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International Investment Instruments:

A Compendium

Volume VI

PART FOUR

INVESTMENT-RELATED PROVISIONS IN ASSOCIATION AGREEMENTS, BILATERAL AND INTERREGIONAL COOPERATION AGREEMENTS

UNITED NATIONS

AGREEMENT ON TRADE, DEVELOPMENT AND COOPERATION BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, OF THE ONE PART, AND THE REPUBLIC OF SOUTH AFRICA, OF THE OTHER PART [*]
[excerpts]

The Agreement on Trade, Development and Cooperation between the European Community and Its Member States, of the One Part, and the Republic of South Africa, of the Other Part was signed at Pretoria on 11 October 1999. It entered into force on 1 January 2000. The member States of the European Community are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

TITLE III

TRADE RELATED ISSUES

SECTION B

RIGHT OF ESTABLISHMENT AND SUPPLY OF SERVICES

Article 29

Reconfirmation of GATS obligations

1. In recognition of the growing importance of services for the development of their economies, the Parties underline the importance of strict observance of the General Agreement on Trade in Services (GATS), in particular its principle on most-favoured-nation treatment, and including its applicable protocols with annexed commitments.

2. In accordance with the GATS, this treatment shall not apply to:

   (a) advantages accorded by either Party under the provisions of an agreement as defined in Article V of the GATS or under measures adopted on the basis of such an agreement;

   (b) other advantages accorded pursuant to the list of most-favoured-nation exemptions annexed by either Party to the GATS.

3. The Parties reaffirm their respective commitments as annexed to the fourth Protocol to the GATS concerning basic telecoms and the fifth Protocol concerning financial services.

[*] *Source*: European Communities (1999). "Agreement on Trade, Development and Cooperation between the European Community and Its Member States, of the One Part, and the Republic of South Africa, of the Other Part", *Official Journal of the European Communities*, L 311, 04 December 1999, pp. 3-297; available also on the Internet (http://europa.eu.int/eur-lex//en/lif/dat/1999/en_299A1204_02.html). [Note added by the editor.]

Article 30
Further liberalisation of supply of services

1. The Parties will endeavour to extend the scope of the Agreement with a view to further liberalising trade in services between the Parties. In the event of such an extension, the liberalisation process shall provide for the absence or elimination of substantially all discrimination between the Parties in the services sectors covered and should cover all modes of supply including the supply of a service:

(a) from the territory of one Party into the territory of the other;

(b) in the territory of one Party to the service consumer of the other;

(c) by a service supplier of one Party, through commercial presence in the territory of the other;

(d) by a service supplier of one Party, through presence of natural persons of that Party in the territory of the other.

2. The Cooperation Council shall make the necessary recommendations for the implementation of the objective set out in paragraph 1.

3. When formulating these recommendations, the Cooperation Council shall take into account the experience gained by the implementation of the obligations of each Party under the GATS, with particular reference to Article V generally and especially paragraph 3(a) thereof covering the participation of developing countries in liberalisation agreements.

4. The objective set out in paragraph 1 shall be subject to a first examination by the Cooperation Council at the latest five years after the entry into force of this Agreement.

SECTION C

CURRENT PAYMENTS AND MOVEMENT OF CAPITAL

Article 32
Current payments

1. Subject to the provisions of Article 34, the Parties undertake to allow all payments for current transactions between residents of the Community and of South Africa to be made in freely convertible currency.

2. South Africa may take the necessary measures to ensure that the provisions of paragraph 1, which liberalise current payments, are not used by its residents to make unauthorised capital outflows.

Article 33
Capital movements

1. With regard to transactions on the capital account of balance of payments, the Community and South Africa shall ensure, from the entry into force of this Agreement, that capital relating to direct investments in South Africa in companies formed in accordance with current laws can move freely, and that such investment and any profit stemming therefrom can be liquidated and repatriated.

2. The Parties shall consult each other with a view to facilitating and eventually achieving full liberalisation of the movement of capital between the Community and South Africa.

Article 34
Balance of payment difficulties

Where one or more Member States of the Community, or South Africa, is in serious balance of payments difficulties, or under threat thereof, the Community or South Africa, as the case may be, may, in accordance with the conditions established under the General Agreement on Tariffs and Trade and Articles VIII and XIV of the Articles of Agreement of the International Monetary Fund, adopt restrictions on current transactions which shall be of limited duration and may not go beyond what is necessary to remedy the balance of payments situation. The Community or South Africa, as the case may be, shall inform the other Party forthwith and shall submit to it as soon as possible a timetable for the elimination of the measures concerned.

SECTION D

COMPETITION POLICY

Article 35
Definition

The following are incompatible with the proper functioning of this Agreement, in so far as they may affect trade between the Community and South Africa:

(a) agreements and concerted practices between firms in horizontal relationships, decisions by associations of firms, and agreements between firms in vertical relationships, which have the effect of substantially preventing or lessening competition in the territory of the Community or of South Africa, unless the firms can demonstrate that the anti-competitive effects are outweighed by pro-competitive ones;

(b) abuse by one or more firms of market power in the territory of the Community or of South Africa as a whole or in a substantial part thereof.

Article 36
Implementation

If, at the entry into force of this Agreement, either Party has not yet adopted the necessary laws and regulations for the implementation of Article 35, in their jurisdictions it shall do so within a period of three years.

Article 37
Appropriate measures

If the Community or South Africa considers that a particular practice in its domestic market is incompatible with the terms of Article 35, and:

(a) is not adequately dealt with under the implementing rules referred to in Article 36, or

(b) in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interests of the other Party or material injury to its domestic industry, including its services industry, the Party concerned may take appropriate measures consistent with its own laws, after consultation within the Cooperation Council, or after 30 working days following referral for such consultation. The appropriate measures to be taken shall respect the powers of the Competition Authority concerned.

Article 38
Comity

1. The Parties agree that, whenever the Commission or the South African Competition Authority has reason to believe that anti-competitive practices, defined under Article 35, are taking place within the territory of the other authority and are substantially affecting important interests of the Parties, it may request the other Party's competition authority to take appropriate remedial action in terms of that authority's rules governing competition.

2. Such a request shall not prejudice any action under the requesting authority's competition laws that may be deemed necessary and shall not in any way encumber the addressed authority's decision-making powers or its independence.

3. Without prejudice to its respective functions, rights, obligations or independence, the competition authority so addressed shall consider and give careful attention to the views expressed and documentation provided by the requesting authority and, in particular, pay heed to the nature of the anti-competitive activities in question, the firm or firms involved, and the alleged harmful effect on the important interests of the aggrieved Party.

4. When the Commission or the Competition Authority of South Africa decides to conduct an investigation or intends to take any action that may have important implications for the interests of the other Party, the Parties must consult, at the request of either Party and both shall endeavour to find a mutually acceptable solution in the light of their respective important interests, giving due regard to each other's laws, sovereignty, the independence of the respective competition authorities and to considerations of comity.

Article 39
Technical assistance

The Community shall provide South Africa with technical assistance in the restructuring of its competition law and policy, which may include among others:

(a) the exchange of experts;

(b) organisation of seminars;

(c) training activities.

Article 40
Information

The Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.

SECTION F

OTHER TRADE-RELATED PROVISIONS

Article 45
Government procurement

1. The Parties agree to cooperate to ensure that access to the Parties' procurement contracts is governed by a system which is fair, equitable and transparent.

2. The Cooperation Council shall periodically review the progress made in this matter.

Article 46
Intellectual property

1. The Parties shall ensure adequate and effective protection of intellectual property rights in conformity with the highest international standards. The Parties apply the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) from 1 January 1996 and undertake to improve, where appropriate, the protection provided for under that Agreement.

2. If problems in the area of intellectual property protection affecting trading conditions were to occur, urgent consultations shall be undertaken, at the request of either Party, with a view to reaching mutually satisfactory solutions.

3. The Community and its Member States confirm the importance they attach to the obligations arising from the:

(a) Protocol to the Madrid Agreement concerning the International Registration of Marks (Madrid 1989);

b) International Convention for the Protection of Performers, Producers of Phonogram and Broadcasting Organisations (Rome 1961);

(c) Patent Cooperation Treaty (Washington 1979 as amended and modified in 1984).

4. Without prejudice to the obligations arising from the WTO Agreement on TRIPs, South Africa could favourably consider accession to the multilateral conventions referred to in paragraph 3.

5. The Parties confirm the importance they attach to the following instruments:

(a) the provisions of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Geneva 1977 and amended in 1979);

(b) Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971);

(c) International Convention for the Protection of New Varieties of Plants (UPOV) (Geneva Act, 1978);

(d) Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (1977 modified in1980);

(e) Paris Convention for the Protection of Industrial Property (Stockholm Act, and amended in 1979) WIPO;

(f) WIPO Copyright Treaty (WCT), 1996.

6. In order to facilitate the implementation of this Article, the Community may provide, on request and on mutually agreed terms and conditions, technical assistance to South Africa in, among other things, the preparation of laws and regulations for the protection and enforcement of intellectual property rights, the prevention of the abuse of such rights, the establishment and reinforcement of domestic offices and other agencies involved in enforcement and protection, including the training of personnel.

7. The Parties agree that for the purpose of this Agreement, intellectual property includes in particular copyright, including the copyright on computer programmes and neighbouring rights, utility models, patents, including biotechnical inventions, industrial designs, geographical indications, including appellations of origin, trade marks and service marks, topographies of integrated circuits, as well as the legal protection of databases and the protection against unfair competition as referred to in Article 10 bis of the Paris Convention for the Protection of Industrial Property and protection of undisclosed information on know-how.

TITLE IV

ECONOMIC COOPERATION

Article 51
Industry

The aim of cooperation in this area is to facilitate the restructuring and modernisation of the South African industry while fostering its competitiveness and growth and to create conditions favourable to mutually beneficial cooperation between South African and Community industry.

The aim of the cooperation shall be, inter alia:

(a) to encourage cooperation between the Parties' economic operators (companies, professionals, sectoral and other business organisations, organised labour, etc.);

(b) to back the efforts of South Africa's public and private sectors to restructure and modernise industry, under conditions ensuring environmental protection, sustainable development and economic empowerment;

(c) to foster an environment which favours private initiatives, with the aim of stimulating and diversifying output for the domestic and export markets;

(d) to promote improved utilisation of South Africa's human resources and industrial potential through, inter alia, the facilitation of access to credit and investment finance and support to industrial innovation, technology transfer, training, research and technological development.

Article 52
Investment promotion and protection

Cooperation between the Parties shall aim to establish a climate which favours and promotes mutually beneficial investment, both domestic and foreign, especially through improved conditions for investment protection, investment promotion, the transfer of capital and the exchange of information on investment opportunities.

The aims of cooperation shall be, inter alia, to facilitate and encourage:

(a) the conclusion, where appropriate, between the Member States and South Africa of agreements for the promotion and protection of investment;

(b) the conclusion, where appropriate, between the Member States and South Africa of agreements to avoid double taxation;

(c) the exchange of information on investment opportunities;

(d) work towards harmonised and simplified procedures and administrative practices in the field of investment;

(e) support, through appropriate instruments, the promotion and encouragement of investment in South Africa and in the Southern African region.

Article 63
Services

The Parties agree to foster cooperation in the services sector in general and in the area of banking, insurance and other financial services in particular, through, inter alia:

(a) encouraging trade in services;

(b) exchanging, where appropriate, information on rules, laws and regulations governing the services sector in the Parties;

(c) improving accounting, auditing, supervision and regulation of financial services and financial monitoring, for example through the facilitation of training schemes.

* * *

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TURKEY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE DEVELOPMENT OF TRADE AND INVESTMENT RELATIONS*

The Agreement between the Government of the Republic of Turkey and the Government of the United States of America Concerning the Development of Trade and Investment Relations was signed on 29 September 1999. It entered into force on 11 February 2000.

The Government of the Republic of Turkey and the Government of the United States of America (individually a "Party" and collectively the (Parties"):

1) Desiring to enhance the partnership, friendship, and spirit of cooperation between the two countries;

2) Desiring to develop further both countries' international trade and economic interrelationship;

3) Taking into account the membership of both countries in the World Trade Organization (WTO), and noting that this Agreement is without prejudice to the rights and obligations of the Parties under the Marrakech Agreement Establishing the World Trade Organization and the agreements, understandings, and other instruments relating thereto or concluded under the auspices of the WTO;

4) Recognizing the importance of fostering an open and predictable environment for international trade and investment;

5) Recognizing the benefits to each Party resulting from increased international trade and investment, and that trade-distorting investment measures and protectionism would deprive the Parties of such benefits;

6) Recognizing the essential role of private investment, both domestic and foreign, in furthering growth, creating jobs, expanding trade, improving technology and enhancing economic development;

7) Recognizing that foreign direct investment confers positive benefits on each Party;

8) Acknowledging previous Agreements between the Republic of Turkey and the United States, and noting that this Agreement is without prejudice to the rights and obligations of the Parties under such Agreements;

* *Source*: The Government of the United States and the Government of Turkey (1999). "Agreement between the Government of the Republic of Turkey and the Government of the United States of America Concerning the Development of Trade and Investment Relations", *Official Gazette of the Government of Turkey No. 23961, 11 February 2000*; available also on the Internet (http://www.turkey.org/business/TIFA-E.htm). [Note added by the editor.]

9) Recognizing the increased importance of services in their economies and in their bilateral relations;

10) Recognizing the need to eliminate non-tariff barriers in order to facilitate greater access to the markets of both countries;

11) Recognizing the importance of providing adequate and effective protection and enforcement of intellectual property rights and of adherence to intellectual property rights conventions;

12) Recognizing the significance to both countries' economic welfare of working toward the observance and promotion of internationally recognized core labor standards based on the principles underlying core ILO Conventions.

13) Desiring to ensure that trade and environmental policies are mutually supportive in furtherance of sustainable development;

14) Desiring to encourage and facilitate private sector contacts between the two countries;

15) Recognizing the principles set forth in the Joint Communique of the Turkey-U.S. Joint Economic Commission of October 20-21, 1998 and the Memorandum of Understanding on establishing a mechanism of commercial consultation signed in Ankara on January 28,1998;

16) Considering that it would be in their mutual interest to establish a bilateral mechanism to explore methods to liberalize trade and investment, including the negotiation of agreements to facilitate freer trade.

To this end, the Parties agree as follows:

ARTICLE ONE

The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate in a mutually beneficial way the exchange of goods and services and to secure favorable conditions for long-term development and diversification of trade between their respective nationals and companies.

ARTICLE TWO

The Parties shall establish a Turkey-United States Council on Trade and Investment, "the Council," which shall be composed of representatives of both Parties. The Turkish side will be chaired by the Undersecretariat of Foreign Trade; and the U.S. side will be chaired by Office of the U.S. Trade Representative (USTR). Both Parties may be assisted by officials of other government entities as circumstances require. The Council will meet at least once a year on mutually accepted dates.

ARTICLE THREE

The objectives of the Council are to hold consultations on specific trade and investment matters of interest to the Parties; to identify agreements appropriate for negotiation; and to identify and work toward the removal of impediments to trade and investment.

ARTICLE FOUR

For the purpose of further developing bilateral trade and providing for a steady increase in the exchange of products and services, the Parties shall consider whether further agreements relating to trade, taxation, intellectual property, investment, labor and environmental issues and to any other matters agreed upon by the Parties would be desirable.

ARTICLE FIVE

1. Either Party may raise for consultation between the Parties any investment matter not arising under the Treaty between the Parties concerning the Reciprocal Encouragement and Protection of Investments, signed in Washington on December 3, 1985, "the Investment Treaty", or any trade matter. Requests for consultation shall be accompanied by a written explanation of the subject to be discussed and consultations shall be held within 30 days of the request, unless the requesting Party agrees to a later date.

2. This Agreement shall be without prejudice to the rights of either Party under its domestic law or under any other instrument to which either country is a party.

ARTICLE SIX

The present Agreement shall enter into force on the date on which the Parties exchange notification that each has completed the legal procedures necessary for this purpose.

ARTICLE SEVEN

The Parties agree to formulate an action agenda for the Council within 30 days of the entry into force of this Agreement.

ARTICLE EIGHT

The present Agreement shall remain in force for a period of five (5) years and thereafter its validity shall be automatically extended on a yearly basis, unless a written notice of termination is given by either Party six (6) months prior to the end of any such period.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this Agreement.

DONE at Washington this 29th day of September 1999, in duplicate in the Turkish and English languages, both texts being equally authentic.

*** * ***

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE ARAB REPUBLIC OF EGYPT CONCERNING THE DEVELOPMENT OF TRADE AND INVESTMENT RELATIONS*

The Agreement between the Government of the United States of America and the Arab Republic of Egypt Concerning the Development of Trade and Investment Relations was signed on 1 July 1999. It entered into force on the date of signature.

The Government of the United States of America and the Government of the Arab Republic of Egypt (individually a "party" and collectively the "parties"):

1) Desiring to enhance the partnership, friendship, and spirit of cooperation between the two countries;

2) Desiring to develop further both countries' international trade and economic interrelationship;

3) Taking into account the membership of both countries in the World Trade Organization (WTO), and noting that this agreement is without prejudice to the rights and obligations of the parties under the Marrakesh Agreement establishing the World Trade Organization and the agreements, understandings, and other instruments relating thereto or concluded under the auspices of the WTO;

4) Recognizing the importance of fostering and open and predictable environment for international trade and investment;

5) Recognizing the benefits to each party resulting from increased international trade and investment, and that trade-distorting investment measures and protectionism would deprive the parties of such benefits;

6) Recognizing the essential role of private investment, both domestic and foreign, in furthering growth, creating jobs, expanding trade, improving technology and enhancing economic development;

7) Recognizing that foreign direct investment confers positive benefits on each party;

8) Taking into account the treaty between the parties concerning the reciprocal encouragement and protection of investments, signed at Washington on September 29, 1982, "The Investment Treaty," and noting that this Agreement is without prejudice to the rights and obligations of the parties under The Investment Treaty;

* *Source*: The Government of the United States and the Government of Egypt (1999). "Agreement between the Government of the United States of America and the Arab Republic of Egypt Concerning the Development of Trade and Investment Relations"; available on the Internet (http://www.usis.egnet.net/usis/agree1.htm). [Note added by the editor.]

