Agreement between the Government of the Italian Republic and the Government of the Republic of Croatia on the Promotion and Protection of Investment

The Government of the Republic of Croatia and the Government of the Republic of Italy (hereafter referred to as the Contracting Parties),

Desiring to establish favourable conditions for improved economic cooperation between the two Countries, and especially in relation to capital investment by investors of one Contracting Party in the territory of the other Contracting Party,

And

Acknowledging that offering encouragement and mutual protection to such investment, will contribute to stimulating business ventures, which foster the prosperity of both Contracting Parties,

Hereby agree as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" shall be construed to mean any kind of property— invested before — back to May 30, 1990— or after the entry into force of this Agreement, by a natural or legal person of a Contracting Party in the territory of the other Contracting Party in conformity with the laws and regulations of that Party. With regard to investments effected before the 30th May 1990, they shall be protected under the terms of this Agreement on condition they are still existing and functioning.

Without limiting the generality of the foregoing, the term "investment" comprises in particular, but not exclusively:

a) Movable and immovable property and any ownership right in rem, including real guarantee rights on property of a Third Party, to the extent that it can be invested;

b) Shares, debentures, equity holdings or any other instruments of credit, as well as Government and public securities in general;

c) Credits for sums of money or any service right having an economic value connected with an investment, as well as reinvested incomes and capital gains;

d) Copyright, commercial trade marks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade secrets, trade names and goodwill;

e) Any economic rights accruing by law or by contract and any licence and franchise granted in accordance with the provisions in force on economic activities, including the right to prospect for, extract and exploit natural resources;

f) Any increases in value of the original investment.

Any change in the form of an investment, admitted in accordance with laws and regulations of the Contracting Party in whose territory the investment was made, does not effect its character of such investment.

2. The term "investor" shall be construed to mean any natural or legal person of a Contracting Party investing in the territory of the other Contracting Party as well as the foreign subsidiaries, affiliates and branches controlled in any way by the above natural and legal persons.

3. The term "natural person", in reference to either Contracting Party, shall be construed to mean any natural person

holding the nationality of that State in accordance with its laws.

4. The term "legal person", in reference to either Contracting Party, shall be construed to mean any entity having its head office in the territory of one of the Contracting Parties and recognised by it, such as public institutions, corporations, partnerships, foundations and associations, regardless of whether their liability is limited or otherwise.

5. The term "income" shall be construed to mean the money accruing to an investment, including in particular profits or interests, interest income, capital gains, dividends, royalties or payments for assistance, technical services and others as well as any considerations in kind such as, but not exclusively, row materials, produce or products live-stock.

6. The term "territory" shall be construed to mean, in addition to the zones contained within the land boundaries, the "maritime zones". The latter also comprise the marine and submarine zones over which the Contracting Parties exercise sovereignty, and sovereign or jurisdictional rights, under international law.

7. "Investment agreement" means an agreement between a Contracting Party (or its agencies or Instrumentalities) and an investor of the other Contracting Party concerning an investment.

8. "Non-discriminatory treatment" means treatment that is at least as favourable as the better of national treatment or most-favoured-nation treatment.

9. "Right of access" means the right to be admitted to carry out investment in the territory of the other Contracting Party.

Article 2. Promotion and Protection of Investments

1. Both Contracting Parties shall encourage investors of the other Contracting Party to invest in their territory and admit such investments in accordance with its laws and regulations.

2. Investors of one of the Contracting Parties shall have the right of access to the investment activities, in the territory of the other Contracting Party, not less favourable than the one granted as per Article 3.1.

3. Both Contracting Parties shall at all times ensure just and fair treatment of the investments of investors of the other Contracting Party. Both Contracting Parties shall ensure that the management, maintenance, use, transformation, enjoyment or assignment of the investments affected in their territory by investors of the other Contracting Party, as well as companies and enterprises in which these investments have been effected, shall in no way be subject to unjustified or discriminatory measures.

