

AGREEMENT

between

THE GOVERNMENT OF BARBADOS

and

THE GOVERNMENT OF THE ITALIAN REPUBLIC

for

THE PROMOTION AND PROTECTION OF INVESTMENTS

PREAMBLE

The Government of Barbados and the Government of the Italian Republic (hereafter referred to as the Contracting Parties);

Desiring to establish favourable conditions for closer economic cooperation between the two countries, and more specifically for investments by nationals of one Contracting Party in the territory of the other Contracting Party; and

Acknowledging that promotion and mutual protection under international agreements of such investments, will contribute towards stimulating business ventures that will foster the prosperity of both Contracting Parties,

Hereby agree as follows:

Article 1

Definitions

For the purposes of this Agreement:

1. The term "investment" irrespective of the legal form adopted, shall be construed to mean any kind of property invested before or after the entry into force of this Agreement by a natural or legal person being a national of one Contracting Party in the territory of the other, in conformity with the laws and regulations of the latter. A change in the form in which assets are invested does not affect their character as investment and the term "investment" includes all investment whether made before or after the date of entry into force of this Agreement. Without limiting the generality of the foregoing, the term "investment" comprises:

- (a) movable and immovable property and any other property rights including, in so far as they may be used for investments purposes, real guarantees on the property of others;
- (b) equity holdings, debentures or shares and any other negotiable instrument or document of title, as well as Government and public securities in general;
- (c) credits for sums of money or any right for pledges or services having an economic value connected with investment, as well as reinvested income;
- (d) copyrights and royalties, commercial trade marks, patents, industrial designs and other intellectual and

immovable property rights, know-how, trade secrets, trade names and good will;

- (e) any right of an economic nature accruing by law or by contract and any licence, concession or franchise issued in accordance with current administrative or other regulations governing the exercise of business activities, including prospecting for, cultivating, extracting and exploiting natural resources.

2. The term "investor" shall be construed to mean any natural or legal person being a national of a Contracting Party who has effected, or is effecting investments in the territory of the other Contracting Party.

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.

4. That term "legal person", in reference to either Contracting Party, shall be construed, to mean any entity having an office in the territory of one of the Contracting Parties, and recognized by the latter Party in accordance with its national legislation as a government-owned institution, joint-stock corporation or partnership, foundation or association, regardless of whether its liability is limited. The capacity and any legal act of legal persons are regulated by laws or regulations of the Party in whose territory investments have been made.

5. The term "income" shall be construed to mean the money that has accrued or is still to accrue to an investment, including, in particular, profits or portions of profits, interest income, income from capital investment, dividends, royalties, payment for assistance, technical services, reinvested capital, capital gains and any additional returns from an investment.

6. The term "territory" shall be construed to mean, in addition to the zones contained within the land boundaries, the territorial sea and the exclusive zone over which the Contracting Parties have sovereignty or exercise sovereign or jurisdictional rights according to international law.

Article 2

Promotion and Protection of Investment

1. Each Contracting Party shall encourage investors of the other Contracting Party to invest in its territory and shall, subject to their legislation authorise these investments.

2. Each Contracting Party shall at all times ensure fair and equitable treatment of the investments of investors of the other Contracting Party. Each Contracting Party shall ensure that the management, maintenance, enjoyment, transformation, cessation and liquidation of investments effected in its territory by investors of the other Contracting Party, as well as the companies and firms in which these investments have been made, shall in no way be subject to unjustified or discriminatory measures.

Article 3

National Treatment and the Most Favoured Nation Clause

1. Each Contracting Party, within its territory, shall accord to investments effected by investors of the other Contracting Party and to the income accruing to such investments no less favourable treatment than that accorded to their own nationals or investors of Third Countries.

2. The treatment accorded to the activities directly related to the investments of investors of either Contracting Party shall not be less favourable than that accorded to similar activities of their own nationals or by investors of any Third Country.

3. Each Contracting Party shall regulate, according to its legislation and regulations, matters relating to entry, residence, work and travel within its respective territory encountered by nationals of the other Contracting Party and members of their families engaged in activities connected with investments in the spirit of this Agreement.