9) Recognizing the increased importance of services in their economies and in bilateral relations;

10) Acknowledging the need to eliminate non-tariff barriers in order to facilitate greater access to the markets of both countries;

11) Recognizing the importance of providing adequate and effective protection and enforcement of intellectual property rights and of adherence to the intellectual property rights conventions;

12) Recognizing the significance to both countries' economic welfare of working toward the observance and promotion of internationally recognized core labor standards;

13) Desiring to ensure that trade and environmental policies are mutually supportive in furtherance of sustainable development;

14) Desiring to encourage and facilitate private sector contracts between the two countries;

15) Recognizing the views mutually expressed in the Joint Statement of the U.S. Egyptian Partnership for Economic Growth and Development of May 3, 1998;

16) Considering that it would be in their mutual interest to establish a bilateral mechanism to explore methods to liberalize trade and investment, including the negotiations of agreements to facilitate freer trade;

To this end, the parties agree as follows:

Article One

The parties affirm their desire to expand trade in products and services consistent with the terms of this agreement. They shall take appropriate measures to encourage and facilitate the exchange of goods and services and to secure favorable conditions for long-term development and diversification of trade between their respective nationals and companies.

Article Two

The parties shall establish a United States-Egypt Council on Trade and Investment which shall be composed of representatives of both parties. The Egyptian side be will chaired by the Ministry of Trade and Supply; and the U.S. side will be chaired by the office of the U.S. Trade Representative (USTR). Both parties will be assisted by officials of other government entities as circumstances require. The council will meet at such times as agreed by the two parties.

Article Three

The objectives of this Council are to hold consultations on specific trade matters, and those investment matters not arising under The Investment Treaty, of interest to the parties; to identify agreements appropriate for negotiation; and to identify and work toward the removal of impediments to trade and investment flows.

Article Four

For the purpose of further developing bilateral trade and providing for a steady increase in the exchange of products and services, the parties shall consider whether further agreements relating to trade, taxation, intellectual property and investment issues would be desirable.

Article Five

1) Either party may raise for consultation between the parties any investment matter not arising under The Investment Treaty or any trade matter. Requests for consultations shall be accompanied by a written explanation of the subject to be discussed and consultations shall be held within 30 days of the request, unless the requesting party agrees to a later date.

2) This Agreement shall be without prejudice to the rights of either party under its domestic law or under any other instrument to which either country is a party.

Article Six

This Agreement shall enter into force on the date of its signature by both parties.

Article Seven

This Agreement shall remain in force unless terminated by mutual consent of the parties or by either party upon six months written notice to the other party.

In witness thereof, the undersigned, being duly authorized by their respective governments, have signed this Agreement.

Done at Washington, D.C. this 1st day of July, 1999, in duplicate in the English and Arabic languages, both texts being equally authentic.

*** * ***

INVESTMENT INCENTIVE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE ARAB REPUBLIC OF EGYPT*

The Investment Incentive Agreement between the Government of the United States of America and the Arab Republic of Egypt was signed on 1 July 1999. It entered into force on the date of signature.

AFFIRMING their common desire to encourage economic activities in Egypt that promote the development of the economic resources and productive capacities of Egypt; and

RECOGNIZING that this objective can be promoted through investment support provided by the Overseas Private Investment Corporation ("OPIC"), a development institution and an agency of the United States of America, in the form of investment insurance and reinsurance, debt and equity investments and investment guaranties;

HAVE AGREED as follows:

ARTICLE I

As used in this Agreement, the following terms have the meanings herein provided. The term "Investment Support" refers to any debt or equity investment, any investment guaranty and any investment insurance or reinsurance which is provided by the Issuer in connection with a project in the territory of Egypt. The term "Issuer" refers to OPIC and any successor agency of the United States of America, and any agent of either. The term "Taxes" means all present and future taxes, levies, imposts, stamps, duties and charges, whether direct or indirect, imposed in Egypt and all liabilities with respect thereto.

ARTICLE 2

The two Governments confirm their understanding, that the Issuer's activities are governmental in nature and therefore:

(a) The Issuer shall not be subject to regulation under the laws of Egypt applicable to insurance or financial organizations, but, in the provision of Investment Support, shall be afforded all rights and have access to all remedies of any such entity, whether domestic, foreign or multilateral.

(b) The Issuer, all operations and activities undertaken by the Issuer in connection with any Investment Support, and all payments, whether of interest, principal, fees, dividends, premiums or the proceeds from the liquidation of assets or of any other nature, that are made, received or guaranteed by the Issuer in connection with any Investment Support shall be exempt from Taxes,

* *Source*: The Government of the United States and the Government of Egypt (1999). "Investment Incentive Agreement between the Government of the United States of America and the Arab Republic of Egypt"; available on the Internet (http://www.usis.egnet.net/usis/agree2.htm). [Note added by the editor.]

whether imposed directly on the Issuer or payable in the first instance by others. Neither projects receiving Investment Support nor investors in such projects shall be exempt from Taxes by operation of this Article, provided, however, that any Investment Support shall be accorded tax treatment no less favorable than that accorded to the investment support of any other national or multilateral development institution which operates in Egypt. The Issuer shall not be subject to Taxes in connection with any transfer, succession or other acquisition which occurs pursuant to paragraph (c) of this Article or Article 3(a) hereof, but obligations for Taxes previously accrued and unpaid with respect to interests received by the Issuer shall not be extinguished as a result of such transfer, succession or other acquisition.

(c) If the Issuer makes a payment to any person or entity, or exercises its rights as a creditor or subrogee, in connection with any Investment Support, the Government of Egypt shall recognize the transfer to, or acquisition by, the Issuer of any cash, accounts, credits, instruments or other assets in connection with such payment or the exercise of such rights, as well as the succession of the Issuer to any right, title, claim, privilege or cause of action existing, or which may arise, in connection therewith.

(d) With respect to any interests transferred to the Issuer or any interests to which the Issuer succeeds under this Article, the Issuer shall assert no greater rights than those of the person or entity from whom such interests were received, provided that nothing in this Agreement shall limit the right of the Government of the United States of America to assert a claim under international law in its sovereign capacity, as distinct from any rights it may have as the Issuer pursuant to paragraph (c) of this Article.

ARTICLE 3

(a) Amounts in the currency of Egypt, including cash, accounts, credits, instruments or otherwise,- acquired by the Issuer upon making a payment, or upon the exercise of its rights as a creditor, in connection with any Investment Support provided by the Issuer for a project in Egypt, shall be accorded treatment in the territory of Egypt no less favorable as to use and conversion than the treatment to which such funds would have been entitled in the hands of the person or entity from which the Issuer acquired such amounts.

(b) Such currency and credits may be transferred by the Issuer to any person or entity and upon such transfer shall be freely available for use by such person or entity in the territory of Egypt in accordance with its laws.

ARTICLE 4

(a) Any dispute between the Government of the United States of America and the Government of the Arab Republic of Egypt regarding the interpretation of this Agreement or which, in the opinion of either party hereto, presents a question of international law arising out of any project or activity for which Investment Support has been provided shall be resolved, insofar as possible, through negotiations between the two Governments. If, six months following a request for negotiations hereunder, the two Governments have not resolved the dispute, the dispute, including the question of 'Whether such dispute presents a question of international law, shall be submitted, at the initiative of either Government, to an arbitral tribunal for resolution in accordance with paragraph (b) of this Article.

(b) The arbitral tribunal referred to in paragraph (a) of this Article shall be established and shall function as follows:

(i) Each Government shall appoint one arbitrator. These two arbitrators shall by agreement designate a president of the tribunal who shall be a citizen of a third state and whose appointment shall be subject to acceptance by the two Governments. The arbitrators shall be appointed within three months, and the president within six months, of the date of receipt of either Government's request for arbitration. If the appointments are not made within the foregoing time limits, either Government may, in the absence of any other agreement, request the Secretary-General of the International Centre for the Settlement of Investment Disputes to make the necessary appointment or appointments. Both Governments hereby agree to accept such appointment or appointments.

(ii) Decisions of the arbitral tribunal shall be made by majority vote and shall be based on the applicable principles and rules of international law. Its decision shall be final and binding.

(iii) During the proceedings, each Government shall bear the expense of its arbitrator and of its representation in the proceedings before the tribunal, whereas the expenses of the president and other costs of the arbitration shall be paid in equal parts by the two Governments. In its award, the arbitral tribunal may reallocate expenses and costs between the two Governments.

(iv) In all other matters, the arbitral tribunal shall regulate its own procedures.

ARTICLE 5

(a) This Agreement shall enter into force on the date of signature.

(b) This Agreement shall continue in force until six months from the date of a receipt of a note by which one Government informs the other of its intent to terminate this Agreement. In such event, the provisions of this Agreement shall, with respect to Investment Support provided while this Agreement was in force, remain in force so long as such Investment Support remains outstanding, but in no case longer than twenty years after the termination of this Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments, have signed this Agreement

DONE at Washington, District of Columbia, United States of America, on the 1st Day of July, 1999, in duplicate, in the English language.

* * *

AGREEMENT CONCERNING THE DEVELOPMENT OF TRADE AND INVESTMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA*

The Agreement Concerning the Development of Trade and Investment between the Government of the Republic of South Africa and the Government of the United States of America was signed on 18 February 1999. It entered into force on the date of signature.

PREAMBLE

The Government of the Republic of South Africa and the Government of the United States of America (hereinafter referred to individually as a "Party" and jointly as the "Parties"):

1. Inspired by the strong desire to strengthen the ties of friendship and cooperation existing between the Parties;

2. Committed to achieving economic development and meaningful integration of developing countries into the global economy;

3. Recognizing the benefits to each Party resulting from increased trade and investment;

4. Determined to work towards greater well-being for their peoples, through increased trade and investment;

5. Convinced of the importance of reinforcing the flow of trade in goods and services;

6. Recognizing the important role of agriculture and agricultural trade between our two countries;

7. Desiring to ensure that trade and environmental policies are mutually supportive in furtherance of economic growth and sustainable development;

8. Recognizing that foreign direct investment confers benefits on each Party;

9. Recognizing the value of fostering a favorable environment for trade and investment between the Parties, including through the elimination of impediments to trade and the provision of adequate and effective protection of intellectual property rights;

10. Reaffirming their commitment to respect and promote the fundamental rights of workers in both countries, based on the core conventions of the International Labor Organization;

* *Source*: The Government of the United States and the Government of South Africa (1999). "Agreement Concerning the Development of Trade and Investment between the Government of the Republic of South Africa and the Government of the United States of America"; available on the Internet (http://www.ustr.gov/regions/africa/tifasaus.htm). [Note added by the editor.]

11. Noting the membership of both countries in the World Trade Organization and accepting that this Agreement is without prejudice to each Party's rights and obligations under the agreements, understandings, and other instruments related to or concluded under the auspices of the WTO;

12. Recognizing the positive and constructive role of the Trade and Investment Committee (TIC) of the Bi-National Commission (BNC), co-chaired by the US Secretary of Commerce and the South African Minister of Trade and Industry, in enhancing economic ties between the two countries;

13. Taking into account the need to eliminate non-tariff barriers in order to facilitate greater access to the markets of both countries;

14. Reaffirming their desire to resolve trade and investment problems and disputes through consultation and dialogue;

HEREBY AGREE as follows:

Article One
OBJECTIVES

The Parties will seek to:

(1) Expand trade in goods and services between them, within the framework and terms of this agreement.

(2) Take appropriate measures to encourage and facilitate the exchange of goods and services, and to secure favorable conditions for long-term development and diversification of trade between the two countries.

(3) Encourage private sector investment between the two countries, as a means of furthering growth, job creation, and economic development, and, to this end, will promote an open and predictable environment for investment and facilitate expanded contacts between their respective private sectors.

Article Two
COUNCIL ON TRADE AND INVESTMENT

(1) The Parties will establish a Council on Trade and Investment (The Council) which will be composed of representatives of both Parties. South Africa's side will be chaired by a representative appointed by the Department of Trade and Industry (DTI). The United States of America's side will be chaired by the Office of the United States Trade Representative (USTR). Each Chair may work with officials from other Government entities as circumstances require.

(2) The function of the Council will be to ensure the fulfilment of the objectives of this Agreement, as set out in Article One, and to provide a forum for consultation and dialogue on specific trade and investment matters of interest to the Parties, as well as for identifying and working towards the removal of impediments to trade and investment flows. In this connection,

the Council will build on the work of and, when both Parties consider it appropriate, consult or cooperate with the TIC of the BNC.

(3) The Council will meet at such times as will be agreed by the Parties.

Article Three
CONSULTATION AND COOPERATION

(1) Either Party may, whenever it considers it appropriate, consult the civil society in its country, such as business, labor, consumer, environmental and academic groups, on matters related to the work of the Council. Either Party may, when it considers it appropriate, present the views of its civil society at meetings of the Council.

(2) For the purposes of providing for the further expansion of bilateral trade and investment flows, the Parties will consider whether further agreements relating to taxation, intellectual property, and trade and investment issues would be desirable.

(3) Either Party may, at any time, raise for consultation any trade or investment matter between the Parties. Requests for consultation will be accompanied by a written explanation of the subject to be discussed, and the consultations will be held within a reasonable time, the venue for which will be agreed between the Parties.

Article Four
FINAL CLAUSES

(1) This Agreement is without prejudice to the rights and obligations of either Party under its domestic law or under any other agreements, conventions or other instruments to which either country is a party.

(2) This Agreement may be amended through an exchange of notes between the Parties through diplomatic channels.

(3) The Agreement will enter into force on the date of its signature by both Parties and will remain in force unless terminated by mutual consent of the Parties, or by either Party upon six months' written notice to the other Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at Cape Town, on 18 February 1999, in the English language.

*** * ***

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF GHANA CONCERNING THE DEVELOPMENT OF TRADE AND INVESTMENT RELATIONS [*]

The Agreement between the Government of the United States of America and the Government of the Republic of Ghana Concerning the Development of Trade and Investment Relations was signed on 26 February 1999. It entered into force on the date of signature.

The Government of the United States of America and the Government of the Republic of Ghana (individually a "Party" and collectively the "Parties"):

1) Desiring to enhance the friendship and spirit of cooperation between the two countries;

2) Desiring to develop further both countries' international trade and economic interrelationship;

3) Taking into account the participation of both countries in the World Trade Organization (WTO), and noting that this Agreement is without prejudice to the rights and obligations of the Parties under the Marrakesh Agreement Establishing the World Trade Organization and the agreements, understandings, and other instruments relating thereto or concluded under the auspices of the WTO;

4) Recognizing the importance of fostering an open and predictable environment for international trade and investment;

5) Recognizing that it is desirable that trade and investment problems between the Parties should be resolved by mutual agreement;

6) Recognizing the benefits to each Party resulting from increased international trade and investment, and that trade and investment barriers would deprive the Parties of such benefits;

7) Recognizing the essential role of private investment, both domestic and foreign, in furthering growth, creating jobs, expanding trade, improving technology and enhancing economic development;

8) Recognizing that foreign direct investment confers positive benefits on each Party;

9) Recognizing the increasing importance of services in their respective economies and in their bilateral relations;

[*] *Source*: The Government of the United States and the Government of Ghana (1999). "Agreement between the Government of the United States of America and the Government of the Republic of Ghana Concerning the Development of Trade and Investment Relations"; available on the Internet (http://www.ustr.gov/regions/africa/ghana.htm). [Note added by the editor.]

10) Taking into account the need to eliminate non-tariff barriers in order to facilitate greater access to the markets of both countries;

11) Recognizing the importance of providing adequate and effective protection and enforcement of intellectual property rights, and taking into account each Party's obligations contained in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and in intellectual property rights conventions;

12) Desiring to further secure the observance and promotion of internationally recognized core labor standards and workers' rights, given the contribution that these afford to the economic well being of both Parties;

13) Desiring to ensure that trade and environmental policies are mutually supportive in furtherance of sustainable development; and

14) Considering that it would be in their mutual interest to establish a bilateral mechanism between the Parties for encouraging the liberalization of trade and investment between them.

To this end, the Parties agree as follows:

ARTICLE ONE

The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They will take appropriate measures to encourage and facilitate the exchange of goods and services and to secure favorable conditions for long-term development and diversification of trade between their respective nationals and companies.

ARTICLE TWO

The Parties will establish a United States - Ghana Council on Trade and Investment ("the Council") which will be composed of representatives of both Parties. The United States of America's side of the Council will be chaired by the Office of the United States Trade Representative (USTR), while the Republic of Ghana's side of the Council will be chaired by the Ministry of Trade and Industry. Each Chair may be assisted by officials of other government entities in their respective countries as circumstances require.

ARTICLE THREE

The objectives of the Council are to hold consultations on specific trade and investment matters of interest to the Parties and the enhancement of trade and investment flows. The Council will also work toward the removal of impediments to such trade and investment flows.

ARTICLE FOUR

The Council will meet at such times and venues as agreed by the Parties.

ARTICLE FIVE

Either Party may seek the views of civil society, such as business, labor, consumer, environmental, and academic groups, on matters related to the work of the Council whenever the Party considers it appropriate.

ARTICLE SIX

For the purposes of further developing bilateral trade and investment and providing for a steady increase in the exchange of goods and services, the Parties will consider whether further agreements relating to trade, taxation, intellectual property, labor, transfer of technology, technical cooperation, and investment issues would be desirable.

ARTICLE SEVEN

Either Party may raise for consultation any trade or investment matter between the Parties. Requests for consultation will be accompanied by a written explanation of the subject to be discussed and consultations will be held within 90 days from the date of the written explanation unless otherwise agreed by the Parties.

Where a Party's specific measure or practice is the subject of discussion, initial consultations will normally be held in the territory of that Party, unless otherwise agreed.