4. Each Contracting Party shall create and maintain, in its territory a legal framework apt to guarantee to investors the continuity of legal treatment, including the compliance, in good faith, of all undertakings assumed with regard to each specific investor.

Article 3. National Treatment and the Most Favoured Nation Clause

1. Both Contracting Parties, within the bounds of their own territory, shall offer investments effected by, and the income accruing to, investors of the other Contracting Party no less favourable treatment than that accorded to investments effected by, and income accruing to, its own nationals or investors of Third States.

2. In case, from the legislation of one of the Contracting Parties, or from the international obligations in force or that may come into force for the future for one of the Contracting Parties, should come out a legal framework according to which the investors of the other Contracting Party would be granted a more favourable treatment than the one foreseen in this Agreement, the treatment granted to the investors of such other Parties will apply also for outstanding relationships.

3. The provisions under paragraph 1 and 2 of this Article do not refer to the advantages and privileges which one Contracting Party may grant to investors of third States by virtue of their membership of a Customs or Economic Union, of a Common Market, of a Free Trade Area, of a regional or sub-regional Agreement, of an international multilateral economic Agreement or under Agreements signed in order to prevent double taxation or to facilitate cross border trade.

Article 4. Compensation for Damage or Losses

Should investors of one of the Contracting Parties incur losses of damages on their investments in the territory of the other Contracting Party due to war, other forms of armed conflict, a state of emergency, civil strife or other similar events, the Contracting Party in which the investment has been effected shall offer adequate compensation in respect of such losses or damages, irrespective whether such losses or damages have been caused by governmental forces of other subjects.

Compensation payments shall be freely transferable without undue delay.

The investors concerned shall receive the same treatment as the nationals of the other Contracting Party and, at all events, no less favourable than that of investors of Third States.

Article 5. Nationalization or Expropriation

1. The investments to which this Agreement relates shall not be subject to any measure which might limit the right of ownership, possession, control or enjoyment of the investments, permanently or temporarily, save where specifically provided by current, national or local, legislation and/or regulations and orders handed down by Courts or Tribunals having jurisdiction.

2. Investments of investors of one of the Contracting Parties shall not be, "de iure" or "de facto", directly or indirectly, totally or partially, nationalized, expropriated, requisitioned or subjected to any measures having an equivalent effect in the territory of the other Contracting Party, except for public purposes or national interest and in exchange for immediate, full and effective compensation, and on condition that these measures are taken on a non-discriminatory basis and in conformity with all legal provisions and procedures.

3. The just compensation shall be established on the basis of the market value immediately prior to the moment in which the decision to nationalise or expropriate is announced or made public.

In the absence of an understanding between the host Contracting Party and the investor during the nationalisation, or expropriation procedure, compensation shall be based on the same reference parameters and exchange rates taken into account in the documents for the constitution of the investment.

The exchange rate applicable to any such compensation shall be that prevailing on the date immediately prior to the moment in which the nationalization or expropriation has been announced or made public.

4. Without restricting the scope of the above paragraph, in case that the object of nationalisation, expropriation, or similar, is a company with foreign capital, the evaluation of the share of the investor will be in the currency of the investment not lower than the starting value, increased by capital increases and revaluation of capital, in distributed profits and reserve funds, and diminished by the value of capital reductions and losses.

5. Compensation will be considered as actual if it will be paid in the same currency in which the investment has been made by the foreign investor, in as much as such currency is — or remains — convertible, or, otherwise, in any other currency accepted by the investor.

6. Compensation payment will be considered as timely if it takes place without undue delay and, in any case, within three months from the day on which the relevant request has been submitted.

7. Compensation shall include interests calculated on a six months LIBOR basis from the date of nationalisation or expropriation to the date of payment and will be freely transferable.

8. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review by a judicial or other competent authority of that Contracting Party, of his or its case to determine whether such expropriation and any compensation, therefore, conforms to the principles set out in this Article.

9. The provisions of paragraph 2. of this Article shall also apply to profits accruing to an investment and, in the event of winding-up, the proceeds of liquidation.

