

Agreement on the protection of investments between the Kingdom of the Netherlands and the Socialist Federal Republic of Yugoslavia

The Government of the Kingdom of the Netherlands and the Government of the Socialist Federal Republic of Yugoslavia,
Taking into account the Agreement on economic, industrial and technical cooperation concluded between them on 13 March 1968,

Desiring to encourage the economic cooperation as envisaged by that agreement, through the protection of investments against non-commercial risks,

Have agreed as follows:

Article I.

For the purposes of the present Agreement:

- a) the term "investments" shall comprise all assets invested in accordance with the laws and regulations of each Contracting Party;
- b) the term "nationals" shall comprise with regard to either Contracting Party:
 - 1) natural persons having the nationality of that Contracting Party in accordance with its law;
 - 2) legal persons constituted in accordance with the law of that Contracting Party.

Article II.

- 1) Each Contracting Party shall ensure fair and equitable treatment to the investments of nationals of the other Contracting Party and shall not impair by unjustified or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals.
- 2) More particularly, each Contracting Party shall accord to such investments the same security and protection as it accords to those of nationals of any third State.

Article III.

Each Contracting Party shall authorize, in conformity with its relevant rules the transfer, without undue restriction and delay, to the country of the other Contracting Party and in the currency of that country, of the net profits and the proceeds of the liquidation of invested capital.

Article IV.

Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals of the other Contracting Party of their investments unless the following conditions are complied with:

- a) the measures are taken in the public interest and in conformity with the laws and regulations of the respective Contracting Parties;
- b) the measures are not discriminatory or contrary to any undertaking which the former Contracting Party may have given;
- c) the measures are accompanied by provision for the payment of just compensation, Such compensation shall represent the genuine value of the investments affected and shall, in order to be effective for the claimants, be paid and made

transferable, without undue delay, to the country of which those claimants are nationals and in the currency of that country.

Article V.

Without prejudice to any special fiscal advantage accorded by the one Contracting Party by virtue of an agreement for the avoidance of double taxation or on the basis of reciprocity that Contracting Party shall, with respect to the levying of taxes, fees or charges and to the enjoyment of fiscal deductions and exemptions, accord to nationals of the other Contracting Party engaged in any economic activity in its territory a treatment not less favourable than that accorded to nationals of any third country.

Article VI.

The competent authority of the Contracting Party in the territory of which a national of the other Contracting Party makes or intends to make an investment, shall give sympathetic consideration to any request of such national to assume the obligation to submit, for arbitration or conciliation, to the Centre established by the Convention of Washington of 18 March 1965 on the settlement of investment disputes between States and nationals of other States, any dispute that may arise in connection with that investment, and shall inform that national in writing of its decision.

Article VII.

If a national of the one Contracting Party has transferred any rights and securities to that Party or to another national of that Party because of that Party's or the latter national's obligation, under a legal system of guaranteeing against non-commercial risks, to reimburse the former national as to damage in respect of an investment made by that national in the territory of the other Contracting Party and approved by that Party, the latter Contracting Party recognizes the subrogation of the grantor of such guarantee into the said rights and securities of the investor.

Article VIII.

The present Agreement shall apply to all investments made in the territory of the one Contracting Party by a national of the other Contracting Party in accordance with the laws and regulations of the former Contracting Party.

Article IX.

- 1) The Contracting Parties hereby establish a Mixed Commission, composed of representatives appointed by them.
- 2) The Mixed Commission shall meet at the request of one of the Contracting Parties, to discuss any matter pertaining to the implementation of the present Agreement. It shall make recommendations to the respective Governments in cases where the objectives of the Agreement might be furthered.

Article X.

In respect of any matter governed by the present Agreement nothing in this Agreement shall prevent a national of the one Contracting Party from benefiting from any right more favourable to him and accorded by the other Contracting Party.

Article XI.

- 1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement which cannot be settled, within a reasonable lapse of time, by means of diplomatic negotiations, shall be submitted, at the request of any party to the dispute, to an arbitral tribunal, composed of three members. Each party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either party.
- 2) If one of the parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other party to make such appointment, the latter party may invite the President of the International Court of Justice to make the necessary appointment.
- 3) If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either party may invite the President of the International Court of Justice, to make the necessary appointment.