This Agreement will be without prejudice to the rights of either Party under its domestic law or under any other instrument to which either country is a party.

ARTICLE EIGHT

Either Party may request a revision of this Agreement by giving a written notice to the other Party. Such a request will be responded to within six months from the date of submission. No revision of this Agreement will be valid unless it is agreed to and signed by both Parties.

ARTICLE NINE

Any dispute between the Parties relating to the implementation and interpretation of this Agreement will be resolved through consultations and negotiations.

ARTICLE TEN

This Agreement will become effective on the date of its signature and will remain effective unless terminated by mutual consent of the Parties or by either Party upon six months' written notice to the other Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this Agreement.

Done in duplicate at Washington, D.C., this 26th day of February 1999.

* * *

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE SOCIALIST REPUBLIC OF VIETNAM ON TRADE RELATIONS[*]
[excerpts]

The Agreement between the United States of America and the Socialist Republic of Vietnam on Trade Relations was signed on July 2000.

The Government of the United States of America and the Government of the Socialist Republic of Vietnam (hereinafter referred to collectively as "Parties" and individually as "Party"),

Desiring to establish and develop mutually beneficial and equitable economic and trade relations on the basis of mutual respect for their respective independence and sovereignty;

Acknowledging that the adoption of and compliance with international trade norms and standards by the Parties will aid the development of mutually beneficial trade relations, and should be the underlying basis of those relations;

Noting that Vietnam is a developing country at a low level of development, is in the process of economic transition and is taking steps to integrate into the regional and world economy by, inter alia, joining the Association of Southeast Asian Nations (ASEAN), the ASEAN Free Trade Area (AFTA), and the Asia Pacific Economic Cooperation forum (APEC), and working toward membership in the World Trade Organization (WTO);

Having agreed that economic and trade ties and intellectual property rights protection are an important and necessary element in the strengthening of their bilateral relations; and

Being convinced that an agreement on trade relations between the Parties will best serve their mutual interests,

Have agreed as follows:

[*] *Source*: The Government of the United States of America and the Government of Vietnam (2000). "Agreement between the United States of America and the Socialist Republic of Vietnam on Trade Relations"; available on the Internet (http://www.ivietnam.com/Eng/business/Laws/trade/printable/ English/agreement.htm). [Note added by the editor.]

CHAPTER IV

DEVELOPMENT OF INVESTMENT RELATIONS

Article 1
Definitions

For the purpose of this Chapter, Annex H, the exchanged letters on Investment Licensing Regime, and, with respect to a covered investment, Articles 1 and 4 of Chapter VII:

1. "investment" means every kind of investment in the territory of a Party owned or controlled directly or indirectly by nationals or companies of the other Party, and includes investment consisting or taking the form of:

   A. a company or enterprise;

   B. shares, stock, and other forms of equity participation, and bonds, debentures, and other forms of debt interests, in a company;

   C. contractual rights, such as under turnkey, construction or management contracts, production or revenue sharing contracts, concessions, or other similar contracts;

   D. tangible property, including real property, and intangible property, including rights, such as leases, mortgages, liens and pledges;

   E. intellectual property, including copyrights and related rights, trademarks, patents, layout designs (topographies) of integrated circuits, encrypted program-carrying satellite signals, confidential information (trade secrets), industrial designs and rights in plant varieties; and

   F. rights conferred pursuant to law, such as licenses and permits;

2. "company" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or other organization;

3. "company of a Party" means a company constituted or organized under the laws of that Party;

4. "covered investment" means an investment of a national or company of a Party in the territory of the other Party;

5. "state enterprise" means a company owned, or controlled through ownership interests, by a Party;

6. "investment authorization" means an authorization granted by the foreign investment authority of a Party to a covered investment or a national or company of the other Party;

7. "investment agreement" means a written agreement between the national authorities of a Party and a covered investment or a national or company of the other Party that (i) grants rights with respect to natural resources or other assets controlled by the national authorities and (ii) the investment, national or company relies upon in establishing or acquiring a covered investment;

8. "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law;

9. "national" of a Party means a natural person who is a national of a Party under its applicable law;

10. an "investment dispute" is a dispute between a Party and a national or company of the other Party arising out of or relating to an investment authorization, an investment agreement or an alleged breach of any right conferred, created or recognized by this Chapter, Annex H, the exchanged letters on Investment Licensing Regime, and Articles 1 and 4 of Chapter VII with respect to a covered investment;

11. "non-discriminatory" treatment means treatment that is at least as favorable as the better of national treatment or most favored nation treatment;

12. "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965; and

13. "Centre" means the International Centre for Settlement of Investment Disputes Established by the ICSID Convention.

Article 2
National Treatment and Most-Favored Nation Treatment

1. With respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of covered investments, each Party shall accord treatment no less favorable than that it accords, in like situations, to investments in its territory of its own nationals or companies (hereinafter "national treatment") or to investments in its territory of nationals or companies of a third country (hereinafter "most favored nation treatment"), whichever is most favorable (hereinafter "national and most favored nation treatment"). Each Party shall ensure that its state enterprises, in the provision of their goods or services, accord national and most favored nation treatment to covered investments, subject to the provisions of paragraph 4.3 of Annex H.

2. A. A Party may adopt or maintain exceptions to the obligations of paragraph 1 in the sectors or with respect to the matters specified in Annex H to this Agreement. In adopting such an exception, a Party may not require the divestment, in whole or in part, of covered investments existing at the time the exception becomes effective.

B. The obligations of paragraph 1 do not apply to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

Article 3
General Standard of Treatment

1. Each Party shall at all times accord to covered investments fair and equitable treatment and full protection and security, and shall in no case accord treatment less favorable than that required by applicable rules of customary international law.

2. Each Party shall in no way impair by unreasonable and discriminatory measures the management, conduct, operation and sale or other disposition of covered investments.

Article 4
Dispute Settlement

1. Each Party shall provide companies and nationals of the other Party with an effective means of asserting claims and enforcing rights with respect to covered investments.

2. In the event of an investment dispute, the parties to the dispute should attempt to resolve the dispute through consultation and negotiation, which may include the use of non-binding third-party procedures. Subject to paragraph 3 of this Article, if the dispute has not been resolved through consultation and negotiations, a national or company of one Party that is a party to an investment dispute may submit the dispute for resolution under one of the following alternatives:

A. to the competent courts or administrative tribunals of the Party in the territory of which the covered investment has been made; or

B. in accordance with any applicable, previously agreed dispute-settlement procedures; or

C. in accordance with the terms of paragraph 3.

3. A. Provided that the national or company concerned has not submitted the dispute for resolution under sub-paragraph 2.A or B, and that ninety days have elapsed from the date on which the dispute arose, the national or company concerned may submit the dispute for settlement by binding arbitration:

(i) to the Centre, if both Parties are members of the ICSID Convention and the Centre is available; or

(ii) to the Additional Facility of the Centre, if the Additional Facility is available; or

(iii) in accordance with the UNCITRAL Arbitration Rules; or

(iv) if agreed by both parties to the dispute, to any other arbitration institution or in accordance with any other arbitration rules.

B. A national or company, notwithstanding that it may have submitted a dispute to binding arbitration under sub-paragraph 3.A, may seek interim injunctive relief, not involving the payment of damages, before the judicial or administrative tribunals of a Party, prior to the

institution of the arbitral proceeding or during the proceeding, for the preservation of rights and interests.

4. Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice of the national or company under sub-paragraph 3.A(i), (ii), (iii) or the mutual agreement of both parties to the dispute under sub-paragraph 3.A(iv). This consent and the submission of the dispute by a national or company under sub-paragraph 3.A shall satisfy the requirement of:

A. Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, for an "agreement in writing;" and

B. Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties to the dispute.

5. Any arbitration under sub-paragraph 3.A(ii), (iii) and (iv) shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

6. Any arbitral award rendered pursuant to this Chapter shall be final and binding on the parties to the dispute. Each Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award. Each Party's enforcement of an arbitral award issued in its territory shall be governed by its national law.

7. In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counterclaim, right of set-off, or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract.

8. For the purposes of this Article and of Article 25(2)(b) of the ICSID Convention with respect to a covered investment, a company of a Party that, immediately before the occurrence of the event or events giving rise to an investment dispute, was a covered investment, shall be treated as a company of the other Party.

Article 5
Transparency

Each Party shall ensure that its laws, regulations and administrative procedures of general application that pertain to or affect investments, investment agreements, and investment authorizations are promptly published or otherwise made publicly available.

Article 6
Special Formalities

This Chapter shall not preclude a Party from prescribing special formalities in connection with covered investments, such as a requirement that such investments be legally constituted under the laws and regulations of that Party, or a requirement that transfers of currency or other monetary instruments be reported, provided that such formalities shall not impair the substance

of any of the rights set forth in this Chapter, Annex H, the exchanged letters on Investment Licensing Regime, and, with respect to a covered investment, Articles 1 and 4 of Chapter VII.

Article 7
Technology Transfer

Neither Party shall mandate or enforce, as a condition for the establishment, acquisition, expansion, management, conduct or operation of a covered investment, any requirement (including any commitment or undertaking in connection with the receipt of a government permission or authorization) to transfer technology, a production process or other proprietary knowledge except:

1. when applying generally applicable environmental laws that are consistent with the provisions of this Agreement; or

2. pursuant to an order, commitment or undertaking that is enforced by a court, administrative tribunal or competition authority to remedy an alleged or adjudicated violation of competition laws.

Article 8
Entry, Sojourn and Employment of Aliens

1. Each Party shall permit nationals and companies of the other Party to transfer employees of any nationality, subject to the Party's laws relating to the entry and sojourn of aliens, to their operations in the territory of the Party in the event that those employees are executives or managers or possess specialized knowledge relating to those operations.

2. Each Party shall permit nationals and companies of the other Party to engage, within the territory of that Party, top managerial personnel of their choice, regardless of nationality, subject to the Party's laws relating to the entry and sojourn of aliens.

3. The foregoing paragraphs shall not preclude a Party from applying its labor laws, so long as they do not impair the substance of the rights granted under this Article.

Article 9
Preservation of Rights

This Chapter, Annex H, the exchanged letters on Investment Licensing Regime, and, with respect to a covered investment, Articles 1 and 4 of Chapter VII, shall not derogate from any of the following that entitle covered investments in like situations to treatment more favorable than that accorded herein:

- laws, regulations and administrative procedures, or administrative or adjudicatory decisions of a Party;
- international legal obligations; or, obligations assumed by a Party, including those contained in an investment agreement or investment authorization.

Article 10
Expropriations and Compensation for War Damages

1. Neither Party shall expropriate or nationalize investments either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article 3. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken; be paid without delay; include interest at a commercially reasonable rate from the date of expropriation; be fully realizable; and be freely transferable at the prevailing market rate of exchange on the date of expropriation. The fair market value shall not reflect any change in value occurring because the expropriatory action had become known before the date of expropriation.

Each Party shall accord national and most favored nation treatment to covered investments as regards any measure relating to losses that investments suffer in its territory owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events.

3. Each Party shall accord restitution, or pay compensation in accordance with paragraph 1, in the event that covered investments suffer from losses in its territory, owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events, that result from:

A. requisitioning of all or part of such investments by the Party's forces or authorities, or

B. destruction of all or part of such investments by the Party's forces or authorities that was not required by the necessity of the situation.

Article 11
Trade -Related Investment Measures

1. Subject to the provisions of paragraph 2, neither Party shall apply any trade-related investment measures (TRIMs) which are inconsistent with the Agreement on Trade-Related Investment Measures of the WTO. The illustrative list of TRIMs set forth in the WTO Agreement on TRIMs ("the List") is contained in Annex I of this Agreement. TRIMs contained on the List will be considered inconsistent with this Article regardless of whether they are imposed in laws, regulations, or as conditions for individual investment contracts or licenses.

2. The Parties agree to eliminate all TRIMs (including those contained in laws, regulations, contracts or licenses) which fall under sub-paragraphs 2(A) (trade balancing requirements) and 2(B) (foreign exchange controls on imports) of the List by the time this Agreement enters into force. Vietnam shall eliminate all other TRIMs no later than five years after the date of entry into force of the Agreement, or the date required under the terms and conditions of Vietnam's accession to the WTO, whichever occurs first.

Article 12
Application to State Enterprises

A Party's obligations shall apply to a state enterprise in the exercise of any regulatory, administrative or other governmental authority delegated to it by that Party.

Article 13
Future Negotiation of Bilateral Investment Treaty

The Parties will endeavor to negotiate a bilateral investment treaty in good faith within a reasonable period of time.

Article 14
Application to Covered Investments

The provisions of this Chapter, Annex H, the exchanged letters on Investment Licensing Regime, and Articles 1 and 4 of Chapter VII shall apply to covered investments existing at the time of entry into force as well as to those established or acquired thereafter.

Article 15
Denial of Benefits

Each Party reserves the right to deny to a company of the other Party the benefits of this Chapter and Chapter V of this Agreement if nationals of a third country own or control the company and

1. the denying Party does not maintain normal economic relations with the third country; or

2. the company has no substantial business activities in the territory of the Party under whose laws it is constituted or organized.

ANNEX H
VIETNAM

In accordance with the provisions in Article 2 of Chapter IV, the Government of the Socialist Republic of Vietnam reserves the right to adopt or maintain exceptions to national treatment in the following sectors and matters:

1. Vietnam may adopt or maintain exceptions to the obligation to accord national treatment to covered investments in the sectors or with respect to the matters specified below:

Broadcasting, television; production, publication and distribution of cultural products; investment in insurance; banking; brokerage, dealership in securities and currency values, and other related services; mineral exploration and exploitation; construction, installation, operation and maintenance of telecommunication facility; construction and operation of inland water, sea and air ports; cargo and passenger transportation by railway, airway, road, sea and inland water-way transportation; fishing and fish catching; real estate business.

2. Sectors in which Vietnam may require that an investment project be in conjunction with the development of local raw material sources:

Processing of paper, vegetable oil, milk, cane sugar, wood processing (except for projects using imported wood).

Such requirements for the development of local raw material sources in the above sectors may be maintained for up to 5 years from the entry into force of this Agreement.

3. Sectors in which Vietnam may require that an investment project export at least 80% of products:

Cement production; paints and construction paints; toiletry tiles and ceramics; PVC and other plastics; footwear; clothing; construction steel; detergent powder; tires and inner tubes for automobile and motor bikes; NPK fertilizer; alcoholic products; tobacco; papers (including printing, and writing paper, photocopy).

Such requirements for exporting at least 80% of products in the above sectors may be maintained for up to 7 years from the entry into force of this Agreement.

4. Except as otherwise provided in this Paragraph (including sub-paragraphs 4.1-4.6), the following exceptions to national treatment shall be applied to a covered investment of a national or company of the United States in all sectors, including but not limited to those sectors listed in paragraphs 1, 2 and 3 of this Annex:

4.1 Requirements on investment capital:

(a) After the entry into force of this Agreement, nationals or companies of the United States shall be allowed to contribute, increase and reinvest capital in any currency, including Vietnamese currency originating from any lawful activity in Vietnam.

(b) The following requirements may be maintained for up to 3 years from the entry into force of this Agreement:

(i) Nationals or companies of the United States must contribute at least 30% of the legal capital of a joint venture unless a lower contribution is approved by the investment licensing agencies;

(ii) The legal capital of a U.S.-owned enterprise shall not be less than 30% of investment capital unless a lower proportion is approved by the investment licensing agencies;

(iii) A national or company of the United States that is a party to a joint venture with a Vietnamese national or company shall give a right of first refusal to the Vietnamese party with respect to the transfer of an interest in the joint venture. An enterprise in Vietnam that is 100% owned by U.S. nationals or companies shall give a right of first refusal to Vietnamese nationals or companies with respect to the transfer of any interest in the enterprise. In any such case, the right of first refusal may be exercised only if the offer of the Vietnamese national or company is the same in all material terms with an offer received from any third party, including with respect to purchase price, timing and method of payment. Any such transfer shall require the approval of the investment licensing agencies; and

(iv) Nationals or companies of the United States are not yet allowed to establish a joint stock company. An enterprise in Vietnam that is invested or owned by U.S. nationals or companies may not issue bonds or shares to the public in Vietnam.

(c) Nationals and companies of the United States shall not be permitted to acquire more than 30% of the shares of an equitized State enterprise.

4.2 Organization and management of joint ventures:

Vietnam may maintain the following requirements for up to 3 years from the entry into force of this Agreement:

(a) The General Director or First Deputy General Director must be Vietnamese citizens; and

(b) A limited number of the most important matters which relate to the organization and operation of the enterprise, comprising the appointment or dismissal of General Director, First Deputy General Director, Chief Accountant; amendments of and additions to the charter of the enterprise; approval of final annual financial statements and financial statement of capital construction; and loan for investment shall be decided on the basis of consensus.

4.3 Prices and fees of some goods and services under the State's control:

Vietnam is in the process of reforming its pricing system in order to develop a uniform set of fees and prices. With a view to creating a more attractive, non-discriminatory business environment, Vietnam shall:

(a) upon the entry into force of this Agreement, (i) refrain from imposing new or more onerous discriminatory prices and fees; and (ii) eliminate, discriminatory prices and fees for the installation of telephones, telecommunications services (other than the subscription charge for local telephone service), water, and tourist services;

(b) within two (2) years of the entry into force of this Agreement, eliminate, progressively, discriminatory prices and fees for registration of motor vehicles, international port charges, and for the subscription charge for local telephone service; and

(c) within four (4) years of the entry into force of this Agreement, eliminate, progressively, discriminatory prices and fees for all other goods and services including, without limitation, electricity and air transport.

4.4 Government subsidies and supports:

Government subsidies and supports granted to domestic enterprises, which include land allocation for investment projects, preferential credits, research and development and education

assistance programs and other forms of Government supports, may not be made available to nationals or companies of the United States.

4.5 Ownership, use of land and residences:

(a) Nationals and companies of the United States are not allowed to own land and residences. U.S. investors are allowed only to lease land for investment purposes.