10. If, after the dispossession, the good concerned has not been utilized, wholly or partially, for that purpose, the owner or his assignees are entitled to the repurchasing of the good at the market price.

Article 6. Repatriation of Capital, Profits and Income

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors a free transfer of the payments relating to these investments, particularly but not exclusively, of:

a) Capital and additional capital, including reinvested income, used to maintain and increase investment;

b) Net income, dividends, royalties, payments for assistance and technical services, interests and other profits;

c) Income deriving from the total or partial sale or the total or partial liquidation of an investment;

d) Funds to repay loans connected to an investment and payment of the related interests;

e) Remuneration and allowances paid to nationals of the other Contracting Party for work and services performed in relation to an investment effected in the territory of the other Contracting Party, in the amount and manner prescribed by the national legislation and regulations in force.

2. Without restricting the scope of Article 3 of this Agreement, the Contracting Parties undertake to accord to transfers referred to in paragraphs 1 and 2 of this article a treatment no less favourable than that accorded to transfers originating from investments made by investors of any third State.

Article 7. Subrogation

In the event that one Contracting Party or an institution thereof has provided a guarantee in respect of non-commercial risks for investment effected by one of its investors in the territory of the other Contracting Party, and has effected payment to the said investor on the basis of that guarantee, the other Contracting Party shall recognise the assignment of the rights of the investor to the first-named Contracting Party. In relation to the transfer of payments to the Contracting Party or its institution by virtue of this assignment, the provisions of Article 4, 5 and 6 of this Agreement shall apply.

Article 8. Transfer Procedures

1. The transfers referred to in Article 4, 5, 6 and 7 shall be effected without undue delay and, at all events, within six months after all fiscal obligations have been met, and shall be made in a convertible currency. All transfers shall be made at the prevailing exchange rate applicable on the date on which the investor applies for the related transfer, with the exception of the provisions under point 3 of Article 5, concerning the exchange rate applicable in case of nationalization or expropriation.

2. The fiscal obligations under the previous paragraph are deemed to be complied with when the investor has fulfilled the obligations according to the proceedings provided for by the law of the Contracting Party on the territory of which the investment has been carried out.

Article 9. Settlement of Disputes between Investors and Contracting Parties

1. Any dispute which may arise between one of the Contracting Parties and the investors of the other Contracting Party on investments, including disputes relating to the amount of compensation, shall be settled amicably, as far as possible.

2. In case the investor and one entity of one of the Parties have stipulated an investment Agreement, the procedure foreseen in such investment agreement shall apply.

3. In the event that such dispute cannot be settled amicably within six months from the date of the written application for settlement, the investor in question may submit at his choice the dispute for settlement to:

a) The Contracting Party's Court having territorial jurisdiction;

b) An "ad hoc" Arbitration Tribunal, in compliance with the arbitration regulations of the UN Commission on the International Trade Law (UNCITRAL).

c) The International Centre for Settlement of Investment Disputes, for the implementation of the arbitration procedures under the Washington Convention of 18 March, 1965, on the settlement of investment disputes between States and nationals of other States, if or as soon as both the Contracting Parties have acceded to it.

4. The arbitration award shall be based on:

- The provisions of this Agreement;

- The national law of the Contracting Party in whose territory the investment was made, including the rules relative to conflicts of law;

- the rules and the universally accepted principles of international law.

Article 10. Settlement of Disputes between the Contracting Parties

1. Any disputes which may arise between the Contracting Parties relating to the interpretation and application of this Agreement shall, as far as possible, be settled amicably through diplomatic channels.

2. In the event that the dispute cannot be settled within six months from the date on which one of the Contracting Parties notifies, in writing, the other Contracting Party, the dispute shall, at the request of one of the Contracting Parties, be laid before an "ad hoc" Arbitration Tribunal as provided in this Article.

3. The Arbitration Tribunal shall be constituted in the following manner: within two months from the moment on which the request for arbitration is received, each of the two Contracting Parties shall appoint a member of the Tribunal. These two arbitrators shall nominate a Chairman who shall be a national of a third State, which maintains diplomatic relations with both Contracting Parties. The President shall be appointed within three months from the date on which the other two members are appointed.

