

AGREEMENT

BETWEEN THE FEDERAL REPUBLIC OF YUGOSLAVIA AND THE KINGDOM OF SPAIN ON PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Federal Republic of Yugoslavia and the Kingdom of Spain (hereinafter referred to as the "Contracting Parties"),

Desiring to intensify economic cooperation between both Contracting Parties,

Intending to create favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party,

Convinced that the promotion and reciprocal protection of investments under this Agreement will stimulate initiatives in this field,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean any kind of assets invested by investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of that Contracting Party and in particular, though not exclusively, shall include:

(a) - movable and immovable property and any other property rights such as mortgages, liens, pledges and similar rights;

(b) - shares, bonds, securities of companies and any other form of participation in companies and business enterprises;

(c) - claims to money or to any performance under contract having economic value and related to the investment;

(d) - rights in the field of intellectual and industrial property, technical processes, know-how and goodwill;

(e) rights that follow economic and commercial activities conferred by law or by virtue of a contract, including concessions to search for, cultivate, extract and exploit natural resources.

Investments made in the territory of one Contracting Party by any legal person or entity of that same Contracting Party which is owned or controlled by investors of the other Contracting Party shall likewise be considered as investments of investors of the other Contracting Party if they have been made in accordance with the laws and regulations of that Contracting Party.

Any alteration of the form in which assets are invested shall not affect their character as investments.

2. The term "investor" shall mean:

(a) - a natural person having the nationality of one Contracting Party according to the law of that Contracting Party;

(b) - a legal person or entity constituted or otherwise duly organised according to the applicable law of one Contracting Party and having its seat in the territory of that same Contracting Party.

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

4. The term "territory" shall mean the land territory, the internal waters and the territorial sea of each of the Contracting Parties, as well as the exclusive economic zone and the continental shelf that extend outside the limits of the territorial sea of each Contracting Party, over which it exercises or may have jurisdiction or sovereign rights in accordance with international law and its applicable national legislation.

Article 2

Promotion and Admission of Investments

1. Each Contracting Party shall, in its territory, to the extent possible, promote investments by investors of the other Contracting Party. Each Contracting Party shall admit such investments in accordance with its laws and regulations.

2. When a Contracting Party admits an investment in its territory, it shall, in accordance with its laws and regulations, grant the necessary consents in connection with such an investment, taking into account the licencing agreement and contracts on technical, commercial and administrative assistance. Each Contracting Party shall accept to issue the necessary certificates concerning the activities of consultants and other qualified persons, regardless of their nationality.

3. Each Contracting Party shall support the opportunities for facilitating, according to its laws and regulations, the entry, stay and work in its territory of nationals of the other Contracting Party and of personnel employed by investors of the other Contracting Party for the purpose of promotion of activities related to the investment.

Article 3

Protection

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall enjoy fair and equitable treatment and full protection and security. In no case shall a Contracting Party accord to such investments treatment less favourable than that provided for by international law.

2. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments. Each Contracting Party shall observe any obligation it may have entered into in writing with regard to investments of investors of the other Contracting Party.

Article 4

National Treatment and Most Favoured Nation Treatment

1. Each Contracting Party shall accord, in its territory, to investments made by investors of the other Contracting Party treatment no less favourable than that which it accords to the investments made by its own investors or by investors of any third State, whichever is more favourable to the investor concerned.

2. Each Contracting Party shall guarantee, in its territory, to investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investor concerned.

3. The treatment guaranteed under paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the benefit of any treatment, preference or privilege resulting from:

(a) - its membership of, or association with, any existing or future free trade area, customs, economic or monetary union or other similar international agreement including other forms of regional economic organisation, or

(b) - any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 5

Expropriation

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation"), except for public interest, with due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation.

2. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier (hereinafter referred to as the "valuation date").

3. Such market value shall be expressed in a freely convertible currency at the market rate of exchange applicable for this currency on the valuation date. Compensation shall include interest calculated at a market rate of exchange for the currency established, from the date of expropriation until the date of payment. Compensation shall be paid without delay, it shall be possible to realise

it in cash and it shall be freely transferable.

4. The investor affected shall, under the laws and regulations of the Contracting Party making the expropriation, have the right to prompt review of its case by a judicial or other competent and independent authority of that Contracting Party, including the valuation of its investment and payment of compensation, in accordance with the principles set out in this Article.

Article 6

Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or to other armed conflict, state of emergency, revolution, insurrection, civil disturbance or any other similar event, shall be accorded by the other Contracting Party treatment, as regards compensation, indemnification, restitution or other settlement, no less favourable than that which the other Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investor concerned. Resulting payments shall be made without delay and shall be freely transferable.

2. Without prejudice to paragraph 1 of this Article, investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers losses in the territory of the other Contracting Party resulting from:

(a) - requisitioning of their investment or part thereof by forces or authorities of the other Contracting Party; or

(b) - destruction of their investment or part thereof by forces or authorities of the other Contracting Party, which was not required by the necessity of the situation, shall be accorded restitution and compensation which in either case shall be prompt, adequate and effective. Resulting payments shall be made without delay and shall be freely transferable.

Article 7

Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments related to their investments. Such transfers shall include, in particular, though not exclusively:

- a) principal capital and additional amounts to maintain or increase investments;
- b) investment returns, as defined in Article 1;
- c) funds from repayment of loans related to investment;
- d) compensations paid under Articles 5 and 6 of this Agreement;
- e) proceeds from the total or partial sale or liquidation of the investment;
- f) unspent earnings and other remuneration of personnel engaged from abroad in connection with investment;
- g) payments arising out of settlement of disputes under Articles 10 and 11.

2. Transfers under this Agreement shall be made without delay, in a freely convertible currency, at the market rate of exchange applicable on the date of transfer.

Article 8

Application of other Provisions

1. If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in accordance with this Agreement contain a provision, general or particular, entitling investments by investors of the other Contracting Party to a treatment more favourable than that provided for by this Agreement, such provision shall, to the extent that it is more favourable, prevail over this Agreement.

2. Nothing in this Agreement shall affect the provisions of international agreements related to intellectual and industrial property rights in force on the date of its signing.

Article 9

Subrogation

1. If one Contracting Party or its designated Agency makes a payment under indemnification, guarantee or contract on insurance against non-commercial risks given for an investment made by its investors in the territory of the other Contracting Party, the second Contracting Party shall recognise the assignment of any right or claim of such investor of the first Contracting Party or its designated Agency and the right of the first Contracting Party or its designated Agency to exercise, by virtue of subrogation, any such right and claim to the same extent as its predecessor in title. This subrogation shall make it possible for the second Contracting Party or its designated Agency to be the direct beneficiary of any payment for indemnification or other compensation to which the investor could be entitled to.

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, whenever possible, be settled through the diplomatic channel.

2. If a dispute between the Contracting Parties cannot be settled in this way within six months from the date of starting the negotiations, it shall, upon the request of either Contracting Party, be submitted for settlement to an arbitral tribunal.

3. The arbitral tribunal shall be constituted in the following way: each Contracting Party shall appoint one member of the tribunal and these two members shall select the third member - a national of a third State, as Chairman. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either of the Contracting Parties informed the other Contracting Party of its intention to submit the dispute for settlement to an arbitral tribunal.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other 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 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. The arbitral tribunal shall reach decisions on the basis of compliance with the law, the provisions of this Agreement as well as the generally accepted principles of international law.

6. Unless the Contracting Parties decide otherwise, the arbitral tribunal shall lay down its own work procedure.

7. The arbitral tribunal shall reach the decision by a majority of votes and this decision shall be final and binding on both Contracting Parties.

8. Each Contracting Party shall bear the costs of its own representative and his participation in the arbitration proceedings. The other costs, including those of the Chairman, shall be borne in equal parts by the two Contracting Parties.

Article 11

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

1. Disputes between an investor of one Contracting Party and the other Contracting Party concerning an investment, under this Agreement, shall be noted in writing by the investor of the other Contracting Party. The parties shall, to the extent possible, endeavour to settle these disputes amicably, by negotiations.

2. If these disputes cannot be settled amicably within six (6) months from the date of the written notification mentioned in paragraph 1, the dispute may be submitted for settlement, at the choice of the investor, to:

- a competent court of the Contracting Party in whose territory the investment is made, or
- an ad hoc tribunal of arbitration established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
- the International Centre for the Settlement of Investment Disputes (ICSID) set up by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18th March 1965, in case both Contracting Parties are members/parties of this Convention.

3. The award shall be based on the provisions of this Agreement, the national law of the Contracting Party in whose territory the investment is made, including the provisions related to conflict of law, as well as the rules and generally accepted principles of international law if they may be applied.

4. A Contracting Party shall not put forward the objection that indemnification or other

compensation for all or part of the damage has been received or will be received by the investor on the basis of guarantee or insurance contract.

5. The arbitration awards shall be final and binding on both parties to the dispute. Each Contracting Party shall monitor the execution of the decisions in accordance with its national law.

Article 12

Application of the Agreement

This Agreement shall apply to any investments made by investors of one Contracting Party in the territory of the other Contracting Party prior to or after its entry into force.

Article 13

Entry into Force, Duration and Termination of the Agreement

1. This Agreement shall enter into force on the date on which the Contracting Parties notify each other of the completion of their applicable constitutional procedures required for the entry into force of international agreements.

2. This Agreement shall remain in force for a period of ten years. Thereafter it shall automatically continue in force unless notice of termination is given in writing by one Contracting Party to the other Contracting Party of its intention to terminate this Agreement twelve months prior to expiration. After the expiration of the initial period of ten years, this Agreement may be denounced at any time by either Contracting Party, by giving written notice to the other Contracting Party twelve months prior to its expiry.

3. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 12 shall remain in force for a period of the following 10 years from the date of notice of cancellation of this Agreement.

In witness whereof, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Madrid, on 25th June 2002, in Serbian, Spanish and English language, all texts being equally authentic. In the event of any divergence in interpretation, the English text shall prevail.

For the Federal Government of the Federal Republic of Yugoslavia Miroljub Labus, m. p.	For the Government of the Kingdom of Spain Juan Costa Climent, m. p.
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