

AGREEMENT

between the Government of the Republic of Austria and the Federal Government of the Federal Republic of Yugoslavia for the Reciprocal Promotion and Protection of Investments

THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA

hereinafter referred to as “Contracting Parties”,

DESIRING to create favourable conditions for greater economic co-operation between the Contracting Parties,

DESIRING to create and maintain favourable conditions for reciprocal investments,

RECOGNIZING that promotion and protection of investments may strengthen the readiness for such investments and hereby make an important contribution to the development of economic relations,

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

For the purpose of this Agreement

(1) the term “investment” comprises all assets invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and in particular, though not exclusively:

- (a) movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges, usufructs and similar rights;
- (b) shares, bonds and any other kind of securities or participations in an enterprise;
- (c) claims to money, claims to any performance or any other claim under contract having an economic value;
- (d) intellectual and industrial property rights, including, but not limited to, copyright, trademarks, patents, industrial designs and technical processes, know-how, trade secrets, trade names and goodwill;
- (e) concessions granted in accordance with the laws and regulations of the Contracting Party in the territory whereof the investment is being made.

(2) the term “investor” means

- (a) any natural person having the nationality of one Contracting Party and making an investment in the other Contracting Party’s territory;
- (b) any juridical person or partnership, constituted in accordance with the legislation of one Contracting Party, having its seat in the territory of that Contracting Party and making an investment in the other Contracting Party’s territory;
- (c) any juridical person or partnership, constituted in accordance with the legislation of one Contracting Party or of a third Party in which the investor referred to in a) or b) exercises a dominant influence.

(3) the term “returns” means the amounts yielded by an investment, and in particular, though not exclusively, profits, interests, capital gains, dividends, royalties, patent and licence fees and other similar fees.

(4) the term “territory” means the area encompassed by land boundaries as well as the sea, marine and submarine zones beyond the territorial sea over which the Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2

Promotion and Protection of Investments

(1) Each Contracting Party shall in its territory encourage and create, as far as possible, stable, equitable, favourable and transparent conditions for investments of investors of the other Contracting Party and admit such investments in accordance with its legislation.

(2) Investments admitted according to paragraph (1) and their returns shall at all times be accorded fair and equitable treatment and shall enjoy the full protection of the present Agreement. The same applies without prejudice to the regulations of paragraph (1) also for their returns in case of reinvestment of such returns.

(3) Any change in the form in which assets are invested including legal extension, alteration or transformation thereof shall not affect their character as investments provided that such change is made in accordance with the legislation of the host Contracting Party.

Article 3

Treatment of Investments

(1) Each Contracting Party shall accord to investors of the other Contracting Party and their investments treatment no less favourable than that accorded to its own investors and their investments or to investors of any third State and their investments.

(2) The provisions of paragraph (1) shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the present or future benefit of any treatment, preference or privilege resulting from:

- (a) membership in an economic union, customs union, free trade zone, monetary union or similar international agreement establishing such unions or other forms of international cooperation including Multilateral Agreement on Investment to which either of the Contracting Parties is or may become a party, or
- (b) any international agreement, international arrangement or domestic legislation on the basis of reciprocity related wholly or partially to taxation.

Article 4

Expropriation and Compensation

(1) Investments of investors of either Contracting Party shall not be expropriated, nationalized or subjected to measures having effect equivalent to expropriation or nationalization (hereinafter referred to as “expropriation”) in the territory of the other Contracting Party except for a public purpose by due process of law on a non-discriminatory basis and against compensation.

(2) Such compensation shall be equivalent to the fair market-value of the investment, as determined in accordance with generally recognized principles of valuation immediately prior to or at the time when the decision for expropriation was announced or became publicly known, whichever is the earlier. In the event that the payment of compensation is delayed, such compensation shall be paid in an amount which would put the investor in a position not less favourable than the position in which he would have been had the compensation been paid immediately on the date of expropriation. To achieve this goal the compensation shall include interest at the prevailing commercial rate, however, in no event less than the current LIBOR-rate or equivalent from the date of expropriation until the date of payment. The amount of compensation finally determined shall be promptly paid to the investor in freely convertible currencies and allowed to be freely transferred without undue delay. Provisions for the determination and payment of such compensation shall be made under due process of law in an appropriate manner not later than at the moment of the expropriation.

(3) The investor affected shall have a right to prompt review, by a judicial or other competent and independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment and of the payment of compensation in accordance with the principles set out in this Article or by an international arbitral tribunal according to Article 9 of the present Agreement.

Article 5

Compensation for Damage or Loss

(1) When investments made by investors of either Contracting Party suffer damage or loss owing to war or other armed conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party, treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that the latter Contracting Party accords to its own investors or investors of any third state, whichever is the most favourable.

(2) Without prejudice to paragraph 1, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

- (a) requisitioning of their property or part thereof by the forces or authorities of the latter Contracting Party, or
- (b) destruction of their property or part thereof by the forces or authorities of the latter Contracting Party which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded prompt restitution or prompt and adequate compensation where restitution is not possible for the damage or loss sustained. Resulting payments shall be made in a freely convertible currency and be freely transferable without undue delay.

Article 6

Transfers

(1) Each Contracting Party shall guarantee without undue delay to investors of the other Contracting Party free transfer in freely convertible currency of payments in connection with an investment, in particular but not exclusively, of

- (a) the initial capital and additional amounts for the maintenance or extension of the investment;
- (b) unspent earnings of the employees of one Contracting Party working in connection with the investment in the territory of either Contracting Party;
- (c) the returns;
- (d) the repayment of loans;
- (e) the proceeds from total or partial liquidation or sale of the investment;
- (f) a compensation according to Articles 4 and 5 of the present Agreement;
- (g) payments arising out of a settlement of a dispute.