4. If, within the period specified in paragraph 3. of this Article, the appointments have not been made, each of the two Contracting Parties can, in default of other arrangement, ask the President of the International Court of Justice to make the appointment. In the event that the President of the Court is a national of one of the Contracting Parties or it is, for any reason, impossible for him to make the appointment, the application shall be made to the Vice-President of the Court. If the Vice-President of the Court is a national of one of the Contracting Parties, or is unable to make the appointment for any reason, the most senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be invited to make the appointment.

5. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure. The tribunal shall reach its decisions by a majority of votes.

6. The decisions of the tribunal are final and binding for each Contracting Party.

7. Each Contracting Party shall bear the costs of its own member of the Tribunal and of its representation in the arbitral proceedings; the costs of the Chairman and remaining cost shall be borne in equal parts by the Contracting Parties. The Tribunal may, however, decide that a higher proportion of costs shall be borne by one of the Contracting Parties and this award shall be binding for both Contracting Parties.

Article 11. Application of other Provisions

1. If a matter is governed both by this Agreement and by another International Agreement to which both Contracting Parties are signatories, or by general international law provisions, the most favourable provisions shall be applied to the Contracting Parties and to the their investors.

2. Whenever the treatment accorded by one Contracting Party to the investors of the other Contracting Party, according to its laws and regulations or other provisions or specific contract or investment authorisations or agreement, is more favourable than that provided under this Agreement, the more favourable treatment shall apply.

In case the host Contracting Party has not applied such treatment, in conformity with the above, and the investor suffers a damage as a consequence thereof, the investors shall be entitled to a compensation of such damages in conformity with Article 4.

3. Whenever, after the date when the investment has been made, a modification should take place in laws, regulations, acts or measures of economic policies governing directly or indirectly the investment, the same treatment will apply upon request of the investor that was applicable to it at the moment when the investment had been carried out.

Article 12. Entry Into Force

This Agreement shall enter into force on the latter date on which either Contracting Party notifies the other that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

Article 13. Duration and Termination

1. This Agreement shall remain in force for a period of 10 years from the date of the notification under Article 13 and shall remain in force for a further period of 5 years thereafter, unless, one year before the expiration of the initial or any subsequent period, either Contracting Party notifies the other Contracting Party of its intention to denounce the Agreement.

2. In case of investments effected prior to the expiry dates, as provided under paragraph 1 of this Article, the provisions of the Articles 1 to 11 shall remain in force for a further five years after the aforementioned dates.

DONE IN Zagreb, on 5th November 1996, in two original versions, in Croatian, Italian and English languages, all three texts being equally authentic.

In case of any divergence of interpretation the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF CROATIA

FOR THE GOVERNMENT OF THE REPUBLIC OF ITALY

Protocol

In signing the Agreement between the Government of the Italian Republic and the Government of the Republic of Croatia on the promotion and protection of investment the Contracting Parties also have agreed the following clauses to be considered as part of the Agreement.

1. General Provision

This Agreement and all of its provisions relating to "investments" also apply to the following associated activities:

Organization, control, operation, maintenance, and sale of companies, branches, agencies, offices, factories and other facilities for conducting business; drafting, executing and executing contracts; acquisition, the use, protection and sale of all types of property, including intellectual property; lending of all kinds, including intellectual property; lending of funds; buying, issuing and selling dividends and others securities; and buying foreign currency for import.

