



17 AOÛT 1988

Berne, le 22 juillet 1988

1329

Au Conseil fédéral

Accord de promotion et de protection réciproques des investissements (APPI) avec la Hongrie

Accord de promotion et de protection réciproques des investissements (APPI) avec la République Populaire Hongroise

Vu la proposition du DFEP du 22 juillet 1988;

Vu les résultats de la procédure de co-rapport, il est

décidé:

1. Le texte de l'accord paraphé le 29 juin 1988 entre la Suisse et la Hongrie relatif à la promotion et à la protection réciproques des investissements entre la Confédération suisse et la République populaire hongroise est approuvé.
2. Le Conseiller fédéral Jean-Pascal Delamuraz, ou le Secrétaire d'Etat Franz Blankart, ou l'Ambassadeur Silvio Arioli, Délégué aux accords commerciaux, signera l'accord, selon les circonstances et notamment en fonction du niveau auquel la délégation hongroise sera conduite.
3. La Chancellerie fédérale est chargée d'établir les pouvoirs pour la signature de l'accord, conformément aux instructions de l'OFAEE.
4. Le DFAE est chargé de procéder à la notification prévue à l'article 12, alinéa (1) de l'accord.
5. La Chancellerie fédérale est chargée de publier l'accord dans le recueil des lois.

Pour extrait conforme

Le secrétaire:

Protokollauszug an:

ohne / mit Beilage

Nr.	z.K.	Dep.	Anz.	Akten
	Y	EDA	10	-
		EDI		
	Y	EJPD	7	-
		EMD		
	Y	EFD	7	-
	Y	EVD	15	-
		EVED		
	Y	BK	6	-
		EFK		
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EIDGENÖSSISCHES VOLKSWIRTSCHAFTSDEPARTEMENT
 DÉPARTEMENT FÉDÉRAL DE L'ÉCONOMIE PUBLIQUE
 DIPARTIMENTO FEDERALE DELL'ECONOMIA PUBBLICA

Berne, le 22 juillet 1988

Au Conseil fédéral

Accord de promotion et de protection réciproques des investissements (APPI) avec la République Populaire Hongroise

1. Contexte général

Engagés dans les mutations qui caractérisent l'environnement politique général, les pays à économie planifiée membres du CAEM s'ouvrent, depuis quelques années déjà, progressivement mais résolument aux investissements étrangers. Ainsi, la plupart d'entre eux se sont-ils dotés de législations plus libérales en matière d'investissement étranger, qui prévoient, par exemple, une participation plus ou moins large au capital des entreprises nationales. Conscients désormais du rôle irremplaçable de la sécurité juridique et du climat d'investissement pour attirer les investisseurs étrangers dont ils ont un besoin urgent en raison de leurs difficultés économiques, ces pays se montrent plus perméables aux principes défendus par les pays industrialisés à économie de marché en matière d'investissement. Les perspectives de conclusion des APPI avec les pays du CAEM se sont, en conséquence, nettement améliorées.

Les milieux économiques de la zone OCDE portent un intérêt croissant - maintes fois exprimé en Suisse - au renforcement des liens économiques avec les pays du CAEM, comme en témoigne aussi la multiplication de leurs projets et réalisations dans ces pays.

La Suisse, engagée dans la négociation d'APPI avec des pays à commerce d'Etat dès le début des années 80, n'était alors ni satisfaite du cadre normatif proposé à ses investisseurs par ces pays, ni convaincue de la volonté suffisante de ces derniers d'améliorer en profondeur cet état de choses. Depuis, et malgré l'APPI conclu en 1986 avec la République populaire de Chine, nous accusons un certain retard dans ce domaine, par rapport à d'autres pays industrialisés de l'OCDE.

Suivant les vœux de notre économie et au vu des orientations et du climat d'investissement relativement libéral de

la Hongrie, le choix de ce pays nous paraît tout indiqué comme base de relance de nos efforts pour une protection suffisante des investissements suisses dans les pays du CAEM. L'oeuvre de longue haleine à laquelle nous donnons cette première et solide impulsion, si ce ne devait être à titre de modèle, du moins à celui de stimulation (l'APPI paraphé le 29.6.1988 avec la Hongrie est comparable à nos meilleurs APPI), sera étayée pas à pas, en contact étroit et régulier avec les milieux concernés de notre économie.

