

No. 13332

**UNITED STATES OF AMERICA
and
YUGOSLAVIA**

**Exchange of notes constituting an agreement relating to
investment guaranties (with annex). Belgrade, 18
January 1973**

Authentic text: English.

Registered by the United States of America on 30 May 1974.

**ÉTATS-UNIS D'AMÉRIQUE
et
YOUUGOSLAVIE**

**Échange de notes constituant un accord relatif à la garantie
des investissements (avec annexe). Belgrade, 18 janvier
1973**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 30 mai 1974.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA RELATING TO INVESTMENT GUARANTIES

I

Belgrade, January 18, 1973

Excellency:

I have the honor to refer to conversations which have recently taken place between representatives of our two Governments relating to investments in the Socialist Federal Republic of Yugoslavia which further the development of the economic resources and productive capacities of Yugoslavia and to guaranties of such investments by the Government of the United States of America. I also have the honor to confirm the following understandings reached as a result of those conversations:

1. When an investor proposes to invest in a project or activity within the territorial jurisdiction of the Government of the Socialist Federal Republic of Yugoslavia, the Host Government, with the assistance of guaranties issued pursuant to this Agreement by the Government of the United States of America, the Guaranting Government, the two Governments shall, upon the request of either, consult respecting the nature of the project or activity.

2. The procedures set forth in this Agreement shall apply only with respect to guaranteed investments in projects or activities duly registered in accordance with applicable Host Government legislation.

3. If the Guaranting Government makes payment to any investor under a guaranty issued pursuant to the present Agreement, the Host Government shall, subject to the provisions of the following paragraph, recognize the transfer to the Guaranting Government of any currency, credits, assets, or investment on account of which payment under such guaranty is made as well as the succession of the Guaranting Government to any right, title, claim, privilege, or cause of action existing, or which may arise, in connection therewith.

4. To the extent that the laws of the Host Government partially or wholly invalidate the acquisition of any interests in any property within its national territory by the Guaranting Government, the Host Government shall permit such investor and the Guaranting Government to make appropriate arrangements pursuant to which such interests are transferred to an entity permitted to own such interests under the laws of the Host Government. The Guaranting Government shall assert no greater rights than those of the transferring investor under the laws of the Host Government with respect to any interests transferred or succeeded to as contemplated in paragraph three. The Guaranting Government does, however, reserve its rights to assert a claim in its sovereign capacity in the

¹ Came into force on 30 May 1973, the date of the note by which the Government of Yugoslavia notified the Government of the United States of America that the Agreement had been approved under its constitutional procedures, in accordance with the provisions of the said notes.

eventuality of a denial of justice or other question of state responsibility as defined in international law.

5. Amounts in the lawful currency of the Host Government and credits thereof acquired by the Guaranteeing Government under such guaranties shall be accorded treatment neither less nor more favorable than that accorded to funds of nationals of the Guaranteeing Government deriving from investment activities like those in which the investor has been engaged, and such amounts and credits shall be freely available to the Guaranteeing Government to meet its expenditures in the national territory of the Host Government.

6. (a) Differences between the two Governments concerning the interpretation of the provisions of this Agreement shall be settled, insofar as possible, through negotiations between the two Governments. If such a difference cannot be resolved within a period of three months following the request for such negotiations, it shall be submitted, at the request of either Government, to an *ad hoc* arbitral tribunal for settlement in accordance with the applicable principles and rules of public international law. The arbitral tribunal shall be established as follows: Each Government shall appoint one arbitrator; these two arbitrators shall designate a President by common agreement who shall be a citizen of a third State and be appointed by the two Governments. The arbitrators shall be appointed within two months and the President within three months of the date of receipt of either Government's request for arbitration. If the foregoing time limits are not met, either Government may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointment or appointments, and both Governments agree to accept such appointment or appointments. The arbitral tribunal shall decide by majority vote. Its decision shall be binding. Each of the Governments shall pay the expense of its member and its representation in the proceedings before the arbitral tribunal; the expenses of the President and the other costs shall be paid in equal parts by the two Governments. The arbitral tribunal may adopt regulations concerning the costs, consistent with the foregoing. In all other matters, the arbitral tribunal shall regulate its own procedures.

(b) Any claim, arising out of investments guaranteed in accordance with this Agreement, against either of the two Governments, which, in the opinion of the other, presents a question of public international law, shall, at the request of the Government presenting the claim, be submitted to negotiations. If at the end of three months following the request for negotiations the two Governments have not resolved the claim by mutual agreement, the claim, including the question of whether it presents a question of public international law, shall be submitted for settlement to an arbitral tribunal selected in accordance with paragraph (a) above. The arbitral tribunal shall base its decision exclusively on the applicable principles and rules of public international law. Only the respective Governments may request the arbitral procedure and participate in it.