"Associated activities" also includes, without limitation:

I. Granting franchises or license rights;

II. Obtaining registrations, licenses, permits and other approvals necessary to run a commercial activities, which shall in any case be issued promptly, as provided for by the legislation of the Parties;

III. Access to financial institutions in any currency, credit and foreign exchange markets;

IV. Access to funds held by financial institutions;

V. The import and installation of equipment necessary for the normal running of the business, including but not limited to, office equipment and cars, and the export of any equipment and cars imported in this way;

VI. Providing commercial information;

VII. Conducting market studies;

VIII. The appointment of sales representatives, including agents, advisers and distributors (ie intermediaries in the distribution of products they did not produce themselves) and the like, their participation in trade fairs and other propaganda events;

IX. The marketing of goods and services, including through internal distribution and marketing systems as well through advertising and direct contact with citizens and societies;

X. Payment for goods and services in local currency.

2. Regarding Article 2

a) In order to resolve the dispute, a specific measure may be found to be arbitrary or discriminatory, despite the fact that the party to the dispute has had or used the opportunity to review the measure in the courts, or the administrative courts of the party.

b) The Contracting Parties shall, with the investors of the other Contracting Party, make investments of national interest at in their territory, specify the investment contract, which will regulate the specific legal relations regarding the by the said investment.

c) Neither Contracting Party shall impose any conditions on its creation, extension or continuation investments which may

entail the assumption or imposition of any obligations on export production, and specifying in particular that goods must be procured locally or similar conditions;

d) Each Contracting Party shall provide effective means of enforcing the request and of enforcing the right with respect to it investments and authorizations in connection therewith and investment contracts.

e) Nationals of one Contracting Party authorized to work in the territory of the other Contracting Party in connection with by investing under this Agreement, they will be entitled to appropriate working conditions for the performance of their own professional activities.

f) Nationals of one Contracting Party shall be permitted to enter and stay in the territory of the other Contracting Party parties for the purpose of establishing, developing, managing or advising on the operation of the investments in which they are, or the company of the first party that employs them, invested or is in the process of investing a significant amount of capital or other reasons.

g) Companies legally incorporated under the laws or regulations in force of one Party and another the party owns or controls, will be allowed to employ the highest management personnel, regardless citizenship.

3. Regarding Article 3

a) All activities related to the procurement, sale and transportation, or raw materials and products, energy, fuels and means of production, as well as any other type of business related thereto and which in some way related to the entrepreneurial activities under this Agreement shall be approved in the territory to each Contracting Party, conditions not less favorable than those accorded to similar activities; and initiatives taken by nationals of that country or investors of a third country.

b) Each Contracting Party shall regulate in accordance with its laws and regulations and, as far as it is concerned possibly, favorably address problems related to the entry, stay, work and movement of another's nationals Contracting Parties in its territory and members of their families engaged in the activities of investments under this Agreement.

4. Regarding Article 5

a) An investment, whether direct or indirect, is considered to be nationalized or expropriated where the bodies are the authorities of the other Contracting Party violated the fundamental rights of the investors, created obstacles to the proper functioning investment project, thereby affecting the interests of genuine expropriation - such as excessive or discriminatory tax burden, restrictions on the supply of raw materials or the application of discriminatory measures by local authorities authorities.

Such expropriation may also take the form of a particular position by certain officials or private persons performing public duties as well as through default.

b) Any measure taken against the investment made by the investor of one of the diminishing Contracting Parties financial assets or other assets of the investment or create obstacles to activities or significant impairment of value of the same investment, as any other measure having equivalent effect, shall be considered as one of the measures which mentioned in Article 5 (2) of the Treaty.

5. Tax Provisions

1. The provisions of this Agreement shall apply to tax matters only in the following case:

a) Where the tax conditions have an effect equivalent to nationalization or expropriation under Article 5 of the Treaty, or affect the obligations of the Contracting Parties under Article 6;

b) When they affect or have effect on the compliance of an investment contract with one of the Contracting Parties the powers conferred by the authorities of one of the Contracting Parties in respect of foreign investment.

2. However, the application of Article 9 shall be excluded if the dispute under points 1 and 2 is governed by the rules governing the settlement of the dispute arising from the Double Taxation Treaty between the parties and is was resolved within a reasonable period of time.

IN WITNESS WHEREOF, the Plenipotentiaries have signed this Protocol

DONE at Zagreb on 5 November 1996 in two original versions, in Italian, in Croatian and in English language, the three texts being equally authentic.

In the event of divergence of interpretation the English language will prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF CROATIA

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC