it by twelve months' prior notice in writing to the other Contracting Party, which notice may be given at any time after the expiry of the ninth year. However, with respect to an investment approved while the Agreement is in force, its provisions shall continue to have effect for a period of ten years from the date of termination.

ARTICLE 13
FINAL PROVISION

This Agreement shall also apply to investments made before its entry into force by investors of one Contracting Party in accordance with the latter's laws and regulations.

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

Done in duplicate at **Brussels**, this **12th day of June** in the 2545 Year of the Buddhist era, corresponding to the 2002 Year of the Christian era, in the Thai, Dutch, French and English languages, all texts being equally authoritative. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND:

Thaksin Shinawatra,
Prime Minister

FOR THE BELGO-LUXEMBURG ECONOMIC UNION:

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:

Guy Verhofstadt,
Prime Minister

For the Walloon Government:

Guy Verhofstadt,
Prime Minister

For the Flemish Government:

Paul Van Grembergen
Minister of Home Affairs,
the Civil Service and Foreign Policy

For the Government of the Region of Brussels-Capital:

Guy Verhofstadt,
Prime Minister

ANNEX TO ARTICLE 2 (1) (a)

1. Competent Authority shall mean the Committee for Approval of Investment under the Agreement for the Promotion and Protection of Investments between the Kingdom of Thailand and other countries chair by the Ministry of Foreign Affairs.

2. Procedures for application of approval of investments are as follows:

(a) Investors of Belgium or Luxemburg shall submit the application for a certificate of approval of their investments to the Committee through the Ministry of Foreign Affairs giving full information on their investments,

(b) The Committee shall consider the application of the investors without undue delay and inform the result to the investors within a period of 60 days from the day of receiving the application. In exceptional cases, if the Committee deems it necessary, it may extend the time to consider the application of approval for another period of 60 days.

3. Investment projects which may be approved by the Committee are those which have the following characteristics, inter alia,:

(a) investment using mainly local contents;

(b) import substitution;

(c) labour intensive;

(d) export oriented;

(e) promoted investment such as pharmaceuticals, electronics, telecommunications, etc.;

(f) transfer of know-how and technology to Thai nationals.