(b) U.S. enterprises are not yet allowed either to mortgage land use rights at foreign credit institutions operating in Vietnam or to transfer land use rights except for the case of transfers of invested assets associated with the land within the land lease period.

4.6 Notwithstanding the above reservations to national treatment for the ownership and use of land and residences, Vietnam shall create favorable conditions in exercising the mortgage and transfer of land use rights relating to covered investments including the elimination, within 3 years from the entry into force of this Agreement, of the restrictions on mortgage and transfer of land use rights mentioned in sub-paragraph 4.5(b).

ANNEX H
UNITED STATES

1. The Government of the United States of America may adopt or maintain exceptions to the obligation to accord national treatment (8) to covered investments in the sectors or with respect to the matters specified below:

atomic energy; customhouse brokers; licenses for broadcast, common carrier, or aeronautical radio stations; COMSAT; subsidies or grants, including government-supported loans, guarantees and insurance; landing of submarine cables; and state and local measures as to which the United States may adopt or maintain exceptions to national treatment under any of its bilateral investment treaties signed between 1 January 1995, and the date of entry into force of this Agreement.

Most favored nation treatment shall be accorded in the sectors and matters indicated above.

2. The Government of the United States of America may adopt or maintain exceptions to the obligation to accord national and most favored nation treatment to covered investments in the sectors or with respect to the matters specified below:

fisheries; air and maritime transport, and related activities; banking, insurance, securities, and other financial services; leasing of minerals and pipeline rights-of-way on government lands; and one-way satellite transmissions of direct-to-home (DTH) and direct broadcast satellite (DBS) television services and of digital audio services.

ANNEX I

TRIMs -- Illustrative List

1. TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 include those which are mandatory or enforceable

under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require:

A. the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of local products, or in terms of a proportion of volume or value of its local production; or

B. that an enterprise's purchases or use of imported products be limited to an amount related to the volume or value of local products that it exports.

2. TRIMs that are inconsistent with the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict:

A. the importation by an enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports;

B. the importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the enterprise; or

C. the exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production.

CHAPTER V

BUSINESS FACILITATION

Article 1

1. To facilitate business activity, and subject to the provisions of Chapters I (including Annexes A, B, C, D and E), III (including Annexes F and G) and IV (including Annexes H and I) of this Agreement, each Party shall:

A. permit nationals and companies of the other Party to import and use, in accordance with normal commercial practices, office and other equipment, such as typewriters, photocopiers, computers and facsimile machines in connection with the conduct of their activities in the territory of such Party;

B. subject to its laws and procedures governing immigration and foreign missions, permit, on a non-discriminatory basis and at market prices, nationals and companies of the other Party access to and use of office space and living accommodations;

C. subject to its laws, regulations and procedures governing immigration and foreign missions, permit nationals and companies of the other Party to engage agents, consultants and distributors of either Party, on prices and terms mutually agreed between the parties, for their production and covered investments;

D. permit nationals and companies of the other Party to advertise their products and services (i) through direct agreement with the advertising media, including television, radio, print and billboard, and (ii) by direct mail, including the use of enclosed envelopes and cards pre-addressed to that national or company;

E. encourage direct contact, and permit direct sales, between nationals and companies of the other Party and end-users and other customers of their goods and services, and encourage direct contacts with agencies and organizations whose decisions will affect potential sales;

F. permit nationals and companies of the other Party to conduct market studies, either directly or by contract, within its territory;

G. permit nationals and companies of the other Party to stock an adequate supply of samples and replacement parts for after-sales service for covered investment products; and

H. provide non-discriminatory access to governmentally-provided products and services, including public utilities, to nationals and companies of the other Party at fair and equitable prices (and in no event at prices greater than those charged to any nationals or companies of third countries where such prices are set or controlled by the government in connection with the operation of their commercial representations).

Article 2

For purposes of this Chapter, the term "non-discriminatory" means treatment that is at least as favorable as the better of national treatment or most favored nation treatment.

Article 3

In case of conflict between any provision of this Chapter and any provision of Chapters I (including Annexes A, B, C, D and E), III (including Annexes F and G) and IV (including Annexes H and I), the provision of the Chapters I, III and IV shall control to the extent of the conflict.

CHAPTER VI

TRANSPARENCY-RELATED PROVISIONS AND RIGHT TO APPEAL

Article 1

Each Party shall publish on a regular and prompt basis all laws, regulations and administrative procedures of general application pertaining to any matter covered by this Agreement.

Publication of such information and measures will be in a manner which enables governmental agencies, enterprises and persons engaged in commercial activity to become acquainted with them before they come into effect and to apply them in accordance with their terms. Each such publication shall include the effective date of the measure, the products (by tariff line) or services affected by the measure, and all authorities that must approve or be consulted in the implementation of the measure, and provide a contact point within each authority from which relevant information can be obtained.

Article 2

Each Party shall provide nationals and companies of the other Party with access to data on the national economy and individual sectors, including information on foreign trade. The provisions of this paragraph and the preceding paragraph do not require disclosure of confidential information which would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of particular enterprises, public or private. For the purposes of this Agreement, confidential information that would prejudice the legitimate commercial interests of particular enterprises means specific information concerning the importation of a product that would have a significant adverse effect on the price or quantity available of such product, but shall not include information required to be disclosed under the agreements administered by the WTO.

Article 3

Each Party shall allow, to the extent possible, the other Party and its nationals the opportunity to comment on the formulation of laws, regulations and administrative procedures of general application that may affect the conduct of business activities covered by this Agreement.

Article 4

All laws, regulations and administrative procedures of general application referred to in paragraph 1 of this Article that are not published and readily available to other governments and persons engaged in commercial activities as of the date of signature of this Agreement will be made public and readily and quickly available. Only laws, regulations and administrative procedures of general application that are published and readily available to other governments and persons engaged in commercial activity will be enforced and enforceable.

Article 5

The Parties shall have or designate an official journal or journals and all measures of general application shall be published in such journals. The Parties will publish such journals on a regular basis and make copies of them readily available to the public.

Article 6

The Parties shall administer, in a uniform, impartial and reasonable manner all their respective laws, regulations and administrative procedures of general application of all the types described in paragraph 1 of this Article.

Article 7

The Parties will maintain administrative and judicial tribunals and procedures for the purpose, inter alia, of the prompt review and correction (upon the request of an affected person) of administrative action relating to matters covered by this Agreement. These procedures shall include the opportunity for appeal, without penalty, by persons affected by the relevant decision. If the initial right of appeal is to an administrative body, there shall also be the opportunity for appeal of the decision to a judicial body. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of the right to any further appeal.

Article 8

The Parties shall ensure that all import licensing procedures, both automatic and non-automatic, are implemented in a transparent and predictable manner, and in accordance with the standards of the WTO Agreement on Import Licensing Procedures.

CHAPTER VII

GENERAL ARTICLES

Article 1 Cross-Border Transactions and Transfers

1. Unless otherwise agreed between the parties to such transactions, all cross-border commercial transactions, and all transfers of currencies relating to a covered investment, shall be made in United States dollars or any other currency that may be designated from time to time by the International Monetary Fund as being a freely usable currency.

2. In connection with trade in products and services, each Party shall grant to nationals and companies of the other Party the better of most-favored-nation or national treatment with respect to:

A. opening and maintaining accounts, in both local and foreign currency, and having access to funds deposited in financial institutions located in the territory of the Party;

B. payments, remittances and transfers of currencies convertible into freely usable currency at a market rate of exchange or financial instruments representative thereof, between the territories of the two Parties, as well as between the territory of that Party and that of any third country;

C. rates of exchange and related matters, including access to freely usable currencies.

3. Each Party shall grant to covered investments of the other Party the better of national or most favored nation treatment with respect to all transfers into and out of each Party's territory. Such transfers include:

- contributions to capital;

- profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment or from the partial
- or complete liquidation of the investment;
- interest, royalty payments, management fees, and technical assistance and other fees;

D. payments made under contract, including a loan agreement;

E. compensation pursuant to Article 10 of Chapter IV and payments arising out of an investment dispute.

4. In all cases, treatment of cross-border transactions and transfers will be consistent with each Party's obligations to the International Monetary Fund.

5. Each Party shall permit returns in kind to be made as authorized or specified in an investment authorization, investment agreement, or other written agreement between the Party and a covered investment or a national or company of the other Party.

6. Notwithstanding paragraphs 1 through 5, a Party may prevent a transfer through the equitable, non-discriminatory and good faith applications (including the seeking of preliminary relief, such as judicial injunctions and temporary restraining orders) of its law relating to:

A. bankruptcy, insolvency or the protection of the rights of creditors;

B. issuing, trading or dealing in securities, futures, options, or derivatives;

C. reports or records of transfers;

D. criminal or penal offenses; or

E. ensuring compliance with orders or judgments in judicial or administrative proceedings.

The provisions of this Article relating to financial transfers shall not preclude:

A. a requirement that a national or company (or its covered investment) comply with customary banking procedures and regulations, provided that they do not impair the substance of the rights granted under this Article;

B. prudential measures in order to protect the interests of creditors and to ensure the stability and integrity of the national financial system.

Article 2 National Security

This Agreement shall not preclude a Party from applying measures that it considers to be necessary for the protection of its own essential security interests. Nothing in this Agreement

shall be construed to require either Party to furnish any information, the disclosure of which it considers contrary to its essential security interests.

Article 3 General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by either Party of measures:

A. with respect to Chapter I, Trade in Goods, necessary to secure compliance with laws or regulations not inconsistent with the provisions of this Agreement, including measures related to the protection of intellectual property rights and the prevention of deceptive practices;

B. with respect to Chapter I, Trade in Goods, referred to in Article XX of the GATT 1994; or with respect to Chapter III, Trade in Services, referred to in Article XIV of the GATS.

2. Nothing in this Agreement shall preclude a Party from applying its laws in respect of foreign missions as set forth in applicable legislation.

3. Nothing in this Agreement limits the application of any existing or future agreements between the Parties on trade in textiles and textile products.

Article 4 Taxation

1. No provision of this Agreement shall impose obligations with respect to tax matters, except that:

A. Chapter I, other than Article 2.1 of such Chapter, shall apply only to taxes other than direct taxes as defined in paragraph 3 of this Article.

B. Within Chapter IV,

i) Articles 4 and 10.1 will apply with respect to expropriation; and

ii) Article 4 will apply with respect to an investment agreement or an investment authorization.

2. With respect to the application of Chapter IV, Article 10.1, an investor that asserts that a tax measure involves an expropriation may submit that dispute to arbitration pursuant to Chapter IV, Article 4.3, provided that the investor concerned has first referred to the competent tax authorities of both Parties the issue of whether that tax measure involves an expropriation. However, the investor cannot submit the dispute to arbitration if, within nine months after the date of referral, the competent tax authorities of both Parties determine that the tax measure does not involve an expropriation.

3. "Direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates,

inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

Article 5 Consultations

1. The Parties agree to consult periodically to review the operation of this Agreement.

2. The Parties agree to consult promptly as arranged through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of this Agreement and other relevant aspects of the relations between the Parties.

3. The Parties agree to establish a Joint Committee ("Committee") on Development of Economic and Trade Relations between Vietnam and the United States of America. The Committee's responsibilities shall include the following:

A. monitoring and securing the implementation of this Agreement and making recommendations to achieve the objectives of this Agreement;

B. ensuring that a satisfactory balance of concessions is maintained during the life of this Agreement;

C. serving as the appropriate channel through which the Parties shall consult at the request of either Party to discuss and resolve matters arising from interpretation or implementation of this Agreement; and

D. seeking and making proposals on the enhancement and diversification of economic and trade relations between the two countries.

4. The Committee shall be co-chaired by representatives of the Parties at the ministerial level, and have members who are representatives from the relevant agencies concerned with the implementation of this Agreement. The Committee shall meet annually or at the request of either Party. The location of the meetings shall alternate between Hanoi and Washington D.C., unless the Parties agree otherwise. The organization and the terms of reference of the Committee shall be adopted by the Committee at its first session.

Article 6 Relationship between Chapter IV, Annex H, Exchanged Letters, and Annex G

As to any matter concerning investment in services not specified in Annex G, the provisions of Annex H shall apply. However, in the event of a conflict between a provision set forth in Chapter IV, Annex H, or exchanged letters on Investment Licensing Regime, and a provision set forth in Annex G, the provision set forth in Annex G shall prevail to the extent of the conflict. Annex H and exchanged letters on Investment Licensing Regime shall not be construed or applied in a manner that would deprive a Party of rights provided under Annex G.

Article 7 Annexes, Schedules and Exchanged Letters

The Annexes, Schedules, and the exchanged letters on Investment Licensing Regime to this Agreement constitute an integral part of this Agreement.

Article 8 Final Provisions, Entry into Force, Duration, Suspension and Termination

1. This Agreement shall enter into force on the day on which the Parties have exchanged notifications that each has completed the legal procedures necessary for this purpose, and shall remain in force for three years.

2. This Agreement shall be extended for successive terms of three years if neither Party notifies the other Party of its intent to terminate this Agreement at least 30 days before the end of a term.

3. If either Party does not have domestic legal authority to carry out its obligations under this Agreement, either Party may suspend application of this Agreement, or, with agreement of the other Party, any part of this Agreement, including MFN treatment. In that event, the Parties will seek, to the fullest extent practicable under domestic law, to minimize unfavorable effects on existing trade relations between the Parties.IN WITNESS THEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington D.C., in duplicate, this thirteenth day of July 2000, in the English and Vietnamese languages, each text being equally authentic.

* * *

1. As used in this Agreement, the term "normal trade relations" shall have the same meaning as the term "most favored nation" treatment.

2. This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the a priori exclusion of any mode of supply.

3. The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

4. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(A) of Article 1 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(C) of Article 1, it is thereby committed to allow related transfers of capital into its territory.

5. Subparagraph 2(C) does not cover measures of a Party which limit inputs for the supply of services.

6. Specific commitments assumed under this Article shall not be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service supplier.

7. Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the

juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

8. With respect to the treatment accorded by a State, Territory or Possession of the United States, national treatment means treatment no less favorable than the treatment accorded thereby, in like situations, to investments of nationals of the United States resident in, and companies legally constituted under the laws and regulations of other States, Territories or Possessions of the United States.

* * *

ECONOMIC PARTNERSHIP, POLITICAL COORDINATION AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, OF THE ONE PART, AND THE UNITED MEXICAN STATES, OF THE OTHER PART[*]
[excerpts]
AND
DECISION NO 2/2001 OF THE EUROPEAN UNION AND MEXICO JOINT COUNCIL OF 27 FEBRUARY 2001 IMPLEMENTING ARTICLES 6, 9, 12(2)(B) AND 50 OF THE ECONOMIC PARTNERSHIP, POLITICAL COORDINATION AND COOPERATION AGREEMENT
[excerpts]

The Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and Its Member States, of the One Part, and the United Mexican States, of the Other Part was signed on 8 December 1997. It entered into force on 1 January 2000. Decision No 2/2001 of the European Union and Mexico Joint Council of 27 February 2001 Implementing Articles 6, 9, 12(2)(b) and 50 of the Economic Partnership, Political Coordination and Cooperation Agreement was adopted on 27 February 2001. It entered into force on 1 March 2001. Annexes I, II and III, and Appendix I of Decision No 2/2001, are not published here; they are available from the same source. The member States of the European Community are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

TITLE III
TRADE

Article 4
Objective

The objective of this Title is to establish a framework to encourage the development of trade in goods and services, including a bilateral and preferential, progressive and reciprocal liberalisation of trade in goods and services, taking into account the sensitive nature of certain products and service sectors and in accordance with the relevant WTO rules.

Article 6
Trade in services

In order to achieve the objective laid down in Article 4, the Joint Council shall decide on the appropriate arrangements for a progressive and reciprocal liberalisation of trade in services, in

[*] *Source*: European Communities (2000). "Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and Its Member States, of the One Part, and the United Mexican States, of the Other Part", *Official Journal of the European Communities*, L 276, 28 October 2000, pp. 45-79; available also on the Internet (http://europa.eu.int/eur-lex/en/lif/dat/2000/en_200A1028_01.html). [Note added by the editor.]

accordance with the relevant WTO rules, in particular, Article V of the General Agreement on Trade in Services (GATS), and taking due account of the commitments already undertaken by the Parties within the framework of that Agreement.

Article 7

The decisions of the Joint Council referred to in Articles 5 and 6 of this Agreement in respect of trade in goods and services, shall adequately cover all these issues within a comprehensive framework and shall enter into force as soon as they have been adopted.

TITLE IV
CAPITAL MOVEMENTS AND PAYMENTS

Article 8
Capital movements and payments

The objective of this Title is to establish a framework to encourage the progressive and reciprocal liberalisation of capital movements and payments between Mexico and the Community, without prejudice to other provisions in this Agreement and further obligations under other international agreements that are applicable between the Parties.

Article 9

In order to achieve the objective laid down in Article 8, the Joint Council shall adopt the measures and timetable for a progressive and reciprocal elimination of restrictions on capital movements and payments between the Parties, without prejudice to other provisions in this Agreement and further obligations under other international agreements that are applicable between the Parties.

This decision shall include, in particular, the following matters:

(a) the definition, content, extension and substance of the concepts included explicitly or implicitly in this Title;

(b) capital transactions and payments, including national treatment, to be covered by the liberalisation;

(c) scope of the liberalisation and transitional periods;

(d) the inclusion of a clause allowing the Parties to maintain restrictions in this area justified on grounds of public policy, public security, public health and defence;

e) the inclusion of clauses allowing the Parties to introduce restrictions in this area in case of difficulties in the operation of exchange-rate or monetary policy of one of the Parties, balance of payments difficulties or, in conformity with international law, the imposition of financial restrictions on third countries.

TITLE V
PUBLIC PROCUREMENT, COMPETITION, INTELLECTUAL PROPERTY AND OTHER TRADE-RELATED PROVISIONS

Article 10
Public procurement

1. The Parties shall agree to the gradual and mutual opening of agreed government procurement markets on a reciprocal basis.

2. In order to achieve this objective, the Joint Council shall decide on the appropriate arrangements and timetable. The decision shall include, in particular, the following matters:

(a) coverage of the agreed liberalisation;
(b) non-discriminatory access to the agreed markets;
(c) threshold values;
(d) fair and transparent procedures;
(e) clear challenge procedures;
(f) use of information technology.

Article 11
Competition

1. The Parties shall agree on the appropriate measures in order to prevent distortions or restrictions of competition that may significantly affect trade between Mexico and the Community. To this end, the Joint Council shall establish mechanisms of cooperation and coordination among their authorities with responsibility for the implementation of competition rules. Such cooperation shall include mutual legal assistance, notification, consultation and exchange of information in order to ensure transparency relating to the enforcement of competition laws and policies.

2. In order to achieve this objective, the Joint Council shall decide in particular, on the following matters:

(a) agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings;

(b) the abuse by one or more undertakings of a dominant position;

(c) mergers between undertakings;

(e) state monopolies of a commercial character;

(f) public undertakings and undertakings to which special or exclusive rights have been granted.

Article 12
Intellectual, industrial and commercial property

1. Reaffirming the great importance they attach to the protection of intellectual property rights (copyright - including the copyright in computer programmes and databases - and neighbouring rights, the rights related to patents, industrial designs, geographical indications including designation of origins, trademarks, topographies of integrated circuits, as well as protection against unfair competition as referred to in Article 10a of the Paris Convention for the Protection of Industrial Property and protection of undisclosed information), the Parties undertake to establish the appropriate measures with a view to ensuring an adequate and effective protection in accordance with the highest international standards, including effective means to enforce such rights.

2. To this effect, the Joint Council shall decide on:

(a) a consultation mechanism with a view to reaching mutually satisfactory solutions in the event of difficulties in the protection of intellectual property;

(b) the detailed measures to be adopted in pursuance of the objective set out in paragraph 1, taking into account in particular the relevant multilateral conventions on intellectual property.

TITLE VI

COOPERATION

Article 14
Industrial cooperation

1. The Parties shall support and promote measures to develop and strengthen efforts to set in motion a dynamic, integrated and decentralised management of industrial cooperation in order to create a climate conducive to economic development, taking account of their mutual interests.

2. Such cooperation shall focus in particular on:

(a) strengthening contacts between both Parties' economic operators, by means of conferences, seminars, missions to seek out industrial and technical opportunities, round tables and general and sector-specific fairs, with a view to identifying and exploiting areas of mutual business interest and to boosting trade, investment and industrial cooperation and technology-transfer projects;

(b) strengthening and extending the existing dialogue between both Parties' economic operators through the promotion of further consultation and coordination activities in order to identify and eliminate obstacles to industrial cooperation, to encourage respect for competition rules, to ensure the consistency of overall measures and to help industry adapt to market requirements;

(c) promoting industrial cooperation initiatives in the context of the process of privatisation and liberalisation of both Parties in order to encourage investments by means of industrial cooperation between undertakings;

(d) supporting modernisation, diversification, innovation, training, research and development and quality initiatives;

(e) promoting the participation of both Parties in pilot projects and in special programmes according to their specific terms.

Article 15
Investment promotion

The Parties shall help to create an attractive and stable environment for reciprocal investment. Such cooperation shall take the form inter alia of:

(a) arrangements for information, identification and dissemination relating to legislation and investment opportunities;

(b) support for the development of a legal environment conducive to investment between the Parties, where appropriate, by the conclusion between the Member States and Mexico, of agreements to promote and protect investment and agreements to prevent double taxation;

(a) the development of harmonised and simplified administrative procedures;

(d) the development of mechanisms for joint investments, in particular, with the small and medium-sized enterprises of both Parties.

Article 16
Financial services

1. The Parties undertake to establish cooperation in the financial services sector, in conformity with their laws, regulations and policies and in accordance with the rules and disciplines of the GATS, in light of their mutual interest and long and medium-term economic objectives.

2. The Parties agree to work together both bilaterally and at the multilateral level to increase mutual understanding and awareness of their respective business environments and to bring about exchanges of information on financial regulations, financial supervision and control and other aspects of common interest.

3. Such cooperation shall have the particular objective of encouraging improved and diversified productivity and competitiveness in the financial services sector.

TITLE VII

INSTITUTIONAL FRAMEWORK

Article 45
Joint Council

A Joint Council is hereby established which shall supervise the implementation of this Agreement. It shall meet at ministerial level, at regular intervals, and when circumstances require. It shall examine any major issues arising within the framework of this Agreement and any other bilateral or international issues of mutual interest.

Article 46

1. The Joint Council shall consist of the Members of the Council of the European Union and Members of the European Commission on the one hand, and Members of the Government of Mexico, on the other.

2. Members of the Joint Council may arrange to be represented, in accordance with the conditions laid down in its rules of procedure.

3. The Joint Council shall establish its own rules of procedure.

4. The Joint Council shall be presided in turn by a Member of the Council of the European Union and a Member of the Government of Mexico, in accordance with the provisions to be laid down in its rules of procedure.

Article 47

The Joint Council shall, for the purpose of attaining the objectives of this Agreement, have the power to take decisions in the cases provided for herein. The decisions taken shall be binding on the Parties which shall take the measures necessary to implement them. The Joint Council may also make appropriate recommendations.

It shall draw up the decisions and recommendations by agreement between the two Parties.

Article 48
Joint Committee

1. The Joint Council shall be assisted in the performance of its duties by a Joint Committee composed of representatives of the members of the Council of the European Union and of the European Commission, on the one hand, and of representatives of the Government of Mexico on the other, normally at senior civil servant level.

In its rules of procedure the Joint Council shall determine the duties of the Joint Committee, which shall include the preparation of meetings of the Joint Council and how the Committee shall function.

2. The Joint Council may delegate to the Joint Committee any of its powers. In this event the Joint Committee shall take its decisions in accordance with the conditions laid down in Article 47.

3. The Joint Committee shall generally meet once a year, on a date and with an agenda agreed in advance by the Parties, in Brussels one year and Mexico the next. Special meetings may be convened by mutual agreement. The office of chairman of the Joint Committee shall be held alternately by a representative of each of the Parties.

Article 49
Other special committees

The Joint Council may decide to set up any other special committee or body to assist it in the performance of its duties.

In its rules of procedure, the Joint Council shall determine the composition and duties of such committees or bodies and how they shall function.

Article 50
Dispute settlement

The Joint Council shall decide on the establishment of a specific trade or trade related dispute settlement procedure compatible with the relevant WTO provisions in this field.

* * *

DECISION NO 2/2001 OF THE EUROPEAN UNION AND MEXICO JOINT COUNCIL OF 27 FEBRUARY 2001 IMPLEMENTING ARTICLES 6, 9, 12(2)(B) AND 50 OF THE ECONOMIC PARTNERSHIP, POLITICAL COORDINATION AND COOPERATION AGREEMENT[*]

[excerpts]

THE JOINT COUNCIL,

Having regard to the Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part, and the United Mexican States, of the other part (hereinafter "the Agreement"), and in particular articles 6, 9, 12 and 50 in conjunction with Article 47 thereof.

Mindful of their rights and obligations under the Marrakesh Agreement establishing the World Trade Organisation (hereinafter "the WTO").

[*] *Source*: European Communities (2001). "Decision No 2/2001 of the European Union and Mexico Joint Council of 27 February 2001 Implementing Articles 6, 9, 12(2)(b) and 50 of the Economic Partnership, Political Coordination and Cooperation Agreement"; *Official Journal of the European Communities*, L 070, 12 March 2001, pp. 7-50; available also on the Internet (http://europa.eu.int/eur-lex/en/lif/dat/ 2001/ en_ 201D0153.html). [Note added by the editor.]

Whereas:

(1) Article 4 and 6 of the Agreement provide that the Joint Council shall decide on the arrangements for a progressive and reciprocal liberalisation of trade in services, in accordance with Article V of the General Agreement on Trade in Services (hereinafter "GATS").

(2) Article 9 of the Agreement provides that the Joint Council shall adopt measures for the progressive liberalisation of investment and related payments between the Parties.

(3) Article 12 of the Agreement stipulates that the Joint Council shall adopt measures with a view to ensure an adequate and effective protection of intellectual property rights.

(4) Article 50 of the Agreement provides that the Joint Council shall establish a specific trade or trade related dispute settlement procedure.

(5) In accordance with Article 60 of the Agreement, upon entry into force of that Agreement, the Decision 2/2000 of the Joint Council established by the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the United Mexican States, of the other part, is deemed to have been adopted by the Joint Council established by the Agreement. That decision implements the objectives laid down in Articles 5, 10, 11 and 12(2)(a) of the Agreement,

HAS DECIDED AS FOLLOWS:

TITLE I

GENERAL PROVISIONS

Article 1
Scope of the Decision

The Joint Council hereby lays down the necessary arrangements for implementing the following objectives of the Agreement:

(a) the progressive and reciprocal liberalisation of trade in services, in conformity with Article V of GATS;

(b) the progressive liberalisation of investment and related payments;

(c) ensuring an adequate and effective protection of the intellectual property rights, in accordance with the highest international standards; and

(d) establishing a dispute settlement mechanism.

TITLE II

TRADE IN SERVICES

Article 2
Coverage

1. For the purposes of this Title, trade in services is defined as the supply of a service:

   (a) from the territory of a Party into the territory of the other Party;

   (b) in the territory of a Party to the service consumer of the other Party;

   (c) by a service supplier of a Party, through commercial presence in the territory of the other Party;

   (d) by a service supplier of a Party, through presence of natural persons in the territory of the other Party.

2. This Title applies to trade in all services sectors with the exception of:

   (a) audio-visual services;

   (b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

      (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service,

      (ii) the selling and marketing of air transport services,

      (iii) computer reservation system (CRS) services, and

   (c) maritime cabotage.

3. Maritime transport and financial services shall be governed by the provisions laid down in Chapters II and III, respectively, unless otherwise specified.

4. Nothing in this Title shall be construed to impose any obligation with respect to government procurement.

5. The provisions of this Title shall not apply to subsidies granted by the Parties.

CHAPTER I

GENERAL PROVISIONS

Article 3
Definitions

For purposes of this Chapter:

(a) A federal, central or subcentral government includes any non-governmental body in the exercise of any regulatory, administrative or other governmental authority delegated to it by that federal, central and sub-central government;

(b) "service suppliers" of a Party means any person of a Party that seeks to provide or provides a service;

(c) "commercial presence" means:

(i) as regards nationals, the right to set up and manage undertakings, which they effectively control. This shall not extend to seeking or taking employment in the labour market or confer a right of access to the labour market of another Party,

(ii) as regards juridical persons, the right to take up and pursue the economic activities covered by this Chapter by means of the setting up and management of subsidiaries, branches or any other form of secondary establishment,

(d) "subsidiary" means a juridical person which is effectively controlled by another juridical person;

(e) a "Community juridical person" or a "Mexican juridical person" means a juridical person set up in accordance with the laws of a Member State of the Community or of Mexico, respectively, and having its registered office, central administration, or principal place of business in the territory of the Community or of Mexico, respectively;

Should the juridical person have only its registered office or central administration in the territory of the Community or Mexico, respectively, it shall not be considered as a Community or a Mexican juridical person, respectively, unless its operations possess a real and continuous link with the economy of the Community or Mexico, respectively;

(f) a "national" means a natural person who is a national of one of the Member States or Mexico according to their respective national legislations.

Article 4
Market Access

In those sectors and modes of supply which shall be liberalised pursuant to the decision provided for in Article 7 (3), and subject to any reservations stipulated therein, the measures which a Party shall not maintain or adopt are defined as:

(a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or a requirement of an economic needs test;

(e) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; and

(f) measures which require specific types of legal entities or joint ventures through which a service supplier of the other Party may supply a service.

Article 5
Most Favoured Nation Treatment

1. Subject to exceptions that may derive from harmonisation of regulations based on agreements concluded by a Party with a third country providing for mutual recognition in accordance with Article VII of GATS, treatment accorded to services suppliers of the other Party shall be no less favourable than that accorded to like services suppliers of any third country.

2. Treatment granted under other agreements concluded by one of the Parties with a third country which have been notified under Article V of GATS shall be excluded from this provision.

3. If a Party enters into an agreement of the type referred to in paragraph 2, it shall afford adequate opportunity to the other Party to negotiate the benefits granted therein.

Article 6
National Treatment

1. Each Party shall, in accordance with Article 7, grant to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and services suppliers.

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

Article 7
Trade liberalisation

1. As provided for in paragraphs 2 to 4, the Parties shall liberalise trade in services between themselves, in conformity with Article V of GATS.

2. From the entry into force of this Decision, neither Party shall adopt new, or more, discriminatory measures as regards services or service suppliers of the other Party, in comparison with the treatment accorded to its own like services or service suppliers.

3. No later than three years following the entry into force of this Decision, the Joint Council shall adopt a decision providing for the elimination of substantially all remaining discrimination between the Parties in the sectors and modes of supply covered by this Chapter (1). That decision shall contain:

(a) a list of commitments establishing the level of liberalisation which the Parties agree to grant each other at the end of a transitional period of ten years from the entry into force of this Decision;

(b) a liberalisation calendar for each Party in order to reach at the end of the ten-year transitional period the level of liberalisation described in subparagraph (a).

4. Except as provided for in paragraph 2, Articles 4, 5 and 6 shall become applicable in accordance with the calendar and subject to any reservations stipulated in the Parties' lists of commitments provided for in paragraph 3.

5. The Joint Council may amend the liberalisation calendar and the list of commitments established in accordance with paragraph 3, with a view to remove or add exceptions.

Article 8
Regulatory carve-out

Each Party may regulate the supply of services in its territory, in so far as regulations do not discriminate against services and service suppliers of the other Party, in comparison to its own like services and service suppliers.

Article 9
Mutual recognition

1. In principle no later than three years following the entry into force of this Decision, the Joint Council shall establish the necessary steps for the negotiation of agreements providing for the mutual recognition of requirements, qualifications, licenses and other regulations, for the purpose of the fulfilment, in whole or in part, by service suppliers of the criteria applied by each Party for the authorisation, licensing, operation and certification of service suppliers and, in particular, professional services.

2. Any such agreement shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of GATS.

CHAPTER III

FINANCIAL SERVICES

Article 11
Definitions

In accordance with the terms of the Annex on Financial Services to the GATS and the GATS Understanding on Commitments in Financial Services, for purposes of this Chapter:

(a) "Financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services comprise the following activities:

A. Insurance and insurance-related services:

1. direct insurance (including co-insurance):

(a) life;

(b) non-life;

2. reinsurance and retrocession;

3. insurance inter-mediation, such as brokerage and agency; and

4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

B. Banking and other financial services (excluding insurance):

1. acceptance of deposits and other repayable funds from the public;

2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

3. financial leasing;

4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

5. guarantees and commitments;

6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

   (a) money market instruments (including cheques, bills, certificates of deposits);

   (b) foreign exchange;

   (c) derivative products including, but not limited to, futures and options;

   (d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

   (e) transferable securities;

   (f) other negotiable instruments and financial assets, including bullion;

7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

8. money broking;

9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

11. provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

(b) "Financial service supplier" means any juridical person of a Party authorised to supply financial services. The term "financial service supplier" does not include a public entity.

(c) "New financial service" means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party.

(d) "Public entity" means:

1. A government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

2. A private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

(e) "Commercial presence" means a juridical entity within a Party's territory for the supply of financial services and includes wholly or partly owned subsidiaries, joint ventures, partnerships, franchising operations, branches, agencies, representative offices or other organisations.

Article 12
Establishment of financial service suppliers

1. Each Party shall allow the financial service suppliers of the other Party to establish a commercial presence in its territory.

2. Each Party may require a financial service supplier of the other Party to incorporate under its own law or impose terms and conditions on establishment that are consistent with the other provisions of this Chapter.

3. No Party may adopt new measures as regards to the establishment and operation of financial service suppliers of the other Party, which are more discriminatory than those applied on the date of entry into force of this Decision.

4. No Party shall maintain or adopt the following measures:

(a) limitations on the number of financial service suppliers whether in the form of numerical quotas, monopolies, exclusive financial service suppliers or the requirements of an economic needs test;
(b) limitations on the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

(d) limitations on the total number of natural persons that may be employed in a particular financial service sector or that a financial service supplier may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or a requirement of an economic needs test; and

(e) limitations on the participation of foreign capital in the terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 13
Cross-border provision of financial services

1. Each party shall allow the cross-border provision of financial services.

2. No Party may adopt new measures as regards to the cross-border provision of financial services by financial service suppliers of the other Party which are more discriminatory as compared to those applied on the date of entry into force of this Decision.

3. Without prejudice to other means of prudential regulation of the cross-border provision of financial services, a Party may require the registration of cross-border financial service suppliers of the other Party.

4. Each Party shall permit persons located in its territory to purchase financial services from financial service suppliers of the other Party located in the territory of that other Party. This obligation does not require a Party to permit such suppliers to do business or carry on commercial operations; or to solicit, market or advertise their activities in its territory. Each Party may define the meaning of "doing business", "carry on commercial operations", "solicit", "market" and "advertise" for purposes of this obligation.

Article 14
National treatment

1. Each Party shall grant to the financial service suppliers of the other Party, including those already established in its territory on the date of entry into force of this Decision, treatment no less favourable than that it accords to its own like financial service suppliers with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of commercial operations of financial service suppliers in its territory.

2. Where a Party permits the cross-border provision of a financial service it shall accord to the financial service suppliers of the other Party treatment no less favourable than that it accords to its own like financial service suppliers with respect to the provision of such a service.

Article 15
Most favoured nation treatment

1. Each Party shall accord to financial service suppliers of the other Party treatment no less favourable than it accords to the like financial service suppliers of a non Party.

2. Treatment granted under other agreements concluded by one of the Parties with a third country which have been notified under Article V of GATS shall be excluded from this provision.