4. The provisions of paragraphs 1 and 2 of this Article do not apply to any advantages or privileges which one Contracting Party grants or may in the future grant to Third States by virtue of:

- (a) its membership of Customs or Economic Unions, Common Market associations, Free Trade Areas, regional or sub-regional Agreements;
- (b) international multilateral economic Agreements; or
- (c) Agreements entered into force in order to prevent double taxation or to facilitate cross-border trade.

Compensation for Losses and Damage

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses and damage, owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riots, or other similar events in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement no less favourable than that which the latter Contracting Party accords its own nationals or companies or to nationals or companies of any Third State.
2. Without prejudice to paragraph 1 of this Article, nationals and companies of one Contracting Party who in any of the situations referred to in that paragraph suffer loss or damage in the territory of the other Contracting Party resulting from:
 - (a) requisitioning of their property by its forces or authorities; or
 - (b) destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation, shall be accorded restitution or adequate compensation.
3. Compensation payments shall be freely transferable without undue delay.

Article 5

Nationalization or Expropriation

1. The investments to which this Agreement relates shall not be subject to any measure which might limit rights of ownership, possession, control or enjoyment of the investments, permanently or temporarily, unless such measures are in accordance with the relevant laws and regulations.
2. Investments or investors of one of the Contracting Parties shall not be directly or indirectly nationalized, expropriated, requisitioned or subjected to any measures having similar effects (herein after referred to as compulsory acquisition) in the territory of the other Contracting Party, except for public purposes or in the national interest, and against immediate, adequate 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 compensation shall be equivalent to the market value, that is the value as determined by the market, of the investment, immediately prior to the time of the announcement by the public authorities of the compulsory acquisition. In determining the market value, due weight shall be given to any factors which might have affected the value before the measures were publicly announced by the authorities. The market value shall be calculated according to internationally acknowledged accounting standards. Whenever there is no market as a basis for determining the value of the investment, compensation shall be calculated on the basis of a fair evaluation of the value of the investment, taking into account all relevant factors such as those elements which constitute distinctive features of the investments. Compensation shall be calculated in a convertible currency at the official exchange rate applicable on the day of which the decision to nationalize or expropriate is announced or made public and shall include interest at the LIBOR rate from the date of nationalization or expropriation to the date of payment. In the event of failure to reach an agreement between the investor and the host Contracting Party, the compensation shall be calculated under the terms of Article 9 of this Agreement, dealing with settlement of disputes. Once the compensation has been determined, it shall be paid promptly and authorisation for its repatriation issued.

4. The provisions of paragraph 1 of this Article shall also apply to profits accruing to an investment and, in the event of wind-up, the proceeds of liquidation.

5. If after the expropriation the good concerned has not been utilized, wholly or partially, for a public purpose, the owner or his assignees are entitled to repurchase the good at the market price, on a reciprocal basis.

Article 6

Repatriation of Capital, Profits and Income

1. Each of the Contracting Parties shall guarantee that, after investors have complied with all their fiscal obligations, they may transfer the following abroad, without undue delay, in any convertible currency:

- (a) the net capital used to initiate an investment and additional shares used to maintain the investment;
- (b) net income, dividends, royalties, payments for assistance and technical services, interest and any other profits;

winding up or otherwise, of an investment; provided that, in cases where the proceeds constitute large sums and in periods of exceptional balance of payments difficulties, the transfer of a minimum of 33 $\frac{1}{3}$ % per year is guaranteed over a period of three years at the relevant commercial rate of interest. This provision is without prejudice to any other agreement made between the investor and the Contracting Party concerned for the transfer of such proceeds;

- (d) funds to repay loans relating to an investment and interest due thereon, provided that the prior consent, if required, of the competent authorities has been obtained in respect of the repayment schedule;
- (e) remuneration and allowances paid to nationals of the other Contracting Party in respect of salaried work and services performed in relation to an investment effected in its territory, in the amount and manner prescribed by current national regulations.

2. Notwithstanding the provisions of Article 3 of this Agreement, the Contracting Parties undertake to apply to the transfers mentioned in paragraph 1 of this Article, no less favourable treatment than is accorded to investments effected of Third States.

3. A Contracting Party shall be entitled to depart from provisions of paragraphs 1 and 2 of this Article where the capital introduced into its territory has not been accorded, if required, approved status in accordance with the exchange control regulations in force in the territory of that Contracting Party at the time of introduction, except where such capital was introduced prior to the existence of any capital regulations.

Article 7

Subrogation

In the event that one Contracting Party or any of its Institutions has provided an insurance guarantee in respect of non-commercial risks for investments effected by one of its investors in the territory of the other Contracting Party, and has made payments to the said investor on the basis of that guarantee, the other Contracting Party shall recognise the assignment of the

rights of the insured investor to the Contracting Party guarantor. In relation to the transfer of payments to the Contracting Party or its Institution by virtue of this assignment, the provisions of Articles 4, 5, and 6 of this Agreement shall apply.

Article 8

Transfer Procedures

1. The transfers referred to in Articles 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. Transfers shall be made in a convertible currency at the official exchange rate applicable on the date on which the investor applies for the related transfer, with the exception of the provisions under paragraph 3 of Article 5 concerning the exchange rate applicable in case of nationalisation or expropriation.

2. The provisions of this Agreement will not, however, limit the application, of the national provisions aimed at preventing fiscal evasion and elusion. To this end the competent authorities of each Contracting Party commit themselves to provide any useful information upon the other Contracting Party's request.

Article 9

Settlement of Disputes between Investors and the Contracting Parties

1. Any dispute between a Contracting Party and an investor of the other Contracting Party concerning an investment of the latter in the territory of the former shall be settled amicably, as far as possible.

2. If such a dispute cannot be settled amicably within a period of three months from the date of the written application for settlement, the investor in question may submit at his choice the dispute to the competent local authorities or to conciliation or arbitration in compliance with Articles 28 and 36 of the Convention on the "Settlement of Investment Disputes between States and Nationals of other States" opened for signature at Washington on March 18, 1965 (the ICSID Convention).

3. Nothing in this Article shall be construed as preventing the Contracting Party and the investor of the other Contracting Party, from agreeing to submit at any time by common consent the dispute referred to in the aforementioned paragraphs to conciliation or arbitration under Articles 28 and 36 of the ICSID Convention, respectively.

— the disputes relate to a question other than nationalization or expropriation under Article 5, then the concerned Contracting Party will consent to immediate submission, if the investor so prefers, either to:

- (a) arbitration or conciliation under Articles 28 and 36 of the ICSID Convention; or
- (b) to an *ad hoc* arbitral tribunal in accordance with the procedures set out in the United Nations Commission on International Trade Law (UNCITRAL Rules) pursuant to the United Nations General Assembly Resolution 81/98 of the 15 December, 1986 (UNGA); or
- (c) to conciliation in accordance with the procedures set out in the UNCITRAL Rules pursuant to the relevant UNGA Resolution.

5. In relation to arbitration, the Contracting Party which is a Party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the investor who is the other Party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.

6. A legal person which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which before such a dispute arises the majority of shares is owned by nationals of the other Contracting Party, shall in accordance with Article 25 (2b) of the ICSID Convention, be treated for the purposes of the ICSID Convention as a national of the other Contracting Party.

7. (1) Neither Contracting Party shall pursue through diplomatic channels any dispute referred to the International Centre for the settlement of Investment Disputes (the Centre), unless:

- (a) the Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre; or
- (b) the other Contracting Party does not abide by and comply with the award rendered by an arbitral tribunal.

This does not preclude informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

Contracting Parties shall also refrain from negotiating through diplomatic channels any matter relating to any conciliation or arbitration procedure established under The United Nations Commission on International Trade Law regulations until all these procedures have been concluded and the concerned Contracting Party has failed to comply with the ruling of the conciliation commission or of the arbitration tribunal.

