Agreement on encouragement and reciprocal protection of investments between the Kingdom of the Netherlands and the Federal Republic of Yugoslavia.

The Kingdom of the Netherlands

And

The Federal Republic of Yugoslavia,

Hereinafter referred to as the Contracting Parties,

Desiring to strengthen their traditional ties of friendship and to extend and intensify the economic relations between them, particularly with respect to investments by the investors of one Contracting Party in the territory of the other Contracting Party,

Recognising that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investments is desirable,

Have agreed as follows:

Article 1.

For the purposes of this Agreement:

a) The term "investments" means every kind of asset and more particularly, though not exclusively:

(i) Movable and immovable property as well as any other rights in rem, such as leases, mortgages, liens and pledges, in respect of every kind of asset;

(ii) Rights derived from shares, bonds and other kinds of interests in companies and joint ventures;

(iii) Claims to money, to other assets or to any performance having an economic value;

(iv) Rights in the field of intellectual property (such as copyrights and related rights, patents, industrial designs or models, trade marks), technical processes, goodwill and know-how;

(v) Rights granted under public law or under contract, including rights to prospect, explore, extract and win natural resources.

b) The term "investors" shall comprise with regard to either Contracting Party:

(i) Natural persons having the nationality of that Contracting Party;

(ii) Legal persons constituted under the law of that Contracting Party;

(iii) Legal persons not constituted under the law of that Contracting Party but controlled, directly or indirectly, by natural persons as defined in (i) or by legal persons as defined in (ii).

c) The term "territory" means:

The territory of the Contracting Party concerned and any area adjacent to the territorial sea which, under the laws applicable in the Contracting Party concerned, and in accordance with international law, is the exclusive economic zone or continental shelf of the Contracting Party concerned, in which that Contracting Party exercises jurisdiction or sovereign

rights.

Article 2.

Either Contracting Party shall, within the framework of its laws and regulations, promote economic cooperation through the protection in its territory of investments of investors of the other Contracting Party. Subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit such investments.

Article 3.

1. Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors. Each Contracting Party shall accord to such investments the most constant protection and security.

2. More particularly, each Contracting Party shall accord to such investments treatment which in any case shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.

3. If a Contracting Party has accorded special advantages to investors of any third State by virtue of agreements establishing customs unions, economic unions, monetary unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

4. Each Contracting Party shall observe any legal obligation it may have entered into with regard to investments of investors of the other Contracting Party.

5. If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, 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 regulation shall, to the extent that it is more favourable, prevail over the present Agreement.

Article 4.

With respect to taxes, fees, charges and to fiscal deductions and exemptions, each Contracting Party shall accord to investors of the other Contracting Party who are engaged in any economic activity in its territory, treatment not less favourable than that accorded to its own investors or to those of any third State who are in the same circumstances, whichever is more favourable to the investors concerned. For this purpose, however, any special fiscal advantages accorded by that Party, shall not be taken into account:

a) Under an agreement for the avoidance of double taxation; or

b) By virtue of its participation in a customs union, economic union or similar institution; or

c) On the basis of reciprocity with a third State.

Article 5.

1. Each Contracting Party shall guarantee to the investors of the other Contracting Party the free transfer of payments related to their investments. The transfers shall be made in a freely convertible currency, without restriction or delay. Such transfers include in particular though not exclusively:

a) Capital and additional amounts to maintain or increase investments;

b) Profits, interests, dividends and other current income;

c) Funds in repayment of loans;

d) The proceeds of sale or liquidation of the investment;

e) Royalties or fees;

f) Unspent earnings of persons working in connection with the investment in the territory of the Contracting Party;

g) Payments arising under Article 7.

2. A Contracting Party may require that, prior to the transfer of payments relating to an investment, tax obligations in relation to such an investment are fulfilled by the investor, provided that such obligations shall be non-discriminatory and shall not be used to defeat the purpose of paragraph 1) of this Article.

3. A Contracting Party may adopt or maintain measures inconsistent with its obligations under paragraph 1 of this Article in the event of serious balance-of-payments and external financial difficulties or threat thereof. Such measures:

a) Shall be consistent with the Articles of Agreement of the International Monetary Fund;

b) Shall not exceed those necessary to deal with the circumstances described in this paragraph; and

c) Shall be temporary and shall be eliminated as soon as conditions permit.

Article 6.

1. Investments by investors of either Contracting Party shall not be nationalized, expropriated or subjected to any other measure having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except where expropriation is:

a) For a purpose which is in the public interest;

b) Carried out under due process of law;

c) Non-discriminatory, and

d) Against prompt, adequate and effective compensation, which shall be effected without delay.

Such compensation shall correspond to the fair market value of the investment expropriated immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

The compensation shall include interest at a normal commercial rate until the date of payment and shall be freely transferable without delay.

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

Article 7.