Jusqu'à présent, la Suisse a conclu avec 39 Etats des APPI ou des accords comportant une clause relative à la protection des investissements. En outre, des pourparlers et négociations sont en cours avec d'autres pays désireux de conclure un tel traité avec notre pays.

2. Contenu de l'APPI paraphé avec la Hongrie

Les APPI conclus jusqu'ici et envisagés par la Suisse concordent dans une large mesure quant à leur contenu. Le texte conventionnel négocié avec la Hongrie retient les principes fondamentaux défendus par la Suisse dans ce domaine. Ainsi, les principes fixés dans la délégation de compétence à conclure des APPI - "avec des pays en développement ou avec d'autres Etats" - du Parlement au Conseil fédéral (AF du 27 septembre 1963, RS 975 et message du Conseil fédéral du 24 mai 1963) sont-ils respectés.

Les dispositions les plus importantes du présent accord règlent les points suivants:

Article 1^{er}, alinéa (1)

Définition de l'investisseur

Pour une société, la qualité d'investisseur est fonction des deux critères alternatifs suivants: son incorporation et son siège, d'une part, son contrôle, d'autre part.

Article 2

Champ d'application

Tombent sous le champ d'application de l'accord, les investissements liés à une activité économique et effectués dès le 1er janvier 1973, date de l'ouverture de la Hongrie aux investissements étrangers (alinéa (1)). Cependant, l'accord n'affectera pas les droits et obligations des Parties Contractantes liés à des investissements qui ne tomberaient pas sous son champ d'application (alinéa (2)).

Article 3

Encouragement et admission

Une fois un investissement étranger admis sur le territoire d'une partie Contractante, celle-ci délivre toute autorisation réclamée par l'investissement.

Article 4, alinéa (1)

Protection

Dès l'admission d'un investissement étranger sur son territoire, chaque Partie Contractante en assume la protection sur une base non discriminatoire.

Article 4, alinéa (2)

Traitement

Chaque Partie Contractante assure sur son territoire un traitement juste et équitable aux investissements des investisseurs de l'autre Partie Contractante. Ce traitement ne doit pas être moins favorable que celui accordé aux investissements effectués sur son territoire par ses propres investisseurs. En outre, si le traitement accordé aux investisseurs de la nation la plus favorisée devait être plus favorable encore, c'est ce traitement qui serait accordé.

Le Protocole à l'accord précise de surcroît que le traitement selon l'Article 4 de l'accord doit aussi être accordé aux investissements - pris comme un tout - auxquels participent des investisseurs des deux Parties Contractantes (joint ventures).

Article 5

Libre transfert

"Libre transfert" signifie qu'un transfert des paiements afférents aux investissements doit être effectif, avoir lieu sans retard injustifié et dans une monnaie convertible.

Article 6

Expropriation et compensation

Toute mesure d'expropriation ou de nationalisation doit être conforme aux prescriptions légales et non discriminatoire. Elle ne saurait être motivée par des raisons autres que l'intérêt public et entraînera le paiement d'une indemnité effective et adéquate, dont le montant sera réglé sans retard et sera librement transférable.

Article 9

Arbitrage entre Parties Contractantes

Une procédure d'arbitrage est prévue en cas de différends sur l'interprétation ou l'application de l'accord.

Article 10

Arbitrage entre une Partie Contractante et un investisseur de l'autre Partie Contractante.

L'investisseur peut porter une contestation relative à l'article 6 (par ex.: expropriation, compensation) devant le Centre international pour le règlement des différends relatifs aux investissements (CIRDI), institué par la Convention de Washington pour le règlement des différends relatifs aux investissements entre Etats et ressortissants d'autres Etats (alinéa (2), lettre a)). Tout autre différend pourra aussi être soumis au CIRDI, si les parties concernées en conviennent (alinéa (2), lettre b)).

4. Constitutionnalité de l'accord

L'article 8 de la constitution fédérale donne à la Confédération la compétence de conclure des traités internationaux.

En vertu de l'article premier de l'arrêté fédéral du 27 septembre 1963 (RS 975), le Conseil fédéral est autorisé à conclure de sa propre compétence des accords de protection et d'encouragement des investissements de capitaux.

5. Conséquences financières et effets sur l'état du personnel

La conclusion du présent accord avec la Hongrie n'impose aucune charge à la Confédération et n'entraîne pas d'augmentation du personnel.