(2) “Without undue delay” means such period as is normally required for the completion of necessary formalities for the transfer of payments. The said period shall commence on the day on which the request for transfer has been submitted and may on no account exceed one month.

(3) The payments referred to in this Article shall be effected at the exchange rates prevailing on the day of the transfer of payments in the territory of the Contracting Party from which the transfer is made.

(4) The rates of exchange shall be determined according to the quotations on the stock exchanges on the territory of each Contracting Party or in the absence of such quotations by the respective banking system in the territory of each of the Contracting Parties. The bank charges shall be fair and equitable.

Article 7

Subrogation

(1) If one Contracting Party or its designated Agency makes a payment to its own investors under a guarantee given in respect of an investment in the territory of the other Contracting Party, the other Contracting Party shall, without prejudice to the rights of the investor of the first Contracting Party under Article 9 of the present Agreement and to the rights of the first Contracting Party under Article 10 of the present Agreement, recognize:

- (a) the assignment to the first Contracting Party or its authorized Agency by law or by legal transaction of any rights and claims of the indemnified investor, and
- (b) that the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, and shall assume obligations pertaining to the investments.

(2) The rights or claims so subrogated shall not exceed the original rights or claims of the investor.

(3) As regards the transfer of payments to the Contracting Party concerned by virtue of such assignment, Article 6 of the present Agreement shall apply *mutatis mutandis*.

Article 8

Other Obligations

(1) If the provisions of law of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to the present Agreement, contain a

rule, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rule shall to the extent that it is more favourable prevail over the present Agreement.

(2) Each Contracting Party shall respect any contractual obligation it may have entered into towards an investor of the other Contracting Party with regard to investments approved by it in its territory in accordance with its legislation.

Article 9

Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) Any dispute between an investor of one Contracting Party and the other Contracting Party concerning the obligations of the latter arising from an investment made by the investor of the first Contracting Party, shall be settled, as far as possible, through amicable negotiations.

(2) If the dispute according to paragraph (1) of this Article cannot be settled by negotiations within three months, the investor may submit the dispute for settlement to a competent court of the Contracting Party which is party to the dispute.

(3) Instead of resorting to the provisions of paragraph (2) of this Article, the investor may choose to submit the dispute for settlement through arbitration to:

- (a) an ad-hoc arbitral tribunal according to the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL);
- (b) the International Centre for Settlement of Investment Disputes, in the event that both Contracting Parties are parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on March 18th, 1965 (ICSID Convention).

(4) Each Contracting Party, by this Agreement irrevocably consents in advance, even in the absence of an individual arbitral agreement between the Contracting Party and the investor, to submit any such disputes to international arbitration, if the investor so chooses. This consent implies the renunciation of the requirement that the internal administrative or juridical remedies should be exhausted.

(5) The award shall be final and binding; it shall be executed according to national law; each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and regulations.

(6) A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received by virtue of a guarantee indemnity in respect of all or some of its losses.

Article 10

Settlement of Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through amicable negotiations.

(2) If a dispute according to paragraph (1) cannot be settled within six months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member and these two members shall agree upon a national of a third State as their chairman. Such members shall be appointed within two months from the date one Contracting Party has informed the other Contracting Party, that it intends to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two further months.

(4) If the periods specified in paragraph (3) are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

(5) The tribunal shall establish its own rules of procedure.

(6) The arbitral tribunal shall reach its decision in virtue of the present Agreement and pursuant to the generally recognized rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

(7) Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

Article 11

Application of the Agreement

(1) This Agreement shall apply to investments made in the territory of one of the Contracting Parties in accordance with its legislation by investors of the other Contracting Party prior to as well as after the entry into force of this Agreement.

(2) If this Agreement is incompatible with the legal acquis of the European Union the Contracting Parties will amend the Agreement as necessary.

Article 12

Entry into Force and Duration

(1) This Agreement is subject to ratification and shall enter into force on the first day of the third month that follows the month during which the instruments of ratification have been exchanged.

(2) This Agreement shall remain in force for a period of ten years; it shall be extended thereafter for an indefinite period and may be denounced in writing through diplomatic channels by either Contracting Party giving twelve months' notice.

(3) In respect of investments made prior to the date of termination of the present Agreement the provisions of Article 1 to 10 of the present Agreement shall continue to be effective for a further period of ten years from the date of termination of the present Agreement.

(4) The entry into force of this Agreement between the Government of the Republic of Austria and the Federal Government of the Federal Republic of Yugoslavia shall terminate the provisions of the Agreement on the Promotion and Protection of Investments between the Republic of Austria and the Socialist Federative Republic of Yugoslavia, signed in Belgrade, on 25 October 1989.

DONE in Belgrad, on 12 October 2001, in duplicate, in the German, Serbian and English languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

For the Government of the Republic of Austria:

Wolfgang Schüssel

For the Federal Government of the Federal Republic of Yugoslavia:

Dragisa Pesic

Die vom Bundespräsidenten unterzeichnete und vom Bundeskanzler gegengezeichnete Ratifikationsurkunde wurde am 24. Mai 2002 ausgetauscht; das Abkommen tritt gemäß seinem Art. 12 Abs. 1 mit 1. August 2002 in Kraft.

Schüssel