3. If a Party enters into an agreement of the type referred to in paragraph 2, it shall afford adequate opportunity to the other Party to negotiate the benefits granted therein.

Article 16
Key personnel

1. No Party may require a financial service supplier of the other Party to engage individuals of any particular nationality as senior managerial or other key personnel.

2. No Party may require that more than a simple majority of the board of directors of a financial service supplier of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 17
Commitments

1. Nothing in this Chapter shall be construed to prevent a Party to apply:

   (a) any existing measure inconsistent with Articles 12 to 16 which is listed on Annex I; or

   (b) an amendment to any discriminatory measure referred to in subparagraph (a) to the extent that the amendment does not increase the inconsistency of the measure with Articles 12 to 16, as it existed immediately before the amendment.

2. The measures listed in Annex I shall be reviewed by the Special Committee on Financial Services established under Article 23, with a view to propose to the Joint Council their modification, suspension or elimination.

3. No later than three years following the entry into force of this Decision, the Joint Council shall adopt a decision providing for the elimination of substantially all remaining discrimination. That decision shall contain a list of commitments establishing the level of liberalisation which the Parties agree to grant each other.

Article 18
Regulatory carve out

Each Party may regulate the supply of financial services, in so far as regulations do not discriminate against financial service or financial service suppliers of the other Party in comparison to its own like financial services and financial service suppliers.

Article 19
Prudential carve out

1. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:

(a) the protection of investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial service supplier;

(b) the maintenance of the safety, soundness, integrity or financial responsibility of financial service suppliers; or

(c) ensuring the integrity and stability of a Party's financial system.

2. These measures shall not be more burdensome than necessary to achieve their aim, and shall not discriminate against financial service suppliers of the other Party in comparison to its own like financial service suppliers.

3. Nothing in this Chapter shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

Article 20
Effective and transparent regulation

1. Each Party shall make its best endeavours to provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow an opportunity for such persons to comment on the measure. Such measure shall be provided:

(a) by means of an official publication; or

(b) in other written or electronic form.

2. Each Party's appropriate financial authority shall make available to interested persons its requirements for completing applications relating to the supply of financial services.

3. On the request of an applicant, the appropriate financial authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

4. Each Party shall make its best endeavours to ensure that the Basle Committee's "Core Principles for Effective Banking Supervision", the International Association of Insurance Supervisors' "Key Standards for Insurance Supervision" and the International Organisation of Securities Commissions' "Objectives and Principles of Securities Regulation" are implemented and applied in its territory.

5. The Parties also take note of the "Ten Key Principles for Information Exchange" promulgated by the Finance Ministers of the G7 Nations, and undertake to consider to what extent they may be applied in bilateral contacts.

Article 21
New financial services

Each Party shall permit a financial service supplier of the other Party to provide any new financial service of a type similar to those services that the Party permits its own financial service suppliers to provide under its domestic law in like circumstances. A Party may determine the juridical form through which the service may be provided and may require authorisation for the provision of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

Article 22
Data processing

1. Each Party shall permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier.

2. As far as the transfer of personal data is concerned, each Party shall adopt adequate safeguards to the protection of privacy and fundamental rights, and freedom of individuals in accordance with Article 41 of the Agreement.

Article 23
Special Committee on Financial Services

1. The Joint Council hereby establishes a Special Committee on Financial Services. The Special Committee shall be composed of representatives of the Parties. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex II.

2. The functions of the Special Committee shall include:

(a) supervising the implementation of this Chapter;

(b) considering issues regarding financial services that are referred to it by a Party;

(c) considering the application of measures listed by either Party in Annex I in order to propose to the Joint Council its modification, suspension or elimination, as appropriate;

(d) reviewing the provisions contained in this Chapter at such a time as either of the Parties may grant a third party more favourable access to its financial services market pursuant to the conclusion of a regional economic integration agreement compatible with Article V of GATS, with a view to proposing consequent modifications to this Chapter to the Joint Council; and

(e) considering implementation of Article 16 of the Agreement.

3. The Special Committee shall meet once a year on a date and with an agenda agreed in advance by the Parties. The office of chairman shall be held alternately. The Special Committee shall report to the Joint Committee the results of each annual meeting.

Article 24
Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Special Committee on Financial Services at its annual meeting.

2. Consultations under this Article shall include officials of the authorities specified in Annex II.

3. Nothing in this Article shall be construed to require financial authorities participating in consultations to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.

4. Where a Party requires information for supervisory purposes concerning a financial service supplier in the other Party's territory, the Party may approach the competent financial authority in the other Party's territory to seek the information.

Article 25
Dispute settlement

Arbitrators appointed to panels established in accordance with Title V for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute, as well as expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

Article 26
Specific exceptions

1. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out by financial service suppliers in competition with public entities or private institutions.

2. Nothing in this Chapter applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.

3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities.

CHAPTER IV

GENERAL EXCEPTIONS

Article 27
Exceptions

1. The provisions of this Title are subject to the exceptions contained in this Article.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Title shall be construed to prevent the adoption or enforcement by any Party of measures:

(a) necessary to protect public morals or to maintain public order and public security;

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Title including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety;

(d) inconsistent with the objective of Article 6 and 14, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of services or service suppliers of the other Party.

3. The provisions of this Title shall not apply to the Parties' respective social security systems or to activities in the territory of each Party, which are connected, even occasionally, with the exercise of official authority.

4. Nothing in this Title shall prevent a Party from applying its laws, regulations and requirements regarding entry and stay, work, labour conditions, and establishment of natural persons (3) provided that, in so doing, it does not apply them in a manner as to nullify or impair the benefits accruing to the other Party under the terms of a specific provision of this Title.

TITLE III

INVESTMENT AND RELATED PAYMENTS

Article 28
Definitions

1. For the purpose of this Title, investment made in accordance with the laws of the Parties means direct investment, investment in real estate and purchase and sale of any kind of securities, as defined in the OECD Codes of Liberalisation.

2. Payments covered by this Title are those related to an investment.

Article 29
Payments related to investment

1. Without prejudice to Articles 30 and 31, restrictions on payments related to investment between the Parties shall be progressively eliminated. The Parties undertake not to introduce any new restrictions on payments related to direct investment from the entry into force of this Decision.

2. Restrictions on payments related to investments in the services sector which have been liberalised in accordance with Title II of this Decision shall be eliminated according to the same timetable.

Article 30
Exchange rate policy and monetary policy difficulties

1. Where, in exceptional circumstances, payments related to investment between the Parties cause, or threaten to cause, serious difficulties for the operation of the exchange rate policy or monetary policy of a Party, that Party may take safeguard measures that are strictly necessary for a period not exceeding six months. The application of safeguard measures may be extended through their formal reintroduction.

2. The Party adopting the safeguard measure shall inform the other Party forthwith and present, as soon as possible, a time schedule for their removal.

Article 31
Balance of payments difficulties

1. Where one or more Member States or Mexico is in serious balance of payments difficulties, or under imminent threat thereof, the Community or the Member State concerned, or Mexico, as the case may be, may adopt restrictive measures with regard to payments, including transfers of proceeds from the total or partial liquidation of direct investment. Such measures shall be equitable, non-discriminatory, in good faith, of limited duration and may not go beyond what is necessary to remedy the balance of payments situation.

2. The Community or the Member State concerned, or Mexico, as the case may be, shall inform the other Party forthwith and present, as soon as possible, a time schedule for their

removal. Such measures shall be taken in accordance with other international obligations of the Party concerned, including those under the WTO Agreement and the Articles of Agreement of the International Monetary Fund.

Article 32
Transfers

The liquidation and transfer abroad of any direct investment made in Mexico by Community residents or in the Community by Mexican residents, and of any profits stemming therefrom, shall not be affected by the provisions of Article 30.

Article 33
Investment promotion between the Parties

The Community and its Member States, within the scope of their respective competences, and Mexico shall aim to promote an attractive and stable environment for reciprocal investment. Such promotion should take the form, in particular, of:

(a) mechanisms for information about and identification and dissemination of investment legislation and opportunities;

(b) development of a legal framework favourable to investment on both sides, particularly through the conclusion, where appropriate, by the Member tates of the Community and Mexico of bilateral agreements promoting and protecting investment and preventing double taxation;

(c) development of uniform and simplified administrative procedures; and

(d) development of mechanisms for joint investments, in particular with the small and medium enterprises of both Parties.

Article 34
International commitments on investment

The Community and its Member States, within the scope of their respective competences, and Mexico recall their international commitments with regard to investment, and especially the OECD Codes of Liberalisation and OECD National Treatment Instrument.

Article 35
Review clause

With the view of the objective of progressive liberalisation of investment, the Community and its Member States, and Mexico affirm their commitment to review the investment legal framework, the investment climate and the flow of investment between their territories consistent with their commitments in international investment agreements not later than three years after the entry into force of this Decision.

TITLE IV

INTELLECTUAL PROPERTY

Article 36
Multilateral Conventions on Intellectual Property

1. The Community and its Member States, on the one hand, and Mexico on the other hand, confirm their obligations arising from the following multilateral conventions:

(a) Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs Agreement, 1994);

(b) Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967);

(c) Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971);

(d) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 1961); and

(e) Patent Cooperation Treaty (Washington, 1970, amended in 1979 and modified in 1984).

2. The Parties confirm the importance they attach to the obligations arising from the International Convention for the Protection of New Varieties of Plants, 1978 (1978 UPOV Convention), or the International Convention for the Protection of New Varieties of Plants, 1991 (1991 UPOV Convention).

3. At the entry into force of this Decision, the Member States of the Community and Mexico will have acceded to the Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks (Geneva, 1977 and amended in 1979).

4. Within 3 years of the entry into force of this Decision the Members States of the Community and Mexico will have acceded to the Budapest Treaty of the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (1977, modified in 1980).

5. The Parties shall make every effort to complete the necessary procedures for their accession to the following multilateral conventions at the earliest possible opportunity:

(a) the WIPO Copyright Treaty (Geneva, 1996); and

(b) the WIPO Performances and Phonogram Treaty (Geneva, 1996).

TITLE V

DISPUTE SETTLEMENT

CHAPTER I

SCOPE AND COVERAGE

Article 37
Scope and coverage

1. The provisions of this Title shall apply with respect to any matter arising from this Decision or from Articles 4, 5, 6, 7, 8, 9, 10 and 11 of the Agreement (hereinafter the "covered legal instruments").

2. By way of exception, the arbitration procedure laid down in Chapter III shall not be applicable in the case of disputes concerning Article 9(2), 31(2) last sentence, 34 and 36 of this Decision.

CHAPTER II

CONSULTATION

Article 38
Consultation

1. The Parties shall at all times endeavour to agree on the interpretation and application of the covered legal instruments and shall make every attempt through cooperation and consultations to arrive to a mutually satisfactory resolution of any matter that might affect their operation.

2. Each Party may request consultations within the Joint Committee with respect to any matter relating to the application or interpretation of the covered legal instruments or any other matter that it considers might affect their operation.

3. The Joint Committee shall convene within 30 days of delivery of the request and shall endeavour to resolve the dispute promptly by means of a decision. That decision shall specify the implementing measures to be taken by the Party concerned, and the period of time to do so.

CHAPTER III

ARBITRATION PROCEDURE

Article 39
Establishment of an arbitration panel

1. In case a Party considers that a measure applied by the other Party violates the covered legal instruments and such matter has not been resolved within 15 days after the Joint Committee has convened pursuant to Article 38(3) or 45 days after the delivery of the request for a Joint Committee meeting, either Party may request in writing the establishment of an arbitration panel.

2. The requesting Party shall state in the request the measure and indicate the provisions of the covered legal instruments that it considers relevant, and shall deliver the request to the other Party and to the Joint Committee.

Article 40
Appointment of arbitrators

1. The requesting Party shall notify the other Party of the appointment of an arbitrator, and propose up to 3 candidates to serve as a chair. The other Party must then appoint a second arbitrator within 15 days, and propose up to 3 candidates to serve as a chair.

2. Both Parties shall endeavour to agree on the chair within 15 days after the second arbitrator has been appointed.

3. The date of establishment of the arbitration panel shall be the date on which the chair is appointed.

4. If a Party fails to appoint its arbitrator pursuant to paragraph 1, such arbitrator shall be selected by lot from the candidates proposed. If the Parties are unable to agree on the chair within the time period referred to in paragraph 2, it shall be selected by lot within one week from the candidates proposed.

5. If an arbitrator dies, withdraws or is removed, a replacement shall be selected within 15 days in accordance with the selection procedure followed to select him or her. In such a case, any time period applicable to the arbitration panel proceeding shall be suspended for a period beginning on the date the arbitrator dies, withdraws or is removed and ending on the date the replacement is selected.

Article 41
Panel reports

1. The arbitration panel should, as a general rule, submit an initial report containing its findings and conclusions to the Parties not later than three months from the date of establishment of the arbitration panel. In no case should it do so later than five months from this date. Any Party may submit written comments to the arbitration panel on its initial report within 15 days of presentation of the report.

2. The arbitration panel shall present to the Parties a final report within 30 days of presentation of the initial report.

3. In cases of urgency, including those involving perishable goods, the arbitration panel shall make every effort to issue its final report to the Parties within three months from the date of establishment of the arbitration panel. In no case should it do so later than four months. The arbitration panel may give a preliminary ruling on whether a case is urgent.

4. All decisions of the arbitration panel, including the adoption of the final report and of any preliminary ruling, shall be taken by majority vote, each arbitrator having one vote.

5. The complaining Party may withdraw its complaint at any time before the final report has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time.

Article 42
Implementation of panel reports

1. Each Party shall be bound to take the measures involved in carrying out the final report referred to in Article 41(2).

2. The Party concerned shall inform the other Party within 30 days after the final report has been issued of its intentions in respect of its implementation.

3. The Parties shall endeavour to agree on the specific measures that are required for implementing the final report.

4. The Party concerned shall promptly comply with the final report. If it is impracticable to comply immediately, the Parties shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement, either Party may request the original arbitration panel to determine the length of the reasonable period of time, in light of the particular circumstances of the case. The ruling of the arbitration panel shall be given within 15 days from that request.

5. The Party concerned shall notify to the other Party the measures adopted in order to implement the final report before the expiry of the reasonable period of time determined in accordance with paragraph 4. Upon that notification, any of the Parties may request the original arbitration panel to rule on the conformity of those measures with the final report. The ruling of the arbitration panel shall be given within 60 days from that request.

6. If the Party concerned fails to notify the implementing measures before the expiry of the reasonable period of time determined in accordance with paragraph 4, or if the arbitration panel rules that the implementing measures notified by the Party concerned are inconsistent with the final report, such Party shall, if so requested by the complaining Party, enter into consultations with a view to agree on a mutually acceptable compensation. If no such agreement has been reached within 20 days from the request, the complaining Party shall be entitled to suspend only the application of benefits granted under the covered legal instruments equivalent to those affected by the measure found to violate the covered legal instruments.

7. In considering what benefits to suspend, a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the panel has found to

violate the covered legal instruments. A complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

8. The complaining Party shall notify the other Party of the benefits which it intends to suspend no later than 60 days before the date on which the suspension is due to take effect. Within 15 days from that notification, any of the Parties may request the original arbitration panel to rule on whether the benefits which the complaining Party intends to suspend are equivalent to those affected by the measure found to violate the covered legal instruments, and whether the proposed suspension is in accordance with paragraphs 6 and 7. The ruling of the arbitration panel shall be given within 45 days from that request. Benefits shall not be suspended until the arbitration Panel has issued its ruling.

9. The suspension of benefits shall be temporary and shall only be applied by the complaining Party until the measure found to violate the covered legal instruments has been withdrawn or amended so as to bring it into conformity with the covered legal instruments, or the Parties have reached agreement on a resolution of the dispute.

10. At the request of any of the Parties, the original arbitration panel shall rule on the conformity with the final report of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel shall be given within 30 days from the date of that request.

11. The rulings provided for in paragraphs 4, 5, 8 and 10 shall be binding.

Article 43
General provisions

1. Any time period mentioned in this Title may be extended by mutual agreement of the Parties.

2. Unless the Parties otherwise agree, the arbitration panel proceedings shall be conducted in accordance with the Model Rules of Procedure set out in Annex III. The Joint Committee may amend the Model Rules of Procedure.

3. Arbitration proceedings established under this Title will not consider issues relating to each Party's rights and obligations under the WTO.

4. Recourse to the dispute settlement provisions of this Title shall be without prejudice to any possible action in the WTO framework, including dispute settlement action. However, where a Party has, with regard to a particular matter, instituted a dispute settlement proceeding under either Article 39(1) of this Title or the WTO Agreement, it shall not institute a dispute settlement proceeding regarding the same matter under the other forum until such time as the first proceeding has ended. For purposes of this paragraph, dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO.

TITLE VI

SPECIFIC DUTIES OF THE JOINT COMMITTEE WITH RESPECT TO TRADE AND OTHER TRADE RELATED MATTERS

Article 44

1. The Joint Committee shall:

   (a) supervise the implementation and proper operation of this Decision, as well as of any other decision concerning trade and other trade related matters(4);

   (b) oversee the further elaboration of the provisions of this Decision;

   (c) undertake consultations pursuant to Article 38(2) and (3);

   (d) carry out any functions assigned to it under this Decision or under any other decision concerning trade or trade related matters;

   (e) assist the Joint Council in the performance of its functions regarding trade and other trade related matters;

   (f) supervise the work of all the special committees established under this Decision; and

   (g) report annually to the Joint Council.

2. The Joint Committee may:

   (a) set up any special committees or bodies to deal with matters falling within its competence, and determine their composition and duties, and how they shall function;

   (b) meet at any time by agreement of the Parties;

   (c) consider any issues regarding trade and other trade related matters, and take appropriate action in the exercise of its functions; and

   (d) take decisions or make recommendations on trade and other trade related matters, in accordance with Article 48(2) of the Agreement.

3. When the Joint Committee meets in order to perform any of the tasks conferred upon it by this Decision, it shall be composed of representatives of the members of the Council of the European Union and of the European Commission, on the one hand, and of representatives of the Government of Mexico, on the other, with a responsibility for trade and trade related matters, normally at senior civil servant level.

TITLE VII

FINAL PROVISIONS

Article 45
Entry into force

This Decision shall enter into force on the first day of the month following that in which it is adopted by the Joint Council.

Article 46
Annexes

The Annexes to this Decision, including the Appendixes to those Annexes, are an integral part thereof.

Done at Brussels, 27 February 2001.

For the Joint Council
The President

J. Castañeda

(1) The Joint Council may decide to postpone the adoption of the decision provided for in this paragraph. Should this occur, the decision shall be adopted not later than one year after the conclusion of the negotiations mandated by Article XIX of GATS and in any event within a reasonable timeframe before the end of the ten-year transitional period.

(2) Notwithstanding Article 3(e), shipping companies established outside the Community or Mexico and controlled by nationals of a Member State of the Community or Mexico, respectively, shall also be beneficiaries of the provisions of this Chapter, if their vessels are registered in accordance with their respective legislation, in that Member State or in Mexico and carry the flag of a Member State or Mexico.

(3) In particular, a Party may require that natural persons must possess the necessary academic qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

(4) The Parties understand that "trade and other trade related matters" includes any matter arising under this Decision and Titles III through V of the Agreement.

* * *

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA CONCERNING THE DEVELOPMENT OF TRADE AND INVESTMENT RELATIONS*

The Agreement between the Government of the United States of America and the Government of the Federal Republic of Nigeria Concerning the Development of Trade and Investment Relations was signed on 16 February 2000. It entered into force on the date of signature.

The Government of the United States of America and the Government of the Federal Republic of Nigeria (individually a "Party" and collectively the "Parties"):

1) Desiring to enhance the friendship and spirit of cooperation between the two countries;

2) Desiring to develop further both countries' international trade and economic interrelationship;

3) Taking into account the participation of both countries in the World Trade Organization (WTO), and noting that this Agreement is without prejudice to the rights and obligations of the parties under the Marrakesh Agreement establishing the World Trade Organization and the agreements, understandings, and other instruments relating thereto or concluded under the auspices of the WTO;

4) Recognizing the importance of fostering an open and predictable environment for international trade and investment;

5) Recognizing that it is desirable that trade and investment problems between the Parties should be resolved by mutual agreement;

6) Recognizing the benefits to each Party resulting from increased international trade and investment, and that trade and investment barriers would deprive the Parties of such benefits;

7) Recognizing the essential role of private investment, both domestic and foreign, in furthering growth, creating jobs, expanding trade, improving technology and enhancing economic development;

8) Recognizing that foreign direct investment confers positive benefits on each Party;

9) Recognizing the increasing importance of services in their respective economies and in their bilateral relations;

* *Source*: The Government of the United States and the Government of Nigeria (2000). "Agreement between the Government of the United States of America and the Government of the Federal Republic of Nigeria Concerning the Development of Trade and Investment Relations"; available on the Internet (http://www.ustr.gov/regions/africa/ustifa.htm). [Note added by the editor.]

10) Taking into account the need to eliminate non-tariff barriers in order to facilitate greater access to the markets of both countries;

11) Recognizing the importance of providing adequate and effective protection and enforcement of intellectual property rights, and taking into account each Party's obligations contained in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and in intellectual property rights conventions;

12) Desiring to further secure the observance and promotion of internationally recognized core labor standards and workers' rights, given the contribution that these afford to the economic well-being of both Parties;

13) Desiring to ensure that trade and environmental policies are mutually supportive in furtherance of sustainable development; and

14) Considering that it would be in their mutual interest to establish a bilateral mechanism between the Parties for encouraging the liberalization of trade and investment between them.

To this end, the Parties agree as follows:

ARTICLE ONE

The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They will take appropriate measures to encourage and facilitate the exchange of goods and services and to secure favorable conditions for long-term development and diversification of trade between their respective nationals and companies.

ARTICLE TWO

The Parties will establish a United States - Nigeria Council on Trade and Investment ("the Council") which will be composed of representatives of both Parties. The United States of America's side of the Council will be chaired by the Office of the United States Trade Representative (USTR), while the Federal Republic of Nigeria's side of the Council will be chaired by the Ministry of Commerce. Each chair may be assisted by officials of other government entities in their respective countries as circumstances require.

ARTICLE THREE

The objectives of the Council are to hold consultations on specific trade and investment matters of interest to the Parties and the enhancement of trade and investment flows. The Council will also work toward the removal of impediments to such trade and investment flows.

ARTICLE FOUR

The Council will meet at such times and venues as agreed by the Parties.

ARTICLE FIVE

Either Party may seek the views of civil society, such as business, labor, consumer, environmental, and academic groups, on matters related to the work of the Council whenever the Party considers it appropriate.

ARTICLE SIX

For the purposes of further developing bilateral trade and investment and providing for a steady increase in the exchange of goods and services, the Parties will consider whether further agreements relating to trade, taxation, intellectual property, labor, transfer of technology, technical cooperation, and investment issues would be desirable.

ARTICLE SEVEN

Either Party may raise for consultation any trade or investment matter between the Parties. Requests for consultation will be accompanied by a written explanation of the subject to be discussed and consultations will be held within 90 days from the date of the written explanation unless otherwise agreed by the Parties.

Where a Party's specific measure or practice is the subject of discussion, initial consultations will normally be held in the territory of that Party, unless otherwise agreed.

This Agreement will be without prejudice to the rights of either Party under its domestic law or under any other instrument to which either country is a Party.

ARTICLE EIGHT

Either Party may request a revision of this Agreement by giving written notice to the other Party. Such a request will be responded to within six months from the date of submission. No revision of this Agreement will be valid unless it is agreed to and signed by both Parties.

ARTICLE NINE

Any dispute between the Parties relating to the implementation and interpretation of this Agreement will be resolved through consultations and negotiations.

ARTICLE TEN

This Agreement will become effective on the date of its signature and will remain effective unless terminated by mutual consent of the Parties or by either Party upon six months' written notice to the other Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this Agreement.

DONE AT WASHINGTON THIS DAY OF FEBRUARY 16, 2000.

* * *

PARTNERSHIP AGREEMENT BETWEEN THE MEMBERS OF THE AFRICAN, CARIBBEAN AND PACIFIC GROUP OF STATES OF THE ONE PART, AND THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, OF THE OTHER PART[*] [excerpts]

The Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and Its Member States, of the Other Part was signed at Cotonou, Benin, on 23 June 2000.

THE COTONOU AGREEMENT

FINAL ACT

PART 3: COOPERATION STRATEGIES

TITLE I: DEVELOPMENT STRATEGIES

CHAPTER 1: GENERAL FRAMEWORK

ARTICLE 19
Principles and objectives

1. The central objective of ACP-EC cooperation is poverty reduction and ultimately its eradication; sustainable development; and progressive integration of the ACP countries into the world economy. In this context, cooperation framework and orientations shall be tailored to the individual circumstances of each ACP country, shall promote local ownership of economic and social reforms and the integration of the private sector and civil society actors into the development process.

2. Cooperation shall refer to the conclusions of United Nations Conferences and to the objectives, targets and action programmes agreed at international level and to their follow up as a basis for development principles. Cooperation shall also refer to the international development cooperation targets and shall pay particular attention to putting in place qualitative and quantitative indicators of progress.

3. Governments and non-State actors in each ACP country shall initiate consultations on country development strategies and community support thereto.

[*] *Source*: African, Caribbean and the Pacific States and the European Community (2000). "Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and Its Member States, of the Other Part", *Official Journal of the European Communities,* L 317, 15 December 2000, P. 3; available also on the Internet (http://www.acpsec.org/gb/cotonou/accord1e.htm). [Note added by the editor.]

ARTICLE 20
The Approach

The objectives of ACP-EC development cooperation shall be pursued through integrated strategies that incorporate economic, social, cultural, environmental and institutional elements that must be locally owned. Cooperation shall thus provide a coherent enabling framework of support to the ACP's own development strategies, ensuring complementarity and interaction between the various elements. In this context and within the framework of development policies and reforms pursued by the ACP States, ACP-EC cooperation strategies shall aim at:

a. achieving rapid and sustained job-creating economic growth, developing the private sector, increasing employment, improving access to productive economic activities and resource, and fostering regional cooperation and integration;

b. promoting human and social development helping to ensure that the fruits of growth are widely and equitably shared and promoting gender equality;

c. promoting cultural values of communities and specific interactions with economic, political and social elements;

d. promoting institutional reforms and development, strengthening the institutions necessary for the consolidation of democracy, good governance and for efficient and competitive market economies; and building capacity for development and partnership; and

e. promoting environmental sustainability, regeneration and best practices, and the preservation of natural resource base.

2. Systematic account shall be taken in mainstreaming into all areas of cooperation the following thematic or cross-cutting themes: gender issues, environmental issues and institutional development and capacity building. These areas shall also be eligible for Community support.

3. The detailed texts as regards development cooperation objectives and strategies, in particular sectoral policies and strategies shall be incorporated in a compendium providing operational guidelines in specific areas or sectors of cooperation. These texts may be revised, reviewed and/or amended by the Council of Ministers on the basis of a recommendation from the ACP-EC Development Finance Cooperation Committee.

PART 3: COOPERATION STRATEGIES

TITLE I: DEVELOPMENT STRATEGIES

CHAPTER 2: AREAS OF SUPPORT

SECTION 1: ECONOMIC DEVELOPMENT

ARTICLE 21
Investment and private sector development

1. Cooperation shall support the necessary economic and institutional reforms and policies at national and/or regional level, aiming at creating a favourable environment for private investment, and the development of a dynamic, viable and competitive private sector.

Cooperation shall further support:

a. the promotion of public-private sector dialogue and cooperation;

b. the development of entrepreneurial skills and business culture;

c. privatisation and enterprise reform; and

d. development and modernisation of mediation and arbitration systems.

2. Cooperation shall also support improving the quality, availability and accessibility of financial and non-financial services to private enterprises, both formal and informal; by:

a. catalysing and leveraging flows of private savings, both domestic and foreign, into the financing of private enterprises by supporting policies for developing a modern financial sector including a capital market, financial institutions and sustainable microfinance operations;

b. the development and strengthening of business institutions and intermediary organisations, associations, chambers of commerce and local providers from the private sector supporting and providing non-financial services to enterprises such as professional, technical, management, training and commercial support services; and

c. supporting institutions, programmes, activities and initiatives that contribute to the development and transfer of technologies and know-how and best practices on all aspects of business management.

3. Cooperation shall promote business development through the provision of finance, guarantee facilities and technical support aimed at encouraging and supporting the creation, establishment, expansion, diversification, rehabilitation, restructuring, modernisation or privatisation of dynamic, viable and competitive enterprises in all economic sectors as well as financial intermediaries such as development finance and venture capital institutions, and leasing companies by:

a. creating and/or strengthening financial instruments in the form of investment capital;

b. improving access to essential inputs such as business information and advisory, consultancy or technical assistance services;

c. enhancement of export activities, in particular through capacity building in all trade-related areas; and

d. encouraging inter-firm linkages, networks and cooperation including those involving the transfer of technology and know-how at national, regional and ACP-EU levels, and partnerships with private foreign investors which are consistent with the objectives and guidelines of ACP-EC Development cooperation.

4. Cooperation shall support microenterprise development through better access to financial and non-financial services; an appropriate policy and regulatory framework for their development; and provide training and information services on best practices in microfinance.

5. Support for investment and private sector development shall integrate actions and initiatives at macro, meso and micro economic levels.

ARTICLE 23
Economic sector development

Cooperation shall support sustainable policy and institutional reforms and the investments necessary for equitable access to economic activities and productive resources, particularly:

a. the development of training systems that help increase productivity in both the formal and the informal sectors;
b. capital, credit, land, especially as regards property rights and use;

c. development of rural strategies aimed at establishing a framework for participatory decentralised planning, resource allocation and management;

d. agricultural production strategies, national and regional food security policies, sustainable development of water resources and fisheries as well as marine resources within the economic exclusive zones of the ACP States. Any fishery agreement that may be negotiated between the Community and the ACP States shall pay due consideration to consistency with the development strategies in this area;

e. economic and technological infrastructure and services, including transport, telecommunication systems, communication services and the development of information society;

f. development of competitive industrial, mining and energy sectors, while encouraging private sector involvement and development;

g. trade development, including the promotion of fair trade;

h. development of business, finance and banking; and other service sectors;

i. tourism development; and

j. development of scientific, technological and research infrastructure and services; including the enhancement, transfer and absorption of new technologies;

k. the strengthening of capacities in productive areas, especially in public and private sectors.

ARTICLE 24
Tourism

Cooperation will aim at the sustainable development of the tourism industry in ACP countries and sub-regions, recognising its increasing importance to the growth of the services sector in ACP countries and to the expansion of their global trade, its ability to stimulate other sectors of economic activity, and the role it can play in poverty eradication.

Cooperation programmes and projects will support the efforts of ACP countries to establish and improve the countries legal and institutional framework and resources for the development and implementation of sustainable tourism policies and programmes, as well as inter alia, improving the competitive position of the sector, especially small and medium-sized enterprises (SMEs), investment support and promotion, product development including the development of indigenous cultures in ACP countries, and strengthening linkages between tourism and other sectors of economic activity.

PART 3: COOPERATION STRATEGIES

TITLE I: DEVELOPMENT STRATEGIES

CHAPTER 2: AREAS OF SUPPORT

SECTION 3: REGIONAL COOPERATION AND INTEGRATION

ARTICLE 28
General approach

Cooperation shall provide effective assistance to achieve the objectives and priorities which the ACP States have set themselves in the context of regional and sub-regional cooperation and integration, including inter-regional and intra-ACP cooperation. Regional Cooperation can also involve Overseas Countries and Territories (OCTs) and outermost regions. In this context, cooperation support shall aim to:

a. foster the gradual integration of the ACP States into the world economy;

b. accelerate economic cooperation and development both within and between the regions of the ACP States;

c. promote the free movement of persons, goods, services, capital, labour and technology among ACP countries;

d. accelerate diversification of the economies of the ACP States; and coordination and harmonisation of regional and sub-regional cooperation policies; and

e. promote and expand inter and intra-ACP trade and with third countries.

ARTICLE 29
Regional economic integration

Cooperation shall, in the area of regional economic integration, support:

a. developing and strengthening the capacities of:

i. regional integration institutions and organisations set up by the ACP States to promote regional cooperation and integration, and

ii. national governments and parliaments in matters of regional integration;

b. fostering participation of Least Developed Countries (LDC) ACP States in the establishment of regional markets and sharing the benefits therefrom;

c. implementation of sectoral reform policies at regional level;

d. liberalisation of trade and payments;

e. promoting cross-border investments both foreign and domestic, and other regional or sub-regional economic integration initiatives; and

f. taking account of the effects of net transitional costs of regional integration on budget revenue and balance of payments.

PART 3: COOPERATION STRATEGIES

TITLE II: ECONOMIC AND TRADE COOPERATION

CHAPTER 1: OBJECTIVES AND PRINCIPLES

ARTICLE 34
Objectives

1. Economic and trade cooperation shall aim at fostering the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries.

2. The ultimate objective of economic and trade cooperation is to enable the ACP States to play a full part in international trade. In this context, particular regard shall be had to the need for the ACP States to participate actively in multilateral trade negotiations. Given the current level of development of the ACP countries, economic and trade cooperation shall be directed at enabling the ACP States to manage the challenges of globalisation and to adapt progressively to new conditions of international trade thereby facilitating their transition to the liberalised global economy.

3. To this end economic and trade cooperation shall aim at enhancing the production, supply and trading capacity of the ACP countries as well as their capacity to attract investment. It shall further aim at creating a new trading dynamic between the Parties, at strengthening the ACP countries trade and investment policies and at improving the ACP countries' capacity to handle all issues related to trade.

4. Economic and trade cooperation shall be implemented in full conformity with the provisions of the WTO, including special and differential treatment, taking account of the Parties' mutual interests and their respective levels of development.

ARTICLE 35
Principles

1. Economic and trade cooperation shall be based on a true, strengthened and strategic partnership. It shall further be based on a comprehensive approach which builds on the strengths and achievements of the previous ACP-EC Conventions, using all means available to achieve the objectives set out above by addressing supply and demand side constraints. In this context, particular regard shall be had to trade development measures as a means of enhancing ACP States' competitiveness. Appropriate weight shall therefore be given to trade development within the ACP States' development strategies, which the Community shall support.

2. Economic and trade cooperation shall build on regional integration initiatives of ACP States, bearing in mind that regional integration is a key instrument for the integration of ACP countries into the world economy.

3. Economic and trade cooperation shall take account of the different needs and levels of development of the ACP countries and regions. In this context, the Parties reaffirm their attachment to ensuring special and differential treatment for all ACP countries and to maintaining special treatment for ACP LDCs and to taking due account of the vulnerability of small, landlocked and island countries.

PART 3: COOPERATION STRATEGIES

TITLE II: ECONOMIC AND TRADE COOPERATION

CHAPTER 2: NEW TRADING ARRANGEMENTS

ARTICLE 36
Modalities

1. In view of the objectives and principles set out above, the Parties agree to conclude new World Trade Organisation (WTO) compatible trading arrangements, removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade.

2. The Parties agree that the new trading arrangements shall be introduced gradually and recognise the need, therefore, for a preparatory period.

3. In order to facilitate the transition to the new trading arrangements, the non-reciprocal trade preferences applied under the Fourth ACP-EC Convention shall be maintained during the preparatory period for all ACP countries, under the conditions defined in Annex V to this Agreement.

4. In this context, the Parties reaffirm the importance of the commodity protocols, attached to Annex V of this Agreement. They agree on the need to review them in the context of the new trading arrangements, in particular as regards their compatibility with WTO rules, with a view to safeguarding the benefits derived therefrom, bearing in mind the special legal status of the Sugar Protocol.

ARTICLE 38
Joint Ministerial Trade Committee

1. A Joint ACP-EC Ministerial Trade Committee shall be established.

2. The Ministerial Trade Committee shall pay special attention to current multilateral trade negotiations and shall examine the impact of the wider liberalisation initiatives on ACP-EC trade and the development of ACP economies. It shall make any necessary recommendations with a view to preserving the benefits of the ACP-EC trading arrangements.

3. The Ministerial Trade Committee shall meet at least once a year. Its rules of procedure shall be laid down by the Council of Ministers. It shall be composed of representatives of the ACP States and of the Community.

PART 3: COOPERATION STRATEGIES

TITLE II: ECONOMIC AND TRADE COOPERATION

CHAPTER 3: COOPERATION IN THE INTERNATIONAL FORA

ARTICLE 39
General Provisions

1. The Parties underline the importance of their active participation in the WTO as well as in other relevant international organisations by becoming members of these organisations and closely following their agenda and activities.

2. They agree to cooperate closely in identifying and furthering their common interests in international economic and trade cooperation in particular in the WTO, including participation in setting and conducting the agenda in future multilateral trade negotiations. In this context, particular attention shall be paid to improve access to the Community and other markets for products and services originating in the ACP countries.

3. They also agree on the importance of flexibility in WTO rules to take account of the ACP's level of development as well of the difficulties faced in meeting their obligations. They further agree on the need for technical assistance to enable the ACP countries to implement their commitments.

4. The Community agrees to assist the ACP States in their efforts, in accordance with the provisions set out in this Agreement, to become active members of these organisations, by developing the necessary capacity to negotiate, participate effectively, monitor and implement these agreements.

PART 3: COOPERATION STRATEGIES

TITLE II: ECONOMIC AND TRADE COOPERATION

CHAPTER 4: TRADE IN SERVICES

ARTICLE 41
General Provisions

1. The Parties underline the growing importance of services in international trade and their major contribution to economic and social development.

2. They reaffirm their respective commitments under the General Agreement on Trade in Services (GATS), and underline the need for special and differential treatment to ACP suppliers of services;

3. In the framework of the negotiations for progressive liberalisation in trade and services, as provided for in Article XIX of GATS, the Community undertakes to give sympathetic

consideration to the ACP States' priorities for improvement in the EC schedule, with a view to meeting their specific interests.

4. The Parties further agree on the objective of extending under the economic partnership agreements, and after they have acquired some experience in applying the Most Favoured Nation (MFN) treatment under GATS, their partnership to encompass the liberalisation of services in accordance with the provisions of GATS and particularly those relating to the participation of developing countries in liberalisation agreements.

5. The Community shall support the ACP States' efforts to strengthen their capacity in the supply of services. Particular attention shall be paid to services related to labour, business, distribution, finance, tourism, culture and construction and related engineering services with a view to enhancing their competitiveness and thereby increasing the value and the volume of their trade in goods and services.

PART 3: COOPERATION STRATEGIES

TITLE II: ECONOMIC AND TRADE COOPERATION

CHAPTER 5: TRADE-RELATED AREAS

ARTICLE 44
General Provisions

1. The Parties acknowledge the growing importance of new areas related to trade in facilitating progressive integration of the ACP States into the world economy.

They therefore agree to strengthen their cooperation in these areas by establishing full and coordinated participation in the relevant international fora and agreements.

2. The Community shall support the ACP States' efforts, in accordance with the provisions set out in this Agreement and the development strategies agreed between the Parties to strengthen their capacity to handle all areas related to trade, including, where necessary, improving and supporting the institutional framework.

ARTICLE 45
Competition Policy

1. The Parties agree that the introduction and implementation of effective and sound competition policies and rules are of crucial importance in order to improve and secure an investment friendly climate, a sustainable industrialisation process and transparency in the access to markets.

2. To ensure the elimination of distortions to sound competition and with due consideration to the different levels of development and economic needs of each ACP country, they undertake to implement national or regional rules and policies including the control and under certain conditions the prohibition of agreements between undertakings, decisions by associations of

undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition. The Parties further agree to prohibit the abuse by one or more undertakings of a dominant position in the common market of the Community or in the territory of ACP States.

3. The Parties also agree to reinforce cooperation in this area with a view to formulating and supporting effective competition policies with the appropriate national competition agencies that progressively ensure the efficient enforcement of the competition rules by both private and state enterprises. Cooperation in this area shall, in particular, include assistance in the drafting of an appropriate legal framework and its administrative enforcement with particular reference to the special situation of the least developed countries.

ARTICLE 46
Protection of Intellectual Property Rights

1. Without prejudice to the positions of the Parties in multilateral negotiations, the Parties recognise the need to ensure an adequate and effective level of protection of intellectual, industrial and commercial property rights, and other rights covered by TRIPS including protection of geographical indications, in line with the international standards with a view to reducing distortions and impediments to bilateral trade.

2. They underline the importance, in this context, of adherence to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to the WTO Agreement and the Convention on Biological Diversity (CBD).

3. They also agree on the need to accede to all relevant international conventions on intellectual, industrial and commercial property as referred to in Part I of the TRIPS Agreement, in line with their level of development.

4. The Community, its Member States and the ACP States may consider the conclusion of agreements aimed at protecting trademarks and geographical indications for products of particular interest of either Party.

5. For the purpose of this Agreement, intellectual property includes in particular copyright, including the copyright on computer programmes, and neighbouring rights, including artistic designs, and industrial property which includes utility models, patents including patents for bio-technological inventions and plant varieties or other effective sui generis systems, industrial designs, geographical indications including appellations of origin, trademarks for goods or services, topographies of integrated circuits as well as the legal protection of data bases and the protection against unfair competition as referred to in Article 10a of the Paris Convention for the Protection of Industrial Property and protection of undisclosed confidential information on know how.

6. The Parties further agree to strengthen their cooperation in this field. Upon request and on mutually agreed terms and conditions cooperation shall inter alia extend to the following areas: the preparation of laws and regulations for the protection and enforcement of intellectual property rights, the prevention of the abuse of such rights by right-holders and the infringement of such rights by competitors, the establishment and reinforcement of domestic and regional offices and other agencies including support for regional intellectual property organisations involved in enforcement and protection, including the training of personnel.

ARTICLE 52
Tax Carve-out Clause

1. Without prejudice to the provisions of Article 31 of Annex IV, the Most Favoured Nation treatment granted in accordance with the provisions of this Agreement, or any arrangement adopted under this Agreement, does not apply to tax advantages which the Parties are providing or may provide in the future on the basis of agreements to avoid double taxation or other tax arrangements, or domestic fiscal legislation.

2. Nothing in this Agreement, or in any arrangements adopted under this Agreement, may be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements, or domestic fiscal legislation.

3. Nothing in this Agreement, or in any arrangements adopted under this Agreement, shall be construed to prevent the Parties from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence, or with regard to the place where their capital is invested.

PART 4: DEVELOPMENT FINANCE COOPERATION

TITLE II: FINANCIAL COOPERATION

CHAPTER 7: INVESTMENT AND PRIVATE SECTOR DEVELOPMENT SUPPORT

ARTICLE 74

Cooperation shall, through financial and technical assistance, support the policies and strategies for investment and private sector development as set out in this Agreement.

ARTICLE 75
Investment promotion

The ACP States, the Community and its Member States, within the scope of their respective competencies, recognising the importance of private investment in the promotion of their development cooperation and acknowledging the need to take steps to promote such investment, shall:

a. implement measures to encourage participation in their development efforts by private investors who comply with the objectives and priorities of ACP-EC development cooperation and with the appropriate laws and regulations of their respective States;

b. take measures and actions which help to create and maintain a predictable and secure investment climate as well as enter into negotiations on agreements which will improve such climate;

c. encourage the EU private sector to invest and to provide specific assistance to its counterparts in the ACP countries under mutual business cooperation and partnerships;

d. facilitate partnerships and joint ventures by encouraging co-financing;

e. sponsor sectoral investment fora to promote partnerships and external investment;

f. support efforts of the ACP States to attract financing, with particular emphasis on private financing, for infrastructure investments and revenue generating infrastructure critical for the private sector;

g. support capacity building for domestic investment promotion agencies and institutions involved in promoting and facilitating foreign investment;

h. disseminate information on investment opportunities and business operating conditions in the ACP States; and

i. promote national, regional and ACP-EU private sector business dialogue, cooperation and partnerships, in particular through an ACP-EU private sector business forum. Support for operations of an ACP-EU private sector business forum shall be provided in pursuit of the following objectives:

   i. to facilitate dialogue within the ACP/EU private sector and between the ACP/EU private sector and the bodies established under the Agreement;

   ii. to analyse and periodically provide the relevant bodies with information on the whole range of issues concerning relations between the ACP and EU private sectors in the context of the Agreement or, more generally, of economic relations between the Community and the ACP countries; and

   iii. to analyse and provide the relevant bodies with information on specific problems of a sectoral nature relating to, inter alia, branches of production or types of products at regional or sub-regional level.

ARTICLE 76
Investment finance and support

1. Cooperation shall provide long-term financial resources, including risk capital, to assist in promoting growth in the private sector and help to mobilise domestic and foreign capital for this purpose. To this end, cooperation shall provide, in particular:

a. grants for financial and technical assistance to support policy reforms, human resource development, institutional capacity-building or other forms of institutional support related to a specific investment, measures to increase the competitiveness of enterprises and to strengthen the capacities of the private financial and non-financial intermediaries, investment facilitation and promotion and competitiveness enhancement activities;

b. advisory and consultative services to assist in creating a responsive investment climate and information base to guide and encourage the flow of capital;

c. risk-capital for equity or quasi-equity investments, guarantees in support of domestic and foreign private investment and loans or lines of credit on the conditions laid down in Annex II "Terms and Conditions of Financing" to this Agreement; and

d. loans from the Bank's own resources.

2. Loans from the Bank's own resources shall be granted in accordance with its statute and with the terms and conditions laid down in Annex II to this Agreement.

ARTICLE 77
Investment guarantees

1. Investment guarantees are an increasingly important tool for development finance as they contribute to reducing project risks and inducing private capital flows.

Cooperation shall therefore ensure the increasing availability and use of risk insurance as a risk-mitigating mechanism in order to boost investor confidence in the ACP States.
2. Cooperation shall offer guarantees and assist with guarantees funds covering risks for qualified investment. Specifically, cooperation shall provide support to:

a. reinsurance schemes to cover foreign direct investment by eligible investors; against legal uncertainties and the major risks of expropriation, currency transfer restriction, war and civil disturbance, and breach of contract. Investors may insure projects for any combination of the four types of coverage;

b. guarantee programmes to cover risk in the form of partial guarantees for debt financing. Both partial risk and partial credit guarantee shall be available; and

c. national and regional guarantee funds, involving, in particular, domestic financial institutions or investors for encouraging the development of the financial sector.

3. Cooperation shall also provide support to capacity-building, institutional support and participation in the core funding of national and/or regional initiatives to reduce the commercial risks for investors (inter alia guarantee funds, regulatory bodies, arbitration mechanisms and judiciary systems to enhance the protection of investments improving the export credit systems).

4. Cooperation shall provide such support on the basis of complementary and added value with respect to private and/or public initiatives and, whenever feasible, in partnership with private and other public organisations. The ACP and the EC will within the framework of the ACP-EC Development Finance Cooperation Committee undertake a joint study on the proposal to set up an ACP-EC Guarantee Agency to provide and manage investment guarantee programmes.

ARTICLE 78
Investment protection

1. The ACP States and the Community and its Member States, within the scope of their respective competencies, affirm the need to promote and protect either Party's investments on their respective territories, and in this context affirm the importance of concluding, in their mutual interest, investment promotion and protection agreements which could also provide the basis for insurance and guarantee schemes.

2. In order to encourage European investment in development projects of special importance to, and promoted by the ACP States, the Community and the Member States, on the one hand and the ACP States on the other, may also conclude agreements relating to specific projects of mutual interest where the Community and European enterprises contribute towards their financing.

3. The Parties also agree to introduce, within the economic partnership agreements, and while respecting the respective competencies of the Community and its Member States, general principles on protection and promotion of investments, which will endorse the best results agreed in the competent international fora or bilaterally.

PART 4: DEVELOPMENT FINANCE COOPERATION

TITLE III: TECHNICAL COOPERATION

ARTICLE 79

1. Technical cooperation shall assist the ACP States in the development of national and regional manpower resources, the sustained development of the institutions critical for development success, including inter alia strengthening ACP consulting firms and organisations, as well as exchange arrangements involving consultants from both ACP and EU firms.

2. Furthermore, technical cooperation, shall be cost-effective and relevant to the need for which it is intended, and shall also favour the transfer of know-how and increase national and regional capabilities. Technical cooperation shall contribute to the achievement of project and programme goals, including efforts to strengthen management capacity of the National and Regional Authorising Officers. Technical assistance shall:

a. be demand-driven and thus made available only at the request of the ACP State or States concerned, and adapted to recipient needs;

b. complement and support ACP efforts to identify their own requirements;

c. be monitored and followed up to guarantee effectiveness;

d. encourage the participation of ACP experts, consultancy firms and educational and research institutions in contracts financed from the Fund and identify ways of employing qualified national and regional personnel on Fund projects;

e. encourage the secondment of ACP national cadres as consultants to an institution in their own country, or a neighbouring country, or to a regional organisation;

f. aim at developing knowledge of national and regional manpower constraints and potential and establish a register of ACP experts, consultants and consultancy firms suitable for employment on projects and programmes financed from the Fund;

g. support intra-ACP technical assistance in order to promote the exchange between the ACP States of technical assistance, management and professional expertise;

h. develop action programmes for long-term institution building and staff development as an integral part of project and programme planning, account being taken of the necessary financial requirements;

i. support arrangements to enhance the capacity of the ACP States to build up their own expertise; and

j. give special attention to the development of the ACP States' capacities in project planning, implementation and evaluation, as well budget management.

3. Technical assistance may be provided in all areas of cooperation and within the limits of the mandate of this Agreement. The activities covered would be diverse in scope and nature, and would be tailored to meet the needs of the ACP States.

4. Technical cooperation may be either of a specific or a general nature. The ACP-EC Development Finance Cooperation Committee shall establish the guidelines for the implementation of technical cooperation.

ARTICLE 80

With a view to reversing the brain drain from the ACP States, the Community shall assist ACP States which so request to facilitate the return of qualified ACP nationals resident in developed countries through appropriate re-installation incentives.

PART 5: GENERAL PROVISIONS FOR THE LEAST-DEVELOPED, LANDLOCKED AND ISLAND ACP STATES (LDLICs)

CHAPTER 1: GENERAL PROVISIONS

ARTICLE 84

1. To enable LDLICs to take full advantage of the opportunities offered by the Agreement so as to step up their respective rates of development, cooperation shall ensure special treatment for the least developed ACP countries and take due account of the vulnerability of landlocked and island ACP countries. It shall also take into consideration the needs of countries in post-conflict situations.

2. Independently of the specific measures and provisions for the least-developed, landlocked and island countries in the different chapters of the Agreement, special attention shall be paid in respect of these groups as well as countries in post-conflict situations to:

a. the strengthening of regional cooperation;

b. transport and communications' infrastructure;

c. the efficient exploitation of marine resources and the marketing of products so produced and, in the case of landlocked countries, inland fisheries;

d. structural adjustment where account shall be taken of the level of development of these countries and equally, at the implementation stage, of the social dimension of adjustment; and

e. the implementation of food strategies and integrated development programmes.

PART 5: GENERAL PROVISIONS FOR THE LEAST-DEVELOPED, LANDLOCKED AND ISLAND ACP STATES (LDLICs)

CHAPTER 2: LEAST-DEVELOPED ACP STATES

ARTICLE 85

1. The least-developed ACP States shall be accorded a special treatment in order to enable them to overcome the serious economic and social difficulties hindering their development so as to step up their respective rates of development.

2. The list of least-developed countries is given in Annex VI. It may be amended by a decision of the Council of Ministers where:

a. a third State in a comparable situation accedes to this Agreement; and

b. the economic situation of an ACP State changes considerably and durably to the extent that it needs to be included in the least-developed category or its inclusion in that category is no longer justified.

ARTICLE 86

The provisions adopted in respect of the least-developed ACP States are contained in the following Articles: 2, 29, 32, 35, 37, 56, 68, 84, 85.

PART 5: GENERAL PROVISIONS FOR THE LEAST-DEVELOPED, LANDLOCKED AND ISLAND ACP STATES (LDLICs)

CHAPTER 3: LANDLOCKED ACP STATES

ARTICLE 87

1. Specific provisions and measures shall be established to support landlocked ACP States in their efforts to overcome the geographical difficulties and other obstacles hampering their development so as to enable them to step up their respective rates of development.

2. The list of landlocked ACP States is given in Annex VI. It may be amended by decision of the Council of Ministers when a third State in a comparable situation accedes to the Agreement.

ARTICLE 88

The provisions adopted in respect of the landlocked ACP States are contained in the following Articles: 2, 32, 35, 56, 68, 84, 87.

PART 5: GENERAL PROVISIONS FOR THE LEAST-DEVELOPED, LANDLOCKED AND ISLAND ACP STATES (LDLICs)

CHAPTER 4: ISLAND ACP STATES

ARTICLE 89

1. Specific provisions and measures shall be established to support island ACP States in their efforts to overcome the natural and geographical difficulties and other obstacles hampering their development so as to enable them to step up their respective rates of development.

2. The list of island ACP States is given in Annex VI. It may be amended by decision of the Council of Ministers when a third State in a comparable situation accedes to the Agreement.

ARTICLE 90

The provisions adopted in respect of the island ACP States are contained in the following Articles: 2, 32, 35, 56, 68, 84, 89.

PART 6: FINAL PROVISIONS

ARTICLE 91
Conflict between this Agreement and other treaties

No treaty, convention, agreement or arrangement of any kind between one or more Member States of the Community and one or more ACP States may impede the implementation of this Agreement.

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