6. Prise de position des offices intéressés

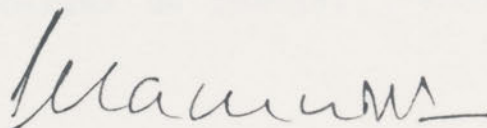
La Chancellerie fédérale, l'Office fédéral de la justice, la Direction du droit international public et l'Administration fédérale des contributions

sont d'accord avec la présente proposition.

7. Proposition

Nous fondant sur ces considérations, nous vous soumettons la proposition ci-jointe.

DEPARTEMENT FEDERAL DE L'ECONOMIE PUBLIQUE



Annexes- Projet de décision du Conseil fédéral

- Accord de promotion et de protection réciproques des investissements avec la République Populaire Hongroise (en anglais, langue dans laquelle l'accord a été négocié, puis paraphé; les versions française et hongroise de l'accord sont en préparation, de concert avec les autorités hongroises).

Pour co-rapport à: et de protection réciproques des

- CHf
- DFJP
- DFAE
- DFF

Extrait du procès-verbal à: 29 juillet 1988

- DFEP en 15 ex. (7 ex. SG, 8 ex. OFAEE)
- DFJP en 10 ex.
- DFAE en 10 ex.
- DFF en 10 ex.

décidé:

1. Le texte de l'accord paraphé le 29 juin 1988 entre la Suisse et la Hongrie relatif à la promotion et à la protection réciproques des investissements entre la Confédération suisse et la République Populaire Hongroise est approuvé.
2. Le Chef de la délégation hongroise étant un vice-ministre, l'Ambassadeur Silvio Arioli, Délégué aux accords commerciaux, est chargé de signer l'accord. Au cas où la délégation hongroise serait conduite à plus haut niveau, le Secrétaire d'Etat Franz Blankart signera l'accord.
3. La Chancellerie fédérale est chargée d'établir les pouvoirs pour la signature de l'accord, conformément aux instructions de l'OFAEE.
4. Le DFAE est chargé de procéder à la notification prévue à l'article 12, alinéa (1) de l'accord.
5. La Chancellerie fédérale est chargée de publier l'accord dans le recueil des lois.

Pour extrait conforme

Le secrétaire:

Accord de promotion et de protection réciproques des investissements (APPI) avec la Hongrie

Vu la proposition du DFEP du 22 juillet 1988

Vu les résultats de la procédure de co-rapport, il est

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5. La Chancellerie fédérale est chargée de publier l'accord dans le recueil des lois.

Pour extrait conforme

Le secrétaire:

Preamble

The Swiss Federal Council and the Government of
the Hungarian People's Republic,

Agreement

Desiring to intensify economic cooperation to the
mutual benefit of both States,

the Swiss Confederation

intending to create and maintain favourable con-
ditions for investments by investors of one Con-
tracting Party **the Hungarian People's Republic**
Contracting Party,

on the Reciprocal Promotion and Protection

Recognizing the need to promote and protect
foreign investments with **of Investments** foster the
economic prosperity of both States,

have agreed as follows:

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Article 1Preamble

For the purpose of this Agreement:

The Swiss Federal Council and the Government of the Hungarian People's Republic,

a) natural persons who, according to the law of the Contracting Party, are domiciled in the territory of that Contracting Party;
Desiring to intensify economic cooperation to the mutual benefit of both States,

b) legal entities, including companies, corporations, associations, trusts, etc., which have their seat, together with real economic activities, in the territory of that same Contracting Party;
Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States, of indirectly, controlled by nationals of that Contracting Party or by legal entities having their seat, in the territory of that Contracting Party,

Have agreed as follows:

(1) The term "investments" shall include every kind of assets and particularly:

a) movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges;

b) shares, parts or any other kinds of participation in companies;

Article 1

Article 1

c) claims to know-how, performance having an economic value;

For the purpose of this Agreement:

(1) The term "investor" refers with regard to either Contracting Party to

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

b) legal entities, including companies, corporations, business associations and other organisations, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party;

c) legal entities established under the law of any country which are, directly or indirectly, controlled by nationals of that Contracting Party or by legal entities having their seat, together with real economic activities, in the territory of that Contracting Party.

(2) The term "investments" shall include every kind of assets and particularly:

a) movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens, pledges;

b) shares, parts or any other kinds of participation in companies;

By wf

Article 1

Article 3

c) claims to money or to any performance having an economic value;

Each Contracting Party shall in its territory pro-

d) copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how and goodwill;

e) concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.

licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting

Party shall, when Article 2, endeavor to issue the necessary authorizations concerning the

activities of other qualified persons of foreign nationality.

Article 2Scope of application

- (1) The present Agreement shall apply to investments in the territory of one Contracting Party, made in accordance with its laws and regulations, by investors of the other Contracting Party if such investments are connected with an economic activity and have been effectuated later than 31 December 1972.
- (2) The present Agreement shall not affect the rights and obligations of the Contracting Parties with respect to investments that are not within the scope of the Agreement.

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Article 3

Promotion and admission of investments

- (1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.
- (2) When a Contracting Party shall have admitted an investment in its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, endeavor to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality.

Article 4

Protection and treatment of investments

- (1) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and, should it so happen, liquidation of such investments.

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Article 4

(2) Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made in its territory by its own investors, or than that granted by each Contracting Party to the investments made in its territory by investors of the most favoured nation, if this latter treatment is more favourable.

(3) The treatment of the most favoured nation shall not apply to privileges which either Contracting Party accords to investors of a third State because of its membership in, or association with a free trade area, a customs or an economic union.

Expropriation and compensation

Article 5

(1) Neither of the Contracting Parties shall take, either directly or indirectly, any measure of expropriation, nationalization or any other measure

Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of the payments relating to these investments, particularly:

- that provisions be made for effective and adequate
- a) of interests, dividends, benefits and other current returns;
 - b) of repayments of loans;

settled in the currency of the country of origin of the investment and paid without delay to the investor, without prejudice to its domicile.

Handwritten signature

Article 5

- c) of amounts assigned to cover expenses relating to the management of the investment;
- d) of royalties and other payments deriving from rights enumerated in Article 1, paragraph (2), letters c), d) and e) of this Agreement;
- e) of additional contributions of capital necessary for the maintenance or development of the investment;
- f) of the proceeds of the sale or of the partial or total liquidation of the investment, including capital appreciation.

Article 6

Expropriation and compensation

- (1) Neither of the Contracting Parties shall take, either directly or indirectly measures of expropriation, nationalization or any other measure having the same nature or the same effect against investments belonging to investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. The amount of compensation, interest included, shall be settled in the currency of the country of origin of the investment and paid without delay to the person entitled thereto, without regard to its residence or domicile.

Article 6

Article 9

- (2) The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place in the territory of the other Contracting Party shall benefit, on the part of this latter, from a treatment in accordance with Article 4, paragraph (2) of this Agreement as regards restitution, idemnification, compensation, or other valuable consideration.

Article 7**More favourable provisions**

If provisions which have been or will be agreed upon by either of the Contracting Parties with an investor of the other Contracting Party entitle the investor to a treatment more favourable than is provided for by the present Agreement, those provisions shall prevail over the terms set forth by this Agreement.

Article 8**Subrogation**

Where one Contracting Party has granted any financial guarantee against non-commercial risks with regard to an investment by an investor in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party.

81 12/1

Article 9

Article 9

- (3) (1) In the cases specified under paragraphs (3) and (4) the **Settlement of disputes between Contracting Parties** is prevented from carrying out the said function or if he is a
- (1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels. Contracting Party, the appointment shall be made by the most senior Judge of the Court who is
- (2) If both Contracting Parties cannot reach an agreement within twelve months after the beginning of the dispute between themselves, the latter shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.
- (3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice. ing disputes with respect to investments between a Contracting Party and an
- (4) If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.
- (2) If these consultations do not result in a solution within six months, the parties to the dispute may proceed as follows:

Article 9

- (5) If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.
- (6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.
- (7) The decisions of the tribunal are final and binding for each Contracting Party.

Article 10

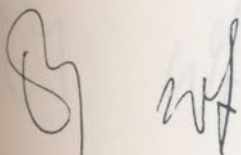
Settlement of disputes between a Contracting Party and an investor of the other Contracting Party

- (1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party and without prejudice to Article 9 of this Agreement (Settlement of disputes between Contracting Parties), consultations will take place between the parties concerned.
- (2) If these consultations do not result in a solution within six months, the parties to the dispute may proceed as follows:

Article 10

Article 11

- a) A dispute concerning Article 6 of this Agreement shall upon request of the investor be submitted to the International Centre for the Settlement of Investment Disputes instituted by the Convention of Washington of March 18, 1965, on the settlement of investment disputes between States and nationals of other States.
- b) In the event of a dispute not referred to in paragraph (2), letter a) of this Article the dispute shall be submitted, upon agreement on such submission by both parties to the dispute, to the International Centre for the Settlement of Investment Disputes. *ve notified each other that they have complied with the constitutional*
- (3) Should the parties to the dispute disagree on whether the conciliation or arbitration is the most appropriate procedure, the investor shall have the choice. The Contracting Party which is party to the dispute can, at no time whatever during the settlement procedure or the execution of the sentence, allege the fact that the investor has received, by virtue of an insurance contract, a compensation covering the whole or part of the incurred damage. *Agreement, the provisions of Articles 1 to 11 shall continue to be effective for*
- (4) A company which has been incorporated or constituted according to the laws in force in the territory of the Contracting Party and which, prior to the origin of the dispute, was under the control of nationals or companies of the other Contracting Party, is considered, in the sense of the Convention of Washington and according to its Article 25 (2) (b), as a company of the latter.



Article 11**Observance of commitments**

Either Contracting Party shall constantly guarantee the observance of the commitments it has entered into with respect to the investments of the investors of the other Contracting Party.

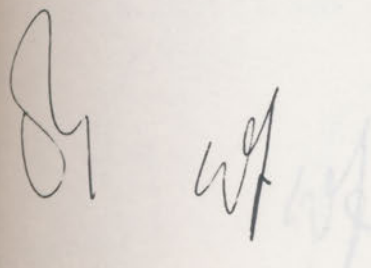
Article 12**Final provisions** For the Government
of the Hungarian

- (1) This Agreement shall enter into force on the day when both Governments have notified each other that they have complied with the constitutional requirements for the conclusion and entry into force of international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of five years, and so forth.
- (2) In case of official notice as to the termination of the present Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

*

*

*



Protocol

Done at , on , in
 two originals, in the Hungarian, French and English
 languages, each text being equally authentic.
 The undersigned plenipotentiaries have, in addition,
 agreed on the following provisions, which shall be
 regarded as an integral part of the said Agreement.

Article 1

For the Swiss Federal
 Council

For the Government
 of the Hungarian
 People's Republic

- b) Investors referred to in Article 1, paragraph (1),
 letter c) may not raise a claim based on Article 6
 of this Agreement if compensation has been paid
 pursuant to a similar provision in another invest-
 ment Protection Agreement concluded by the Con-
 tracting Party in the territory of which the in-
 vestment has been made.

Article 4

- a) It is understood that the treatment provided for by
 this Article shall be accorded to investments
 having the form of legal entities in which inves-
 tors of both Contracting Parties participate.

- b) Membership in an "economic union" includes member-
 ship in the Council for Mutual Economic Assistance
 (CMEA).

Protocol

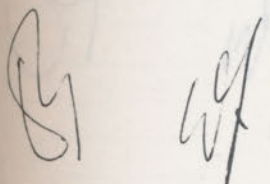
On signing the Agreement between the Swiss Confederation and the Hungarian People's Republic on the Reciprocal Promotion and Protection of Investments, the undersigned plenipotentiaries have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the said Agreement.

Ad Article 1

- a) An investor according to Article 1, paragraph (1), letter c) may be required to submit proof of such control in order to be recognized by the Contracting Party in the territory of which the investment has been or is to be made as an investor of the other Contracting Party.
- b) Investors referred to in Article 1, paragraph (1), letter c) may not raise a claim based on Article 6 of this Agreement if compensation has been paid pursuant to a similar provision in another Investment Protection Agreement concluded by the Contracting Party in the territory of which the investment has been made.

Ad Article 4

- a) It is understood that the treatment provided for by this Article shall be accorded to investments having the form of legal entities in which investors of both Contracting Parties participate.
- b) Membership in an "economic union" includes membership in the Council for Mutual Economic Assistance (CMEA).

Two handwritten signatures in blue ink are located at the bottom left of the page. The first signature is a stylized 'G' or 'S', and the second is a more complex, cursive signature.