7. This Agreement shall continue in force until six months from the date of receipt of a note by which one Government informs the other of an intent no longer to be a party to the Agreement. In such event, the provisions of the agreement with respect to guaranties issued while the Agreement was in force shall remain in force for the duration of those guaranties, but in no case longer than twenty years, after the denunciation of the Agreement.

8. This Agreement shall enter into force on the date of the note by which the Host Government communicates to the Guaranteeing Government that the Agreement has been approved in conformity with the Host Government's constitutional procedures. This Agreement, upon entry into force, shall replace and terminate the Agreement on investment guaranties effected by exchange of notes signed at Washington on August 15, 1952.¹

¹United Nations, *Treaty Series*, vol. 184, p. 97.

Upon receipt of a note from Your Excellency indicating that the foregoing provisions are acceptable to the Government of the Socialist Federal Republic of Yugoslavia, the Government of the United States of America will consider that this note and your reply thereto constitute an agreement between our two Governments on this subject, the Agreement to enter into force in accordance with paragraph eight above.

Accept, Excellency, the renewed assurances of my highest consideration.

[Signed]

MALCOLM TOON

Ambassador of the United States of America
in Belgrade

His Excellency Janko Smole
Member of the Federal Executive Council
and Federal Secretary for Finance
of the Socialist Federal Republic of Yugoslavia

II

*The Yugoslav Member of the Federal Executive Council
and Federal Secretary of Finance to the American Ambassador*

Beograd, January 18, 1973

Mr. Ambassador,

I have the honor to acknowledge the receipt of your note dated January 18, 1973, which reads:

[See note I]

I have the honor to notify You that the Government of the Socialist Federal Republic of Yugoslavia confirms the agreement reached as stated in Your note and considers that the note and this reply constitute the component parts of the Agreement between the Government of the Socialist Federal Republic of Yugoslavia and the Government of the United States of America on guaranties for American private investments against noncommercial risks.

Accept, Mr. Ambassador, assurances of my highest consideration.

[Signed]

JANKO SMOLE

Member of the Federal Executive Council
and Federal Secretary for Finance
of the Socialist Federal Republic of Yugoslavia

ANNEX

AIDE-MÉMOIRE

In article 72 of the Law on the Resources of Economic Organizations ("Official Gazette of the SFRY", No. 10/1968), there is the following provision:

“If a foreign partner wishes to transfer the rights and duties referred to under the contract to a foreign legal or physical person or to another domestic economic organization, he must first offer, in writing, a transfer of the rights and duties referred to under the contract to the domestic economic organization in which the resources are invested.

“The domestic economic organization, unless otherwise provided for under the contract, must within sixty days after the day of receipt of the offer forward a statement to the foreign partner on acceptance or non-acceptance of the offer.

“If a foreign partner carries out a transfer of the rights and duties referred to under the contract contrary to the provision of paragraph one of this article without making an offer to the domestic economic organization beforehand, or if he carries out a transfer of the rights and duties referred to under the contract under conditions which are, for the persons to which the transfer has been made, more favorable than the conditions offered to the domestic economic organization, then the domestic economic organization in which the resources are invested may demand, in a complaint lodged with a competent economic court, that the transfer of the rights and duties referred to under the contract be cancelled and that the rights and duties referred to under the contract be transferred, under the same conditions, to the domestic economic organization.

“A complaint against a violation of the first option right to transfer of the rights and duties referred to under the contract may be lodged within thirty days after the day when the domestic economic organization learned about the transfer or about the more favorable conditions of the transfer.

“Transfer of the rights and duties of a foreign legal or physical person to another foreign person or to the domestic economic organization is entered in the register referred to under article 69 of the Law on the Resources of Economic Organizations. A notification of the transfer of the rights and duties referred to under the contract must be submitted by the foreign person carrying out this transfer within a period of thirty days after the date of the conclusion of a contract on the transfer.”

The Government of the Socialist Federal Republic of Yugoslavia considers that the above-quoted provision of article 72 of the Law on the Resources of Economic Organizations, although it is not directly connected with the Agreement on Investment Guaranties signed between the Government of the Socialist Federal Republic of Yugoslavia and the Government of the United States of America, is not in contradiction to the above-mentioned Agreement.

[Signed]

JANKO SMOLE
Member of the Federal Executive Council
and Federal Secretary for Finance
of the Socialist Federal Republic of Yugoslavia

Beograd, January 18, 1973.

Malcolm Toon
Ambassador of the United States of America
in Beograd