

AGREEMENT BETWEEN THE REPUBLIC OF TURKEY AND THE REPUBLIC OF INDIA CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of Turkey and the Republic of India, (hereinafter called the Parties.)

Desiring to promote greater economic cooperation between them, particularly with respect to investment by investors of one Party in the territory of the other Party;

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of capital and technology and the economic development of the Parties;

Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources;

And

Having resolved to conclude an agreement concerning the encouragement and reciprocal protection of investments,

Hereby agree as follows:

Article I. Definitions and Scope of the Agreement

For the purpose of this Agreement:

1. The term "investor" means:

(a) Natural persons deriving their status as nationals of either Party according to its applicable law,

(b) Companies, including corporations, firms or business associations incorporated or constituted under the law in force in either of the Parties, and engaged in substantive business operations in the territory of that Party.

2. The term "investment" means every kind of asset established or acquired including changes in the form of such investment in accordance with the laws and regulations of the Party in which the investment is made and in particular, though not exclusively, shall include the following: (a) Shares, stocks or any other form of participation in companies;

(b) Returns reinvested, claims to money or any other rights having financial value related to an investment;

(c) Movable and immovable property, as well as any other rights as mortgages, liens, pledges and any other similar rights as defined in conformity with the laws and regulations of the Party in whose territory the property is situated;

(d) Intellectual property rights, goodwill, technical processes and know how in accordance with the relevant laws of the respective Party;

(e) Business concessions conferred by law or by contract, including concessions related to natural resources;

3. The term investment shall cover all investments existing at the time of entry into force of the Agreement as well as those made or acquired thereafter.

4. The term "returns" means the amounts yielded by an investment and includes in particular, though not exclusively, profit, interest, and dividends.

5.

(a) The term "Turkey" means the territory of the Republic of Turkey, as well as the maritime zones over which Turkey is

entitled to sovereign rights and exercises jurisdiction in accordance with International Law.

(b) The term "India" means the territory of the Republic of India and includes the territorial sea and airspace above it, as well as other maritime zones in which India has sovereign rights, other rights and jurisdiction in accordance with International Law.

Article II. Promotion and Protection of Investments

1. Each Party shall encourage and create favourable conditions for investors of the other Party to make investments in its territory, and treat such investments on a basis no less favourable than that accorded in similar situations to investments of investors of any third country, within the framework of its laws and regulations.

2. Each Party shall accord to these investments, once established, treatment no less favourable than that accorded in similar situations to investments of its investors or to investments of investors of any third country, whichever is the most favourable.

3. Subject to the laws and regulations of the Parties relating to the entry, sojourn and employment of non-citizens:

(a) Nationals of either Party shall be permitted to enter and remain in the territory of the other Party for purposes of establishing, developing, administering or advising on the operation of an investment to which they, or an investor of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources;

(b) Companies which are legally constituted under the applicable laws and regulations of one Party, and which are investments of investors of the other Party, shall be permitted to engage top managerial and technical personnel of their choice, regardless of nationality.

4. The provisions of this Article shall not be construed so as to oblige one Party to extend the investors of the other Party the benefit of any treatment, preference or privilege which the former Party may grant to:

(a) A customs union, free trade zone, monetary union or similar international agreement establishing such unions or other forms of international cooperation to which either of the Parties is or may become a party, or

(b) Any arrangement or international agreement relating wholly or partially to taxation.

Article III. Expropriation and Compensation

1. Investments shall not be expropriated, nationalized or subject, directly or indirectly, to measures of similar effect (hereinafter referred to as "expropriation") except for a public purpose, in a non-discriminatory manner, with the payment of fair and equitable compensation and in accordance with laws in force and the general principles of treatment provided for in Article II of this Agreement.

2. Compensation shall be equivalent to the real market value of the expropriated investment before the expropriatory action was taken or became public knowledge. This shall include interest at a prevailing rate until the date of payment. Compensation shall be paid without delay, be effectively realizable and be freely transferable as described in paragraph 2 Article IV

3. Investors of either Party whose investments suffer losses in the territory of the other Party owing to war, insurrection, civil disturbance or other similar events shall be accorded by the other Party treatment no less favourable than that accorded to its own investors or to investors of any third country, whichever is the most favourable treatment, as regards any measures it adopts in relation to such losses.

Article IV. Repatriation and Transfer

1. Each Party shall permit all transfers related to an investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) Returns;

(b) Proceeds from the sale or liquidation of all or any part of an investment;

(c) Compensation pursuant to Article III;

(d) Reimbursements and interest payments deriving from loans in connection with investments;

(e) Salaries, wages and other remunerations received by the nationals of one Party who have obtained in the territory of the other Party the corresponding work permits relative to an investment;

(f) Payments arising from an investment dispute.

2. Transfers shall be made in the currency in which the investment has been made or in any convertible currency at the rate of exchange in force at the date of transfer, unless otherwise agreed by the investor and the hosting Party.