Article 10

Settlement of Disputes between the Contracting Parties

1. Any dispute 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 three months of the date on which one of the Contracting Party 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 of the date on which the request for arbitration is received, each Contracting Party shall appoint a member of a Tribunal. These two members shall then choose a national of a Third State to act as Chairman. The Chairman shall be appointed within three months of the date on which the other two members are appointed.
4. If the two members have not been appointed within the time provided by paragraph 3 of this Article, either of the Contracting Parties may apply to the President of the International Court of Justice to make the appointments. 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 appointment 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 he 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. The Arbitration Tribunal shall reach its decision by majority vote, and its decisions shall be binding. Both Contracting Parties shall pay the costs of their own arbitrator and of their own costs at the hearings. The Chairman's costs and any other costs shall be divided equally between 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.

The Arbitration Tribunal shall lay down its own procedures.

Article 11

Relations between Governments

The provisions of this Agreement shall apply irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

Article 12

Application of other provisions

1. Whenever any issue is governed both by this Agreement and by another international Agreement to which both the Contracting Parties are parties, or whenever it is governed otherwise by general International Law, the most favourable provisions, case by case, shall be applied to the Contracting Parties and to their investors.

2. Whenever, as a result of laws, regulations, provisions or specific contracts, one of the Contracting Parties has adopted a more advantageous treatment for investors of the other Contracting Party than that provided in this Agreement, they shall be accorded that more favourable treatment.

Article 13

Entry into force

This Agreement shall become effective on the date on which both Contracting Parties have notified the other of the fulfillment of their respective constitutional requirements.

Article 14

Duration and Expiry Date

1. This Agreement shall remain effective for 10 years as from the date in which the notification procedures indicated in Article 13 have been effected and it shall continue in force until the expiration of twelve months from

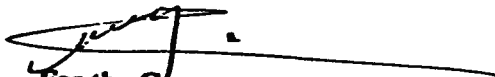
In relation to arbitration, under Article 9(2), it shall be conducted in accordance with Arbitration Standards of the United Nations Commission on International Trade Law (UNCITRAL), pursuant to Resolution 31'98 of 15th December 1976 adopted by the United Nations General Assembly, and with the following provisions:


- (a) There shall be three Arbitrators. If they are not national of either of the Contracting Parties, they shall be nationals of States having diplomatic relations with both Contracting Parties.

For arbitrators to be appointed pursuant to the provisions of the UNCITRAL Rules, the President of the Institute of Arbitration of the Stockholm Chamber of Commerce shall be the "Appointing Authority". The Arbitration will be held in Stockholm, except where other arrangements have been made between the involved Contracting Parties.

- (b) The acknowledgement and the enforcement of the decision of the Arbitration Tribunal in the territories of the Contracting Parties shall be governed by their respective national legislation in accordance with the relevant international conventions to which they are Parties.

Done at Bridgetown on October 25, 1995 in two copies, one in Italian and one in English both texts being authentic.


For the Government of the
Italian Republic


For the Government
of Barbados

the date on which either Contracting Party shall have given written notice of termination to the other.

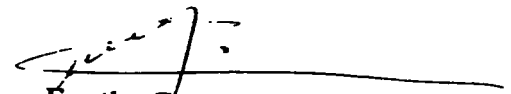
2. In the case of investments effected prior to the expiry dates of the present Agreement, as provided in paragraph 1 of this Article, the provisions of Articles 1 to 12 shall remain effective for a period of twenty years after the date of termination and without prejudice to the application thereafter of the rules of general International Law.

In witness whereof, the undersigned, being duly authorized thereto by respective Government, have signed the present Agreement.

Done at Bridgetown on October 25, 1995 in two copies, one in Italian and one in English both texts being authentic.



For the Government of
Barbados



For the Government of the
Italian Republic

PROTOCOL

On signing the Agreement between the Government of the Italian Republic and the Government of Barbados on the Promotion and Protection of Investments, the Contracting Parties also agreed to the following clauses which shall be deemed to form an integral part of the Agreement.

1. In reference to Article 3:

Investment related activities concerning the procurement, sale and transport of raw and processed materials, energy, fuels, instrumental goods, as well as any other kind of related operation which is in any way connected with the entrepreneurial activities governed by this Agreement, shall be equally accorded no less favourable treatment in territories of both Contracting Parties than that accorded to similar activities and initiatives of resident nationals or investors nationals of any Third State.