4) If, in the cases provided for in the second and third paragraph of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either party, the Vice-President should make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either party, the most senior member of the Court who is not a national of either party should make the necessary appointments.

5) The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the parties that the dispute be settled amicably. The foregoing provisions shall not prejudice the power of the tribunal to decide the dispute ex aequo et bono if the parties so agree.

6) Unless the parties decide otherwise, the tribunal shall determine its own procedure.

7) The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the parties to the dispute.

Article XII.

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the Kingdom as a whole, unless the notification provided for in article XII, paragraph (1) of this Agreement, provides otherwise.

Article XIII.

1) The present Agreement shall enter into force on the first day of the second month following the date on which both Contracting Parties have informed each other in writing that the procedures constitutionally required therefor in their respective countries have been complied with, and shall remain in force for a period of 10 years.

Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for another period of 10 years, and so on, each Contracting Party reserving the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

2) Subject to the period mentioned in paragraph 1 of this Article, the Government of the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of one or more of the constituent parts of the Kingdom.

3) In respect of investments made before the date of the termination of the present Agreement the foregoing Articles thereof shall continue to be effective for a further period of 15 years from that date.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

DONE at Belgrade, this sixteenth day of February, 1976.

For the Government of the Kingdom of the Netherlands:

(sd). J. VAN DER VALK.

Jo van der Valk (sd.)

Ambassador Extraordinary and Plenipotentiary of the Kingdom of the Netherlands

For the Government of the Socialist Federal Republic of Yugoslavia:

(sd) M. CEMOVIC

Momcilo Cemovic

Member of the Federal Executive Council and Federal Secretary for Finance

Exchange of Letters

Nr. I

Your Excellency,

With reference to Article II of the Agreement on the protection of investments between the Socialist Federal Republic of Yugoslavia and the Kingdom of the Netherlands signed today, I have the honour to inform Your Excellency that the Government of the Socialist Federal Republic of Yugoslavia is prepared to accept that, if the rules regulating the transfer of net profits and the proceeds of the withdrawal or the liquidation of invested capital emanating from investment contracts with Netherlands investors are changed in a manner making them less favourable for the investor, the transfer will be regulated by the provisions which were in force on the day the investment contract was registered.

This facility will not apply to investments made before the date of entry into force of the Agreement. To such investments the transfer provisions may be applied, if so desired, which were in force on the date of entry into force of the Agreement.

However, it is the understanding of the Government of the Socialist Federal Republic of Yugoslavia, that, if the relevant provisions of the Constitution and the Law on investment of funds by foreign persons in domestic associated labour organizations are changed, the Yugoslav Government shall apply such provisions with regard to the abovementioned transfers, as are applicable to investments from any third state.

It is furthermore the understanding of my Government that the Government of the Kingdom of the Netherlands will apply the principle of freedom of transfer, and that, if the transfer regulations are changed, the treatment applied by the Netherlands Government to transfers emanating from investments by nationals of the Socialist Federal Republic of Yugoslavia shall be as favourable as that accorded to transfers made by nationals of any third state, without prejudice to the provisions on transfers in the framework of the European Economic Community.

I have the honour to request Your Excellency to confirm that the above represents also the understanding of the Government of the Kingdom of the Netherlands.

Please accept, Excellency, the assurance of my highest consideration.

For the Government of the Socialist Federal Republic of Yugoslavia:

(sd) M. CEMOVIC

Momcilo Cemovic

Member of the Federal Executive Council and Federal Secretary for Finance

Nr. II

Your Excellency,

I herewith have the honour to acknowledge receipt of Your Excellency's letter of to-day, reading as follows,

(see Nr. I)

I confirm herewith that the above represents the understanding reached between our two Governments.

Please accept, Excellency, the assurance of my highest consideration.

For the Government of the Kingdom of the Netherlands:

(sd.) J. VAN DER VALK

Jo van der Valk