Article V. Subrogation

1. If the investment of an investor of one Party is insured against non-commercial risks under a system established by law, and where the insurer has made payment to such investors in respect of their claims under this Agreement, any subrogation of the insurer which stems from the terms of the insurance agreement shall be recognized by the other Party.

2. The insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

3. Disputes between a Party and an insurer shall be settled in accordance with the provisions of Article VI of this Agreement.

Article VI. Settlement of Disputes between One Party and Investors of the other Party

1. Disputes between one of the Parties and an investor of the other Party, in connection with his investment, shall be notified in writing, including a detailed information, by the investor to the host Party of the investment. As far as possible, the investor and the concerned Party shall endeavour to settle these disputes by consultations and negotiations in good faith.

2. If these disputes cannot be settled in this way within six months following the date of the written notification mentioned in paragraph 1, may, at the choice of investor, unless otherwise mentioned hereafter, be submitted:

(a) For resolution, in accordance with the law of the Party which has admitted the investment to that Party's judicial, or other competent bodies; or

(b) To international arbitration by reference to:

(i) The International Center for Settlement of Investment Disputes (ICSID) according to the Convention on Settlement of Investment Disputes between States and Nationals of other States, in case both Parties become signatories to the Convention.

(ii) Additional Facility for the Administration of Conciliation, Arbitration and Fact-finding Proceedings, by mutual consent,

(iii) An ad hoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL), subject to following modifications:

- The appointing authority under Article 7 of the Rules shall be the President, the Vice-President or the next senior Judge of the International Court of Justice who is not a national of either Party. The third Arbitrator shall not be a national of either Party.

- The Parties shall appoint their respective arbitrators within two months.

- The arbitral award shall be made in accordance with the provisions of this Agreement.

- The arbitral tribunal shall state the basis of decision and give reasons upon the request of either party.

3. The arbitration awards shall be final and binding for all parties in dispute. Each Party commits itself to execute the award according to its national law.

Article VII. Settlement of Disputes between the Parties

1. The Parties shall seek in good faith and a spirit of cooperation a rapid and equitable solution to any dispute between them concerning the interpretation or application of this Agreement. In this regard, the Parties agree to engage in direct and meaningful negotiations to arrive at such solutions. If the Parties cannot reach an agreement within six months after the beginning of disputes between themselves through the foregoing procedure, the disputes may be submitted, upon the

request of either Party, to an arbitral tribunal of three members.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State. In the event either Party fails to appoint an arbitrator within the specified time, the other Party may request the President of the International Court of Justice to make the appointment.

3. If both arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment, the Chairman shall be appointed upon the request of either Party by the President of the International Court of Justice.

4. If, in the cases specified under paragraphs (2) and (3) 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 Party, the appointment shall be made by the Vice-President, and if the Vice-President is prevented from carrying out the said function or if he is a national of either Party, the appointment shall be made by the most senior member of the Court who is not a national of either Party.

5. The tribunal shall have three months from the date of the selection of the Chairman to agree upon rules of procedure consistent with the other provisions of this Agreement. In the absence of such agreement, the tribunal shall request the President of the International Court of Justice to designate rules of procedure, taking into account generally recognized rules of international arbitral procedure.

6. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within eight months of the date of selection of the Chairman, and the tribunal shall render its decision within two months after the date of the final submissions or the date of the closing of the hearings, whichever is later. The arbitral tribunal shall reach its decisions, which shall be final and binding, by a majority of votes.

7. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the Parties. The tribunal may, however, at its discretion, decide that a higher proportion of the costs be paid by one of the Parties.

8. A dispute shall not be submitted to an international arbitration court under the provisions of this Article, if the same dispute has been brought before another international arbitration court under the provisions of Article VII and is still before the court. This will not impair the engagement in direct and meaningful negotiations between both Parties.

Article VIII. Applicable Laws

1. Except as otherwise provided in this Agreement, all investment shall be governed by the laws in force in the territory of the Party in which such investments are made.

2. Notwithstanding paragraph (1) of this Article nothing in this Agreement precludes the host Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency, in accordance with its laws normally and reasonably applied on a non discriminatory basis.

Article IX. Application of other Rules

If the provisions of law of either Party or obligations under international law existing at present established hereafter between the Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

Article X. Entry Into Force

1. This Agreement shall enter into force on the date on which the exchange of instruments of ratification has been completed. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2 of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter. This Agreement shall not, however, be applicable to disputes which had arisen before its entry into force.

2. Either Party may, by giving one year's written notice to the other Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

3. This Agreement may be amended by written agreement between the Parties. Any amendment shall enter into force when each Party has notified the other that it has completed all internal requirements for entry into force of such amendment.

4. With respect to investments made or acquired prior the date of termination of this Agreement and to which this Agreement otherwise applies, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement.

DONE at Ankara on the day of 17th September in the year 1998 Turkish and English languages all of which are equally authentic.

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

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA