

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF CROATIA
AND
THE GOVERNMENT OF THE REPUBLIC OF ITALY
ON THE PROMOTION AND PROTECTION OF INVESTMENTS

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, raw 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 point 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 or 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 or 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 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.
5. Arbitration decisions shall be final and binding for the Parties in conflict. Each Contracting Party undertakes to execute the decisions in accordance with its national law.
6. Both Contracting Parties shall refrain from negotiating through diplomatic channels any matter relating to an arbitration procedure or judicial procedures underway until these procedures have been concluded, and one of the Contracting Parties has failed to comply with the ruling of the Arbitration Tribunal or the Court of law within the period envisaged by the ruling, or else within the period which can be determined on the basis of the international or domestic law provisions which can be applied to the case.

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 Expiry

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.

In WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

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

On signing the Agreement on the Promotion and Protection of Investments the Government of the Republic of Croatia and the Government of the Republic of Italy, also agree to the following clauses, which shall be deemed to form an integral part of the Agreement.

1. General Provision

This Agreement and all provisions thereof referred to "Investments" apply as well to the following associated activities:

the organization, control, operation, maintenance and disposition of companies, branches, agencies, offices, factories or other facilities for the conduct of business; the making, performance and enforcement of contracts; the acquisition, use, protection, disposition of property of all kinds including intellectual property; the borrowing of all kinds including intellectual property; the borrowing of funds; the purchase, issuance and sale of equity shares and other securities; and the purchase of exchange for imports.

"Associated activities" also include, without limitation:

- I the granting of franchises or rights under licenses;
- II the receipt of registrations, licenses, permits and other approvals necessary for the conduct of commercial activities which shall in any event be issued expeditiously, as provided for in the legislation of the Parties;
- III the access to financial institutions in any currency, and to credits and currency markets;
- IV the access to funds held in financial institutions;
- V the importation and installation of equipment necessary for the normal conduct of business affairs, including, but not limited to, office equipment and automobiles, and the export of any equipment and automobiles so imported;
- VI the dissemination of commercial information;
- VII the conduct of market studies;
- VIII the appointment of commercial representatives, including agents, consultants and distributors (i.e., mediators in the distribution of products which they themselves did not produce), and the serving as the same, and their participation in trade fairs and other promotional events;
- IX the marketing of goods and services, including through internal distribution and marketing systems, as well as by advertising and direct contact with nationals and companies;
- X the payment for goods and services in local currency.

2. With reference to Article 2

- a) For purposes of dispute resolution a particular measure may be found to be arbitrary or discriminatory notwithstanding the fact that a party to a dispute has had or exercised the opportunity to review such measure in the Courts or Administrative Tribunals of a Party.
- b) The Contracting Parties will stipulate with investors of the other Contracting Party, who carry out investment of national interest in their territory, an investment agreement, which will govern the specific legal relationships related to said investment.
- c) Neither of the Contracting Parties will set any conditions for the creation, the expansion or the continuation of investments, which may imply the taking over or the imposing of any

obligations to export production, and which specifies that goods must be procured locally, or similar conditions.

- d) Each Contracting Party will provide effective means of asserting claims and enforcing rights with respect to investments and authorisations relating thereto and investment agreements.
- e) Citizens of either Contracting Parties authorised to work in the territory of the other Contracting Party in connection with an investment as per this Agreement, shall have the right to adequate working conditions for the carrying out of their professional activities.
- f) Nationals of either Contracting Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering, or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other reasons.
- g) Companies which are legally constituted under the applicable laws or regulations of one Party and which are owned or controlled by the other Party, shall be permitted to engage top managerial personnel of their choice, regardless of nationality.

3. With reference to Article 3

- a) All the activities relating to the procurement, sale and transport of raw and processed materials, energy, fuels and production means, as well as any other kind of operation related to them and somehow linked to entrepreneurial activities under this Agreement shall be accorded, in the territory of each Contracting Party, no less favourable treatment than that accorded to similar activities and initiatives taken by residing nationals or investors of a Third Country.
- b) Each Contracting Party shall govern according to its laws and regulations and as favourably as possible the problems connected with the entry, stay, work and movement in its territory of nationals of the other Contracting Party, and members of their families, performing activities related to investments under this Agreement.

4. With reference to Article 5

- a) An investment is considered to have been, directly or indirectly, nationalised or expropriated in case the authorities of the other Contracting Party have violated fundamental rights of the investor, created obstacles to the good functioning of the investment project, having, by this means, an impact, on the interests of a true dispossesment - like, as an example, an excessive or discriminatory tax burden, restrictions to the procurement of raw materials, or the application, by local authorities, of discriminatory measures.

Such expropriation may take place also under the form of a specific attitude of specific officials or private subjects exercising public functions, as well as by means of omissions.

Any measure undertaken towards an investment effected by an investor of one of the Contracting Parties, which subtracts financial resources of other assets from the investments or creates obstacles to the activities or substantial prejudice to the value of the same investment, as well as any other measure having equivalent effect, will be considered as one of the measures referred to in paragraph 2 of Article 5.

5. Tax Provisions

1. The provisions of this Agreement will apply to tax matters, only in the following case:
 - a) in case a tax treatment has an effect equivalent to nationalisation or expropriation as per Article 5 above, or have an impact on the obligations of either of the Contracting Parties as per Article 6;
 - b) have an impact on compliance, by one of the Contracting Parties, with an investment agreement or of an authorisation granted by an authority of one of the Contracting Parties as concerns foreign investments.
2. Application of Article 9 is however excluded if the dispute as per points 1 and 2 is governed by the rules about dispute resolution of a double taxation treaty in force between the Parties, and has been resolved within a reasonable period of time.

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

**FOR THE GOVERNMENT
OF THE REPUBLIC OF CROATIA**

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