1. Investors of the one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

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

(i) Requisitioning of their property by the authorities of the other Contracting Party, or

(ii) Destruction of their property by the authorities of the other Contracting Party, which was not required by the necessity of the situation,

Shall be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective and, with regard to compensation, shall be in accordance with Article 6.

Article 8.

If the investments of an investor of the one Contracting Party are insured against non-commercial risks or otherwise give rise to payment of indemnification in respect of such investments under a system established by law, regulation or government contract, any subrogation of the insurer or re-insurer or Agency designated by the one Contracting Party to the rights of the said investor pursuant to the terms of such insurance or under any other indemnity given shall be recognised by the other Contracting Party.

Article 9.

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall, if possible, be settled amicably.

2. If the dispute referred to in paragraph 1 of this Article cannot be settled within three months from the date on which either party to the dispute requested in writing an amicable settlement, the investor shall be entitled to submit the dispute, at his choice, for settlement to:

a) The International Centre for Settlement of Investment Disputes, for settlement by arbitration or conciliation under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965;

b) The International Centre for Settlement of Investment Disputes under the Rules Governing the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings (Additional Facility Rules), if one of the Contracting Parties is not a Contracting State to the Convention as mentioned in paragraph a) of this Article;

c) A sole arbitrator or an international ad hoc arbitral tribunal under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);

d) The Court of Arbitration of the International Chamber of Commerce (ICC).

3. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international conciliation or arbitration in accordance with the provisions of this Article.

4. The consent given by the Contracting Party in paragraph 3) of this Article, together with either the written submission of the dispute to resolution by the investor or the investor's advance written consent to such submission, shall constitute the written consent and the written agreement of the parties to the dispute to its submission for settlement for the purposes of Chapter II of the ICSID Convention, the ICSID Additional Facility Rules, Article 1 of the UNCITRAL Arbitration Rules, the Rules of Arbitration of the ICC and Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention").

5. The arbitral awards shall be final and binding on the parties to the dispute and shall be executed under the laws of the Contracting Party in whose territory the investment was made.

6. A legal person which is a national of one Contracting Party and which before such a dispute arises is controlled by nationals of the other Contracting Party shall, in accordance with Article 25 2b) of the Convention, for the purpose of the Convention be treated as a national of the other Contracting Party.

Article 10.

The provisions of this Agreement shall, from the date of entry into force thereof, also apply to investments, which have been made before that date.

Article 11.

Either Contracting Party may propose to the other Contracting Party that consultations be held on any matter concerning the interpretation or application of the Agreement. The other Contracting Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

Article 12.

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, unless the Parties have otherwise agreed, be submitted, at the request of either Party, 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 paragraphs 2 and 3 of this Article, the President of the International Court of Justice is prevented from discharging the said function or is a national of either Contracting Party, the Vice-President shall be invited to 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 available who is not a national of either Party shall be invited to 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 settlement of 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.

8. Each Contracting Party shall bear the costs of its own arbitrator and of its representation in the arbitration proceedings. The costs of the Chairman and the remaining expenses shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties.

Article 13.

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, to the Netherlands Antilles and to Aruba, unless the notification provided for in Article 14, paragraph 1 provides otherwise.

Article 14.

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

2. 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 periods of ten years, whereby each Contracting Party reserves the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3. In respect of investments made before the date of the termination of the present Agreement, the foregoing Article s shall continue to be effective for a further period of fifteen years from that date.

4. Subject to the period mentioned in paragraph 2 of this Article, the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom.

5. Upon entry into force of the present Agreement, the Agreement on the Protection of Investments between the Kingdom of the Netherlands and the Socialist Federal Republic of Yugoslavia, signed on 16 February 1976, shall be terminated in the relation between the Kingdom of the Netherlands and the Federal Republic of Yugoslavia, and replaced by the present Agreement. The present Agreement will only terminate the Agreement on the Protection of Investments between the Kingdom of the Netherlands and the Socialist Federal Republic of Yugoslavia, signed on 16 February 1976, in relation with the Federal Republic of Yugoslavia and those parts of the Kingdom of the Netherlands to which the present Agreement applies in conformity with the notification mentioned in paragraph 1 of this Article. The present Agreement shall however not be applicable to disputes concerning investments which are subject of a dispute settlement procedure under the Agreement on the Protection of Investments between the Kingdom of the Netherlands and the Socialist Federal Republic of Yugoslavia of 16 February 1976. In that case the latter Agreement shall continue to apply to these investments, as far as it

concerns the disputes referred to, until a final settlement for these disputes has been reached.

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

DONE in two originals at The Hague, on 29 January 2002, in the Netherlands, Serbian and English languages, the three texts being authentic. In case of difference of interpretation the English text will prevail.

For the Kingdom of the Netherlands

(sd.) J. J. VAN AARTSEN

For the Federal Republic of Yugoslavia

(sd.) G. SVILANOVIC